

ORDINANCE NO. 819

AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ENACTING TITLE 20 ("TELECOMMUNICATIONS") OF THE FAIRFAX MUNICIPAL CODE TO ESTABLISH NEW REGULATIONS FOR WIRELESS TELECOMMUNICATION FACILITIES

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

(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.

(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 .

(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) 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) 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) 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.

(13) 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. State and federal laws and regulations require local governments to act on permit applications for wireless facilities within a prescribed time period and may automatically deem an application approved when a failure to act occurs. See 47 U.S.C. § 332(c)(7)(B)(iii); 47 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. 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.

(14) 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.

(15) 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.

(16) 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 urgent 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 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. 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.

(17) 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.

(18) 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, but includes appropriate regulations to ensure that the installation, augmentation and relocation of wireless telecommunications facilities including in the public right-of-way are conducted in such a manner as to lawfully balance the legal rights of applicants under the Federal Telecommunications Act and the California Public Utilities Code while, at the same time, protect to the full extent feasible against the safety and land use concerns described herein.

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

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

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

Section 1. The Fairfax Municipal Code is hereby amended as follows: A New Section, Section 20, 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. To the extent this Section 20 conflicts with Section 19, Section 20 shall control and amend Section 19.

Section 2. The Town Council hereby finds that Adoption of this Ordinance will enact only minor changes in land use regulations, and it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for the development of any new or expanded wireless telecommunication facilities anywhere other than where they were previously allowed under existing federal, state and local regulations. The wireless facilities themselves are exempt from CEQA pursuant to CEQA Guidelines Section 15305, which exempts minor encroachment permits, and Section 15303, which exempts the installation of small equipment and facilities in a small structure. The Ordinance does not constitute a "project" within the meaning of the California Environmental Quality Act of 1970 (CEQA) Guidelines Section 15060(c)(2) because there is no potential that small cell facility regulations will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because they have no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. Moreover, even if the proposed Ordinances and Resolution comprise a project for CEQA analysis, the ordinance falls within the "common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."

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

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

Section 5. Effective Date. This ordinance is adopted as an urgency ordinance for the immediate preservation of the public peace, health and safety within the meaning of Government Code Section 36937(b) and therefore shall be passed immediately upon its introduction and shall become effective immediately, and shall be posted in three public places in the Town, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club.

PASSED AND ADOPTED at a special meeting of the Town Council of the Town of Fairfax on the 26th day of September 2018, by the following vote:

AYES: ACKERMAN, COLER, GODDARD, LACQUES, REED
NOES: None
ABSENT: None
ABSTAIN: None



Peter Lacques, Mayor

ATTEST:



Michele Gardner, Town Clerk

Exhibit A
URGENCY ORDINANCE

Title 20: Telecommunications
Chapter 20.04. WIRELESS TELECOMMUNICATIONS FACILITIES

20.04.010 Purpose

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

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

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

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

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

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

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

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

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

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

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

- 77 H. **“Existing”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as
78 may be amended, which currently provides that a constructed tower or base station is existing
79 for purposes of the FCC's Section 6409(a) regulations if it has been reviewed and approved
80 under the applicable zoning or siting process, or under another State or local regulatory review
81 process, provided that a tower that has not been reviewed and approved because it was not
82 in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this
83 definition.
- 84 I. **“FCC”** means the Federal Communications Commission or its duly appointed
85 successor agency.
- 86 J. **“Modification”** means any change to an existing wireless telecommunications facility
87 that involves any of the following: collocation, expansion, modification, alteration,
88 enlargement, intensification, reduction, or augmentation, including, but not limited to, a
89 change in size, shape, color, visual design, or exterior material. Modification does not include
90 repair, replacement, or maintenance if those actions do not involve a change to the existing
91 facility involving any of the following: collocation, expansion, modification, alteration,
92 enlargement, intensification, reduction, or augmentation.
- 93 K. **“Personal Wireless Services”** means the same as defined in 47 U.S.C. §
94 332(c)(7)(C)(i), as may be amended, which defines the term as commercial mobile services,
95 unlicensed wireless services and common carrier wireless exchange access services.
- 96 L. **“Personal Wireless Service Facilities”** means the same as defined in 47 U.S.C. §
97 332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal
98 wireless services.
- 99 M. **“Zoning administrator”** means the Town 's Planning and Building Services Director
100 or his/her designee.
- 101 N. **“Pole”** means a single shaft of wood, steel, concrete, or other material capable of
102 supporting the equipment mounted thereon in a safe and adequate manner and as required
103 by provisions of the Fairfax Municipal Code.
- 104 O. **“Public Right-of-Way or “Right-of-Way”** means any public street, public way, public
105 alley or public place, laid out or dedicated, and the space on, above or below it, and all
106 extensions thereof, and additions thereto, under the jurisdiction of the Town.
- 107 P. **“Reviewing Authority”** means the person or body who has the authority to review
108 and either grant or deny a wireless telecommunications facility permit pursuant to this chapter.
- 109 Q. **“RF”** means radio frequency or electromagnetic waves.
- 110 R. **“Roof-mounted”** means mounted directly on the roof of any building or structure,
111 above the eave line of such building or structure.

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

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

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

122 V. **“Substantial Change”** means the same as defined by the FCC in 47 C.F.R. §
123 1.40001(b)(7), as may be amended, which currently defines that term differently based on the
124 particular wireless facility type (tower or base station) and location (in or outside the public
125 right-of-way). For clarity, this definition organizes the FCC's criteria and thresholds for a
126 substantial change according to the wireless facility type and location.

127 1. For towers outside the public rights-of-way, a substantial change occurs when:

128 a) the proposed collocation or modification increases the overall height more than
129 10% or the height of one additional antenna array not to exceed 20 feet
130 (whichever is greater); or

131 b) the proposed collocation or modification increases the width more than 20 feet
132 from the edge of the wireless tower or the width of the wireless tower at the level
133 of the appurtenance (whichever is greater); or

134 c) the proposed collocation or modification involves the installation of more than
135 the standard number of equipment cabinets for the technology involved, not to
136 exceed four; or

137 d) the proposed collocation or modification involves excavation outside the current
138 boundaries of the leased or owned property surrounding the wireless tower,
139 including any access or utility easements currently related to the site.

140 2. For towers in the public rights-of-way and for all base stations, a substantial change
141 occurs when:

142 a) the proposed collocation or modification increases the overall height more than
143 10% or 10 feet (whichever is greater); or

144 b) the proposed collocation or modification increases the width more than 6 feet
145 from the edge of the wireless tower or base station; or

146 c) the proposed collocation or modification involves the installation of any new
147 equipment cabinets on the ground when there are no existing ground-mounted

- 148 equipment cabinets; or
- 149 d) the proposed collocation or modification involves the installation of any new
150 ground-mounted equipment cabinets that are ten percent (10%) larger in height
151 or volume than any existing ground-mounted equipment cabinets; or
- 152 e) the proposed collocation or modification involves excavation outside the area in
153 proximity to the structure and other transmission equipment already deployed
154 on the ground.
- 155 3. In addition, for all towers and base stations wherever located, a substantial change
156 occurs when:
- 157 a) the proposed collocation or modification would defeat the existing concealment
158 elements of the support structure as determined by the zoning administrator; or
- 159 b) the proposed collocation or modification violates a prior condition of approval,
160 provided however that the collocation need not comply with any prior condition
161 of approval related to height, width, equipment cabinets or excavation that is
162 inconsistent with the thresholds for a substantial change described in this
163 section.

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

172 W. **“Telecommunications Tower”** or **“Tower”** means a freestanding mast, pole, guyed
173 tower, lattice tower, free standing tower or other structure designed and primarily used to
174 support wireless telecommunications facility antennas. For the purposes of “Eligible
175 Facilities Requests”, the term “Tower” means the same as defined by the FCC in 47 C.F.R.
176 § 1.40001(b)(9), as may be amended, which currently defines that as any structure built
177 for the sole or primary purpose of supporting any FCC-licensed or authorized antennas
178 and their associated facilities, including structures that are constructed for wireless
179 communications services including, but not limited to, private, broadcast, and public safety
180 services, as well as unlicensed wireless services and fixed wireless services such as
181 microwave backhaul, and the associated site.

182 X. **“Transmission Equipment”** means the same as defined by the FCC in 47 C.F.R. §
183 1.40001(b)(8), as may be amended, which currently defines that term as equipment that
184 facilitates transmission for any FCC-licensed or authorized wireless communication service,
185 including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and
186 regular and backup power supply. The term includes equipment associated with wireless
187 communications services including, but not limited to, private, broadcast, and public safety

188 services, as well as unlicensed wireless services and fixed wireless services such as
189 microwave backhaul.

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

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

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

201 1. A facility that qualifies as an amateur station as defined by the FCC, 47 C.F.R. Part
202 97, of the Commission’s Rules, or its successor regulation.

203 2. An antenna facility that is subject to the FCC Over-The-Air-Receiving Devices rule,
204 47 C.F.R. Section 1.4000, or any successor regulation, including, but not limited to,
205 direct-to-home satellite dishes that are less than one meter in diameter, TV
206 antennas used to receive television broadcast signals and wireless cable antennas.

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

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

212 5. Telecommunications facilities owned and operated by any emergency medical care
213 provider.

214 6. Mobile services providing public information coverage of news events of a
215 temporary nature.

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

218 **20.04.030 Applicability**

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

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

222 2. All facilities, notwithstanding the date approved, shall be subject immediately to the
223 provisions of this chapter governing the operation and maintenance, cessation of
224 use and abandonment, removal and restoration of wireless telecommunications
225 facilities and wireless telecommunications collocation facilities and the prohibition
226 of dangerous conditions or obstructions by such facilities; provided, however, that
227 in the event a condition of approval conflicts with a provision of this chapter, the
228 condition of approval shall control unless and until the permit is amended or
229 revoked.

230 B. Title 20, including but not limited to this chapter 20.04 shall not apply to a wireless
231 telecommunications facility on property owned by the Town.

232 C. Notwithstanding any provision of the Fairfax Municipal Code to the contrary, provisions
233 governing the installation of a public utility structure or facility shall not apply to wireless
234 telecommunications facilities. Title 19 and Title 20 shall govern all applications for wireless
235 telecommunications facilities.

236 **20.04.040 Wireless Telecommunications Facility Permit Required**

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

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

244

<i>Description Facility</i>	<i>Wireless</i>	<i>Private Property</i>		<i>Public Right-of Way³</i>
		<i>RS, RD, RM, PDD Residential Zoning Districts and CR Commercial Zoning district</i>	<i>All Other Zoning Districts</i>	<i>Non-Residential Zoning Districts except for CR</i>
Roof-mounted facility, building-mounted facility, or facility mounted on an existing pole		Not Permitted	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
Facility mounted on a replacement pole or new telecommunications tower		Not Permitted	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
New wireless telecommunications collocation facility		Not Permitted	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
Eligible facilities request ¹ or application pursuant to California Government Code Section 65850.6 ²		Permitted	Permitted	Permitted
¹ See requirements of section 20.04.140. ² See requirements of section 20.04.150. 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.				

245

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

250 **20.04.050 Application for Permit**

251 A. **Application content.** All applications for a permit required by this chapter must be
252 made in writing on such form as the zoning administrator prescribes. For permit applications
253 other than Eligible Facilities Requests (which are addressed in Section 20.04.140), the form
254 shall include the following information, in addition to all other information determined
255 necessary by the zoning administrator as well as all other information required by the Town

256 as part of an application for a conditional use permit:

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

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

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

298 **B. Independent expert.**

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

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

304 (b) Compliance with applicable radio frequency emission standards and
305 applicable electrical codes and fire codes and best practices for fire and
306 electrical safety,

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

309 (d) An engineering and seismic assessment of the proposed installation to
310 ensure the proposed location is structurally adequate to support the
311 proposed installation, and the installation will meet the seismic standards
312 set forth for "Risk Category IV" for "essential facilities" as set forth in the
313 California Building Code (CBC), and adequately engineered to withstand
314 the maximum wind loads that could be reasonably anticipated for the
315 location. For installations on utility poles, the assessment would be
316 based on conformance to CPUC standards,

317 (e) An assessment of any fire hazard a proposed installation presents to
318 surrounding vegetation and structures

319 (f) Technical demonstration of the unavailability of alternative sites, facility
320 designs or configurations, and coverage analysis, and

321 (g) The validity of conclusions reached or claims made by applicant.

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

324 **20.04.060 Location and Configuration Preferences**

325 A. **Purpose.** The purpose of this section is to provide guidelines to applicants and the
326 reviewing authority regarding the preferred locations and configurations for wireless
327 telecommunication facilities in the Town , provided that nothing in this section shall be
328 construed to permit a wireless telecommunication facility in any location or configuration that

329 it is otherwise prohibited by this chapter.

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

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

- 336 1. Collocation with existing facilities,
- 337 2. Roof-mounted,
- 338 3. Building-mounted,
- 339 4. Mounted on an existing pole or utility pole
- 340 5. Mounted on a new pole or utility pole that will replace an existing pole or utility pole,
- 341 6. Mounted on a new telecommunication tower.

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

- 344 1. In the CH zoning district,
- 345 2. In the CC zoning district,
- 346 3. In the CS zoning district,
- 347 4. In the CL zoning district,
- 348 5. In the PD zoning district,
- 349 6. In the public right-of-way with the closest adjacent district being a commercial
350 district.

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

357 **20.04.070 Design and Development Standards for All Facilities**

358 A. **Basic requirements.** The design and development standards set forth in this section
359 apply to all wireless telecommunications facilities no matter where they are located. Wireless

360 telecommunications facilities shall be designed and maintained so as to minimize visual,
361 noise, and other impacts on the surrounding community and shall be planned, designed,
362 located, and erected in accordance with the design and development standards in this section.

363 B. **No speculative facilities.** A wireless telecommunications facility, wireless
364 telecommunications collocation facility, or a telecommunications tower, which is built on
365 speculation and for which there is no wireless tenant is prohibited within the Town .

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

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

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

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

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

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

393 I. **Noise.**

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

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

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

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

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

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

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

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

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

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

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

- 442 1. Facilities mounted to a telecommunications tower, including, but not limited to, the
443 attached antennas, shall be designed to be the minimum functional height and width
444 required to adequately support the proposed facility and meet FCC
445 requirements. The applicant shall provide documentation satisfactory to the zoning
446 administrator establishing compliance with this paragraph. In any event, facilities
447 mounted to a telecommunications tower shall not exceed the applicable height limit
448 for structures in the applicable zoning district.
- 449 2. Aside from the antenna itself, no additional equipment may be visible. All cables,
450 including, but not limited to, electrical and utility cables, shall be run within the
451 interior of the telecommunications tower and shall be camouflaged or hidden to the
452 fullest extent feasible without jeopardizing the physical integrity of the tower.
- 453 3. Pole installations shall be situated so as to utilize existing natural or man-made
454 features including topography, vegetation, buildings, or other structures to provide
455 the greatest amount of visual screening.
- 456 4. All antenna components and accessory wireless equipment shall be treated with
457 exterior coatings of a color and texture to match the predominant visual background
458 or existing architectural elements so as to visually blend in with the surrounding
459 development. Subdued colors and non-reflective materials that blend with
460 surrounding materials and colors shall be used.
- 461 5. Poles shall be no greater in diameter or other cross-sectional dimensions than is
462 necessary for the proper functioning of the facility.
- 463 6. If a faux tree is proposed for the Pole installation, it shall be of a type of tree
464 compatible with those existing in the immediate areas of the installation. If no trees
465 exist within the immediate areas, the applicant shall create a landscape setting that
466 integrates the faux tree with added species of a similar height and type. Additional
467 camouflage of the faux tree may be required depending on the type and design of
468 faux tree proposed.

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

- 473 1. Accessory equipment for roof-mounted facilities shall be installed inside the building
474 to which it is mounted or underground, if feasible. If not feasible, such accessory
475 equipment may be located on the roof of the building that the facility is mounted on,
476 provided that both the equipment and screening materials are painted the color of

the building, roof, or surroundings. All screening materials for roof-mounted facilities shall be of a quality and design that is architecturally integrated with the design of the building or structure.

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

20.04.090 Additional Design and Development Standards for Facilities in the Public Right-of-Way

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

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

C. Antennas.

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

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

D. Poles.

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

2. Pole height and width limitations:

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

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

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

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

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

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

F. **Location.**

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

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

3. 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.

4. Each pole mounted wireless telecommunications facility must be separated by at least 1,500 feet.
5. All cables, including, but not limited to, electrical and utility cables, between the pole and any accessory equipment shall be placed underground, if feasible.
6. 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.

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

H. Accessory equipment. The wireless facility shall be powered using unmetered service, whenever available. If not available, the electric meter shall be pole-mounted to the extent feasible, and all accessory equipment shall be located underground within three (3) feet of the pole and ground flush mounted to the extent feasible. When above-ground is the only feasible location for a particular type of accessory equipment and when such accessory equipment cannot be pole-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five (5) feet and a total footprint of fifteen (15) square feet, and shall be screened and camouflaged to the fullest extent possible, including the use of landscaping or alternate screening. Required electrical meter cabinets shall be adequately screened and camouflaged.

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

19.04.100 Conditions of Approval for All Facilities

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

1. Before the permittee submits any application for a permit or other permits required by the Fairfax Municipal Code, the permittee must incorporate the wireless telecommunication facility permit granted under this chapter, all conditions associated with the wireless telecommunications facility permit and engineering and electrical plans, schematics and specifications and the approved plans and any photo simulations (the "Approved Plans") into the project plans. The permittee must construct, install and operate the wireless telecommunications facility in strict compliance with the Approved Plans. The permittee shall submit an as built drawing within 90 days after installation of the facility.
2. Where feasible, as new technology becomes available, the permittee shall:
 - (a) place above-ground wireless telecommunications facilities below ground, including, but not limited to, accessory equipment that has been mounted

- 592 to a telecommunications tower or mounted on the ground; and
- 593 (b) replace larger, more visually intrusive facilities with smaller, less visually
594 intrusive facilities, after receiving all necessary permits and approvals
595 required pursuant to the Fairfax Municipal Code.
- 596 3. The permittee shall submit and maintain current at all times basic contact and site
597 information, in a form as may be required by the Town . The permittee shall notify
598 the Town of any changes to the information submitted within seven (7) days of any
599 change, including change of the name or legal status of the owner or operator. This
600 information shall include, but is not limited to, the following:
- 601 (a) Identity, including the name, address and 24-hour local or toll free contact
602 phone number of the permittee, the owner, the operator, and the agent
603 or person responsible for the maintenance of the facility.
- 604 (b) The legal status of the owner of the wireless telecommunications facility,
605 including official identification numbers and FCC certification.
- 606 (c) Name, address, and telephone number of the property owner if different
607 than the permittee.
- 608 4. The permittee shall not place any facilities that will deny access to, or otherwise
609 interfere with, any public utility, easement, or right-of-way located on the site. The
610 permittee shall allow the Town reasonable access to, and maintenance of, all
611 utilities and existing public improvements within or adjacent to the site, including,
612 but not limited to, pavement, trees, public utilities, lighting and public signage.
- 613 5. At all times, all required notices and signs shall be posted on the site as required
614 by the FCC and California Public Utilities Commission, and as approved by the
615 Town . The location and dimensions of a sign bearing the emergency contact name
616 and telephone number shall be posted pursuant to the approved plans.
- 617 6. At all times, the permittee shall ensure that the facility complies with the most
618 current regulatory and operational standards including, but not limited to, radio
619 frequency emissions standards adopted by the FCC and antenna height standards
620 adopted by the Federal Aviation Administration as well as all electrical code
621 requirements for the equipment, wiring the equipment and providing power to the
622 equipment, to ensure the facility does not pose an undue fire risk or electrical risk.
623 The Town shall retain a consultant, at the sole expense of the permittee, to perform
624 testing demonstrating compliance with current regulatory and operational
625 standards, and to ensure the equipment is operating within proper specifications
626 and does not pose an undue fire risk or electrical risk. Tests shall occur upon
627 commencement of operations and annually thereafter.
- 628 7. If the zoning administrator determines there is good cause to believe that the facility
629 may emit radio frequency emissions that are likely to exceed FCC standards, the
630 zoning administrator may require the permittee to submit a technically sufficient

- 631 written report certified by a qualified radio frequency emissions engineer, certifying
632 that the facility is in compliance with such FCC standards.
- 633 8. If, upon inspection, the Town Building Official determines there is good cause to
634 believe that the facility (including, without limitation its Accessory Equipment,
635 Antenna and/or Base Station) may present a fire risk or electrical hazard, the
636 Building Official may order the facility to be shut down and powered off until such
637 time as the facility is repaired and restored to its correct operating specifications, at
638 the sole expense of the permittee.
- 639 9. Permittee shall pay for and provide a performance bond, which shall be in effect
640 until the facilities are fully and completely removed and the site reasonably returned
641 to its original condition, to cover permittee's obligations under these conditions of
642 approval and the Fairfax Municipal Code. The bond coverage shall include, but not
643 be limited to, removal of the facility, maintenance obligations and landscaping
644 obligations. The amount of the performance bond shall be set by the zoning
645 administrator in an amount rationally related to the obligations covered by the bond
646 and shall be specified in the conditions of approval.
- 647 10. Permittee shall defend, indemnify, protect and hold harmless the Town, its elected
648 and appointed council members, boards, commissions, officers, officials, agents,
649 consultants, employees, and volunteers from and against any and all claims,
650 actions, or proceeding against the Town and its elected and appointed council
651 members, boards, commissions, officers, officials, agents, consultants, employees
652 and volunteers to attack, set aside, void or annul, an approval of the Town,
653 Planning Commission or Town Council concerning this permit and the project and
654 any and all claims, actions, or proceedings arising from, or related to, the
655 installation, operation or inspection of any facility. Such indemnification shall
656 include damages, judgments, settlements, penalties, fines, defensive costs or
657 expenses, including, but not limited to, interest, attorneys' fees and expert witness
658 fees, or liability of any kind related to or arising from such claim, action, or
659 proceeding. The Town shall promptly notify the permittee of any claim, action, or
660 proceeding. Nothing contained herein shall prohibit Town from participating in a
661 defense of any claim, action or proceeding. The Town shall have the option of
662 coordinating the defense, including, but not limited to, choosing counsel for the
663 defense at permittee's expense.
- 664 11. All conditions of approval shall be binding as to the applicant and all successors in
665 interest to permittee.
- 666 12. A condition setting forth the permit expiration date in accordance with section
667 20.04.20 shall be included in the conditions of approval.
- 668 **20.04.110 Additional Conditions of Approval for Facilities in the Public Right-**
669 **of-Way**
- 670 A. In addition to compliance with the requirements of this chapter, upon approval all

671 facilities in the public right-of-way shall be subject to each of the conditions of approval set
672 forth in section 20.04.100, each of the following conditions of approval, and any modification
673 of these conditions or additional conditions of approval deemed necessary by the reviewing
674 authority:

675 1. The wireless telecommunications facility shall be subject to such conditions, changes or
676 limitations as are from time to time deemed necessary by the Town Manager or his/her
677 designee for the purpose of: (a) protecting the public health, safety, and welfare, (b)
678 preventing interference with pedestrian (e.g., ADA) and vehicular traffic, and (c) preventing
679 damage to the public right-of-way or any property adjacent to it. The Town may modify
680 the permit to reflect such conditions, changes or limitations by following the same notice
681 and public hearing procedures as are applicable to the grant of a wireless
682 telecommunications facility permit for similarly located facilities, except the permittee shall
683 be given notice by personal service or by registered or certified mail at the last address
684 provided to the Town by the permittee.

685 2. The permittee shall not move, alter, temporarily relocate, change, or interfere with
686 any existing structure, improvement or property without the prior consent of the
687 owner of that structure, improvement or property. No structure, improvement or
688 property owned by the Town shall be moved to accommodate a wireless
689 telecommunications facility unless the Town determines that such movement will
690 not adversely affect the Town or any surrounding businesses or residents, and the
691 permittee pays all costs and expenses related to the relocation of the Town's
692 structure, improvement or property. Prior to commencement of any work pursuant
693 to an encroachment permit issued for any facility within the public right-of-way, the
694 permittee shall provide the Town with documentation establishing to the Town's
695 satisfaction that the permittee has the legal right to use or interfere with any other
696 structure, improvement or property within the public right-of-way to be affected by
697 applicant's facilities.

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

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

5. Prior to issuance of a building permit, the applicant shall obtain the zoning administrator's approval of a tree protection plan prepared by a certified arborist if the installation of the wireless telecommunication facility will be located within the canopy of a street tree, or a protected tree on private property, or within a ten (10)-foot radius of the base of such a tree. Depending on site specific criteria (e.g., location of tree, size, and type of tree, etc.), a radius greater than ten (10) feet may be required by the zoning administrator.
6. Should any utility company offer electrical service that does not require the use of a meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet and any related foundation within thirty (30) days of such service being offered and reasonably restore the area to its prior condition.
7. The permittee shall modify, remove, or relocate its facility, or portion thereof, without cost or expense to Town , if and when made necessary by:
- a) Any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or aboveground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by Town or any other public agency;
 - b) Any abandonment of any street, sidewalk, or other public facility;
 - c) Any change of grade, alignment or width of any street, sidewalk or other public facility; or
 - 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.
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.

19.04.120 Findings – Conditional Use Permit

- A. Where a wireless telecommunication facility, excluding Eligible Facilities Requests, 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:

1. 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).
2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.
3. 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.
4. Noise generated by equipment will not be excessive, annoying nor be detrimental to the public health, safety, and welfare and will not exceed the standards set forth in this chapter.

B. 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:

1. 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 a franchise or other agreement with the Town permitting them to use the public right-of-way.
2. 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.

20.04.130 Exceptions

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

1. Denial of the facility as proposed would violate federal law, state law, or both; or
2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.

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

788 application.

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

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

798 **20.04.140 Eligible Facilities Requests**

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

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

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

808 D. **Eligible Facilities Request Application Requirement.** The Town shall not approve
809 any Eligible Facilities Request subject to this chapter except upon a duly filed application
810 consistent with this Section and any other written rules the Town or the zoning administrator
811 may establish from time to time. An application must include the following information:

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

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

820 3. A detailed site and engineering plan of the proposed facility containing the exact
821 proposed location of the facility, created by a qualified licensed engineer and in
822 accordance with requirements set by the zoning administrator. The site and
823 engineering plan shall display the dimensions of each proposed facility, including
824 its height from the ground level. The site and engineering plans shall show the
825 proposed facility from each cardinal direction.

- 826 4. Photographs of facility equipment and an accurate visual impact analysis with photo
827 simulations.
- 828 5. A written statement that explains in plain factual detail whether and why Section
829 6409(a) and the related FCC regulations require approval for the specific project. A
830 complete written narrative analysis will state the applicable standard and all the
831 facts that allow the Town to conclude the standard has been met. Bare conclusions
832 not factually supported do not constitute a complete written analysis. As part of this
833 written statement the applicant must also include (i) whether and why the support
834 structure qualifies as an existing tower or existing base station; and (ii) whether and
835 why the proposed collocation or modification does not cause a substantial change
836 in height, width, excavation, equipment cabinets, concealment or permit
837 compliance. The analysis provided under (ii) shall include a copy of all prior
838 conditions of approval, and an explanation as to why the prior conditions of approval
839 are met by the proposed wireless facility application.
- 840 6. A technically sufficient written report certified by a qualified radio frequency
841 emissions engineer, certifying that the facility is in compliance with such FCC
842 standards.

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

- 844 1. *Voluntary Pre-Submittal Conference.* Before application submittal, applicants are
845 encouraged (but not required) to schedule and attend a pre-application meeting
846 with the zoning administrator for all proposed modifications submitted for approval
847 pursuant to Section 6409(a). A pre-submittal conference is intended to streamline
848 the review process through informal discussion that includes, without limitation, the
849 appropriate project classification, including whether the project qualifies for Section
850 6409(a); potential concealment issues (if applicable); coordination with other Town
851 departments responsible for application review; and application completeness
852 issues. To mitigate unnecessary delays due to application incompleteness,
853 applicants are encouraged (but not required) to bring any draft applications or other
854 materials so that Town staff may provide informal feedback about whether such
855 applications or other materials may be incomplete or unacceptable.
- 856 2. *Submittal Appointment.* All Eligible Facilities Request Applications must be filed
857 with the Town at a pre-scheduled appointment with the zoning administrator or
858 his/her designee. Applicants may generally submit one (1) application per
859 appointment, but may schedule successive appointments for multiple applications
860 whenever feasible. Any application received without an appointment, whether
861 delivered in-person or through any other means, will not be considered duly filed
862 unless the applicant received a written exemption from the zoning administrator at
863 a pre-submittal conference.
- 864 3. *Appointment Scheduling Procedures.* For any event in the submittal process that
865 requires an appointment, applicants must submit a written request to the zoning
866 administrator. .

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

872 5. *Departmental Forms, Rules and Other Regulations.* The Town council authorizes
873 the zoning administrator to develop and publish permit application forms, checklists,
874 informational handouts and other related materials that the zoning administrator
875 finds necessary, appropriate or useful for processing requests for section 6409(a)
876 approvals. Without further authorization from the Town council, the zoning
877 administrator may from time-to-time update and alter any such permit application
878 forms, checklists, informational handouts and other related materials as the zoning
879 administrator deems necessary, appropriate or useful to respond to regulatory,
880 technological or other changes related to this chapter. The Town council authorizes
881 the zoning administrator to establish other reasonable rules and regulations, which
882 may include without limitation regular hours for appointments with applicants, as
883 the zoning administrator deems necessary or appropriate to organize, document
884 and manage the application intake process.

885 F. **Administrative Review; Decision Notices.** The zoning administrator shall
886 administratively review an application for an Eligible Facilities Request Application and act
887 on such an application without prior notice or a public hearing. Within five (5) working days
888 after the zoning administrator conditionally approves or denies an Eligible Facilities
889 Request Application, the zoning administrator shall send a written notice to the applicant.
890 In the event that the zoning administrator determines that an application submitted for
891 approval pursuant to Section 6409(a) does not qualify for approval, the zoning
892 administrator will send written notice to the applicant that includes the reasons to support
893 the review authority's decision and states that the application will be denied without
894 prejudice.

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

- 898 1. Qualifies as an Eligible Facilities Request; and
899 2. Complies with (or is conditioned to comply with) all generally applicable health and
900 safety rules.

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

906 I. **Conditional 6409(a) Approvals.** Subject to any applicable limitations in federal or

state law, nothing in this chapter is intended to limit the Town 's authority to conditionally approve an application for a section 6409(a) approval to protect and promote the public health, safety and welfare.

J. **Appeals.** Notwithstanding any provision of the Fairfax Municipal Code to the contrary, including but not limited to Section 17.036, an applicant may appeal a decision by the zoning administrator to deny without prejudice a Section 6409(a) application. The appeal must be filed within two (2) 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 Council shall serve as the appellate authority for all such an appeal. The Town shall provide notice for an administrative hearing by the Town Council. The Town Council shall limit its review to whether the project should be approved or denied in accordance with the provisions in paragraphs (G) and (H) of this section. The decision of the Town Council shall be final and not subject to any further administrative appeals.

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

1. *Approved Plans.* Before the permittee submits any application for a building permit or other permits required by the Fairfax Municipal Code, the permittee must incorporate the wireless telecommunications facility permit granted under this section, all conditions associated with the wireless telecommunications facility permit and the approved plans and any photo simulations (the "Approved Plans") into the project plans. The permittee must construct, install and operate the wireless telecommunications facility in strict compliance with the Approved Plans. The permittee shall submit an as built drawing within ninety (90) days after installation of the facility.
2. *Permit Term.* The Town 's grant or grant by operation of law of a Section 6409(a) approval will not extend the permit term, if any, for any conditional use permit, or other underlying prior regulatory authorization. Accordingly, the term for a section 6409(a) approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station.
3. *Accelerated Permit Terms Due to Invalidation.* In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Section 6409(a) approval, such 6409(a) approvals shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved section 6409(a) approvals or the zoning administrator grants an extension upon written request from the permittee that shows good cause for the extension, which includes without limitation extreme financial hardship. Notwithstanding anything in the previous sentence to

- 949 the contrary, the zoning administrator may not grant a permanent exemption or
950 indefinite extension. A permittee shall not be required to remove its improvements
951 approved under the invalidated section 6409(a) approval when it has submitted an
952 application for a conditional use permit for those improvements before the one-year
953 period ends.
- 954 4. *No Waiver of Standing.* The Town 's grant or grant by operation of law of a Section
955 6409(a) approval does not waive, and shall not be construed to waive, any standing
956 by the Town to challenge Section 6409(a), any FCC rules that interpret Section
957 6409(a) or any section 6409(a) approval.
- 958 5. *Build-out Period.* The section 6409(a) approval will automatically expire one year
959 from the issuance date unless the permittee obtains all other permits and approvals
960 required to install, construct and operate the approved wireless facility, which
961 includes without limitation any permits or approvals required by the any federal,
962 state or local public agencies with jurisdiction over the subject property, the wireless
963 facility or its use. The zoning administrator may grant one (1) written extension to a
964 date certain when the permittee shows good cause to extend the limitations period
965 in a written request for an extension submitted at least 30 days prior to the automatic
966 expiration date in this condition. Any further extensions may be granted by the
967 planning commission.
- 968 6. *Maintenance Obligations; Vandalism.* The permittee shall keep the site, which
969 includes without limitation any and all improvements, equipment, structures, access
970 routes, fences and landscape features, in a neat, clean and safe condition in
971 accordance with the Approved Plans and all conditions in this section 6409(a)
972 approval. The permittee shall keep the site area free from all litter and debris at all
973 times. The permittee, at no cost to the Town , shall remove and remediate any
974 graffiti or other vandalism at the site within 48 hours after the permittee receives
975 notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- 976 7. *Compliance with Laws.* The permittee shall maintain compliance at all times with all
977 federal, state and local statutes, regulations, orders or other rules that carry the
978 force of law ("Laws") applicable to the permittee, the subject property, the wireless
979 facility or any use or activities in connection with the use authorized in this section
980 6409(a) approval. The permittee expressly acknowledges and agrees that this
981 obligation is intended to be broadly construed and that no other specific
982 requirements in these conditions are intended to reduce, relieve or otherwise lessen
983 the permittee's obligations to maintain compliance with all Laws.
- 984 8. *Adverse Impacts on Other Properties.* The permittee shall use all reasonable efforts
985 to avoid any and all undue or unnecessary adverse impacts on nearby properties
986 that may arise from the permittee's construction, installation, operation,
987 modification, maintenance, repair, removal or other activities at the site. The
988 permittee shall not perform or cause others to perform any construction, installation,
989 operation, modification, maintenance, repair, removal or other work that involves
990 heavy equipment or machines on any day and at any time prohibited under the

991 Fairfax Municipal Code. The restricted work hours in this condition will not prohibit
992 any work required to prevent an actual, immediate harm to property or persons, or
993 any work during an emergency declared by the Town . The zoning administrator
994 may issue a stop work order for any work that violates this condition.

995 9. *Noise Complaints.* The permittee shall conduct all activities on the site in
996 compliance with the noise standards in the Fairfax Municipal Code. In the event
997 that any person files a noise complaint and the Town verifies that such complaint is
998 valid, the permittee must remedy the violation within ten (10) days after notice from
999 the Town , which may include a demonstration that the permittee has amended its
1000 operational guidelines in situations where the violation arises from the permittee's
1001 personnel rather than the permittee's equipment.

1002 10. *Inspections; Emergencies.* The permittee expressly acknowledges and agrees that
1003 the Town or its designee may enter onto the site and inspect the improvements and
1004 equipment upon reasonable prior notice to the permittee; provided, however, that
1005 the Town or its designee may, but will not be obligated to, enter onto the site area
1006 without prior notice to support, repair, disable or remove any improvements or
1007 equipment in emergencies or when such improvements or equipment threatens
1008 actual, imminent harm to property or persons. The permittee will be permitted to
1009 supervise the Town or its designee while such inspection or emergency access
1010 occurs.

1011 11. *Contact Information.* The permittee shall furnish the Town with accurate and up-to-
1012 date contact information for a person responsible for the wireless facility, which
1013 includes without limitation such person's full name, title, direct telephone number,
1014 facsimile number, mailing address and email address. The permittee shall keep
1015 such contact information up-to-date at all times.

1016 12. *Indemnification.* The permittee and, if applicable, the property owner upon which
1017 the wireless facility is installed shall defend, indemnify and hold harmless the Town
1018 , its agents, officers, officials, employees and volunteers from any and all (1)
1019 damages, liabilities, injuries, losses, costs and expenses and from any and all
1020 claims, demands, law suits, writs and other actions or proceedings ("Claims")
1021 brought against the Town or its agents, officers, officials, employees or volunteers
1022 to challenge, attack, seek to modify, set aside, void or annul the Town 's approval
1023 of this section 6409(a) approval, and (2) other Claims any kind or form, whether for
1024 personal injury, death or property damage, that arise from or in connection with the
1025 permittee's or its agents', directors', officers', employees', contractors',
1026 subcontractors', licensees', or customers' acts or omissions in connection with this
1027 section 6409(a) approval or the wireless facility. In the event the Town becomes
1028 aware any Claims, the Town will use best efforts to promptly notify the permittee
1029 and the private property owner and shall reasonably cooperate in the defense. The
1030 permittee expressly acknowledges and agrees that the Town shall have the right to
1031 approve, which approval shall not be unreasonably withheld, the legal counsel
1032 providing the Town 's defense, and the property owner or permittee (as applicable)
1033 shall promptly reimburse Town for any costs and expenses directly and necessarily

1034 incurred by the Town in the course of the defense. The permittee expressly
1035 acknowledges and agrees that the permittee's indemnification obligations under
1036 this condition are a material consideration that motivates the Town to approve this
1037 section 6409(a) approval, and that such indemnification obligations will survive the
1038 expiration or revocation of this section 6409(a) approval.

1039 13. *Performance Bond.* Before the Town issues any construction permit in connection
1040 with the wireless facility, if in the Town's sole discretion the existing performance
1041 bond for the facility is inadequate or the facility is not associated with any existing
1042 performance bond, the permittee shall post a performance bond from a surety and
1043 in a form acceptable to the Town manager in an amount equal to or greater than a
1044 written estimate from a qualified contractor with experience in wireless facilities
1045 removal. The written estimate must include the cost to remove all equipment and
1046 other improvements, which includes without limitation all antennas, radios,
1047 batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires,
1048 conduits, structures, shelters, towers, poles, footings and foundations, whether
1049 above ground or below ground, constructed or installed in connection with the
1050 wireless facility. In establishing or adjusting the bond amount required under this
1051 condition, and in accordance with California Government Code § 65964(a), the
1052 Town manager shall take into consideration information provided by the permittee
1053 regarding the cost to remove the wireless facility.

1054 14. *Record Retention.* The permittee must maintain complete and accurate copies of
1055 all permits and other regulatory approvals issued in connection with the wireless
1056 facility, which includes without limitation this approval, the approved plans and
1057 photo simulations incorporated into this approval, all conditions associated with this
1058 approval and any ministerial permits or approvals issued in connection with this
1059 approval. In the event that the permittee does not maintain such records as required
1060 in this condition, any ambiguities or uncertainties that would be resolved through an
1061 inspection of the missing records will be construed against the permittee.

1062 15. *Compliance Obligations.* An applicant or permittee will not be relieved of its
1063 obligation to comply with every applicable provision in the Fairfax Municipal Code,
1064 any permit, any permit condition or any applicable law or regulation by reason of
1065 any failure by the Town to timely notice, prompt or enforce compliance by the
1066 applicant or permittee.

1067 **20.04.150 Wireless Telecommunications Collocation Facilities Covered under**
1068 **California Government Code Section 65850.6**

1069 A. **Purpose.** The purpose of this section is to comply with an application for a Wireless
1070 Telecommunications Collocation Facility under California Government Code Section 65850.6,
1071 for which a 6409(a) approval is not being requested. This section provides the requirements,
1072 standards and regulations for a wireless telecommunications collocation facility for which
1073 subsequent collocation is a permitted use pursuant to California law. Only those facilities that
1074 fully comply with the eligibility requirements set forth in California Government Code Section
1075 65850.6, or its successor provision, and which strictly adhere to the requirements and

1076 regulations set forth in this section shall qualify as a wireless telecommunications collocation
1077 facility.

1078 B. **Definitions.** For the purposes of this section, the following terms are defined as
1079 follows:

1080 1. **“Collocation Facility”** means the placement or installation of wireless facilities,
1081 including antennas, and related equipment, on, or immediately adjacent to, a
1082 wireless telecommunications collocation facility.

1083 2. **“Wireless Telecommunications Facility”** means equipment and network
1084 components such as towers, utility poles, transmitters, base stations, and
1085 emergency power systems that are integral to providing wireless
1086 telecommunications services.

1087 3. **“Wireless Telecommunications Collocation Facility”** means a wireless
1088 telecommunications facility that includes collocation facilities.

1089 C. **Procedures.** An application for a Wireless Telecommunications Collocation Facility
1090 under California Government Code Section 65850.6 shall be processed in the same manner
1091 as an application for 6409(a) approval is processed, except that where the process requires
1092 justification for the 6409(a) approval, the applicant shall instead provide the justification for a
1093 Wireless Telecommunications Collocation Facility under California Government Code Section
1094 65850.6.

1095 D. **Requirements.** All requirements, regulations, and standards set forth in this chapter
1096 for a wireless telecommunications facility shall apply to a wireless telecommunications
1097 collocation facility; provided, however, the following shall also apply to a wireless
1098 telecommunications collocation facility:

1099 1. The applicant for a wireless telecommunications collocation facility permit shall
1100 describe or depict:

1101 (a) The wireless telecommunications collocation facility as it will be initially
1102 built; and

1103 (b) All collocations at full build-out, including, but not limited to, all antennas,
1104 antenna support structures, and accessory equipment.

1105 2. Any collocation shall use screening methods substantially similar to those used on
1106 the existing wireless telecommunications facilities unless other optional screening
1107 methods are specified in the conditions of approval.

1108 3. A wireless telecommunications collocation facility permit shall not be approved
1109 unless an environmental impact report, negative declaration, or mitigated negative
1110 declaration was prepared and approved for the wireless telecommunications
1111 collocation facility.

1112 E. **Permitted Use.** Notwithstanding any other provision of this chapter, a subsequent
1113 collocation on a wireless telecommunications collocation facility shall be a permitted use only
1114 if all of the following requirements are satisfied:

1115 1. The wireless telecommunications collocation facility:

1116 (a) Was approved after January 1, 2007, by discretionary permit;

1117 (b) Was approved subject to an environmental impact report, negative
1118 declaration, or mitigated negative declaration; and

1119 (c) Otherwise complies with the requirements of California Government
1120 Code Section 65850.6(b), or its successor provision, for addition of a
1121 collocation facility to a wireless telecommunications collocation facility,
1122 including, but not limited to, compliance with all performance and
1123 maintenance requirements, regulations and standards in this chapter and
1124 the conditions of approval in the wireless telecommunications collocation
1125 facility permit; and

1126 2. The collocations were specifically considered when the relevant environmental
1127 document was prepared for the wireless telecommunications collocation facility.

1128 3. Before collocation, the applicant seeking collocation shall obtain all other applicable
1129 non-discretionary permits, as required pursuant to the Fairfax Municipal Code.

1130 F. **New or Amended Permit.** Except as otherwise provided above, approval of a new or
1131 amended permit shall be required when the facility is modified other than by collocation in
1132 accordance with this section, or the proposed collocation:

1133 1. Increases the height of the existing permitted telecommunications tower or
1134 otherwise changes the bulk, size, location, or any other physical attributes of the
1135 existing permitted wireless telecommunications collocation facility unless
1136 specifically permitted under the conditions of approval applicable to such wireless
1137 telecommunications collocation facility; or

1138 2. Adds any microwave dish or other antenna not expressly permitted to be included
1139 in a collocation facility by the conditions of approval.

1140 G. **Appeals.** Notwithstanding any provision of the Fairfax Municipal Code to the contrary,
1141 including but not limited to Chapter 17.036, any applicant may appeal a decision by the zoning
1142 administrator. The appeal must be filed within 10 days from the zoning administrator's
1143 decision. The appeal must state in plain terms the grounds for reversal and the facts that
1144 support those grounds. The Town Manager shall serve as the appellate authority for all
1145 appeals of all actions of the zoning administrator taken pursuant to this section. The Town
1146 shall provide notice for an administrative hearing by the Town Manager. The Town Manager
1147 shall limit its review to whether the project should be approved or denied in accordance with
1148 the provisions in this section. The decision of the Town Manager shall be final and not subject
1149 to any further administrative appeals.

1150 **20.04.160 Business License**

1151 A permit issued pursuant to this chapter shall not be a substitute for any business license
1152 otherwise required under the Fairfax Municipal Code.

1153 **20.04.170 Emergency Deployment**

1154 In the event of a declared federal, state, or local emergency, or when otherwise warranted by
1155 conditions that the zoning administrator deems to constitute an emergency, the zoning
1156 administrator may approve the installation and operation of a temporary wireless
1157 telecommunications facility (e.g., a cell on wheels or "COW"), which is subject to such
1158 reasonable conditions that the zoning administrator deems necessary.

1159 **20.04.180 Operation and Maintenance Standards**

1160 A. All wireless telecommunications facilities must comply at all times with the following
1161 operation and maintenance standards. All necessary repairs and restoration shall be
1162 completed by the permittee, owner, or operator within 48 hours:

1163 1. After discovery of the need by the permittee, owner, operator or any designated
1164 maintenance agent; or

1165 2. After permittee, owner, operator, or any designated maintenance agent receives
1166 notification from a resident or the zoning administrator.

1167 B. All facilities, including, but not limited to, telecommunication towers, poles, accessory
1168 equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the
1169 facility site shall be maintained in good condition, including ensuring the facilities are
1170 reasonably free of:

1171 1. General dirt and grease;

1172 2. Chipped, faded, peeling, and cracked paint;

1173 3. Rust and corrosion;

1174 4. Cracks, dents, and discoloration;

1175 5. Missing, discolored, or damaged artificial foliage or other camouflage;

1176 6. Graffiti, bills, stickers, advertisements, litter and debris;

1177 7. Broken and misshapen structural parts; and

1178 8. Any damage from any cause.

1179 C. All trees, foliage or other landscaping elements approved as part of the facility shall be
1180 maintained in good condition at all times, and the permittee, owner and operator of the facility
1181 shall be responsible for replacing any damaged, dead or decayed landscaping. No

1182 amendment to any approved landscaping plan may be made until it is submitted to and
1183 approved by the zoning administrator.

1184 D. The permittee shall replace its facilities, after obtaining all required permits, if
1185 maintenance or repair is not sufficient to return the facility to the condition it was in at the time
1186 of installation.

1187 E. Each facility shall be operated and maintained at all times in compliance with applicable
1188 federal regulations, including FCC radio frequency emissions standards.

1189 F. Each facility shall be operated and maintained to comply at all times with the noise
1190 regulations of this chapter and shall be operated and maintained in a manner that will minimize
1191 noise impacts to surrounding residents. Except for emergency repairs, any testing and
1192 maintenance activities that will be audible beyond the property line shall only occur between
1193 the hours of 7:00 a.m. and 5:00 p.m. on Monday through Friday, excluding holidays, unless
1194 alternative hours are approved by the zoning administrator. Backup generators, if permitted,
1195 shall only be operated during periods of power outages or for testing.

1196 G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall
1197 be flown and shall be properly maintained at all times.

1198 H. Each owner or operator of a facility shall routinely inspect each site to ensure
1199 compliance with the standards set forth in this section and the conditions of approval.

1200 **20.04.190 No Dangerous Conditions or Obstructions Allowed**

1201 No person shall install, use or maintain any wireless telecommunications facility which in
1202 whole or in part rests upon, in or over any public sidewalk or parkway, when such installation,
1203 use or maintenance endangers or is reasonably likely to endanger the safety of persons or
1204 property, or when such site or location is used for public utility purposes, public transportation
1205 purposes or other governmental use, or when such facility unreasonably interferes with or
1206 impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped
1207 vehicle, the ingress into or egress from any residence or place of business, the use of poles,
1208 posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street
1209 furniture or other objects permitted at or near said location.

1210 **20.04.200 Permit Expiration**

1211 A. A permit for any wireless telecommunications facility shall be valid for a period of ten
1212 (10) years, unless the Planning Commission authorizes a longer period or pursuant to another
1213 provision of the Fairfax Municipal Code the permit lapses sooner or is revoked. At the end of
1214 such period, the permit shall expire.

1215 B. A permittee may apply for extensions of its permit in increments of no more than ten
1216 years and no sooner than twelve months prior to expiration of the permit.

1217 C. If a permit has not expired at the time an application is made for an extension, the
1218 zoning administrator may administratively extend the term of the permit for subsequent ten-

1219 year terms upon verification of continued compliance with the findings and conditions of
1220 approval under which the application was originally approved, as well as any other applicable
1221 provisions of the Fairfax Municipal Code that are in effect at the time the permit extension is
1222 granted.

1223 1. At the zoning administrator's discretion, additional studies and information may be
1224 required of the applicant.

1225 2. If the zoning administrator determines that the facility is nonconforming or that
1226 additional conditions of approval are necessary to bring the facility into compliance
1227 with the provisions of the Fairfax Municipal Code that are then in effect at the time
1228 of permit expiration, the zoning administrator shall refer the extension request to
1229 the Planning commission.

1230 D. The request for an extension shall be decided by the Planning commission if the permit
1231 expired before the application is made for an extension or if the zoning administrator refers
1232 the matter to the Planning commission. After notice and a public hearing, the Planning
1233 commission may approve, conditionally approve, or deny the extension.

1234 **20.04.210 Cessation of Use or Abandonment**

1235 A. A wireless telecommunications facility is considered abandoned and shall be promptly
1236 removed as provided herein if it ceases to provide wireless telecommunications services for
1237 ninety (90) or more consecutive days. If there are two or more users of a single facility, then
1238 this provision shall not become effective until all users cease using the facility.

1239 B. The operator of a facility shall notify the Town in writing of its intent to abandon or cease
1240 use of a permitted site or a nonconforming site (including unpermitted sites) within ten days
1241 of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of
1242 the facility shall provide written notice to the zoning administrator of any discontinuation of
1243 operations of 30 days or more.

1244 C. Failure to inform the zoning administrator of cessation or discontinuation of operations
1245 of any existing facility as required by this section shall constitute a violation of any approvals
1246 and be grounds for:

1247 1. Prosecution;

1248 2. Revocation or modification of the permit;

1249 3. Calling of any bond or other assurance required by this chapter or conditions of
1250 approval of the permit;

1251 4. Removal of the facilities by the Town in accordance with the procedures established
1252 under the Fairfax Municipal Code for abatement of a public nuisance at the owner's
1253 expense; and

1254 5. Any other remedies permitted under the Fairfax Municipal Code.

1255 **20.04.220 Removal and Restoration, Permit Expiration, Revocation or Abandonment**

1256 A. **Permittee's removal obligation.** Upon the expiration date of the permit, including any
1257 extensions, earlier termination or revocation of the permit or abandonment of the facility, the
1258 permittee, owner or operator shall remove its wireless telecommunications facility and restore
1259 the site to its natural condition except for retaining the landscaping improvements and any
1260 other improvements at the discretion of the Town . Removal shall be in accordance with
1261 proper health and safety requirements and all ordinances, rules, and regulations of the Town
1262 . The facility shall be removed from the property within 30 days, at no cost or expense to the
1263 Town . If the facility is located on private property, the private property owner shall also be
1264 independently responsible for the expense of timely removal and restoration.

1265 B. **Failure to remove.** Failure of the permittee, owner, or operator to promptly remove its
1266 facility and restore the property within 30 days after expiration, earlier termination, or
1267 revocation of the permit, or abandonment of the facility, shall be a violation of the Fairfax
1268 Municipal Code, and be grounds for:

- 1269 1. Prosecution;
- 1270 2. Calling of any bond or other assurance required by this chapter or conditions of
1271 approval of permit;
- 1272 3. Removal of the facilities by the Town in accordance with the procedures
1273 established under the Fairfax Municipal Code for abatement of a public nuisance at
1274 the owner's expense; or
- 1275 4. Any other remedies permitted under the Fairfax Municipal Code.

1276 C. **Summary removal.** In the event the zoning administrator determines that the
1277 condition or placement of a wireless telecommunications facility located in the public right-of-
1278 way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent
1279 threat to public safety, or determines other exigent circumstances require immediate
1280 corrective action (collectively, "exigent circumstances"), the zoning administrator may cause
1281 the facility to be removed summarily and immediately without advance notice or a
1282 hearing. Written notice of the removal shall be served upon the person who owns the facility
1283 within five business days of removal and all property removed shall be preserved for the
1284 owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if
1285 the owner fails to pick-up the property within 60 days, the facility shall be treated as
1286 abandoned property.

1287 D. **Removal of facilities by Town .** In the event the Town removes a facility in
1288 accordance with nuisance abatement procedures or summary removal, any such removal
1289 shall be without any liability to the Town for any damage to such facility that may result from
1290 reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance
1291 abatement, the Town may collect such costs from the performance bond posted and to the
1292 extent such costs exceed the amount of the performance bond, collect those excess costs in
1293 accordance with the Fairfax Municipal Code. Unless otherwise provided herein, the Town
1294 has no obligation to store such facility. Neither the permittee nor the owner nor operator shall

1295 have any claim if the Town destroys any such facility not timely removed by the permittee,
1296 owner, or operator after notice, or removed by the Town due to exigent circumstances.

1297 **20.04.230 Effect on Other Ordinances**

1298 Compliance with the provisions of this chapter shall not relieve a person from complying with
1299 any other applicable provision of the Fairfax Municipal Code, including but not limited to
1300 obtaining any necessary encroachment or building permits. In the event of a conflict between
1301 any provision of this chapter and other provisions of the Fairfax Municipal Code, this chapter
1302 shall control.

1303 **20.04.240 Effect of State or Federal Law**

1304 Notwithstanding any other provision of this Title to the contrary, the Town may grant an
1305 exception to any of the requirements of this title if it makes a finding that the applicant has
1306 demonstrated that the refusal of the Town to grant such an exception would prohibit or have
1307 the effect of prohibiting the provision of personal wireless services within the meaning of 47
1308 USC §332(c)(7), or otherwise is preempted or prohibited by state or federal law.