



TOWN OF FAIRFAX

STAFF REPORT

October 25, 2018

TO: Planning Commission

FROM: Garrett Toy, Town Manager

SUBJECT: Consideration of an ordinance of the Town of Fairfax to consolidate Titles 19 & 20 ("Telecommunications") of the Fairfax Municipal Code into a revised Title 19 which establishes uniform and 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

Adopt a resolution recommending the Town Council adopt an ordinance consolidating Title 19 & 20 into a revised Title 19 ("Telecommunications") of the Fairfax Municipal Code to establish uniform and comprehensive regulations for wireless telecommunication facilities.

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 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.

On September 26, 2018, the FCC approved a Declaratory Ruling and Report and Order to 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." The ruling will 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.

In response to this 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, the Council adopted Urgency Ordinance No. 819, at a special Council meeting on September 26th, to immediately establish standards for WCF to ensure that the Town's regulations reflected current federal and state law and recent trends in wireless facilities deployment. The urgency ordinance provided 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.

DISCUSSION

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. At the September 26th Council meeting, staff reported we would take a similar ordinance to the Planning Commission for consideration. It should be noted that the FCC's Declaratory Ruling and Report and Order *will not take effect until January 14, 2019*. This should provide sufficient time for the Council to adopt a permanent ordinance prior to the effective date of the FCC Ruling.

Proposed Ordinance

The proposed 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.

At its September 26th meeting, the Council did make some revisions to the urgency ordinance to strengthen certain provisions. One significant revision was that the Council created a new Title 20 as a companion ordinance to the existing Title 19 ("Telecommunications") in the Fairfax municipal code. While Title 20 would control in the event of any conflicts with Title 19, the Council did not want to exclude any existing provisions of Title 19 that perhaps should have been included in the new Title 20. As clarification, the Town adopted Title 19 in 1999 to address cell towers. This code section has never been amended. Please note that smartmeters did not exist at that time. Chapter 8.68 of the Town's municipal code addresses smartmeters and related equipment.

The proposed ordinance consolidates Titles 19 and 20 into a new Title 19. The intent of Title 20 was to replace in its entirety Title 19. However, at the Council's direction, staff was to evaluate if there were any sections of Title 19 that should have been included in Title 20. In addition, the Council requested the Planning Commission review the attached letter submitted at the meeting.

To facilitate the PC's review, we created a redline of the proposed ordinance. The "base" document is the urgency ordinance adopted by the Council. The redline document reflects staff and the Town Attorneys' revisions, primarily made to: a) reformat into a new Title 19, b) clarify issues, c) correct typos/grammar, d) strengthen provisions, e) prevent a legal conflict with state and/or federal laws, f) eliminate references to an urgency ordinance, and g) include any provisions of the existing Title 19 that should be included in the new version. Staff did try to note the reasons for some of the revisions in the margins of the redline. We also included a table to reference old Title 19 provisions to new Title 19 provisions. Janet Coleson, Town Attorney, and Gail Karish from BBK, will be present at the meeting to "walk" the PC thru the revisions and to answer any questions.

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 retain 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 (except for the CR- commercial recreation zone) 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 Council.
16. 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.

EFFECTIVE DATE/NEXT STEPS

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. Should the Planning Commission make a recommendation this evening, staff will take the ordinance to the Council at its November 7th meeting.

ENVIRONMENTAL REVIEW

The proposed Ordinance 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

- Attachment A - Resolution 2018-18
- Attachment B - Redline of Proposed Ordinance
- Attachment C - Table
- Attachment D –Letter received at 9/26/18 Town Council special meeting
- Attachment E – Citizen comments

RESOLUTION NO. 2018-18

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX
RECOMMENDING THE TOWN COUNCIL ADOPT ORDINANCE NO. ____ ENTITLED
“AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
CONSOLIDATING TITLE 19 AND 20 INTO A REVISED TITLE 19
 (“TELECOMMUNICATIONS”) OF THE FAIRFAX MUNICIPAL CODE TO ESTABLISH
UNIFORM AND COMPREHENSIVE REGULATIONS FOR WIRELESS
TELECOMMUNICATION FACILITIES**

WHEREAS, the purpose of this Ordinance is to update the Town's Municipal Code to provide uniform and comprehensive standards, regulations and permit requirements for the installation of wireless telecommunications facilities in the Town including on private property and in the Town's public right-of-way; and

WHEREAS, the wireless telecommunications industry has expressed interest in submitting applications for the installation of “small cell” wireless telecommunications facilities in the Town's public rights-of-way. Other California cities have already received applications for small cells to be located within the public right-of-way; and

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

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

WHEREAS, Section 2902 of the California Public Utilities Code authorizes municipal corporations to retain their powers of control to supervise and regulate the relationships between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and

repair of public streets by any public utility and the location of the poles, wires, mains, or conduits of any public utility on, under, or above any public streets; and

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

WHEREAS, Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner, and may involve the imposition of fees; and

WHEREAS, state and federal law have changed substantially since the Town last adopted regulations for wireless telecommunications facilities in the Town. Such changes include establishing "shot clocks" whereby the Town must approve or deny installations within a certain period of time. Federal regulations require local governments to act on permit applications for wireless facilities within a prescribed time period and state and federal law and regulations permit applicants to invoke a deemed granted remedy when a failure to timely act occurs. See 47 U.S.C. § 332(c)(7)(B)(iii); 47 C.F.R. §§ 1.40001 et seq.; Cal. Gov't Code § 65964.1. Under federal law, a decision on certain applications must be made in as few as 60 days. The Town is in need of clear regulations for wireless installations in the public right-of-way given the number of anticipated applications and legal timelines upon which the Town must act; and

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

WHEREAS, the regulations of wireless installations including in the public right-of-way are necessary to protect and preserve the aesthetics in the community, as well as the values of properties within the Town, and to ensure that all wireless telecommunications facilities are installed using the least intrusive means possible; and

WHEREAS, The Town finds that in light of more recent developments in federal and state law with respect to the regulation of small cell and other wireless telecommunications facilities, there is a need for the Town to update its current ordinances based on current telecommunications trends, updates in laws, as well as aesthetic and location options for wireless facilities. The Town finds that Northern California is now experiencing an unprecedented increase in the number and intensity of

wildfires exacerbated by the effects of climate change, and that power lines and electrical equipment failures are a leading cause of California wildfires; that overburdened utility poles can present a hazard of collapsing and failing, that wireless facilities may present an electrical hazard and/or increase the risk of electrical fires if not properly regulated, installed and monitored; and

WHEREAS, the Town finds that a personal residence is for most homeowners their single greatest financial asset, and that proximity of wireless facilities has been shown to adversely affect property values of personal residences. The Town further finds that aesthetic considerations in residential zones are especially important in close proximity to personal residences; and

WHEREAS, the Town recognizes its responsibilities under the Federal Telecommunications Act of 1996 and state law, and believes that it is acting consistent with the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare. The Town does not intend that this Ordinance prohibit or have the effect of prohibiting telecommunications service; rather, it 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; and

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; and

WHEREAS, the adoption of the proposed Ordinance 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; and

WHEREAS, the Planning Commission has conducted a duly-noticed public hearing to consider the draft ordinance, hear the presentation of a staff report, and receive public comment on the matter.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the Town of Fairfax as follows:

SECTION 1. The recitals set forth above are adopted as further findings of the Planning Commission.

SECTION 2. The Planning Commission has reviewed the draft ordinance attached hereto as Attachment 1 and finds that it is consistent with the Town General Plan, as set forth above.

SECTION 3. The Planning Commission hereby recommends that the Town Council adopt Attachment 1 hereto in order to consolidate Titles 19 and 20 into a revised Title 19 (“Telecommunications”) of the Fairfax Town Code to establish uniform and comprehensive regulations for wireless telecommunication facilities.

The forgoing Resolution was duly passed and adopted at a regular meeting of the Planning Commission of the Town of Fairfax held in said Town on the 25th day of October 2018 by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mimi Newton, Chair

Attest:

Ben Berto, Secretary

ORDINANCE NO. _____

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AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX CONSOLIDATING TITLES 19 and 20 ("TELECOMMUNICATIONS") OF THE FAIRFAX MUNICIPAL CODE INTO A REVISED TITLE 19 WHICH ESTABLISHES UNIFORM AND COMPREHENSIVE REGULATIONS FOR WIRELESS TELECOMMUNICATION FACILITIES

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WHEREAS, This Ordinance is adopted as follows:

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

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

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

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Deleted: The Federal Telecommunications Act of 1996 preempts and declares invalid state or local rules that "prohibit" the provision of interstate or intrastate telecommunications service or personal wireless services.¶

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

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

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

¶ (9)

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

(5) Section 2902 of the California Public Utilities Code authorizes municipal corporations to retain their powers of control to supervise and regulate the relationships between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets by any public

utility and the location of the poles, wires, mains, or conduits of any public utility on, under, or above any public streets.

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

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

(12) State and federal law have changed substantially since the Town last adopted regulations for wireless telecommunications facilities in the Town. Such changes include establishing "shot clocks" whereby the Town must approve or deny installations within a certain period of time. Federal regulations require local governments to act on permit applications for wireless facilities within a prescribed time period and state and federal laws and regulations permit applicants to invoke a deemed granted remedy when a failure to timely act occurs. See 47 U.S.C. § 332(c)(7)(B)(iii); 47 C.F.R. §§ 1.40001 et seq.; Cal. Gov't Code § 65964.1. Under federal law, a decision on certain applications must be made in as few as 60 days.

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

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

(15) The Town finds that in light of more recent developments in federal and state law with respect to the regulation of small cell and other wireless telecommunications facilities, there is an need for the Town to update its current ordinances based on current telecommunications trends, updates in laws, as well as aesthetic and location options for wireless facilities. The Town finds that Northern California is now experiencing an unprecedented increase in the number and intensity of wildfires exacerbated by the effects of climate change, and that power lines and electrical equipment failures are a leading cause of California wildfires; that overburdened utility poles can present a hazard of collapsing and failing, that wireless facilities may present an electrical hazard and/or increase the risk of electrical fires if not properly regulated, installed and monitored.

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(12)

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

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Deleted: Pursuant to FCC regulations, the Town cannot adopt a moratorium ordinance to toll the time period for review for certain type of facilities, even when needed to allow the Town to maintain the status quo while it reviews and revises its policies for compliance with changes in state or federal law. The Town is in immediate need of clear regulations for wireless installations in the public right-of-way given the number of anticipated applications and legal timelines upon which the Town must act.

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Deleted: The Town Council also finds that the lack of specifically-designed standards and regulations in the Municipal Code for wireless facilities located in the public right-of-way, the increasing requests for information about the Town's regulation of wireless telecommunications facilities, the inability to adopt a temporary moratorium, and the potential liabilities and negative consequences for noncompliance with state and federal regulations (including, without limitation, the ability for applicants to invoke deemed approval remedies) present current and immediate threat to the public health, safety and welfare. The Town Council further finds and declares that the immediate implementation of the Ordinance is necessary to preserve and protect public health, safety and welfare.

(16) The Town finds that a personal residence is for most homeowners their single greatest financial asset, and that proximity of wireless facilities has been shown to adversely affect property values of personal residences. The Town further finds that aesthetic considerations in residential zones are especially important in close proximity to personal residences.

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(17) The Town recognizes its responsibilities under the Federal Telecommunications Act of 1996 and state law, and believes that it is acting consistent with the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare. The Town does not intend that this Ordinance prohibit or have the effect of prohibiting telecommunications service; rather, it 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.

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Based on the foregoing, the Town Council finds and determines that the preservation of the public health, safety and welfare requires that this Ordinance be enacted.

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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.

Deleted: 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

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

Section 1. The Fairfax Municipal Code is hereby amended as follows: A revised Chapter, Chapter 19, of the Fairfax Municipal Code is hereby enacted as set forth in Exhibit A to this Ordinance, which is hereby incorporated as though set forth in full herein. The existing Chapters 19 and 20 are hereby repealed.

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. Effective Date. This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building.

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

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AYES: _____
NOES: _____
ABSENT: _____
ABSTAIN: _____

~~Deleted: 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, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club.¶~~

 Peter Lacques, Mayor

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~~Deleted: None~~

ATTEST:

 Michele Gardner, Town Clerk

Exhibit A
ORDINANCE

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Title 19: Telecommunications
REVISED Chapter 19.04. WIRELESS TELECOMMUNICATIONS FACILITIES

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1 19.04.010 Purpose

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

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

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25 19.04.020 Definitions. For the purposes of this chapter, the following defined terms shall
26 have the meaning set forth in this section, unless otherwise defined or the context clearly
27 indicates or requires a different meaning.

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

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

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

47 C. **“Base Station”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1),
48 as may be amended, which currently defines that term as a structure or equipment at a fixed
49 location that enables FCC-licensed or authorized wireless communications between user
50 equipment and a communications network. The term does not encompass a tower as defined
51 in 47 C.F.R. § 1.40001(b)(9) or any equipment associated with a tower. The term includes,
52 but is not limited to, equipment associated with wireless communications services such as
53 private, broadcast, and public safety services, as well as unlicensed wireless services and
54 fixed wireless services such as microwave backhaul. The term includes, but is not limited to,
55 radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies,
56 and comparable equipment, regardless of technological configuration (including distributed
57 antenna systems and small-cell networks). The term includes any structure other than a tower
58 that, at the time the relevant application is filed with the State or local government under this
59 chapter, supports or houses equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii) that has
60 been reviewed and approved under the applicable zoning or siting process, or under another
61 State or local regulatory review process, even if the structure was not built for the sole or
62 primary purpose of providing such support. The term does not include any structure that, at
63 the time the relevant application is filed with the State or local government under this chapter,
64 does not support or house equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii).

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

68 E. **“Collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2),
69 as may be amended, which currently defines that term as the mounting or installation of
70 transmission equipment on an eligible support structure for the purpose of transmitting or
71 receiving radio frequency signals for communications purposes.

Deleted: 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

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72 F. **“Eligible Facilities Request”** means the same as defined by the FCC in 47 C.F.R. §
73 1.40001(b)(3), as may be amended, which currently defines that term as any request for
74 modification of an existing tower or base station that does not substantially change the
75 physical dimensions of such tower or base station, involving: (i) collocation of new
76 transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of
77 transmission equipment.

78 G. **“Eligible Support Structure”** means the same as defined by the FCC in 47 C.F.R. §
79 1.40001(b)(4), as may be amended, which currently defines that term as any tower or base
80 station as defined in this section, provided that it is existing at the time the relevant application
81 is filed with the State or local government under this chapter.

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82 H. **“Existing”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as
83 may be amended, which currently provides that a constructed tower or base station is existing
84 for purposes of the FCC's Section 6409(a) regulations if it has been reviewed and approved

94 under the applicable zoning or siting process, or under another State or local regulatory review
95 process, provided that a tower that has not been reviewed and approved because it was not
96 in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this
97 definition.

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

100 J. **"Modification"** means any change to an existing wireless telecommunications facility
101 that involves any of the following: collocation, expansion, modification, alteration,
102 enlargement, intensification, reduction, or augmentation, including, but not limited to, a
103 change in size, shape, color, visual design, or exterior material. Modification does not include
104 repair, replacement, or maintenance if those actions do not involve a change to the existing
105 facility involving any of the following: collocation, expansion, modification, alteration,
106 enlargement, intensification, reduction, or augmentation.

107 K. **"Personal Wireless Services"** means the same as defined in 47 U.S.C. §
108 332(c)(7)(C)(i), as may be amended, which defines the term as commercial mobile services,
109 unlicensed wireless services and common carrier wireless exchange access services.

110 L. **"Personal Wireless Service Facilities"** means the same as defined in 47 U.S.C. §
111 332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal
112 wireless services.

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

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

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

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

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

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

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

129 T. **"Section 6409(a) Approval"** means the approval required by Section 6409(a).

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

138 V. **“Substantial Change”** means the same as defined by the FCC in 47 C.F.R. §
139 1.40001(b)(7), as may be amended, which currently defines that term differently based on the
140 particular wireless facility type (tower or base station) and location (in or outside the public
141 right-of-way). For clarity, this definition organizes the FCC’s criteria and thresholds for a
142 substantial change according to the wireless facility type and location.

- 143 1. For towers outside the public rights-of-way, a substantial change occurs when:
- 144 a) the proposed collocation or modification increases the overall height more than
145 10% or the height of one additional antenna array not to exceed 20 feet
146 (whichever is greater); or
 - 147 b) the proposed collocation or modification increases the width more than 20 feet
148 from the edge of the wireless tower or the width of the wireless tower at the level
149 of the appurtenance (whichever is greater); or
 - 150 c) the proposed collocation or modification involves the installation of more than
151 the standard number of equipment cabinets for the technology involved, not to
152 exceed four; or
 - 153 d) the proposed collocation or modification involves excavation outside the current
154 boundaries of the leased or owned property surrounding the wireless tower,
155 including any access or utility easements currently related to the site.
- 156 2. For towers in the public rights-of-way and for all base stations, a substantial change
157 occurs when:
- 158 a) the proposed collocation or modification increases the overall height more than
159 10% or 10 feet (whichever is greater); or
 - 160 b) the proposed collocation or modification increases the width more than 6 feet
161 from the edge of the wireless tower or base station; or
 - 162 c) the proposed collocation or modification involves the installation of any new
163 equipment cabinets on the ground when there are no existing ground-mounted
164 equipment cabinets; or
 - 165 d) the proposed collocation or modification involves the installation of any new
166 ground-mounted equipment cabinets that are ten percent (10%) larger in height
167 or volume than any existing ground-mounted equipment cabinets; or

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

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

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

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

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

188 W. **“Telecommunications Tower”** or **“Tower”** means a freestanding mast, pole, guyed
189 tower, lattice tower, free standing tower or other structure designed and primarily used to
190 support wireless telecommunications facility antennas. For the purposes of “Eligible
191 Facilities Requests”, the term “Tower” means the same as defined by the FCC in 47 C.F.R.
192 § 1.40001(b)(9), as may be amended, which currently defines that as any structure built
193 for the sole or primary purpose of supporting any FCC-licensed or authorized antennas
194 and their associated facilities, including structures that are constructed for wireless
195 communications services including, but not limited to, private, broadcast, and public safety
196 services, as well as unlicensed wireless services and fixed wireless services such as
197 microwave backhaul, and the associated site.

198 X. **“Transmission Equipment”** means the same as defined by the FCC in 47 C.F.R. §
199 1.40001(b)(8), as may be amended, which currently defines that term as equipment that
200 facilitates transmission for any FCC-licensed or authorized wireless communication service,
201 including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and
202 regular and backup power supply. The term includes equipment associated with wireless
203 communications services, including, but not limited to, private, broadcast, and public safety
204 services, as well as unlicensed wireless services and fixed wireless services such as
205 microwave backhaul.

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

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

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

217 1. A facility that qualifies as an amateur station as defined by the FCC, 47 C.F.R. Part
218 97, of the Commission’s Rules, or its successor regulation.

219 2. An antenna facility that is subject to the FCC Over-The-Air-Reception Devices rule,
220 47 C.F.R. Section 1.4000, or any successor regulation, including, but not limited to,
221 direct-to-home satellite dishes that are less than one meter in diameter, TV
222 antennas used to receive television broadcast signals and wireless cable antennas.

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

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

228 5. Telecommunications facilities owned and operated by any emergency medical care
229 provider.

230 6. Mobile services providing public information coverage of news events of a
231 temporary nature.

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

234 **19.04.030 Applicability**

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

236 1. All facilities for which applications were pending prior to the effective date of this
237 chapter shall be subject to and comply with all provisions of this chapter;

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238 All facilities, notwithstanding the date approved, shall be subject immediately to the
239 provisions of this chapter governing the operation and maintenance, cessation of
240 use and abandonment, removal and restoration of wireless telecommunications

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244 facilities and wireless telecommunications collocation facilities and the prohibition
245 of dangerous conditions or obstructions by such facilities; provided, however, that
246 in the event a condition of approval conflicts with a provision of this chapter, the
247 condition of approval shall control unless and until the permit is amended or
248 revoked.

249
250 B. Notwithstanding any provision of the Fairfax Municipal Code to the contrary, provisions
251 governing the installation of a public utility structure or facility shall not apply to wireless
252 telecommunications facilities. Title 19 shall govern all applications for wireless
253 telecommunications facilities.

254 **19.04.040 Wireless Telecommunications Facility Permit Required**

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

258 Excluding Eligible Facilities Request applications, applications for wireless facilities shall
259 require a use permit subject to the requirements of this chapter, to be acted upon by the
260 Planning Commission pursuant to Chapter 17.032, and other permits as set forth in the table
261 below, in addition to any other permit required pursuant to the Fairfax Municipal Code. Eligible
262 Facilities Request applications shall be processed according to the requirements of Section
263 19.04.140.

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Description of Wireless Facility	Private Property		Public Right-of Way ³
	RS, RD, RM, PDD Residential Zoning Districts and CR Commercial Zoning district	All Other Zoning Districts	Non-Residential Zoning Districts except for CR
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.

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

279 **19.04.050 Application for Permit**

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280 A. **Application content.** All applications for a permit required by this chapter must be
281 made in writing on such form as the zoning administrator prescribes. For permit applications
282 other than Eligible Facilities Requests (which are addressed in Section 19.04.140), the form
283 shall include the following information, in addition to all other information determined
284 necessary by the zoning administrator or the Town as part of an application for a conditional

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291 use permit:

- 292 1. Full name and contact information for the facility owner, facility operator, agent (if
293 any), and property owner, and related letter(s) of authorization.
- 294 2. The type of facility, including a full written description of the proposed facility, its
295 purpose, technical specifications, and an assessment of any fire hazard a proposed
296 installation presents to surrounding vegetation and structures.
- 297 3. A detailed site and engineering plan of the proposed facility containing the exact
298 proposed location of the facility, created by a qualified licensed engineer and in
299 accordance with requirements set by the zoning administrator. The site and
300 engineering plan shall display the dimensions of each proposed facility, including
301 its height from the ground level. The site and engineering plans shall show the
302 proposed facility from each cardinal direction.
- 303 4. Photographs of facility equipment and an accurate visual impact analysis with photo
304 simulations.
- 305 5. Proof of all applicable licenses or other approvals required by the FCC.
- 306 6. A technically sufficient written report certified by a qualified radio frequency
307 emissions engineer, certifying that the facility is in compliance with such FCC
308 standards.
- 309 7. If the application is for a facility that will be located within the public right-of-way,
310 the applicant shall certify that it is a telephone corporation or state the basis for its
311 claimed right to enter the right-of-way, and provide a copy of its certificate of public
312 convenience and necessity (CPCN), if a CPCN has been issued by the California
313 Public Utilities Commission.
- 314 8. A written description identifying the geographic service area for the subject
315 installation, accompanied by a plan and maps showing anticipated future
316 installations and modifications for the following two years.
- 317 9. A written report that analyzes acoustic levels for the proposed wireless
318 telecommunications facility and all associated equipment, including, without
319 limitation, all environmental control units, sump pumps, temporary backup power
320 generators, and permanent backup power generators in order to demonstrate
321 compliance with chapter 7.16 (Noise Control). The acoustic analysis must be
322 prepared and certified by a qualified engineer and include an analysis of the
323 manufacturer specifications for all noise-emitting equipment and a depiction of the
324 proposed equipment relative to all adjacent property lines. In lieu of a written report,
325 the applicant may submit evidence from the equipment manufacturer that the
326 ambient noise emitted from all the proposed equipment will not, both individually
327 and cumulatively, exceed the applicable limits.

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332 10. If the applicant claims it requires an exception to the requirements of this chapter,
333 all information and studies necessary for the Town to evaluate that claim.

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334 11. An application and processing fee and a deposit for a consultant review as set forth
335 in paragraph (B) of this section.

336 12. Any other studies or information determined necessary by the zoning administrator,

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337 B. **Independent expert.** The zoning administrator is authorized to retain on behalf of the
338 Town an independent, qualified consultant to review any application for a permit for a wireless
339 telecommunication facility. The cost of this review shall be paid by the applicant through a
340 deposit pursuant to an adopted fee schedule resolution. The consultant may review the
341 technical aspects of the application, including, but not limited to, the following matters:

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342 The accuracy, adequacy, and completeness of submissions;

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343 Compliance with applicable radio frequency emission standards and applicable electrical
344 codes and fire codes and best practices for fire and electrical safety;

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345 Whether any requested exception is justified;

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346 An engineering and seismic assessment of the proposed installation to ensure that the
347 proposed location is structurally adequate to support the proposed installation, and that the
348 installation will meet the seismic standards set forth for "Risk Category IV" for "essential
349 facilities" as set forth in the California Building Code (CBC), and that it is adequately
350 engineered to withstand the maximum wind loads that could be reasonably anticipated for the
351 location. For installations on utility poles, the assessment would be based on conformance
352 to CPUC standards;

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353 An assessment of any fire hazard a proposed installation presents to surrounding vegetation
354 and structures;

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355 A technical evaluation of alternative sites, facility designs or configurations, and coverage
356 analysis; and

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357 The validity of conclusions reached or claims made by applicant.

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358 **19.04.060 Location and Configuration Preferences**

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

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364 B. **Review of Location and Configuration.** The reviewing authority shall consider the
365 extent to which a proposed wireless telecommunication facility complies with these
366 preferences and whether there are feasible alternative locations or configurations to the

391 proposed facility that are more preferred under this section.

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

394 1. Collocation with existing facilities outside the public rights-of-way;

395 2. Roof-mounted;

396 3. Building-mounted;

397 4. Mounted on an existing pole or utility pole;

398 5. Mounted on a new pole or utility pole that will replace an existing pole or utility pole;
399 and

400 6. Mounted on a new telecommunication tower or pole.

401 D. **Order of Preference - Location.** The order of preference for the location of wireless
402 telecommunications facilities from most preferred to least preferred is:

403 1. In the CH zoning district;

404 2. In the CC zoning district;

405 3. In the CS zoning district;

406 4. In the CL zoning district;

407 5. In the PD zoning district; and

408 6. In the public right-of-way with the closest adjacent district being a commercial
409 district.

410 E. **Accessory equipment.** In order of preference from most preferred to least preferred,
411 accessory equipment for wireless telecommunication facilities and wireless
412 telecommunications collocation facilities shall be located underground (where possible),
413 within a building or structure, on a screened roof top area or structure, or in a rear yard if not
414 readily visible from surrounding properties and the roadway, unless the reviewing authority
415 finds that another location is preferable under the circumstances of the application.

416 **19.04.070 Design and Development Standards for All Facilities**

417 A. **Basic requirements.** The design and development standards set forth in this section
418 apply to all wireless telecommunications facilities no matter where they are located. Wireless
419 telecommunications facilities shall be designed and maintained so as to minimize visual,
420 noise, and other impacts on the surrounding community and shall be planned, designed,
421 located, and erected in accordance with the design and development standards in this section.

Commented [7]: Needed for clarification – the first preference is collocation outside PROW

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433 B. Build-out Period. Approvals will automatically expire one (1) year from the issuance date,
434 unless the permittee obtains all other permits and approvals required to install, construct
435 and operate the approved wireless facility, which includes, without limitation, any permits
436 or approvals required by the any federal, state, or local public agencies with jurisdiction
437 over the subject property, the wireless facility, or its use. The zoning administrator may
438 grant one (1) written extension to a date certain when the permittee shows good cause to
439 extend the limitations period in a written request for an extension submitted at least 30
440 days prior to the automatic expiration date in this subparagraph. Any further extensions
441 may be granted by the Planning Commission, in its sole discretion, pursuant to the same
442 procedures to request an extension from the zoning administrator.

443 C. **General guidelines.** The applicant shall employ screening and camouflage design
444 techniques in the design and placement of wireless telecommunications facilities in order to
445 ensure that the facility is as visually inconspicuous as possible, to prevent the facility from
446 dominating and disrupting the surrounding area, and to hide the facility from predominant
447 views from surrounding properties, all in a manner that achieves compatibility with the
448 community.

449 D. **Traffic safety; Roads.** All facilities shall be designed and located in such a manner
450 as to avoid adverse impacts on traffic safety. Whenever feasible, existing roads and parking
451 areas should be used to access, build and service new telecommunications facilities. Any
452 new access roads or parking areas constructed shall be shared with subsequent
453 telecommunications facilities and/or other permitted uses to the extent feasible. New access
454 roads constructed in open space areas shall have the minimum width and surfacing necessary
455 to meet fire safety and access requirements, and shall be graded and drained consistent with
456 Town Code Chapter 8.26, Urban Runoff Pollution Prevention. The size of new parking areas
457 shall be limited to the minimum necessary to accommodate vehicles associated with periodic
458 maintenance of the facility.

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

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

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

473 H. **Lighting.** No wireless telecommunications facility may be illuminated, unless either

Commented [GT8]: Legal Counsel suggested this provision in the eligible facilities would better that the "no speculative facilities" section.

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Deleted: A wireless telecommunications facility, wireless telecommunications collocation facility, or a telecommunications tower, which is built on speculation and for which there is no wireless tenant is prohibited within the Town.

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Commented [GT10]: The old Title 19 had specific language regarding landscaping/vegetation, but this language gives the Town broader control.

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Deleted: <#>Applications for wireless communications facilities shall be accompanied by a landscape plan that shows existing vegetation, indicates any vegetation proposed for removal or trimming, and identifies proposed planting by type, size, and location. The emphasis of the landscape plan should be to visually screen the proposed facility and stabilize soils on sloping sites. Introduced vegetation shall be native, drought tolerant species compatible with the predominant natural setting of the project area.¶
<#>Existing trees and other screening vegetation in the vicinity of the proposed facility and associated accessways shall be protected from damage both during and after construction. Submission of a tree protection plan may be required to ensure compliance with this requirement.¶
<#>All vegetation disturbed during project construction shall be replanted with compatible vegetation and soils disturbed by development shall be reseeded to control erosion.¶
<#>No vegetation shall be removed subsequent to project completion, except to comply with local and state fire safety regulations, to prevent the spread of disease as required by the state's Food and Agriculture Department, or to prevent safety hazards to people or property.¶
<#>The permittee shall enter into a landscape performance and maintenance agreement with the Town of Fairfax to ensure the installation and establishment of required landscaping. This agreement shall be secured by financial securities in an amount equal to 150 percent of estimates to cover the cost of materials and labor for required improvements. The duration of the landscape maintenance agreement shall be coterminous w

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555 specifically required by the Federal Aviation Administration or other government agency or in
556 association with the illumination of an athletic field on Town or school property. Lightning
557 arresters and beacon lights are not permitted, unless required by the Federal Aviation
558 Administration or other government agency. Legally required lightning arresters and beacons
559 shall be included when calculating the height of facilities. If lighting is permitted, the following
560 requirements apply to such lighting:

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- 561 1. Mechanically-operated, low wattage, hooded and downward directed exterior lighting
562 shall be permitted for safety purposes only and shall be kept off, except when
563 maintenance or safety personnel are present at night.
- 564 2. Tower lighting required under FAA regulations should, to the greatest extent feasible,
565 be shielded or directed to minimize light and glare impacts on nearby properties and
566 residents.
- 567 3. Nighttime lighting of warning signs required near publicly accessible facilities must
568 consist of low-wattage fixtures, and must be directed downward and hooded.

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569 I. **Noise.**

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

573 2. Backup generators shall only be operated during periods of power outages, and
574 shall not be tested on weekends, holidays, or between the hours of 5:00 p.m. and
575 7:00 a.m.

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576 3. At no time shall equipment noise from any facility exceed an exterior noise level of
577 55 dBA at the facility's property line if the facility is located in a business or
578 commercial zone that permits those uses, provided, however, that for any such
579 facility located within 500 feet of any property zoned residential or improved with a
580 residential use, such equipment noise shall not exceed an exterior noise level of 40
581 dBA at the property line of any such residential property. For any facility located
582 within a residential zone, such equipment noise shall at no time be audible at the
583 property line of any residentially-improved or residential zoned property.

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

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590 J. **Security.** Each wireless telecommunications facility shall be designed to be resistant
591 to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti, and
592 other conditions that would result in hazardous situations, visual blight, or attractive
593 nuisances. The reviewing authority may require the provision of warning signs, fencing, anti-
594 climbing devices, or other techniques to prevent unauthorized access.

Deleted: and vandalism when, because of their location or accessibility, a facility has the potential to become an attractive nuisance

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

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611 **19.04.080 Additional Design and Development Standards for Facilities Outside the**
612 **Public Right-of-Way**

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

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

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

623 D. **Facilities mounted to a telecommunications tower.**

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

- Moved down [1]: Facilities mounted to a telecommunications tower shall be located in close proximity to existing above-ground utilities, such as electrical towers or utility poles (which are not scheduled for removal or under grounding for at least 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 .
- Moved (insertion) [1]

629 2. Facilities mounted to a telecommunications tower, including, but not limited to, the
630 attached antennas, shall be designed to be the minimum functional height and width
631 required to adequately support the proposed facility and meet FCC
632 requirements. The applicant shall provide documentation satisfactory to the zoning
633 administrator establishing compliance with this paragraph. In any event, facilities
634 mounted to a telecommunications tower shall not exceed the applicable height limit
635 for structures in the applicable zoning district.

636 3. Aside from the antenna itself, no additional equipment may be visible. All cables,
637 including, but not limited to, electrical and utility cables, shall be laid within the
638 interior of the telecommunications tower and camouflaged or hidden to the fullest
639 extent feasible without jeopardizing the physical integrity of the tower.

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- Deleted: shall be

640 4. Pole installations shall be situated so as to utilize existing natural or man-made
641 features including topography, vegetation, buildings, or other structures to provide
642 the greatest amount of visual screening.

658 5. All antenna components and accessory wireless equipment shall be treated with
659 exterior coatings of a color and texture to match the predominant visual background
660 or existing architectural elements so as to visually blend in with the surrounding
661 development. Subdued colors and non-reflective materials that blend with
662 surrounding materials and colors shall be used.

663 6. Poles shall be no greater in diameter or other cross-sectional dimensions than is
664 necessary for the proper functioning of the facility.

665 7. If a faux tree is proposed for the pole installation, it shall be of a type of tree
666 compatible with those existing in the immediate areas of the installation. If no trees
667 exist within the immediate areas, the applicant shall create a landscape setting that
668 integrates the faux tree with added species of a similar height and type. Additional
669 camouflage of the faux tree may be required depending on the type and design of
670 faux tree proposed.

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671 E. **Accessory equipment.** All accessory equipment associated with the operation of any
672 wireless telecommunications facility shall be fully screened or camouflaged and located so as
673 to minimize their visibility to the greatest extent possible, utilizing the following methods for
674 the type of installation:

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675 1. Accessory equipment for roof-mounted facilities shall be installed inside the building
676 to which it is mounted or underground, if feasible. If not feasible, such accessory
677 equipment may be located on the roof of the building that the facility is mounted on,
678 provided that both the equipment and screening materials are painted the color of
679 the building, roof, or surroundings. All screening materials for roof-mounted facilities
680 shall be of a quality and design that is architecturally integrated with the design of
681 the building or structure.

682 2. Accessory equipment for facilities mounted to a telecommunications tower shall be
683 visually screened by locating the equipment either within a nearby building, in an
684 underground vault (with the exception of required electrical panels), or in another
685 type of enclosed structure, which shall comply with the development and design
686 standards of the zoning district in which the accessory equipment is located. Such
687 enclosed structure shall be architecturally treated and adequately screened from
688 view by landscape plantings, decorative walls, fencing or other appropriate means,
689 selected so that the resulting screening will be visually integrated with the
690 architecture and landscaping of the surroundings.

691 **19.04.090 Additional Design and Development Standards for Facilities in the Public**
692 **Right-of-Way**

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

696 B. **Right-of-way authority.** An encroachment permit must be obtained for any work in
697 the public right of way. Only applicants authorized to enter the public right-of-way pursuant to

702 state or federal law or a franchise or other agreement with the Town shall be eligible for a
703 permit to install or modify a wireless telecommunications facility in the public right-of-way.

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704 C. **Antennas.**

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

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712 2. *Street light poles.* The maximum height of any antenna mounted to a street light
713 pole shall not exceed seven (7) feet above the existing height of the street light pole
714 in a location with its closest adjacent district being a commercial zoning district, and
715 shall not exceed three (3) feet above the existing height of the street light pole in
716 any other zoning district. Any portion of the antenna or equipment mounted on a
717 street light pole shall be no less than eighteen (18) feet above any drivable road
718 surface.

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719 D. **Poles.**

720 1. Only pole-mounted antennas shall be permitted in the public right-of-way. All other
721 types of telecommunications towers are prohibited, and no new poles are permitted
722 that are not replacing an existing pole unless an exception is granted pursuant to
723 Section 19.04.130.

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724 2. Pole height and width limitations:

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

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730 b) Notwithstanding (a) above, no facility shall be located on a pole that is less
731 than twenty (20) feet in height, and no facility shall exceed thirty-five (35) feet
732 in height as measured from the ground, including, but not limited to, the pole
733 or replacement pole and any antenna that protrudes above the pole or
734 replacement pole.

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735 3. Pole-mounted equipment shall not exceed six (6) cubic feet in dimension per pole.

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six cubic feet in dimension.¶

736 4. If an applicant proposes to replace a pole in order to accommodate the facility, the
737 pole shall match the appearance of the original pole to the extent feasible, unless
738 another design better accomplishes the objectives of this chapter. Such
739 replacement pole shall not exceed the height of the pole it is replacing by more than

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751 seven (7) feet, and no facility shall exceed thirty-five (35) feet in height as measured
752 from where the base of the pole meets the ground.

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

760 6. All new wires needed to service the wireless telecommunications facility must be
761 installed within the width of the existing utility pole so as to not exceed the diameter
762 and height of the existing utility pole. For streetlights, any replacement pole must
763 allow for an integrated design with wires inside the pole.

764
765 E. **Space occupied.** Facilities shall be designed to occupy the least amount of space in
766 the public right-of-way that is technically feasible.

767 F. **Location.**

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

771 2. A facility shall not be located within any portion of the public right-of-way that would
772 interfere with access to fire hydrants, fire stations, fire escapes, water valves,
773 underground vaults, valve housing structures, or any other vital public health and
774 safety facility.

775 3. Each pole mounted wireless telecommunications facility must be separated by at
776 least one thousand five hundred (1,500) feet.

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

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

781 H. **Accessory equipment.** The wireless facility shall be powered using unmetered
782 service, whenever available. If not available, the electric meter shall be pole-mounted to the
783 extent feasible, and all accessory equipment shall be located underground within three (3)
784 feet of the pole and ground flush mounted to the extent feasible. When above-ground is the
785 only feasible location for a particular type of accessory equipment and when such accessory
786 equipment cannot be pole-mounted, such accessory equipment shall be enclosed within a
787 structure, and shall not exceed a height of five (5) feet and a total footprint of fifteen (15)

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Deleted: <#>Facilities mounted to a telecommunications tower, above-ground accessory equipment, or walls, fences, landscaping or other screening methods shall be setback a minimum of 18 inches from the front of a curb.

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Deleted: <#>All new wires needed to service the wireless telecommunications facility must be installed within the width of the existing utility pole so as to not exceed the diameter and height of the existing utility pole.¶

800 square feet, and shall be screened and camouflaged to the fullest extent possible, including
801 the use of landscaping or alternate screening. Required electrical meter cabinets shall be
802 adequately screened and camouflaged.

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

805 **19.04.100 Conditions of Approval for All Facilities**

806 A. In addition to compliance with the requirements of this chapter, upon approval all
807 facilities shall be subject to each of the following conditions of approval, as well as any
808 modification of these conditions or additional conditions of approval deemed necessary by the
809 reviewing authority throughout the duration of the permit:

810 1. Before the permittee submits any application for a permit or other permits required
811 by the Fairfax Municipal Code, the permittee must incorporate the wireless
812 telecommunication facility permit granted under this chapter, all conditions
813 associated with the wireless telecommunications facility permit and engineering
814 and electrical plans, schematics and specifications and the approved plans and any
815 photo simulations into the project plans (the "Approved Plans"). The permittee must
816 construct, install and operate the wireless telecommunications facility in strict
817 compliance with the Approved Plans. The permittee shall submit an as built drawing
818 within ninety (90) days after installation of the facility.

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

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

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823 b) replace larger, more visually-intrusive facilities with smaller, less visually-
824 intrusive facilities, after receiving all necessary permits and approvals
825 required pursuant to the Fairfax Municipal Code.

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826 3. The permittee shall submit and maintain current at all times basic contact and site
827 information, in a form as may be required by the Town. The permittee shall notify
828 the Town of any changes to the information submitted within seven (7) days of any
829 change, including change of the name or legal status of the owner or operator. This
830 information shall include, but is not limited to, the following:

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831 a) Identity, including the name, address and 24-hour local or toll free contact
832 phone number of the permittee, the owner, the operator, and the agent or
833 person responsible for the maintenance of the facility;

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834 b) The legal status of the owner of the wireless telecommunications facility,
835 including official identification numbers and FCC certification; and

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836 c) The name, address, and telephone number of the property owner if different

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845 than the permittee.

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

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

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855 6. At all times, the permittee shall ensure that the facility complies with the most
856 current regulatory and operational standards including, but not limited to, radio
857 frequency emissions standards adopted by the FCC, antenna height standards
858 adopted by the Federal Aviation Administration, and all electrical code requirements
859 for the equipment, wiring the equipment and providing power to the equipment. At
860 the sole expense of the permittee and using a consultant approved by the Town,
861 testing shall be performed demonstrating compliance with current regulatory and
862 operational standards, and to ensure the equipment is operating within proper
863 specifications and does not pose an undue fire risk or electrical risk. Tests shall
864 occur upon commencement of operations and annually thereafter, and results
865 provided in a written report to the Town.

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Deleted: The Town shall retain a consultant, a

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866
867 7. If, upon inspection, the Town Building Official determines there is good cause to
868 believe that the facility (including, without limitation, its Accessory Equipment,
869 Antenna and/or Base Station) may present a fire risk or electrical hazard, the
870 Building Official may order the facility to be shut down and powered off until such
871 time as the facility is repaired and restored to its correct operating specifications, at
872 the sole expense of the permittee.

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Deleted: FCC standards, the zoning administrator may require the permittee to submit a technically-sufficient written report certified by a qualified radio frequency emissions engineer, certifying that the facility is in compliance with such FCC standards.

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

881 9. Permittee shall defend, indemnify, protect, and hold harmless the Town, its elected
882 and appointed council members, boards, commissions, officers, officials, agents,
883 consultants, employees, and volunteers from and against any and all claims,
884 actions, or proceeding against the Town and its elected and appointed council

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904 members, boards, commissions, officers, officials, agents, consultants, employees,
905 and volunteers to attack, set aside, void or annul, an approval of the Town, Planning
906 Commission or Town Council concerning the permit, the project, and any and all
907 claims, actions, or proceedings arising from, or related to, the installation, operation,
908 or inspection of any facility. Such indemnification shall include damages,
909 judgments, settlements, penalties, fines, defensive costs or expenses, including,
910 but not limited to, interest, attorneys' fees, and expert witness fees, or liability of any
911 kind related to or arising from such claim, action, or proceeding. The Town shall
912 promptly notify the permittee of any claim, action, or proceeding that this
913 indemnification obligation may cover. Nothing contained herein shall prohibit Town
914 from participating in a defense of any claim, action or proceeding. The Town shall
915 have the option of coordinating the defense, including, but not limited to, choosing
916 counsel for the defense at permittee's expense.

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917 10. All conditions of approval shall be binding as to the applicant and all successors in
918 interest to permittee.

919 11. The proposed facility complies with all applicable provisions of this chapter,
920 including the technical review by the Town's Independent Expert set forth in Section
921 19.04.050(B).

922 12. The proposed facility has been designed and located to achieve compatibility with
923 the community to the maximum extent reasonably feasible.

924 13. Noise generated by equipment will not be excessive, annoying nor be detrimental
925 to the public health, safety, and welfare and will not exceed the standards set forth
926 in this chapter.

927 14. A condition setting forth the permit expiration date in accordance with section
928 19.04.20 shall be included in the conditions of approval.

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929 15. Record Retention. The permittee must maintain complete and accurate copies of
930 all permits and other regulatory approvals issued in connection with the wireless
931 facility, including, without limitation, any approval, the approved plans and photo
932 simulations incorporated into the approval, all conditions associated with the
933 approval, and any other ministerial permits or approvals issued in connection with
934 the approval. In the event that the permittee does not maintain such records as
935 required in this condition, any ambiguities or uncertainties that would be resolved
936 through an inspection of the missing records will be construed against the
937 permittee.

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

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951 **19.04.110 Additional Conditions of Approval for Facilities in the Public Right-of-Way**

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

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957 1. The wireless telecommunications facility shall be subject to such conditions,
958 changes or limitations as are from time to time deemed necessary by the Town
959 Manager or his/her designee for the purpose of: (a) protecting the public health,
960 safety, and welfare, (b) preventing interference with pedestrian and vehicular traffic,
961 and (c) preventing damage to the public right-of-way or any property adjacent to it.
962 The Town may modify the permit to reflect such conditions, changes or limitations
963 by following the same notice and public hearing procedures as are applicable to the
964 grant of a wireless telecommunications facility permit for similarly located facilities,
965 except the permittee shall be given notice by personal service or by registered or
966 certified mail at the last address provided to the Town by the permittee.

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967 2. The permittee shall not move, alter, temporarily relocate, change, or interfere with
968 any existing structure, improvement, or property without the prior consent of the
969 owner of that structure, improvement, or property. No structure, improvement or
970 property owned by the Town shall be moved to accommodate a wireless
971 telecommunications facility, unless the Town determines that such movement will
972 not adversely affect the Town or any surrounding businesses or residents, and the
973 permittee pays all costs and expenses related to the relocation of the Town's
974 structure, improvement, or property. Prior to commencement of any work pursuant
975 to an encroachment permit issued for any facility within the public right-of-way, the
976 permittee shall provide the Town with documentation establishing to the Town's
977 satisfaction that the permittee has the legal right to use or interfere with any other
978 structure, improvement, or property within the public right-of-way to be affected by
979 applicant's facilities.

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

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

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written notice by the zoning administrator, the zoning administrator shall cause such repair to be completed at permittee's sole cost and expense.

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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.

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6. If a meter cabinet has been approved for the facility and subsequently, any utility company offers electrical service that does not require the use of a meter cabinet, the permittee shall seek approval of the utility company to switch to the unmetered service and, at its sole cost and expense, remove the meter cabinet and any related foundation within thirty (30) days of such service being obtained and reasonably restore the area to its prior condition.

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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:

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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;

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

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

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

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

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9. The applicant has the right to enter the public right-of-way pursuant to state or federal law, or by virtue of a franchise or other agreement with the Town permitting them to use the public right-of-way.

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10. The facility will not interfere with the use of the public right-of-way, existing subterranean infrastructure, or the Town's plans for modification or use of such location and infrastructure.

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19.04.120 Procedures for a Duly Filed Applications

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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. A pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification, including whether the project qualifies for Section 6409(a); potential concealment issues (if applicable); coordination with other Town departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that Town staff may provide informal feedback about whether such applications or other materials may be incomplete or unacceptable.

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Where a wireless telecommunication facility, excluding Eligible Facilities Requests (20.04.140) and collocation facilities (Section 20.04.150), requires a conditional use permit under this chapter, the reviewing authority shall not approve any application, unless, in addition to the findings generally applicable to all conditional use permits, all of the following additional findings are made:¶

The proposed facility complies with all applicable provisions of this chapter, including the technical review by the Town's Independent Expert set forth in Section 20.04.050(B).¶

The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.¶

The applicant has submitted a statement of its willingness to allow other carriers to collocate on the proposed wireless telecommunications facility wherever technically and economically feasible and where collocation would not harm community compatibility and will not incommode the public use and would not harm the public safety.¶

Noise generated by equipment will not be excessive, annoying nor be detrimental to the public health, safety, and welfare and will not exceed the standards set forth in this chapter.¶

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

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

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

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

Deleted: <#>The applicant has provided substantial written evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into by virtue of a franchise or other agreement with the Town permitting them to use the public right-of-way.¶
<#>The applicant has demonstrated that the facility will not interfere with the use of the public right-of-way, existing subterranean infrastructure, or the Town's plans for modification or use of such location and infrastructure.¶
<#>20

19.04.130 Exceptions

A. Exceptions pertaining to any provision of this chapter, including, but not limited to,

1125 exceptions from findings that would otherwise justify denial, may be granted by the reviewing
1126 authority if the reviewing authority makes the finding that a refusal to grant the exception would
1127 violate federal law, state law, or both.

1128 B. An applicant may only request an exception at the time of applying for a wireless
1129 telecommunications facility permit. The request must include both the specific provision(s) of
1130 this chapter from which the exception is sought and the basis of the request.

1131 C. The applicant shall have the burden of proving that the exception should be granted.

1132 19.04.140 Eligible Facilities Requests

1133 A. **Applicability.** This Section applies to all Eligible Facilities Requests pursuant to
1134 Section 6409(a).

1135 B. **Approval Required.** Applicants for Eligible Facilities Requests must submit a written
1136 request for a 6409(a) approval consistent with this section, which will be reviewed by the
1137 zoning administrator, who will determine whether the request should be approved,
1138 conditionally approved, or denied without prejudice pursuant to the standards and procedures
1139 contained in this section.

1140 C. **Other Regulatory Approvals.** Any Eligible Facilities Request approved under this
1141 chapter shall be subject to any and all lawful conditions or requirements associated with such
1142 other permits or regulatory approvals from the Town and state or federal agencies.

1143 D. **Eligible Facilities Request Application Requirement.** An application must include
1144 the following information:

1145 1. Full name and contact information for the facility owner, facility operator, agent (if
1146 any), and property owner, and related letter(s) of authorization. If the applicant does
1147 not own the subject property, the application must include a written authorization
1148 signed by the property owner that empowers the applicant to file the application and
1149 perform all wireless facility construction, installation, operation, and maintenance to
1150 the extent described in the application.

1151 2. The type of facility, including a full, written description of the proposed facility, its
1152 purpose, and technical specifications.

1153 3. A detailed site and engineering plan of the proposed facility containing the exact
1154 proposed location of the facility, created by a qualified, licensed engineer and in
1155 accordance with requirements set by the zoning administrator. The site and
1156 engineering plan shall display the dimensions of each proposed facility, including,
1157 but not limited to, its height from the ground level. The site and engineering plans
1158 shall show the proposed facility from each cardinal direction.

1159 4. Photographs of facility equipment and an accurate visual impact analysis with photo
1160 simulations.

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Deleted: <#>Denial of the facility as proposed would violate federal law, state law, or both; or
<#>A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.

Deleted: <#>Any request for an exception after the Town has deemed an application complete shall be treated as a new

Deleted: <#> application.

Deleted: <#>Notwithstanding any other provision of this chapter, a conditional use permit shall be required for a facility when an exception is requested.

Deleted: <#> denial of the facility as proposed would violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both, using the evidentiary standards required by that law at issue

Deleted: <#>The Town shall have the right to hire an independent consultant, at the applicant's expense, to evaluate the issues raised

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Deleted: The Town shall not approve any Eligible Facilities Request subject to this chapter, except upon a duly filed application consistent with this sSection and any other written rules the Town or the zoning administrator may establish from time to time.

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5. A written statement that explains why the applicant believes Section 6409(a) and the related FCC regulations require approval. 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 (a) whether and why the support structure qualifies as an existing tower or existing base station; and (b) whether and why the proposed Eligible Facilities Request does not cause a substantial change in height, width, excavation, equipment cabinets, concealment, or permit compliance. The analysis provided under (b) 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 by a qualified radio frequency emissions engineer, certifying that the facility is in compliance with such FCC standards.
- E. Administrative Review; Decision Notices.** The zoning administrator shall administratively review an application for an Eligible Facilities Request and act on such an application without prior notice or a public hearing. Within five (5) working days after the zoning administrator approves, conditionally approves, or denies an Eligible Facilities Request application, the zoning administrator shall send a written notice to the applicant. In the event that the zoning administrator determines that an application submitted for approval pursuant to Section 6409(a) 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.
- F. 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.
- G. Criteria for Denial Without Prejudice.** 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.
- H. 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.
- I. 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

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<#>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 classification, including whether the project qualifies for Section 6409(a); potential concealment issues (if applicable); coordination with other Town departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that Town staff may provide informal feedback about whether such applications or other materials may be incomplete or unacceptable. ¶
<#>Submittal Appointment. All Eligible Facilities Request applications must be filed with the Town at a pre-scheduled appointment with the zoning administrator or his/her designee. Applicants may generally submit one (1) application per appointment, but may schedule successive appointments for multiple applications whenever feasible. Any application received without an appointment, whether delivered in-person or through any other means, will not be considered duly filed, unless the applicant receive ... [2]

Deleted: <#>Departmental Forms, Rules and Other Regulations. The Town council authorizes

Deleted: <#> the zoning administrator to develop and publish permit application forms, checklists, ... [3]

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Deleted: Notwithstanding any other provisions in this chapter, and consistent with all applicable federal ... [4]

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Deleted: <#>Appeals. Notwithstanding any provision of the Fairfax Municipal Code to the contrary, incl ... [5]

1380 administrator or deemed approved by the operation of law, shall be automatically subject to
1381 the following conditions in this section; provided, however, that the zoning administrator shall
1382 have discretion to modify or amend these conditions on a case-by-case basis as may be
1383 necessary or appropriate under the circumstances:

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1384 1. *Approved Plans.* Before the permittee submits any application for a building permit
1385 or other permits required by the Fairfax Municipal Code, the permittee must
1386 incorporate the wireless telecommunications facility permit granted under this
1387 section, all conditions associated with the wireless telecommunications facility
1388 permit and the approved plans and any photo simulations into the project plans (the
1389 "Approved Plans"). The permittee must construct, install and operate the wireless
1390 telecommunications facility in strict compliance with the Approved Plans. The
1391 permittee shall submit an as built drawing within ninety (90) days after installation
1392 of the facility.

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1393 2. *Permit Term.* The Town's grant or grant by operation of law of a Section 6409(a)
1394 approval will not extend the permit term, if any, for any conditional use permit, or
1395 other underlying prior regulatory authorization. Accordingly, the term for a Section
1396 6409(a) approval shall be coterminous with the underlying permit or other prior
1397 regulatory authorization for the subject tower or base station.

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1398 3. *Accelerated Permit Terms Due to Invalidation.* In the event that any court of
1399 competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule
1400 that interprets Section 6409(a) such that federal law would not mandate approval
1401 for any Section 6409(a) approval, such 6409(a) approvals shall automatically expire
1402 one year from the effective date of the judicial order, unless the decision would not
1403 authorize accelerated termination of previously approved Section 6409(a)
1404 approvals or the zoning administrator grants an extension upon written request from
1405 the permittee that shows good cause for the extension, which includes, without
1406 limitation, extreme financial hardship. Notwithstanding anything in the previous
1407 sentence to the contrary, the zoning administrator may not grant a permanent
1408 exemption or indefinite extension. A permittee shall not be required to remove its
1409 improvements approved under the invalidated Section 6409(a) approval when it
1410 has submitted an application for a conditional use permit for those improvements
1411 before the one-year period ends.

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1412 4. *No Waiver of Standing.* The Town's grant or grant by operation of law of a Section
1413 6409(a) approval does not waive, and shall not be construed to waive, any standing
1414 by or right of the Town to challenge Section 6409(a), any FCC rules that interpret
1415 Section 6409(a), or any Section 6409(a) approval.

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1416 5. *Build-out Period.* The Section 6409(a) approval will automatically expire one (1)
1417 year from the issuance date, unless the permittee obtains all other permits and
1418 approvals required to install, construct and operate the approved wireless facility,
1419 which includes, without limitation, any permits or approvals required by the any
1420 federal, state, or local public agencies with jurisdiction over the subject property,
1421 the wireless facility, or its use. The zoning administrator may grant one (1) written

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extension to a date certain when the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this subparagraph. Any further extensions may be granted by the Planning Commission, in its sole discretion, pursuant to the same procedures to request an extension from the zoning administrator.

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6. *Maintenance Obligations; Vandalism.* The permittee shall keep the site, which includes, without limitation, any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean, and safe condition in accordance with the Approved Plans and all conditions in the Section 6409(a) approval. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at its sole cost, shall remove and remediate any graffiti or other vandalism at the site within two (2) days after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

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7. *Compliance with Laws.* The permittee shall maintain compliance at all times with all federal, state, and local laws applicable to the permittee, the subject property, the wireless facility, or any use or activities in connection with the use authorized in this section 6409(a) approval. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve, or otherwise lessen the permittee's obligations to maintain compliance with all applicable laws.

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

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

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10. *Inspections; Emergencies.* The permittee expressly acknowledges and agrees that the Town or its designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the Town or its designee may, but is not obligated to, enter onto the site area without

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1489 prior notice to support, repair, disable, or remove any improvements or equipment
1490 in emergencies or when such improvements or equipment threatens actual,
1491 imminent harm to property or persons. The permittee will be permitted to supervise
1492 the Town or its designee while such inspection or emergency access occurs.

1493 11. *Contact Information.* The permittee shall furnish the Town with accurate and up-to-
1494 date contact information for a person responsible for the wireless facility, which
1495 includes, without limitation, such person's full name, title, direct telephone number,
1496 facsimile number, mailing address, and email address. The permittee shall keep
1497 such contact information up-to-date at all times.

1498 12. *Performance Bond.* Before the Town issues any construction permit in connection
1499 with the wireless facility, if, in the Town's sole discretion, the existing performance
1500 bond for the facility is inadequate or the facility is not associated with any existing
1501 performance bond, the permittee shall post a performance bond from a surety and
1502 in a form acceptable to the Town manager in an amount equal to or greater than a
1503 written estimate from a qualified contractor with experience in wireless facilities
1504 removal. The written estimate must include the cost to remove all equipment and
1505 other improvements, which includes, without limitation, all antennas, radios,
1506 batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires,
1507 conduits, structures, shelters, towers, poles, footings and foundations, whether
1508 above ground or below ground, constructed or installed in connection with the
1509 wireless facility. In establishing or adjusting the bond amount required under this
1510 condition, and in accordance with California Government Code § 65964(a), the
1511 Town manager shall take into consideration information provided by the permittee
1512 regarding the cost to remove the wireless facility.

1513 **19.04.150 Wireless Telecommunications Collocation Facilities Covered under**
1514 **California Government Code Section 65850.6**

1515 A. **Purpose.** The purpose of this section is to comply with an application for a Wireless
1516 Telecommunications Collocation Facility under California Government Code Section 65850.6,
1517 for which a 6409(a) approval is not being requested. This section provides the requirements,
1518 standards, and regulations for a wireless telecommunications collocation facility for which
1519 subsequent collocation is a permitted use pursuant to California law. Only those facilities that
1520 fully comply with the eligibility requirements set forth in California Government Code Section
1521 65850.6, or its successor provision, and which strictly adhere to the requirements and
1522 regulations set forth in this section, shall qualify as a wireless telecommunications collocation
1523 facility.

1524 B. **Definitions.** For the purposes of this section, the following terms are defined as
1525 follows:

1526 1. **"Collocation Facility"** means the placement or installation of wireless facilities,
1527 including antennas, and related equipment, on, or immediately adjacent to, a
1528 wireless telecommunications collocation facility.

~~Deleted: <#>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 a section 6409(a) approval, and (2) other Claims of any kind or form, whether including, without limitation, 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 underlying 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~~ ... [6]

~~Deleted: <#>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 including, es without limitation, anythis approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, and any other 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.¶ <#>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.¶ <#>20~~

1629 2. **“Wireless Telecommunications Facility”** means equipment and network
1630 components such as towers, utility poles, transmitters, base stations, and
1631 emergency power systems that are integral to providing wireless
1632 telecommunications services.

1633 3. **“Wireless Telecommunications Collocation Facility”** means a wireless
1634 telecommunications facility that includes collocation facilities.

1635 C. **Procedures.** Applications for wireless telecommunications collocation facilities shall
1636 comply with this Section and other applicable provisions of this Chapter. An application for a
1637 collocation facility under California Government Code Section 65850.6 shall be processed in
1638 the same manner as an application for Section 6409(a) approval is processed, except that
1639 where the process requires justification for the Section 6409(a) approval, the applicant shall
1640 instead provide the justification for a collocation facility under California Government Code
1641 Section 65850.6.

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1642 D. **Requirements.** All requirements, regulations, and standards set forth in this chapter
1643 for a wireless telecommunications facility shall apply to a wireless telecommunications
1644 collocation facility; provided, however, the following shall also apply to a wireless
1645 telecommunications collocation facility:

1646 1. The applicant for a wireless telecommunications collocation facility permit shall
1647 describe or depict:

1648 a) The wireless telecommunications collocation facility as it will be initially built;
1649 and

1650 b) All collocations at full build-out, including, but not limited to, all antennas,
1651 antenna support structures, and accessory equipment.

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1652 2. Any collocation shall use screening methods substantially similar to those used on
1653 the existing wireless telecommunications facilities, unless other optional screening
1654 methods are specified in the conditions of approval.

1655 3. A wireless telecommunications collocation facility permit shall not be approved,
1656 unless an environmental impact report, negative declaration, or mitigated negative
1657 declaration was prepared and approved for the wireless telecommunications
1658 collocation facility.

1659 E. **Permitted Use.** Notwithstanding any other provision of this chapter, a subsequent
1660 collocation facility on a wireless telecommunications collocation facility shall be a permitted
1661 use only if all of the following requirements are satisfied:

1662 1. The wireless telecommunications collocation facility:

1663 a) Was approved after January 1, 2007, by discretionary permit;

1664 b) Was approved subject to an environmental impact report, negative

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1671 declaration, or mitigated negative declaration; and

1672 c) Otherwise complies with the requirements of California Government Code
1673 Section 65850.6(b), or its successor provision, for addition of a collocation
1674 facility to a wireless telecommunications collocation facility, including, but not
1675 limited to, compliance with all performance and maintenance requirements,
1676 regulations, and standards in this chapter and the conditions of approval in
1677 the wireless telecommunications collocation facility permit.

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1678 2. The collocations were specifically considered when the relevant environmental
1679 document was prepared for the wireless telecommunications collocation facility.

1680 3. Before collocation, the applicant seeking collocation shall obtain all other applicable
1681 non-discretionary permits, as required pursuant to the Fairfax Municipal Code.

1682 F. **New or Amended Permit.** Except as otherwise provided above, approval of a new or
1683 amended permit shall be required when the facility is modified other than by collocation in
1684 accordance with this section, or the proposed collocation:

1685 1. Increases the height of the existing permitted telecommunications tower or
1686 otherwise changes the bulk, size, location, or any other physical attributes of the
1687 existing permitted wireless telecommunications collocation facility, unless
1688 specifically permitted under the conditions of approval applicable to such wireless
1689 telecommunications collocation facility; or

1690 2. Adds any microwave dish or other antenna not expressly permitted to be included
1691 in a collocation facility by the conditions of approval.

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1692
1693 **19.04.160 Business License**

1694 A permit issued pursuant to this chapter shall not be a substitute for any business license
1695 otherwise required under the Fairfax Municipal Code.

1696 **19.04.170 Emergency Deployment**

1697 In the event of a declared federal, state, or local emergency, or when otherwise warranted by
1698 conditions that the zoning administrator deems to constitute an emergency, the zoning
1699 administrator may approve the installation and operation of a temporary wireless
1700 telecommunications facility (e.g., a cell on wheels or "COW"), which is subject to such
1701 reasonable conditions that the zoning administrator deems necessary.

1702 **19.04.180 Operation and Maintenance Standards**

1703 A. All wireless telecommunications facilities must comply at all times with the following
1704 operation and maintenance standards. All necessary repairs and restoration shall be
1705 completed by the permittee, owner, or operator within 48 hours.

Deleted: Appeals. Notwithstanding any provision of the Fairfax Municipal Code to the contrary, including, but not limited to, Chapter 17.036, any applicant may appeal a decision by the zoning administrator on an application for a collocation facility under this section. The appeal must be filed within ten (10) 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 appeals of all actions of the zoning administrator taken pursuant to this section. 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 this section. The decision of the Town Manager shall be final and not subject to any further administrative appeals. Appeals with respect to applications for wireless telecommunications collocation facilities are governed by Section

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1730 1. After discovery of the need by the permittee, owner, operator or any designated
1731 maintenance agent; or

1732 2. After permittee, owner, operator, or any designated maintenance agent receives
1733 notification from a resident or the zoning administrator.

1734 B. All facilities, including, but not limited to, telecommunication towers, poles, accessory
1735 equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the
1736 facility site shall be maintained in good condition, including ensuring the facilities are
1737 reasonably free of:

1738 1. General dirt and grease;

1739 2. Chipped, faded, peeling, and cracked paint;

1740 3. Rust and corrosion;

1741 4. Cracks, dents, and discoloration;

1742 5. Missing, discolored, or damaged artificial foliage or other camouflage;

1743 6. Graffiti, bills, stickers, advertisements, litter and debris;

1744 7. Broken and misshapen structural parts; and

1745 8. Any damage from any cause.

1746 C. All trees, foliage, ~~and~~ other landscaping elements approved as part of the facility shall
1747 be maintained in good condition at all times, and the permittee, owner, and operator of the
1748 facility shall be responsible for replacing any damaged, dead, or decayed landscaping. No
1749 amendment to any approved landscaping plan may be made until it is submitted to and
1750 approved by the zoning administrator.

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1751 D. The permittee shall replace its facilities, after obtaining all required permits, if
1752 maintenance or repair is not sufficient to return the facility to the condition it was in at the time
1753 of installation.

1754 E. Each facility shall be operated and maintained at all times in compliance with applicable
1755 federal regulations, including FCC radio frequency emissions standards.

1756 F. Each facility shall be operated and maintained to comply at all times with the noise
1757 regulations of this chapter and shall be operated and maintained in a manner that will minimize
1758 noise impacts to surrounding residents. Except for emergency repairs, any testing and
1759 maintenance activities that will be audible beyond the property line shall only occur between
1760 the hours of 7:00 a.m. and 5:00 p.m. on Monday through Friday, excluding holidays, unless
1761 alternative hours are approved by the zoning administrator. Backup generators, if permitted,
1762 shall only be operated during periods of power outages or for testing.

1764 G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall
1765 be flown and shall be properly maintained at all times.

1766 H. Each owner or operator of a facility shall routinely inspect each site to ensure
1767 compliance with the standards set forth in this section and the conditions of approval.

1768 **19.04.190 No Dangerous Conditions or Obstructions Allowed**

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1769 No person shall install, use, or maintain any wireless telecommunications facility which in
1770 whole or in part rests upon, in or over any public sidewalk or parkway, when such installation,
1771 use, or maintenance endangers or is reasonably likely to endanger the safety of persons or
1772 property, or when such site or location is used for public utility purposes, public transportation
1773 purposes, or other governmental use, or when such facility unreasonably interferes with or
1774 impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped
1775 vehicle, the ingress into or egress from any residence or place of business, the use of poles,
1776 posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street
1777 furniture, or other objects permitted at or near said location.

1778 **19.04.200 Permit Expiration**

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1779 A. A permit for any wireless telecommunications facility shall be valid for a period of ten
1780 (10) years, unless the Planning Commission authorizes a different period, or pursuant to
1781 another provision of the Fairfax Municipal Code the permit lapses sooner or is revoked. At
1782 the end of such period, the permit shall expire.

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1783 B. A permittee may apply for renewals of its permit in increments of no more than ten (10)
1784 years and no sooner than twelve (12) months prior to expiration of the permit.

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1785 C. If a permit has not expired at the time an application is made for a renewal, the zoning
1786 administrator may administratively extend the term of the permit for subsequent ten (10) year
1787 terms upon verification of continued compliance with the findings and conditions of approval
1788 under which the application was originally approved, as well as any other applicable
1789 provisions of the Fairfax Municipal Code that are in effect at the time the permit renewal is
1790 granted. The following may also be required for an application to renew a wireless permit:

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1791 1. At the zoning administrator's discretion, additional studies and information may be
1792 required of the applicant.

1793 2. If the zoning administrator determines that the facility is nonconforming or that
1794 additional conditions of approval are necessary to bring the facility into compliance
1795 with the provisions of the Fairfax Municipal Code that are then in effect, the zoning
1796 administrator shall refer the renewal request to the Planning Commission.

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1797 D. The request for a renewal shall be decided by the Planning Commission if the permit
1798 expired before the application is made for a renewal or if the zoning administrator refers the
1799 matter to the Planning commission. After notice and a public hearing, the Planning
1800 Commission may approve, conditionally approve, or deny the renewal.

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1820 **19.04.210 Cessation of Use or Abandonment**

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1821 A. A wireless telecommunications facility is considered abandoned and shall be promptly
1822 removed as provided herein if it ceases to provide wireless telecommunications services for
1823 ninety (90) or more consecutive days. If there are two or more users of a single facility, then
1824 this provision shall not become effective until all users cease using the facility.

1825 B. The operator of a facility shall notify the Town in writing of its intent to abandon or cease
1826 use of a permitted site or a nonconforming site (including unpermitted sites) within ten (10)
1827 days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator
1828 of the facility shall provide written notice to the zoning administrator of any discontinuation of
1829 operations of thirty (30) days or more.

1830 C. Failure to inform the zoning administrator of cessation or discontinuation of operations
1831 of any existing facility as required by this section shall constitute a violation of any approvals
1832 and be grounds for:

- 1833 1. Prosecution;
- 1834 2. Revocation or modification of the permit;
- 1835 3. Calling of any bond or other assurance required by this chapter or conditions of
1836 approval of the permit;
- 1837 4. Removal of the facilities by the Town in accordance with the procedures established
1838 under the Fairfax Municipal Code for abatement of a public nuisance at the owner's
1839 expense; and
- 1840 5. Any other remedies permitted under the Fairfax Municipal Code or applicable law.

1841 **19.04.220 Removal and Restoration, Permit Expiration, Revocation or Abandonment**

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1842 A. **Permittee's removal obligation.** Upon the expiration date of the permit, earlier
1843 termination or revocation of the permit or abandonment of the facility, the permittee, owner or
1844 operator shall remove its wireless telecommunications facility and restore the site to its natural
1845 condition, except for retaining the landscaping improvements and any other improvements at
1846 the sole discretion of the zoning administrator. Removal shall be in accordance with proper
1847 health and safety requirements and all ordinances, rules, and regulations of the Town. The
1848 facility shall be removed from the property within thirty (30) days of the permit's expiration, at
1849 no cost or expense to the Town. If the facility is located on private property, the private
1850 property owner shall also be jointly and severally responsible for the expense of timely
1851 removal and restoration.

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1852 B. **Failure to remove.** Failure of the permittee, owner, or operator to promptly remove its
1853 facility and restore the property within thirty (30) days after expiration, earlier termination, or
1854 revocation of the permit, or abandonment of the facility, shall be a violation of the Fairfax
1855 Municipal Code, and be grounds for:

- 1864 1. Prosecution;
- 1865 2. Calling of any bond or other assurance required by this chapter or conditions of
- 1866 approval of permit;
- 1867 3. Removal of the facilities by the Town in accordance with the procedures established
- 1868 under the Fairfax Municipal Code for abatement of a public nuisance at the owner's
- 1869 expense; or
- 1870 4. Any other remedies permitted under the Fairfax Municipal Code.

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1871 C. **Summary removal.** In the event the zoning administrator determines that the
 1872 condition or placement of a wireless telecommunications facility located in the public right-of-
 1873 way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent
 1874 threat to public safety, or determines other exigent circumstances require immediate
 1875 corrective action (collectively, "exigent circumstances"), the zoning administrator may cause
 1876 the facility to be removed summarily and immediately without advance notice or a hearing. If
 1877 the circumstances allow for it and, to the extent feasible, the zoning administrator will notify
 1878 the permittee to remove the facility and allow for the reinstallation of the facility, subject to the
 1879 permittee demonstrating to the satisfaction of the Town's Building Official and zoning
 1880 administrator that the work can be done in safe manner compliant with the original Approved
 1881 Plans and Section 19.04.100. Written notice of the removal shall be served upon the person
 1882 who owns the facility within five (5) business days of removal and all property removed shall
 1883 be preserved for the owner's pick-up, as is reasonably feasible. If the owner cannot be
 1884 identified following reasonable effort or if the owner fails to pick-up the property within sixty
 1885 (60) days, the facility shall be treated as abandoned property.

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1886 D. **Removal of facilities by Town.** In the event the Town removes a facility in
 1887 accordance with this chapter, any such removal shall be without any liability to the Town for
 1888 any damage to such facility that may result from reasonable efforts of removal. In addition to
 1889 the procedures for recovering costs of nuisance abatement, the Town may collect such costs
 1890 from the performance bond posted and to the extent such costs exceed the amount of the
 1891 performance bond, collect those excess costs in accordance with the Fairfax Municipal
 1892 Code. Unless otherwise provided herein, the Town has no obligation to store such facility.
 1893 Neither the permittee, the owner, nor the operator shall have any claim if the Town damages
 1894 or destroys any such facility not timely removed by the permittee, owner, or operator after
 1895 notice, or removed by the Town due to exigent circumstances.

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1902 **19.04.230** Authorization for Departmental Forms, Rules, and Other Regulations.

1903 The Town Council authorizes the zoning administrator to develop and publish permit
1904 application forms, checklists, informational handouts and other related materials that the
1905 zoning administrator finds necessary, appropriate or useful for processing requests,
1906 applications, permits, or any other matter under this chapter. Without further authorization
1907 from the Town Council, the zoning administrator may from time-to-time update and alter any
1908 such permit application forms, checklists, informational handouts and other related materials
1909 as the zoning administrator deems necessary, appropriate or useful to respond to regulatory,
1910 technological or other changes related to this chapter. The Town Council authorizes the
1911 zoning administrator to establish other reasonable rules and regulations, which may include,
1912 without limitation, regular hours for appointments with applicants, as the zoning administrator
1913 deems necessary or appropriate to organize, document, and manage the application intake
1914 and permitting process.

1915 **19.04.240 Appeals.** Notwithstanding any provision of the Fairfax Municipal Code to the
1916 contrary, including, but not limited to, Chapter 17.036, any applicant may appeal a decision
1917 by the zoning administrator under this Chapter. The appeal must be filed within two (2) days
1918 from the zoning administrator's decision. The appeal must state in plain terms the grounds for
1919 reversal and the facts that support those grounds. The Town Council shall serve as the
1920 appellate authority for all appeals of all actions of the zoning administrator taken pursuant to
1921 this section. The Town shall provide notice for an administrative hearing by the Town Council.
1922 The Town Council shall limit its review to whether the project should be approved or denied
1923 in accordance with the provisions in this Chapter.

1924

1925 **19.04.250** Effect on Other Ordinances

1926 Compliance with the provisions of this chapter shall not relieve a person from complying with
1927 any other applicable provision of the Fairfax Municipal Code, including, but not limited to,
1928 obtaining any necessary encroachment or building permits. In the event of a conflict between
1929 any provision of this chapter and other provisions of the Fairfax Municipal Code, this chapter
1930 shall control.

1931

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

CONCORDANCE TABLE
For Changes to Provisions of Fairfax Municipal Code
Regarding Wireless Communications Facilities

Topic	Old Provision(s)	New Provision(s)
Purpose	19.04.010; 19.08.010	19.04.010
Applicability	19.04.020	19.04.030
Definitions	19.04.030	19.04.020
Exceptions	19.04.040	19.04.020(AA); 19.04.130
Planning commission approval required	19.04.050	19.04.040
Findings	19.04.060	19.04.120
Building official determination of need for building permits	19.04.070	N/A
Timing	19.04.080	N/A
Appeals	19.04.090	19.04.140(J); 19.04.150(G)
Application requirements	19.08.020	19.04.050; 19.04.140
Standard agreements/Terms of permits	19.08.030	19.04.100; 19.04.110
Permit duration	19.08.040	19.04.200
Location of wireless facilities	19.08.050	19.04.060; 19.04.090
Collocation	19.08.060	19.04.150
Radio frequency reports	19.08.070	19.04.050
Lighting	19.08.080	19.04.070
Roads and accessways	19.08.090	19.04.070; 19.04.080
Vegetation	19.08.100	19.04.070
Noise and traffic	19.08.110	19.04.070; 19.04.080
Visual compatibility	19.08.120	19.04.070; 19.04.080

*This table is only for ease of reference purposes and is not exhaustive. In revising the Town Code on wireless communication facilities, significant changes were made, including the addition of many provisions addressing topics not addressed by the prior ordinance. Such new provisions are not detailed in this table, as this table is meant only to show the movement and changes to prior provisions through the revisions.

Rcvd at 9-26-18
TC Spec. Mtg
from Jess
Lerner.

September 26, 2018

Dear Members of the Fairfax Town Council,

We the undersigned are:

Educators, attorneys, doctors, entrepreneurs, teachers, business owners, healers, therapists, scientists, retirees, activists, consultants, musicians, grocers, grandparents, and other members of the Fairfax community, all of whom are concerned about the upcoming proposal of 5G "small cell" wireless antennas coming into our community.

We write to you in the spirit of the 2005 (UNESCO) adopted Precautionary Principle, which states: "When human activities may lead to morally unacceptable harm that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that harm."

There continues to be a growing body of peer reviewed literature that shows a myriad of adverse health effects to electromagnetic radiation, including cancers, immune system suppression, fatigue and a wide range of health affects that impact the ability for affected people to function in everyday life.

The fact that the Trump FCC denies this fact by saying that data is ambiguous and unproven is false and would not be worth commenting on except for the fact that the Trump FCC will attempt through its rules to control the conversation and the outcome of tonight's meeting.

The newly formed 5G-Free Task Force is pleased to provide you with a list of recommendations and supplementary information that we have researched and concluded would maximize safety and minimize harm to Fairfax residents, workers and visitors, and our community at large.

We urge the Town of Fairfax to take the following actions:

1. Pass an Urgency Ordinance/ DO NOT repeal Chapter 19 of the Current Town Code

Pass an Urgency Ordinance similar to the ordinance passed by the Mill Valley City Council on September 6, 2018, which includes various amendments (indicated below in our list) that reflect the specific needs of our town.

2. Do Not Repeal Chapter 19 Telecom Ordinance

We strongly urge the Town Council to NOT repeal the Title 19 Telecom Ordinance (Line #144 Section 1 of the proposed Urgency Ordinance). This ordinance, while out of date, continues to contain vital policy for the Town of Fairfax, including rules surrounding smart meters, etc. We further urge the Town Council to make the new telecom ordinance a stand alone ordinance. There is no real downside to having the two side by side ordinances for a couple of months. Further, the council can put language in the new ordinance to the effect that it doesn't preempt existing Fairfax regulations and is in addition to the regulations set forth therein.

3. Prohibit Installations in Residential Zoning Districts

Prohibit the installation of Wireless Facilities (including Small Cell Towers, and Close Proximity Microwave Radiation Antennae-Wireless Telecom Facilities, aka CPMRA-WTFs, in all

residential zoning districts, including public-rights-of-way in the residential zones.

4. Prohibit Wireless Facilities in Publicly Owned Facilities

Prohibit wireless facilities from being installed on city-owned facilities, properties and buildings.

5. Require Public Process, Permits and Design Review

Require any telecommunication corporation that applies for new permits for "Close Proximity Microwave Radiation Antennae" and any and all current and future wireless technologies to go through a public process along with the normal discretionary, conditional use permitting and design review process, and be thoroughly vetted with public involvement including a robust process of public notification and public hearings.

Any language in the proposed ordinance that gives the Town Manager absolute power over decision making and approval must be omitted and replaced with language that includes a public process. The approval of any and all permits must be done through a public process and a final vote of the Town Council.

6. Monitoring Equipment/Safety

On issuance of a permit, require the applicant to pay ongoing monitoring of the antenna signal to ensure signal power is within agreed upon parameters. Explore the option of having automated 24/7 data monitoring that can be accessed by the town/public. If this is not feasible, require that the telcom provide funding to the Town of Fairfax to hire its own contractor for (at a minimum) quarterly monitoring of the antenna output and provide test results to the Town of Fairfax to ensure compliance with the permit. Language of the permit needs to specify consequences if the telecom's signal is out of compliance, including fines or termination of the permit.

7. Establish Setbacks

Establish an 1800-foot setback minimum for all Wireless Facilities for all residents in all zones from all residential units in all zones (to protect those living in mixed use commercial and industrial zones).

8. Antenna Interval Minimums- 3000 Feet

Establish a 3000-foot minimum between any two small cell devices from any wireless company. This prevents overloading on individual poles and minimizes excessive numbers of antennas in our community. According to Verizon's own online documentation,

devices can function at 3000 feet

(<https://www.activistpost.com/2018/07/verizon-video-features-employees-explaining-how-they-are-ignoring-the-precautionary-principle-to-unleash-harmful-5g-technology-all-over-the-world.html>).

9. Mechanical Integrity of Poles/Facilities

Establish full assessment of mechanical integrity, including a seismic safety assessment of poles before any large equipment is hung on poles to ensure safety for the community. Disallow installation of equipment on any poles that are leaning. Prohibit co-location of telecom company equipment on poles or other facilities in Fairfax.

10. Prevent JPA Actions that Influence the Town of Fairfax or Fairfax Property

Prohibit giving away public property for profit and expressly prohibit any actions by the Town Manager as part of the Marin General Services Agency (MGSA) or any other of Marin's Joint Power's Agencies (JPA's) to vote or support expansion of these technologies without full vetting of proposals by the Fairfax Town Council.

11. Antenna Location Prohibitions- Schools, Parks, etc.

5G and successor antenna equipment should not be installed near schools, parks, preschools, medical or other health care facilities, convalescent homes, preschools, daycare centers, playing fields, fire houses or police stations where some of our most vulnerable community members spend time. For example White Hill and Cascade Canyon school are located in Planned Development District which under the current proposed language would be acceptable for antenna installation.

12. Viewsheds and Aesthetics Considerations

Viewshed and general aesthetics need to be considered via the design review process for all applications with full public noticing and involvement. Consideration should include historical preservation considerations and generally the aesthetic character of our small town.

13. Fire Hazard and Other Hazard Potential

A full fire hazard potential assessment must be conducted that includes the presence of nearby vegetation and structures.

Mechanical consideration: poles and other structures must exceed general guidelines to ensure they can withstand earthquakes and storms. No poles should be overloaded such that a risk is created for

life or property. There should be no co-location of equipment on such facilities.

14. Noise Assessment/Evaluation

There should be no equipment that generates noise whatsoever.

15. Property Values

Potential property value decreases of greater than 10% must be considered and evaluated with respect to the potential for antennas to constitute a private property "taking". Property owners must be compensated for decreased property value.

16. Commit to Fiber

We urge the Fairfax Town Council make a commitment to safer, faster and more secure fiber optic technology to keep the town of Fairfax up to date with technology and to maximize safety for its residents, visitors and employees.

17. Emergency Preparedness and Gaps in Coverage

As residents of Fairfax, we are acutely aware of dangers posed by fire and flood in our town. Communications are fundamental to the safety of our community in the event of an emergency. We support a

robust dialogue about the myriad of solutions that exist and support thorough investigation of each of them.

We believe this conversation requires significant preparation and time for the community to come together to explore all possible solutions and that we should not delay action on moving forward with this Urgency Ordinance by attempting to solve this complex problem at this time.

It is important to note that the 5G rollout is not intended or expected to provide any gap coverage solutions whatsoever. Providing 5G antennas in the areas with less coverage would be cost prohibitive for the telecoms simply because there are not enough customers in these areas to justify their investment.

18. Notification and Public Comment Process

Upon proposal of any wireless facilities from telecoms, the town must notify the public via website, postings, and paper mail. During the application process, the town must provide a public comment period and schedule meetings to address issues about the proposed facility. Public notice mailings should include information about the notification contents on the *outside* of the envelope such as, "Notice of Nearby Cell Antenna Proposal" to ensure the public sees and has an opportunity fully participate.

Appendix A

Critical Information to Review Addressing the Proposed 5G rollout:

A. Hire An Expert Contractor

We strongly recommend that the Town of Fairfax hire an expert(s) in wireless telecommunications law and technology to help them compose any subsequent ordinances and amendments addressing any wireless technology.

B. The Rollout Is Likely Illegal on Several Grounds

This 5G roll-out exemption that included a wide range of environmental laws — the overstepping of local control, community safety and well being — presents significant concerns for communities across the country.

Seventeen Ohio cities have filed lawsuits challenging the roll-out in court on these grounds. More than 50 cities and counties have joined them.

The Natural Resources Defense Council (NRDC) filed a lawsuit against the FCC on May 14, 2018, challenging the legality of the FCC's March 30, 2018 order exempting "small wireless facilities" from environmental review.

Ten Native American tribes are challenging the FCC's ruling because it also

exempts small wireless facilities from review under the National Historic Preservation Act.

The U.S. Conference of Mayors (USCM) will sue the Federal Communications Commission (FCC) if the commission does not change a proposed policy that would preempt local control in a bid to streamline installation of 5G wireless infrastructure.

The National Association of Counties also opposes the proposal because it would "effectively prevent local governments from properly examining the impact that construction, modification or installation of broadcasting facilities may have on public health, safety and welfare of the local community."

C. Fire Safety/Concerns

Residents' safety will be threatened and towns will be liable for the fire hazards that these devices present. The many wires can cause sparks. Radiation emitted from devices dries out land and foliage, creating fuel for fires. These devices would be installed on telephone poles, a serious fire risk. PG&E power-lines were implicated as the source of sparking fires in the Santa Rosa fires in 2017 and the recent one in Lagunitas in Summer 2018. The 2007 Malibu fire was caused by poles overloaded with AT&T, Sprint and Verizon microwave antennas in addition to arcing utility wires.

D. Property Values

Close Proximity Microwave Radiation Antenna - Wireless Telecommunications Facilities (CPMRA-WTFs) decrease the property values of homes near cell phone towers by 20-25%, according to a peer-reviewed study in the 2005 Appraisal Journal.

A home buyers survey done by the National Institute for Science, Law & Public Policy found that 94% of respondents would pay less for a property near a cell tower or antenna, and 79% would under no circumstances purchase or rent a property within a few blocks of a tower or antenna. 90% were concerned about the increasing number of towers and antennae in their neighborhoods. This would have a repurcussive effect on the city coffers: Lower property values could negatively affect taxes and city finances.

E. Electromagnetic Sensitivity (EMS) is recognized as a disability by the Americans With Disabilities Act.

Imposing this kind of wide-spread radiation on the growing number of people who suffer from this condition is similar to removing wheelchair ramps in public places for people with other disabilities. Many who suffer from EMR exposure will not be able to participate in public life, potentially violating The Equality Act. Under this act, public accommodation must prohibit exclusion, segregation, and unequal treatment.

F. Threat to privacy and security.

The 5G rollout further enhances technologies that threaten our privacy and security as they are easily hackable. While this roll-out is not specifically designed for the "Internet of Things", it does enable a greater expansion of these technologies which are already growing rapidly. These technologies allow for the connecting of any enabled device, including, for example, your toothbrush, refrigerator, nanny-cam or toaster, to the Internet. Smart meters, pace-makers, and insulin pumps have already been hacked.

To learn more about the vast number of seemingly innocuous devices that are continuing to undermine our privacy and security, please visit Mozilla's "Privacy Not Included" pages:

<https://advocacy.mozilla.org/en-US/privacynotincluded>

G. Harm to Nature, Extinction of Species

The U.S. Dept. of the Interior says that 241 species of birds are at mortality risk from both tower collisions and the radiation that towers emit. It states that "the electromagnetic standards used by the FCC continue to be based on thermal heating, a criterion now really 30 years out of date and inapplicable today."

One National Institute of Health (NIH) study has found that radio-frequency radiation (RFR) caused honey bees to become distressed, aggressive and prone to swarm. The U.S. Fish and Wildlife Services found that RFR

disturbs bees' orientation and navigation mechanisms and contributes to colony collapse in 62.5% of apiaries--as far as a half mile from a tower.

The Dept. of Entomology at Cornell estimates that 70% of the world's food crops, including the 11 billion dollar a year CA almond crop, depend on pollinators. Yet the USDA claims that beekeepers lost 44% of colonies in 2015-16. The NIH study also found similar effects on other insects, as well as genotoxic effects and DNA damage in earthworms. A German study conducted from 2006-15 found significant damage to the sides of trees exposed to phone masts.

H. No Percetible Increase in Speed

5G will add to—not replace—our current wireless technology by utilizing frequencies already in use and also adding higher frequencies—submillimeter and millimeter waves. It's designed to enable wireless transmission of HD TV and The Internet of Things, not expand cell phone coverage. It's only about 3X faster than 4G, but 100X slower than fiber optic.

We should not trade health, safety, privacy, choice, property rights, and town character for "speed" we won't even detect.

I. FCC's Inadequate "Safety" Standards

The EPA admits that the FCC has never tested the effects of non-thermal radiation, nor have any long-term studies ever been done by the FCC or

the industries it is supposed to regulate. The standards have not been updated since 1996, long before most of this technology was developed or imposed on the public.

It is astonishing and unacceptable that the health effects of these technologies are preempted from consideration for the 5G roll-out of this new technology. Thousands of peer reviewed studies, including that by the US Government's National Institute of Environmental and Health Sciences (NIEHS) and the US National Toxicology Program, show clear evidence of harm caused by wireless exposures, including significant increases in brain tumors, heart tumors and DNA damage. Other studies conclude neurological problems, melatonin suppression, infertility, headaches, insomnia, confusion, weakness, autism, Parkinson's, Alzheimer's and more from RF microwave radiation exposures at levels many thousands of times lower than our current Federal RF microwave radiation exposure guidelines — which are not protective. The proximity of these Close Proximity Microwave Radiation Antennas to our homes and schools dramatically increases the intensity of exposure (Mill Valley, My Street, My Choice).

These studies closely mirror the effects found forty years ago by Dr. Zorach Glaser, Ph.D., LT, MSC, USNR, who is still considered an international expert in the field of RF bioeffects. He conducted studies for the Naval Medical Research Institute, as well as six other Naval departments.

While we realize we cannot make policy for health reasons to comply with FCC rules, we as a community need to continue to deepen our

understanding of the significant health effects associated with this technology.

Thank you for taking the time to read and consider our concerns and doing everything you can to honor our requests, protect our community, and uphold the values of our town.

Sincerely,

Jess Lerner, 14 Canyon Rd
Andy Peri, 10 Cypress Drive
Roberta Anthes & Will Levine, 2 Snowden Lane
Kathy Flores, 14 Claus Circle
Ed Tilton, 14 Claus Circle
Lea Wildflower, 12 School Street
Samuel Case, 84 Canyon Rd
Judy Aizuss, 84 Canyon Rd
Valeri Hood & Bert Bartsch, 79 Dominga Ave
Janet FitzGerald, 56 Canyon Rd
Kim and Eric Best, 67 Canyon Rd
Kim Burggraf & Paul Harris, 46 Canyon Rd
Allison Boswell & Robert Reedy, 14 Canyon Rd
Minna Kim, 88 Canyon Rd
Archer Mell, 6, Manor School, Adeline Mell, 3
Steven J Wasserman, 1 Meadow Way, Fairfax
Nicholas George & Jasmine Dickison, 189 canyon road
Leo George, age 5, Manor School Kindergarten
Luca George, age 3.5
Frank and Ronita Egger, 13 Meadow Way
Shawn Sullivan, 168 Canyon Road
Richard Appelbaum, 61 Woodland Rd
Stephen Keese & Pamela Meigs, 310 Cypress Drive
Michele Simonson, 52 Park Rd
Florence Schneider, 277 Scenic Rd
Raymond Haas, 27 Ridge Rd

Jim Normandi, Owner, Backyard Farmer, 135 Bolinas Rd

Kathleen Carroll, Owner, The Potting Shed, 55 Bolinas Rd
Jane Brooks, Owner, The Find, Bolinas Rd
David Bryan Kitts, 751 Center Boulevard

San Anselmo

Sara Granovetter
Gabriel Klapman
Juniper Klapman, age 6 mos
Bonnie McMurry
Kathleen Boggs
Sharon Hamilton
Owen Hamilton, 19
Nate Hamilton, 16
Morris T Beazley
Liz Dietrich
Shane Curran
Maggie Curran, age 5

San Geronimo Valley

MaryBeth Bragnan
Barbara Graham
Kym Kuzmic
Kathrina Peterson

Mill Valley

Paige Hutson
Frank Leahy
Rachel Gaunt
Connie Barker

San Rafael

Victoria Sievers
Kim Hahn
Bob Ernst
A Anahaar

Linda Neal

From: Roberta Anthes <robertaanthes@aol.com>
Sent: Friday, September 14, 2018 10:38 AM
To: Peter Lacques; Barbara Coler; John Reed; Garrett Toy; Renee Goddard; Bruce Ackerman; Linda Neal; Mimi Newton; Cindy Swift; egonzales-parber@townoffairfax.org; Norma Fragoso; mrodriguez@townoffairfax.org; Phil Green; Laura Kehrlein
Subject: 5G Roll-Out Letter
Attachments: 5G Roll-Out Letter.docx

Dear Town Council Members, Planning Commissioners, and Town Manager,

Thank you for hearing us out on the 5G Roll-Out issue last week and for seriously considering what our path should be. I'm sending an attachment that lays out my position as clearly and simply as possible. It's in 2 parts: Why Fairfax Officials Should Oppose the 5G Roll-Out and What Fairfax Should Do.

I'm happy to speak with any and all of you or answer any questions you have about what I've sent. I don't personally suffer from EMS (yet), but I know many who do. Both the WHO and the ADA recognize this as a disability, and while the law disallows health as a consideration in the 5G issue, I hope you will be compassionate in your own considerations when finding ways to address the roll-out.

Sincerely,

Roberta Anthes
2 Snowden Lane
Fairfax, CA
415-721-0906

Linda Neal

From: Pascal Beran Designs <pascalberandesigns@yahoo.com>
Sent: Wednesday, September 26, 2018 1:37 PM
To: Susan Pascal Beran; Shelley Clark
Cc: tracykelly300@gmail.com; Velvy Appleton; writingLiz@comcast.net; janerichardsondesign@gmail.com; jennyapplen@mac.com; Linda Neal
Subject: Marinda Heights Property Comments by Town

Greetings,

This is Susan Pascal Beran of the Fairfax Open Space Committee (FOSC). I am reaching out to you because you either spoke at our special meeting on March 22nd of this year or have contacted us regarding your views and information about this project pertaining to the statement we will be submitting. On behalf of the committee, I am hoping to compile all the comments so that we can make as informed and relevant a statement as possible. The reason I need to reach out at this time is twofold.

Firstly, it has been a while since the special March 22 meeting and the project has just been resubmitted. The city representatives who had said they would take notes, seem to have lost most of them. FOSC took some notes of our own, but since we were relying on the city's recordings as well, and as we were further away from the speakers, we find our notes are not as clear as we would like. Therefore, in the interest of clarity, we are asking people that spoke if they can write a **concise recap** of their points along with providing any records, documents, or historical substantiation to support them. Some people indicated that they were in possession of these, and that they could provide them, but we haven't received a lot in this regard. Any such evidence will give our recommendation that much more validity. We will come pick it up if it is not electronically transferable.

Again, for your reference, comments were solicited in the following topic areas: Natural Resources, Cultural Resources, Visual Resources, Recreational, Connectivity, Wildlife, Hazards, and Other (please specify).

In order to insure relevance of comments, feel free to visit the link describing the current status of the project as resubmitted here on the town's website: <https://www.fairfaxbuildingplanning.org/marinda-heights.html>

Secondly, we do not have contact information for many of the speakers who were present, and are asking that if you know someone's name or address or contact info who did speak, who is not included in this one, please either forward this or please send us their info.

Thank you for your interest in our town, its future and community.

Sincerely,

Susan Pascal Beran, FOSC board member

P.S. Some people we are trying to locate email info for are:
Pamela Miegs (sp?)
Karen T? from Oak Tree Lane,
Adrian Rossi (sp?)
Michelle Armosso (SP?)

Stephen Pringle (sp?) had camera- talked about wildlife
John ? talked about ridgline ordinance and visuals
Barbara from 116 San Gabriel Dr talked about Geology
Liz and ? From 120? Oak Springs - geology
Myron Walters? on Archengelas - geology and gifted liability
Judd simas? Marinda dr. - wear and tear from construction
Michelle Rodriguez ? geology, open space agreements, design*
Teresa on Oak springs- traffic
Someone from Willow (26?)- swimming pool and mud slides
Barney Chapman on Marinda? - slides
Michele - fire hazard
Laura Tanpca (?) Manor Rd
Michael - real estate issues
Mark Bell/Fell? 21/69? Dominga

Linda Neal

From: Annie Kelly <anniek22@gmail.com>
Sent: Wednesday, September 26, 2018 3:16 PM
To: Michele Gardner; Linda Neal
Subject: Opposed to the 5G Network!

Greetings, Fairfax Town Council & Planning Commission,

I'm writing with deep concern about the proposed 5G network and its impact on the health of humans and animals. Humanity is already inundated with too many environmental toxins and this just seems like the perfect storm to tip everyone into a Total Load of stressors in the body. Please, I urge you, to do what you can to adopt and "Urgency Ordinance" similar to that of Mill Valley's to protect all our residents by not allowing any 5G towers near homes.

Thank you for your time!!

Kindest regards,

Anne Kelly in Fairfax
650.393.9423

Linda Neal

From: Lisa Hunt <lisa.hunt59@gmail.com>
Sent: Thursday, September 13, 2018 7:47 AM
To: Linda Neal
Subject: Fwd: Fairfax and 5G Antennae

Importance: High

Begin forwarded message:

From: Lisa Hunt <lisa.hunt59@gmail.com>
Subject: Fairfax and 5G Antennae
Date: September 13, 2018 at 7:45:36 AM PDT
To: mgardner@townoffairfax.org, lneal@townoffairfax.com

Hello -

I want to voice my concern regarding the installation of 5G transmitters by residential neighborhoods.

From the information that I've read on the website <http://mystreetmychoice.com> it is clear that these cell towers represent a safety and health hazard and have contributed to (or have been the cause of) fires in California.

I urge you to follow Fairfax's city and federal laws. It's the Town of Fairfax's duty and obligation to protect our safety, privacy and residential charm and character. It's my understanding that Mill Valley and San Anselmo adopted an "Urgency Ordinance" to prevent the 5G's from being installed near residences.

Thank you for your support.

Lisa Hunt
26 Claus Circle
e: lisa.hunt59@gmail.com
ph: 415-250-2187

Linda Neal

From: Jess Lerner <jessmlerner@gmail.com>
Sent: Sunday, September 16, 2018 8:32 PM
To: Linda Neal
Subject: Requesting an urgency ordinance and details on 5G
Attachments: Quick Guide to Understanding the Small Cell Tower Updated 9.12.18 v4.pptx; MVTelecommunications Ord - final w CC revisions.docx; Letter from Sustainable TamAlmonte to Fairfax Town Council re- Small Cell Facilities for 5G technology 9-1-18 (1).pdf

Please forward to the members of the Planning Commission. Thank you.

Dear Fairfax Planning Commission:

My name is Jessica Lerner, and I am a resident of Fairfax. I spoke recently at the Town Council meeting about my concerns, experience with and knowledge about wireless exposure. Our town is very concerned about the potential arrival of 5G for many reasons, and I know you have been sent a lot of information about this. We are here to help if you need more information, suggestions or resources for how to address this in an urgency ordinance, and hope you will take the time to read this and consider what so many residents are requesting.

Here are some new, time sensitive details I want to make sure to share with you that you and Town Council members may not yet be aware of:

The FCC is having a vote very soon (Sept 26, in just 2 weeks) to design laws restricting our towns' ability to add the protections needed against 5G installation, with only a short window for us to make changes, **so we would need an Urgency Ordinance meeting to vote on this as Mill Valley did in order to beat that deadline.** (see attached for Mill Valley details).

Clearly this issue needs to be top priority, and **we request that you call an Emergency Ordinance meeting to create an Urgency Ordinance meeting on it now as Mill Valley's did before that deadline.**

Inaction by the Town Council will allow AT&T and others to automatically install equipment, and other telecoms will have access to the same poles, adding more weight, fire hazards, health hazards, privacy issues (as you clearly outlined at the meeting) and negative aesthetic impact, along with lowering property values and putting especially children, elderly and those with sensitivities immediately at risk.

We have learned from the recent fires in the San Geronimo Valley just this week that electrical wires and utilities were to blame, just as they were in the Santa Rosa fires last year where many lost their lives. 5G would also be an immense fire hazard, would go out in any fire or emergency, and in addition, would not provide any extra cell phone coverage, as so many have misunderstood. I am happy to give more details about this and clarify further here and when we meet (and you can read

more about this in the Powerpoint- 5G is not designed for better or additional coverage, only speed, and only dealing with current gaps in 4G coverage would address this.)

There are so many more effective and safe ways to communicate during emergencies.

Meanwhile, tighter restrictions need to be mandated by the Council. The important points are covered in the letter to the Mill Valley council from Sustainable TamAlmonte, attached here for your review. We can follow their lead. As of this week, San Anselmo has also decided to tighten their proposed ordinance before these critical deadlines loom.

Fairfax is known for its investment in sustainability, green ethics, human values over corporations, and putting community first. Let's make sure to align ourselves with these exceptional values, the reasons many of us have chosen to make this special place our home.

Many Fairfax residents are educated on this issue, with more learning about it every day. The community will continue to stand up and request immediate action to protect themselves and their families. Residents and healthcare providers are becoming activated and responding to this impending public health threat. Several well respected doctors commented at the recent San Anselmo Town Council meeting, outlining the scientifically proven health risks for all.

We have everything we need, including many experts and resources, to utilize this already existing model of Mill Valley **plus adding our own improved amendments to our Fairfax ordinance to further protect residents and our town from all the issues outlined above.**

We are asking that Fairfax address this issue within the next week and discuss it at the Planning Commission meeting this Thursday Sept 20, and before the FCC vote Sept 26, so we can create the proper amendments to the ordinance, and align ourselves with the other Marin towns currently taking similar action, such as Mill Valley, Ross and San Anselmo.

The county is also addressing this issue immediately and taking similar actions in unincorporated areas to eliminate 5G anywhere residential, and looking at how to limit it in mixed use areas.

I am attaching here the **Powerpoint used at the Mill Valley meeting** which is a clear, thorough account of what you need to know, and solutions for how to approach this simply and successfully. I ask that you review this Powerpoint as soon as possible. Please also read the **letter from Sustainable TamAlmonte to the Fairfax Town Council.**

As residents, we understand this is a challenging issue to deal with in a short amount of time; however, it is now quite simple to address, as we have other models to look to, experts to advise us, and resources at our fingertips to make these crucial amendments. On behalf of all the residents of Fairfax whom you represent and work to protect, please do request that the Town Council work on this Urgency Ordinance now.

Thank you again, and I am looking forward to meeting with you soon. Please be in touch with any questions or ways we can help.

Attached you will find the Powerpoint, the letter on this issue to Mill Valley from Sustainable TamAlmonte, and the new Mill Valley Ordinance.

Respectfully,
Jess Lerner

please put this document on public record. Thank you.

Linda Neal

From: Ann Maddox <annhmaddox@icloud.com>
Sent: Tuesday, September 25, 2018 3:19 PM
To: Michele Gardner; Linda Neal
Subject: Microwave cell towers

Please stop installation of 5G microwave in Fairfax for the health & safety of our citizens and unborn babies!

Sincerely,
Ann Maddox
399 Forrest Ave.
Fairfax, CA 94930

Sent from my iPhone

Linda Neal

From: Ethan Sommer <ethan@dpwcre.com>
Sent: Sunday, September 16, 2018 7:26 PM
To: Michele Gardner; Linda Neal
Subject: Yes to 5G!

Hi Friends and Neighbors,

My name is Ethan Sommer, a Fairfax resident. Recently people have been disseminating false and misleading information about the 5G network. Fear of cell technology dates back to literally the very first "brick" cell phone, yet no single study has ever proved the cancer link. In fact, brain cancer rates over the past 30 years have actually diminished nation-wide, please see study here: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3098028/>

As a resident of Marin, it is important that myself and my family have access to the latest communications technology. Not only is this fundamental for the growth and education of my family, it is also essential for my business and my overall well being. Remember, the 5G network will enable the "internet of things," which will allow us to have energy efficient "smart homes."

Historically, when societies eschew technology, it comes at a detriment to that society. Let's say "Yes" to a technologically sophisticated future, "yes" to smart homes, and "yes" to 5G!

Best,

--

Ethan Sommer
Vice President
Dunhill Partners West

mobile/direct (415) 358-2660
www.DPWcre.com | license 01925416

Linda Neal

From: Vivianne Nantel <vivianne@viviannenantel.com>
Sent: Saturday, September 22, 2018 9:47 PM
To: Linda Neal
Subject: urgency ordinance--stop G5

Dear One,

It is extremely urgent we stop the grave danger of the G5 tower not only in Fairfax, but all around the world. All research and studies indicate the same great danger to our health and sanity, and also to the tremendous harmful impact it has on all animals and insects. This kind of harmful radiation literally cook people's brain, damage the system as well as to many animal species, and also destroy many type of insects such as the bees.

Thanks so much for your great compassion, and for your receptivity and openness in understand that technology is not always for the benefit and welfare of the people and the animals, rather for the corporate bottom line profit...in order "greed".

In deep gratitude, sincerely yours, many blessings to you dear...Vivianne Nantel

PS. By the way I live right here near the Fairfax's border in Sleepy Hollow.



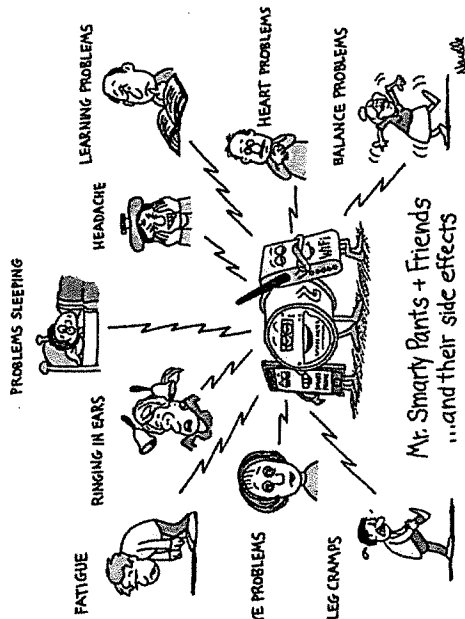
Vivianne Nantel

"Where there is divine love, there is compassion in actions."

www.VivianneNantel.com
www.facebook.com/Viviannenantel

EMFs are electromagnetic fields. They include electric and magnetic fields, and wireless radiation emitted by cell towers, cell and cordless phones, smart meters, smart grid, wi-fi, computers, power lines, fluorescent lights, indoor wiring, appliances, cars, inverters and other electronic devices.

Why are EMFs a problem?



EMFs can cause fatigue, headaches, sleep problems, anxiety, ringing in the ears, heart problems, learning and memory disorders, fertility problems, electrosensitivity, increased cancer risk and more. Children, the ill, and the elderly are more vulnerable.

EMFs are now so common and widespread that they've become environmental pollution.



Studies show wireless radiation harms nature: birds, bees, and trees.

"Man-made electromagnetic fields impact all living organisms. We must reduce our dependence on wireless technologies."
Marie-Claire Cammaerts, PhD, Belgium

Studies show children's brains absorb more radiation than adults'.



Brain scans of radiation absorption at different ages. Reprinted from O. Gandhi et al., IEEE Transactions on Microwave Theory & Techniques, 1996.

"The harmful effects of electromagnetic fields, regardless of their frequencies, are now scientifically settled. Pregnant women (the fetus) and children and adolescents are particularly vulnerable." Dominique Belpomme, MD, France

Aren't EMFs regulated by the government? Many common EMF devices sold today have not been proven safe for long term exposure. The Federal Communications Commission (FCC) safety guidelines are outdated. The FCC is promoting rapid expansion of higher frequency (5G) cell towers in our communities. The FCC cannot be relied on to protect public health or the environment.

Learn about the science: The International Agency for Research on Cancer at the World Health Organization classifies EMFs as possible carcinogens. <https://goo.gl/9DQC6M>

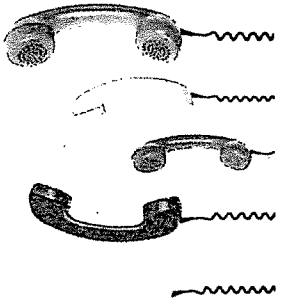
The National Toxicology Program found an increase in brain and heart tumors from exposure to cell phone frequencies. <https://goo.gl/jgh5kf>

The BioInitiative Reports reference more than 3,800 peer-reviewed published studies. The authors conclude that EMFs jeopardize global health and recommend stricter biologically-based standards and lower exposure limits. www.bioinitiative.org

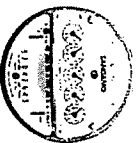
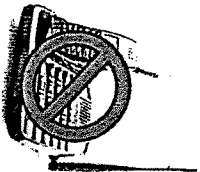
Independent scientists who have published peer-reviewed studies on EMFs signed the International Scientists Appeal, which calls for greater public and environmental protections from EMF exposure. www.emfscientist.org

Solutions

We recommend prudent avoidance of EMFs, which means being cautious, sensible, and reducing or avoiding EMFs when and where you can.



- Use a corded landline for your home and work place. *(remove cordless phones)*
- Use analog utility meters on your home. *(remove smart meters)*
- Use a wired router for internet connection for faster and safer service. *(avoid wi-fi)*
- Reduce cell phone use. Keep cell phones away from your body. Keep cell phones away from children. *(Best to use cell phones for emergencies only)*
- Learn more safety tips: www.emfsafetynetwork.org/safety-precautions/



About EMF Safety Network

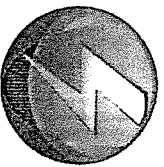
Our mission is to educate and empower people by providing science and solutions to reduce EMFs to improve lives, achieve public policy change, and obtain environmental justice. We work at the local to the federal level, helping you to create awareness and change in your community!

Appreciation from a member:

"I am so grateful for your hard work and organization. I have never participated in a government issue before, and you made it so easy to write and send my postcards, call my state legislators, and have talking points for conversations with neighbors."

Become a member!

Membership dues are \$50 annually. To pay by check mail to EMF Safety Network or donate on our website.



EMF
SAFETY NETWORK

PO Box 1016

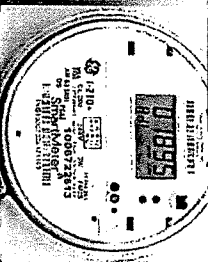
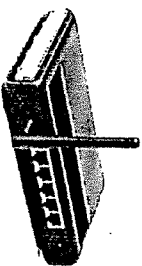
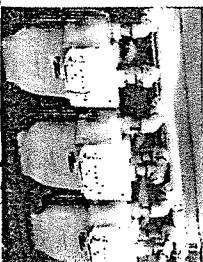
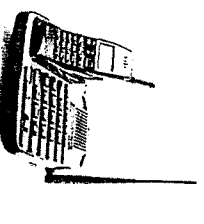
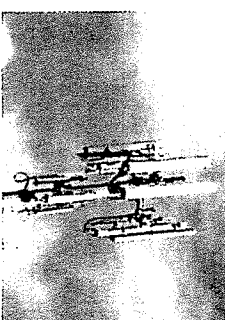
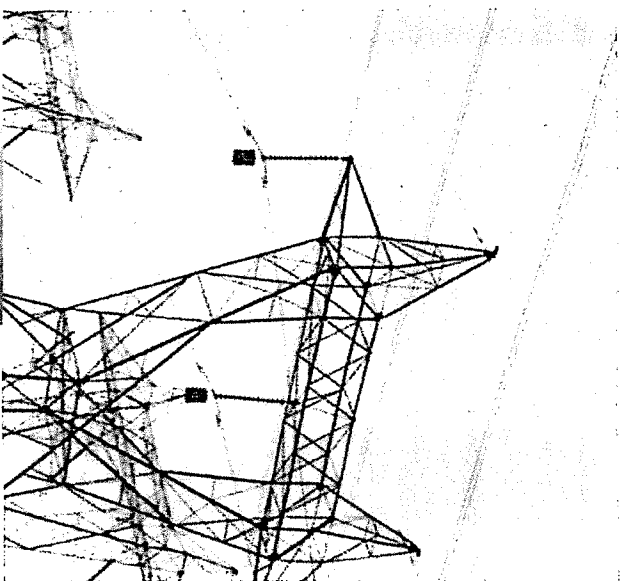
Sebastopol CA, 95472

(707) 827-0109

www.emfsafetynetwork.org

EMF Safety Network is a sponsored project of Ecological Options Network (EON) a 501 (c)(3) not-for-profit organization. Donations of \$100 or more are tax deductible. Make check payable to EON, and mail to EMF Safety Network.

What are EMFs?



Videos on EMFs

* 5G Tower in San Francisco....1 min. I shot this video
<https://youtu.be/ihs-KSDKz30>

Generation Zapped
<https://generationzapped.com/trailer/>

Great Video on Wireless in school
<https://youtu.be/Fv6kikiBzug>

Insect Decline
<https://youtu.be/aHhUch5GgtY>

Great Reserach
<http://scientists4wiredtech.com/>

<https://www.telecompowergrab.org/science.html>

Ben Greenfield on EMF's
<https://bengreenfieldfitness.com/podcast/biohacking-podcasts/the-real-research-on-wifi-health-cell-phones-dirty-electricity-more/>

Cell phones and cancer
<https://youtu.be/MLMSCnYcfCY>

<https://youtu.be/wARxnaxrRkK>

Cece in Ashland..great overreview..meters etc
https://youtu.be/0W_vlGmnpqE

International Scientist Appeal on Electromagnetic Fields- Dr Martin Blank PhD <https://youtu.be/2ljs5lrebac>

5G
<https://youtu.be/6TVNx8-vy88>

Dirty Electricity

<https://youtu.be/FAgNHirOhxc>

8 Household Electronics that can harm your Health

<https://youtu.be/1UJ64gfCKQI>

<https://youtu.be/DeXMCsJUoqU>

ENVIRONMENTAL HEALTH TRUST <https://ehtrust.org/about/>

Dr Devra Davis

Dr Devra Video on Cell Phones

<https://youtu.be/wCzaoo4nBbY>

<http://scientists4wiredtech.com/>

Hello Representatives and Community members at large....
The Telecom wireless industry is worth over 17 trillion dollars.....
There are 30 million radio masts world wide...and growing exponentially.....

This is a fast moving, massive global business with a goal of covering 95% of the land mass with modulated microwave radiation 24/7
As the FCC chairperson has said....."Look out to anyone who gets in the way"

In short, we are all part of a huge experiment based on "the use now, find out later model"

Hundreds of radiation scientists signed a petition to the UN saying that EMR was out of control and nobody knows what the long term effect of exposure is going to be.

They urged all governments to protect the people from an emerging health crisis as effects are showing up in their research that is including cancers and damage to DNA in humans. THERE HAS BEEN NO PREMARKET SAFETY TESTING for 5G or any of the G's.

Children are dropping dead of heart attacks in school (2 in Chicago), children are now having pace makers put in their hearts for irregular heart activity.

I personally experience this almost every day. The extremely high frequency of the cell towers and routers (which are like small cell towers) mess with the electrical patterns of the heart AND brain. This is genotoxic and carcinogenic (PAUSE).....we are microwaving our children, our beloved pets, our birds and bees and deer and fox, our community.....everything and its getting WAY WORSE.

We are exposed to a quintillion times more radiation than just 10 years ago!!!! A quintillion times.

Telecom companies will tell you their 5G transmitters meet all Federal safety requirements, and they're probably right. What they don't tell you is that those FCC safety requirements are based on disputed scientific knowledge as of 1986. ...that's 34 years ago.

We have proof now about how wireless radiation can impact our health.

There are 1,000's of scientific studies that have been conducted by researchers around the world, concerning the biological effects of RF radiation.

I would like to submit some of these references and I have included a list of videos which are both informative and.... entertaining. I have included my contact info I can be assistance. I do professional EMF Analysis, Education and Mitigation so my passion is in this field.

Briefly, some of the content titles in the references are:

- I. Effects On Fetal And Newborn Development
- II. Effects On Young Children
- III. Brain Tumors
- IV. Parotid Gland Tumors
- V. Other Malignancies
- VI. Effects On DNA
- VII. Neurological/Cognitive Effects
- VIII. Effects On Male Fertility
- IX. Electromagnetic Sensitivity
- X. Effects On Implanted Medical Devices

There is power in what we know.

Thank you SO much for your time and efforts in this sensitive issue. Kiah Bosy

I. Effects On Fetal And Newborn Development

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EMF Safety Levels

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The following information was compiled by Michael Neuert of EMF Center.com

What Are the Health Concerns?

Published studies from around the world have linked electromagnetic fields (EMF) to increased risks for several types of cancer, as well as increased stress, suppression of the immune system, cellular and hormone changes, and even depression and suicide. In fact, several thousand studies have reported biological effects related to EMFs.

Some of the specific illnesses include leukemia, lymphoma, brain tumors, melanoma, breast cancer, asthma, Alzheimer's disease, Lou Gehrig's disease, miscarriage and birth defects.

Anecdotally, EMFs are often associated with sleep problems, headache, fatigue, anxiety, mental confusion, irritability, memory loss, dizziness, itchy or burning skin, tinnitus, and other symptoms. There are three main kinds of EMFs. All three types have been linked to important biological effects. And each type of EMF is measured with a different kind of test instrument...

- A. **ELF Magnetic Fields** ^{Note 2} are the particular EMF component most often linked to serious health effects — such as childhood leukemia and other cancers — in the research studies. Common sources include electric power lines, electrical wiring, lighting fixtures, electric appliances and most electrical devices. Wiring problems and stray electrical current in metal pipes can also create surprisingly high levels. Magnetic fields are measured with an ELF gauss meter, in units of “mill gauss” (mG).
- B. **ELF Electric Fields** ^{Note 2} are also linked to important biological effects, but have been studied less. Anecdotally, they are often involved when people feel “sensitive” to electromagnetic fields. Common sources include hidden electrical wiring, power cords for lamps and devices, and power lines. Electric fields create unnatural electric voltages on the skin, which can be measured with a Body Voltage Meter, in units of “Volts AC” (V).
- C. **RF Fields** (radio frequency fields, includes microwaves) have been linked to various types of cancer, tumors and health effects similar to the ELF fields. RF fields are commonly emitted from modern wireless and electronic equipment — cell towers, cell phones, cordless telephones, wireless computers, Wi-Fi routers, baby monitors, Smart Meters, TV and radio broadcast towers, microwave ovens, radar, etc. They are measured with an RF meter, usually in units of “microwatts per centimeter squared” ($\mu\text{W}/\text{cm}^2$). ^{Note 3}

Special Note: There is still great controversy about the potential health effects from EMFs. Please refer to the proper medical authorities and scientific research literature to make your own decisions regarding health effects and safety levels.¹ The attached “What EMF Level is Safe?” page shows some of the more common EMF exposure guidelines that you may wish to consider.⁴

^{Note 1} I am engineer and not a medical doctor. I cannot diagnose or treat any EMF-related health concerns. Please consult with your own doctor or other health professional regarding EMF exposure guidelines.

^{Note 2} Extremely-Low-Frequency or “ELF” is the EMF frequency range which includes the common 60 hertz (60 cycles-per-second) electric utility power used in the US/Canada and the 50 Hz power in Europe.

^{Note 3} When RF frequencies are also added to the ELF magnetic and electric fields due to the use of electronic dimmers, fluorescent lights, computers, Smart Meters, etc., this is called “Dirty Electricity”.

^{Note 4} Some of this information is anecdotal, based on my 22 years of professional experience with clients.

What EMF Level is Safe?⁹

EMF Safety Levels ©2017 by Michael R Neuert (www.emfcenter.com or 707-578-1645)

Test Location	ELF Magnetic Fields	ELF Electric Fields	Radio Frequency (RF) Fields (including Microwaves)	
Unit of Measure →	Mill gauss (Mg)	Volts AC on Skin (V)	Unit: Volts/meter V/m	mW/cm ²
Lowest Level Linked to Cancer ^{See Note 5 & 6}	1.0 (2.0) ⁵	unknown	0.87	0.2
Average Level in Homes ^{See Note 7}	0.5 to 1.0	0.5 to 2.0	.019 to 1.4	.0001-.05
Building Biology Severe Concern ^{See Note 8}	1.0	0.1 (sleep)	.061	.001
Bio Initiative Report 2012 ^{See Note 9}	1.0	n/a	.034	.0003
General Public Precautionary Level ^{See Note 10}	0.5	1.0 (sleep 0.5)	.19	.01
EMF Hypersensitivity Advice ^{See Note 11}	0.1	0.1	.020 or less	.0001 or less
Official FCC Safety Limit ^{See Note 12}	n/a	n/a	61.4 Thermal	1000
ICNIRP Guidelines for General Public ^{Note 12}	2000	n/a		1000

- ⁵ The Lowest Level Linked to Cancer for Magnetic Fields: The strongest evidence comes from the Swedish epidemiological study which reported increased leukemia for children at levels of 2.0 mG or more (Feychting & Ahlbom, 1993). And a German study has linked exposures as low as 1.0 mG to reduced survival rates for children trying to recover from leukemia (Svendson, Weikopf, Kaatsch & Schuz, 2007).
- ⁶ The Lowest Level Linked to Cancer for RF is from two Australian studies of radio/TV broadcast towers that found increased childhood leukemia at levels as low as 0.2 microwatts/cm². The first (Hocking, 1996) found that leukemia death rates were more than double for the exposed children. The second (Hocking, 2000) found that children trying to recover from leukemia were twice as likely to survive in a lower exposure home.
- ⁷ The Average Level in Homes for magnetic fields is derived from nationwide research studies and confirmed in my own testing experience. The average levels for electric fields and RF fields are estimates from my own 22 years of professional testing in the San Francisco Bay area.
- ⁸ The Building Biology Severe Concern level is from the "Standard of Building Biology Testing Methods" published by the Institute for Baubiology. (Go to www.hbeic.org/pdf/standards/sbm2008.pdf.)
- ⁹ The BioInitiative Report Recommendations are from the 2012 "BioInitiative Report: A Rationale for a Biologically-Based Public Exposure Standard for Electromagnetic Fields". (Go to www.bioinitiative.org. For a detailed list of the RF studies reporting adverse health effects and the related RF exposure levels, go to www.bioinitiative.org/report/wp-content/uploads/pdfs/BioInitiativeReport-RF-Color-Charts.pdf.)
- ¹⁰ The General Public Precautionary Level is my own offering to healthy concerned clients based on my own understanding of the EMF research, and leaning towards caution. For example for magnetic fields, to offer some margin of safety below the 1.0 mG linked to cancer, I might suggest a safety level of 0.5 mG.
- ¹¹ The EMF Hypersensitivity Advisory is based upon anecdotal experience by EMF professionals like myself who often find it necessary to reduce exposures to these levels for sensitive individuals to report relief of symptoms. However, there is no guarantee that these levels will be low enough for any particular person.
- ¹² The FCC Safety Limit is the US "Maximum Permissible Exposure for the General Public" in FCC/OET Bulletin #56 (www.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet56/oet56e4.pdf). The ICNIRP Guidelines are from the commonly cited 2010 publication by the International Commission on Non-Ionizing Radiation Protection (<http://www.icnirp.org/cms/upload/publications/ICNIRPLFgdl.pdf>).
- ¹³ The official safety level depends on frequency. Value shown is for frequencies of 1500 MHz and higher.

