



## **TOWN OF FAIRFAX**

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**DATE:** November 29, 2018

**TO:** Planning Commission

**FROM:** Garrett Toy, Town Manager  
Ben Berto, Planning Director

**SUBJECT:** Continued discussion/consideration of an ordinance to consolidate Titles 19 & 20 ("Telecommunications") of the Fairfax Municipal Code into a revised Title 19 which establishes uniform and comprehensive regulations for wireless telecommunication facilities including the regulation of the installation, operation and maintenance of wireless telecommunications within the Town on private property and within the Town's public rights-of-way; CEQA exempt Section 15060(c)(2), Section 15378, Section 15061(b)(3), Section 15305, and Section 15303

*(NOTE: This item was initially discussed at the Planning Commission's October 25<sup>th</sup> meeting and continued to this meeting.)*

### **RECOMMENDATION**

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

### **BACKGROUND**

Attached is the staff report from the October 25, 2018 Planning Commission meeting.

### **DISCUSSION**

On October 25, 2018, the Planning Commission received public comment and discussed the proposed ordinance, but due to the lateness of hour, continued the item to this meeting. Attached are the meeting minutes which reflects the comments received including the "big picture" comments from the PC. The minutes reflect the individual Commissioner general comments on the issue. While some Commissioners indicate they supported some of their colleague's comments, no consensus was reached on the numerous issues discussed.

Some of the key issues discussed were:

- Increasing the minimum distance between wireless cell facilities.
- Adding buffer zone requirement between residences and wireless cell facilities.

- Adding stronger provisions to address threaten/endangered species and habitats, historic or culturally significant properties, and ADA standards with regard to EMF disabilities.
- Adding zoning restrictions

*Due to the Thanksgiving holiday, staff and legal counsel will be prepared to answer the Planning Commission's questions at the meeting regarding these issues and identify the sections of the ordinance that addresses some of these issues.*

Staff suggests a process in which the PC first identifies the key policy issues and then tries to determine if consensus can be reached on the issues. Specifically, we recommend the PC propose to the Town Council general policy revisions as opposed to specific language revisions to the ordinance. This would avoid the complicated process of making specific languages revisions to the ordinance at the meeting. Staff has found it becomes very confusing for staff, policymakers, and the public to make numerous language revisions to ordinances at the meeting.

Furthermore, this prevents the process from getting "bogged down" in the details and allows the Town Council to consider an ordinance sooner rather than later.

Staff would take those PC recommendations on the broader policy issues and any specific language revisions to the Town Council for consideration. At its meeting, the Council could direct staff to make those revisions and return with a revised ordinance for Council consideration. This would also allow sufficient time for legal counsel to craft and review such revisions. For example, the PC could recommend to the Council that they add a buffer requirement between residences and small cell facilities. The Council could then direct staff to include such a provision in a revised ordinance.

#### **EFFECTIVE DATE/NEXT STEPS**

Should the Planning Commission make a recommendation this evening, staff would take the ordinance along with the PC's proposed revisions to the Council at its January 16, 2019 meeting.

#### **ENVIRONMENTAL REVIEW**

The proposed Ordinance is exempt from the California Environmental Quality Act ("CEQA"). Adoption of this Ordinance will enact only minor changes in land use regulations, and it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for the development of any new or expanded wireless telecommunication facilities anywhere other than where they were previously allowed under existing federal, state and local regulations. The proposed Ordinance does not constitute a "project" within the meaning of the California Environmental Quality Act of 1970 (CEQA) Guidelines Section 15060(c)(2) because there is no potential that small cell facility regulations will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because they have no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. Moreover, even if the proposed Ordinances and Resolution comprise a project for

CEQA analysis, the ordinance falls within the “common sense” CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” Finally, the wireless facilities themselves are exempt from CEQA pursuant to CEQA Guidelines Section 15305, which exempts minor encroachment permits, and Section 15303, which exempts the installation of small equipment and facilities in a small structure.

**FISCAL IMPACT**

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

**ATTACHMENTS**

- A. Resolution
- B. Proposed Ordinance
- C. October 25<sup>th</sup> PC minutes
- D. Staff report from October 25<sup>th</sup> without attachments

RESOLUTION NO. 2018-18

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**WHEREAS**, the Town recognizes its responsibilities under the Federal Telecommunications Act of 1996 and state law, and believes that it is acting consistent with the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare. The Town does not intend that this Ordinance prohibit or have the effect of prohibiting telecommunications service; rather, it includes appropriate regulations to ensure that the installation, augmentation and relocation of wireless telecommunications facilities including in the public right-of-way are conducted in such a manner as to lawfully balance the legal rights of applicants under the Federal Telecommunications Act and the California Public Utilities Code while, at the same time, protect to the full extent feasible against the safety and land use concerns described herein; and

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

**WHEREAS**, the adoption of the proposed Ordinance is exempt from the California Environmental Quality Act ("CEQA"). Adoption of this Ordinance will enact only minor changes in land use regulations, and it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for the development of any new or expanded wireless telecommunication facilities anywhere other than where they were previously allowed under existing federal, state and local regulations. The proposed Ordinance does not constitute a "project" within the meaning of the California Environmental Quality Act of 1970 (CEQA) Guidelines Section 15060(c)(2) because there is no potential that small cell facility regulations will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because they have no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. Moreover, even if the proposed Ordinances and Resolution comprise a project for CEQA

analysis, the ordinance falls within the “common sense” CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” Finally, the wireless facilities themselves are exempt from CEQA pursuant to CEQA Guidelines Section 15305, which exempts minor encroachment permits, and Section 15303, which exempts the installation of small equipment and facilities in a small structure; and

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

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

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

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

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

The forgoing Resolution was duly passed and adopted at a special meeting of the Planning Commission of the Town of Fairfax held in said Town on the 29th day of November 2018 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Mimi Newton, Chair

Attest:

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Ben Berto, Secretary

**ORDINANCE NO.**

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

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



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

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

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

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

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

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

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

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

(17) The Town recognizes its responsibilities under the Federal Telecommunications Act of 1996 and state law, and believes that it is acting consistent with the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare. The Town does not intend that this Ordinance prohibit or have the effect of prohibiting telecommunications service; rather, it includes appropriate regulations to ensure that the installation, augmentation and relocation of wireless telecommunications facilities including in the public right-of-way are conducted in such a manner as to lawfully balance the legal rights of applicants under the Federal Telecommunications Act and the California Public Utilities Code while, at the same time, protect to the full extent feasible against the safety and land use concerns described herein.

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

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

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

Section 15378 because they have no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. Moreover, even if the proposed Ordinances and Resolution comprise a project for CEQA analysis, the ordinance falls within the "common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."

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

**Section 4. Effective Date.** This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building.

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

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Mayor

**ATTEST:**

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Michele Gardner, Town Clerk

**Exhibit A  
ORDINANCE**

**Title 19: Telecommunications  
REVISED Chapter 19.04. WIRELESS TELECOMMUNICATIONS FACILITIES**

1 **19.04.010 Purpose**

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

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

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

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

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

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

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

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

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

65 F. **“Eligible Facilities Request”** means the same as defined by the FCC in 47 C.F.R. §  
66 1.40001(b)(3), as may be amended, which currently defines that term as any request for  
67 modification of an existing tower or base station that does not substantially change the  
68 physical dimensions of such tower or base station, involving: (i) collocation of new  
69 transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of  
70 transmission equipment.

71 G. **“Eligible Support Structure”** means the same as defined by the FCC in 47 C.F.R. §  
72 1.40001(b)(4), as may be amended, which currently defines that term as any tower or base  
73 station as defined in this section; provided that it is existing at the time the relevant application  
74 is filed with the State or local government under this chapter.

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

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

82 I. **“FCC”** means the Federal Communications Commission or its duly appointed  
83 successor agency.

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

91 K. **“Personal Wireless Services”** means the same as defined in 47 U.S.C. §  
92 332(c)(7)(C)(i), as may be amended, which defines the term as commercial mobile services,  
93 unlicensed wireless services and common carrier wireless exchange access services.

94 L. **“Personal Wireless Service Facilities”** means the same as defined in 47 U.S.C. §  
95 332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal  
96 wireless services.

97 M. **“Zoning administrator”** means the Town’s Planning and Building Services Director  
98 or his/her designee.

99 N. **“Pole”** means a single shaft of wood, steel, concrete, or other material capable of  
100 supporting the equipment mounted thereon in a safe and adequate manner and as required  
101 by provisions of the Fairfax Municipal Code.

102 O. **“Public Right-of-Way or “Right-of-Way”** means any public street, public way, public  
103 alley or public place, laid out or dedicated, and the space on, above or below it, and all  
104 extensions thereof, and additions thereto, under the jurisdiction of the Town.

105 P. **“Reviewing Authority”** means the person or body who has the authority to review  
106 and either grant or deny a wireless telecommunications facility permit pursuant to this chapter.

107 Q. **“RF”** means radio frequency or electromagnetic waves.

108 R. **“Roof-mounted”** means mounted directly on the roof of any building or structure,  
109 above the eave line of such building or structure.

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

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

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

120 V. **“Substantial Change”** means the same as defined by the FCC in 47 C.F.R. §  
121 1.40001(b)(7), as may be amended, which currently defines that term differently based on the  
122 particular wireless facility type (tower or base station) and location (in or outside the public  
123 right-of-way). For clarity, this definition organizes the FCC's criteria and thresholds for a  
124 substantial change according to the wireless facility type and location.

- 125 1. For towers outside the public rights-of-way, a substantial change occurs when:
- 126 a) the proposed collocation or modification increases the overall height more than  
127 10% or the height of one additional antenna array not to exceed 20 feet  
128 (whichever is greater); or
  - 129 b) the proposed collocation or modification increases the width more than 20 feet  
130 from the edge of the wireless tower or the width of the wireless tower at the level  
131 of the appurtenance (whichever is greater); or
  - 132 c) the proposed collocation or modification involves the installation of more than  
133 the standard number of equipment cabinets for the technology involved, not to  
134 exceed four; or
  - 135 d) the proposed collocation or modification involves excavation outside the current  
136 boundaries of the leased or owned property surrounding the wireless tower,  
137 including any access or utility easements currently related to the site.
- 138 2. For towers in the public rights-of-way and for all base stations, a substantial change  
139 occurs when:
- 140 a) the proposed collocation or modification increases the overall height more than  
141 10% or 10 feet (whichever is greater); or
  - 142 b) the proposed collocation or modification increases the width more than 6 feet  
143 from the edge of the wireless tower or base station; or
  - 144 c) the proposed collocation or modification involves the installation of any new  
145 equipment cabinets on the ground when there are no existing ground-mounted  
146 equipment cabinets; or
  - 147 d) the proposed collocation or modification involves the installation of any new  
148 ground-mounted equipment cabinets that are ten percent (10%) larger in height  
149 or volume than any existing ground-mounted equipment cabinets; or

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

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

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

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

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

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

180 X. **“Transmission Equipment”** means the same as defined by the FCC in 47 C.F.R. §  
181 1.40001(b)(8), as may be amended, which currently defines that term as equipment that  
182 facilitates transmission for any FCC-licensed or authorized wireless communication service,  
183 including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and  
184 regular and backup power supply. The term includes equipment associated with wireless  
185 communications services, including, but not limited to, private, broadcast, and public safety  
186 services, as well as unlicensed wireless services and fixed wireless services such as  
187 microwave backhaul.



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

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

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

199 1. A facility that qualifies as an amateur station as defined by the FCC, 47 C.F.R. Part  
200 97, of the Commission’s Rules, or its successor regulation.

201 2. An antenna facility that is subject to the FCC Over-The-Air-Reception Devices rule,  
202 47 C.F.R. Section 1.4000, or any successor regulation, including, but not limited to,  
203 direct-to-home satellite dishes that are less than one meter in diameter, TV  
204 antennas used to receive television broadcast signals and wireless cable antennas.

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

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

210 5. Telecommunications facilities owned and operated by any emergency medical care  
211 provider.

212 6. Mobile services providing public information coverage of news events of a  
213 temporary nature.

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

216 **19.04.030 Applicability**

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

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

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

223 facilities and wireless telecommunications collocation facilities and the prohibition  
224 of dangerous conditions or obstructions by such facilities; provided, however, that  
225 in the event a condition of approval conflicts with a provision of this chapter, the  
226 condition of approval shall control unless and until the permit is amended or  
227 revoked.

228  
229 B. Notwithstanding any provision of the Fairfax Municipal Code to the contrary, provisions  
230 governing the installation of a public utility structure or facility shall not apply to wireless  
231 telecommunications facilities. Title 19 shall govern all applications for wireless  
232 telecommunications facilities.

233 **19.04.040 Wireless Telecommunications Facility Permit Required**

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

237 Excluding Eligible Facilities Request applications, applications for wireless facilities shall  
238 require a use permit subject to the requirements of this chapter, to be acted upon by the  
239 Planning Commission pursuant to Chapter 17.032, and other permits as set forth in the table  
240 below, in addition to any other permit required pursuant to the Fairfax Municipal Code. Eligible  
241 Facilities Request applications shall be processed according to the requirements of Section  
242 19.04.140.

243

<i>Description of Wireless Facility</i>	<i>Private Property</i>		<i>Public Right-of Way<sup>3</sup></i>
	<i>RS, RD, RM, PDD, UR 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 <sup>1</sup> or application pursuant to California Government Code Section 65850.6 <sup>2</sup>	Permitted	Permitted	Permitted
<sup>1</sup> See requirements of section 19.04.140. <sup>2</sup> See requirements of section 19.04.150. <sup>3</sup> 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.			

244

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

249 **19.04.050 Application for Permit**

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

255 use permit:

- 256 1. Full name and contact information for the facility owner, facility operator, agent (if  
257 any), and property owner, and related letter(s) of authorization.
- 258 2. The type of facility, including a full written description of the proposed facility, its  
259 purpose, technical specifications, and an assessment of any fire hazard a proposed  
260 installation presents to surrounding vegetation and structures;
- 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 a qualified engineer and include an analysis of the  
287 manufacturer specifications for all noise-emitting equipment and a depiction of the  
288 proposed equipment relative to all adjacent property lines. In lieu of a written report,  
289 the applicant may submit evidence from the equipment manufacturer that the  
290 ambient noise emitted from all the proposed equipment will not, both individually  
291 and 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 B. **Independent expert.** The zoning administrator is authorized to retain on behalf of the  
298 Town an independent, qualified consultant to review any application for a permit for a wireless  
299 telecommunications facility. The cost of this review shall be paid by the applicant through a  
300 deposit pursuant to an adopted fee schedule resolution. The consultant may review the  
301 technical aspects of the application, including, but not limited to, the following matters:

302 The accuracy, adequacy, and completeness of submissions;

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

305 Whether any requested exception is justified;

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

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

315 A technical evaluation of alternative sites, facility designs or configurations, and coverage  
316 analysis; and

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

318 **19.04.060 Location and Configuration Preferences**

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

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

327 proposed facility that are more preferred under this section.

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

- 330 1. Collocation with existing facilities outside the public rights-of-way;
- 331 2. Roof-mounted;
- 332 3. Building-mounted;
- 333 4. Mounted on an existing pole or utility pole;
- 334 5. Mounted on a new pole or utility pole that will replace an existing pole or utility pole;
- 335 and
- 336 6. Mounted on a new telecommunication tower or pole.

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

- 339 1. In the CH zoning district;
- 340 2. In the CC zoning district;
- 341 3. In the CS zoning district;
- 342 4. In the CL zoning district;
- 343 5. In the PD zoning district; and
- 344 6. In the public right-of-way with the closest adjacent district being a commercial  
345 district.

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

#### 352 **19.04.070 Design and Development Standards for All Facilities**

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

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

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

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

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

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

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

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

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

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

413 I. **Noise.**

- 414 1. Each wireless telecommunications facility and wireless telecommunications  
415 collocation facility shall be operated in such a manner so as to minimize any  
416 possible disruption caused by noise.
- 417 2. Backup generators shall only be operated during periods of power outages, and  
418 shall not be tested on weekends, holidays, or between the hours of 5:00 p.m. and  
419 7:00 a.m.
- 420 3. At no time shall equipment noise from any facility exceed an exterior noise level of  
421 55 dBA at the facility's property line if the facility is located in a business or  
422 commercial zone that permits those uses; provided, however, that for any such  
423 facility located within 500 feet of any property zoned residential or improved with a  
424 residential use, such equipment noise shall not exceed an exterior noise level of 40  
425 dBA at the property line of any such residential property. For any facility located  
426 within a residential zone, such equipment noise shall at no time be audible at the  
427 property line of any residentially-improved or residential zoned property.
- 428 4. Any equipment, including, but not limited to, air conditioning units, that may emit  
429 noise that would be audible from either beyond three feet from the facility in the  
430 case of a facility located in the right-of-way, or the facility's property line in the case  
431 of other facilities, shall be enclosed or equipped with noise attenuation devices to  
432 the extent necessary to ensure compliance with applicable noise limitations under  
433 the Fairfax Municipal Code.

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



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

444 **19.04.080 Additional Design and Development Standards for Facilities Outside the**  
445 **Public Right-of-Way**

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

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

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

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

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

462 2. Facilities mounted to a telecommunications tower, including, but not limited to, the  
463 attached antennas, shall be designed to be the minimum functional height and width  
464 required to adequately support the proposed facility and meet FCC  
465 requirements. The applicant shall provide documentation satisfactory to the zoning  
466 administrator establishing compliance with this paragraph. In any event, facilities  
467 mounted to a telecommunications tower shall not exceed the applicable height limit  
468 for structures in the applicable zoning district.

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

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

- 476 5. All antenna components and accessory wireless equipment shall be treated with  
477 exterior coatings of a color and texture to match the predominant visual background  
478 or existing architectural elements so as to visually blend in with the surrounding  
479 development. Subdued colors and non-reflective materials that blend with  
480 surrounding materials and colors shall be used.
- 481 6. Poles shall be no greater in diameter or other cross-sectional dimensions than is  
482 necessary for the proper functioning of the facility.
- 483 7. If a faux tree is proposed for the pole installation, it shall be of a type of tree  
484 compatible with those existing in the immediate areas of the installation. If no trees  
485 exist within the immediate areas, the applicant shall create a landscape setting that  
486 integrates the faux tree with added species of a similar height and type. Additional  
487 camouflage of the faux tree may be required depending on the type and design of  
488 faux tree proposed.

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

- 493 1. Accessory equipment for roof-mounted facilities shall be installed inside the building  
494 to which it is mounted or underground, if feasible. If not feasible, such accessory  
495 equipment may be located on the roof of the building that the facility is mounted on,  
496 provided that both the equipment and screening materials are painted the color of  
497 the building, roof, or surroundings. All screening materials for roof-mounted facilities  
498 shall be of a quality and design that is architecturally integrated with the design of  
499 the building or structure.
- 500 2. Accessory equipment for facilities mounted to a telecommunications tower shall be  
501 visually screened by locating the equipment either within a nearby building, in an  
502 underground vault (with the exception of required electrical panels), or in another  
503 type of enclosed structure, which shall comply with the development and design  
504 standards of the zoning district in which the accessory equipment is located. Such  
505 enclosed structure shall be architecturally treated and adequately screened from  
506 view by landscape plantings, decorative walls, fencing or other appropriate means,  
507 selected so that the resulting screening will be visually integrated with the  
508 architecture and landscaping of the surroundings.

509 **19.04.090 Additional Design and Development Standards for Facilities in the Public**  
510 **Right-of-Way**

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

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

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

518 **C. Antennas.**

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

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

533 **D. Poles.**

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

538 2. Pole height and width limitations:

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

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

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

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

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

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

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

567  
568 E. **Space occupied.** Facilities shall be designed to occupy the least amount of space in  
569 the public right-of-way that is technically feasible.

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

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

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

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

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

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

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

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

596 **19.04.100 Conditions of Approval for All Facilities**

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

601 1. Before the permittee submits any application for a permit or other permits required  
602 by the Fairfax Municipal Code, the permittee must incorporate the wireless  
603 telecommunication facility permit granted under this chapter, all conditions  
604 associated with the wireless telecommunications facility permit and engineering  
605 and electrical plans, schematics and specifications and the approved plans and any  
606 photo simulations into the project plans (the "Approved Plans"). The permittee must  
607 construct, install and operate the wireless telecommunications facility in strict  
608 compliance with the Approved Plans. The permittee shall submit an as built drawing  
609 within ninety (90) days after installation of the facility.

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

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

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

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

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

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

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

628 than the permittee.

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

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

638 6. At all times, the permittee shall ensure that the facility complies with the most  
639 current regulatory and operational standards including, but not limited to, radio  
640 frequency emissions standards adopted by the FCC, antenna height standards  
641 adopted by the Federal Aviation Administration, and all electrical code requirements  
642 for the equipment, wiring the equipment and providing power to the equipment. At  
643 the sole expense of the permittee and using a consultant approved by the Town,  
644 testing shall be performed demonstrating compliance with current regulatory and  
645 operational standards, and to ensure the equipment is operating within proper  
646 specifications and does not pose an undue fire risk or electrical risk. Tests shall  
647 occur upon commencement of operations and annually thereafter, and results  
648 provided in a written report to the Town.

649  
650 7. If, upon inspection, the Town Building Official determines there is good cause to  
651 believe that the facility (including, without limitation, its Accessory Equipment,  
652 Antenna and/or Base Station) may present a fire risk or electrical hazard, the  
653 Building Official may order the facility to be shut down and powered off until such  
654 time as the facility is repaired and restored to its correct operating specifications, at  
655 the sole expense of the permittee.

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

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

668 members, boards, commissions, officers, officials, agents, consultants, employees,  
669 and volunteers to attack, set aside, void or annul, an approval of the Town, Planning  
670 Commission or Town Council concerning the permit, the project, and any and all  
671 claims, actions, or proceedings arising from, or related to, the installation, operation,  
672 or inspection of any facility. Such indemnification shall include damages,  
673 judgments, settlements, penalties, fines, defensive costs or expenses, including,  
674 but not limited to, interest, attorneys' fees, and expert witness fees, or liability of any  
675 kind related to or arising from such claim, action, or proceeding. The Town shall  
676 promptly notify the permittee of any claim, action, or proceeding that this  
677 indemnification obligation may cover. Nothing contained herein shall prohibit Town  
678 from participating in a defense of any claim, action or proceeding. The Town shall  
679 have the option of coordinating the defense, including, but not limited to, choosing  
680 counsel for the defense at permittee's expense.

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

683 11. The proposed facility complies with all applicable provisions of this chapter,  
684 including the technical review by the Town's Independent Expert set forth in Section  
685 19.04.050(B).

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

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

691 14. A condition setting forth the permit expiration date in accordance with section  
692 19.04.20 shall be included in the conditions of approval.

693 15. *Record Retention.* The permittee must maintain complete and accurate copies of  
694 all permits and other regulatory approvals issued in connection with the wireless  
695 facility, including, without limitation, any approval, the approved plans and photo  
696 simulations incorporated into the approval, all conditions associated with the  
697 approval, and any other ministerial permits or approvals issued in connection with  
698 the approval. In the event that the permittee does not maintain such records as  
699 required in this condition, any ambiguities or uncertainties that would be resolved  
700 through an inspection of the missing records will be construed against the  
701 permittee.

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

707 **19.04.110 Additional Conditions of Approval for Facilities in the Public Right-of-Way**

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

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

723 2. The permittee shall not move, alter, temporarily relocate, change, or interfere with  
724 any existing structure, improvement, or property without the prior consent of the  
725 owner of that structure, improvement, or property. No structure, improvement or  
726 property owned by the Town shall be moved to accommodate a wireless  
727 telecommunications facility, unless the Town determines that such movement will  
728 not adversely affect the Town or any surrounding businesses or residents, and the  
729 permittee pays all costs and expenses related to the relocation of the Town's  
730 structure, improvement, or property. Prior to commencement of any work pursuant  
731 to an encroachment permit issued for any facility within the public right-of-way, the  
732 permittee shall provide the Town with documentation establishing to the Town's  
733 satisfaction that the permittee has the legal right to use or interfere with any other  
734 structure, improvement, or property within the public right-of-way to be affected by  
735 applicant's facilities.

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

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



- 748 written notice by the zoning administrator, the zoning administrator shall cause such  
749 repair to be completed at permittee's sole cost and expense.
- 750 5. Prior to issuance of a building permit, the applicant shall obtain the zoning  
751 administrator's approval of a tree protection plan prepared by a certified arborist if  
752 the installation of the wireless telecommunication facility will be located within the  
753 canopy of a street tree, or a protected tree on private property, or within a ten (10)-  
754 foot radius of the base of such a tree. Depending on site specific criteria (e.g.,  
755 location of tree, size, and type of tree, etc.), a radius greater than ten (10) feet may  
756 be required by the zoning administrator.
- 757 6. If a meter cabinet has been approved for the facility and subsequently any utility  
758 company offers electrical service that does not require the use of a meter cabinet,  
759 the permittee shall seek approval of the utility company to switch to the unmetered  
760 service and, at its sole cost and expense, remove the meter cabinet and any related  
761 foundation within thirty (30) days of such service being obtained and reasonably  
762 restore the area to its prior condition.
- 763 7. The permittee shall modify, remove, or relocate its facility, or portion thereof, without  
764 cost or expense to Town, if and when made necessary by:
- 765 a) Any public improvement project, including, but not limited to, the construction,  
766 maintenance, or operation of any underground or aboveground facilities,  
767 including, but not limited to, sewers, storm drains, conduits, gas, water, electric  
768 or other utility systems, or pipes owned by Town or any other public agency;
- 769 b) Any abandonment of any street, sidewalk, or other public facility;
- 770 c) Any change of grade, alignment or width of any street, sidewalk, or other public  
771 facility; or
- 772 d) A determination by the zoning administrator that the wireless  
773 telecommunications facility has become incompatible with public health, safety,  
774 or welfare or the public's use of the public right-of-way.
- 775 8. Any modification, removal, or relocation of the facility shall be completed within  
776 ninety (90) days of written notification by Town, unless exigencies dictate a shorter  
777 period for removal or relocation. Modification or relocation of the facility shall  
778 require submittal, review, and approval of a permit amendment pursuant to the  
779 Fairfax Municipal Code. The permittee shall be entitled, on permittee's election, to  
780 either a pro-rata refund of fees paid for the original permit or to a new permit, without  
781 additional fee, at a location as close to the original location as the standards set  
782 forth in the Fairfax Municipal Code allow. In the event the facility is not modified,  
783 removed, or relocated within said period of time, the Town may cause the same to  
784 be done at the sole cost and expense of permittee. Further, due to exigent  
785 circumstances as provided in the Fairfax Municipal Code, the Town may modify,  
786 remove, or relocate wireless telecommunication facilities without prior notice to  
787 permittee, provided permittee is notified within a reasonable period thereafter.

- 788 9. The applicant has the right to enter the public right-of-way pursuant to state or  
789 federal law, or by virtue of a franchise or other agreement with the Town permitting  
790 them to use the public right-of-way.
- 791 10. The facility will not interfere with the use of the public right-of-way, existing  
792 subterranean infrastructure, or the Town's plans for modification or use of such  
793 location and infrastructure.

794

795 **19.04.120 Procedures for a Duly Filed Applications**

- 796 1. *Voluntary Pre-Submittal Conference.* Before application submittal, applicants are  
797 encouraged (but not required) to schedule and attend a pre-application meeting  
798 with the zoning administrator. A pre-submittal conference is intended to streamline  
799 the review process through informal discussion that includes, without limitation, the  
800 appropriate project classification, including whether the project qualifies for Section  
801 6409(a); potential concealment issues (if applicable); coordination with other Town  
802 departments responsible for application review; and application completeness  
803 issues. To mitigate unnecessary delays due to application incompleteness,  
804 applicants are encouraged (but not required) to bring any draft applications or other  
805 materials so that Town staff may provide informal feedback about whether such  
806 applications or other materials may be incomplete or unacceptable.
- 807 2. *Submittal Appointment.* All applications must be filed with the Town at a pre-  
808 scheduled appointment with the zoning administrator or his/her designee.  
809 Applicants may generally submit one (1) application per appointment, but may  
810 schedule successive appointments for multiple applications whenever feasible. Any  
811 application received without an appointment, whether delivered in-person or  
812 through any other means, will not be considered duly filed, unless the applicant  
813 received a written exemption from the zoning administrator at a pre-submittal  
814 conference.
- 815 3. *Appointment Scheduling Procedures.* For any event in the submittal process that  
816 requires an appointment, applicants must submit a written request to the zoning  
817 administrator.
- 818 4. *Applications Deemed Denied.* To promote efficient review and timely decisions, the  
819 Town may deem an application denied without prejudice to the applicant to re-file  
820 as a new application when the applicant fails to tender a substantive response to  
821 the Town within ninety (90) calendar days after the Town deems the application  
822 incomplete in a written notice to the applicant.

823

824 **19.04.130 Exceptions**

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

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

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

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

833 **19.04.140 Eligible Facilities Requests**

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

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

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

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

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

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

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

860 4. Photographs of facility equipment and an accurate visual impact analysis with photo  
861 simulations.

862 5. A written statement that explains why the applicant believes Section 6409(a) and  
863 the related FCC regulations require approval. A complete written narrative analysis  
864 will state the applicable standard and all the facts that allow the Town to conclude  
865 the standard has been met. Bare conclusions not factually supported do not  
866 constitute a complete written analysis. As part of this written statement the applicant  
867 must also include (a) whether and why the support structure qualifies as an existing  
868 tower or existing base station; and (b) whether and why the proposed Eligible  
869 Facilities Request does not cause a substantial change in height, width, excavation,  
870 equipment cabinets, concealment, or permit compliance. The analysis provided  
871 under (b) shall include a copy of all prior conditions of approval and an explanation  
872 as to why the prior conditions of approval are met by the proposed wireless facility  
873 application.

874 6. A technically-sufficient written report by a qualified radio frequency emissions  
875 engineer, certifying that the facility is in compliance with such FCC standards.

876 **E. Administrative Review; Decision Notices.** The zoning administrator shall  
877 administratively review an application for an Eligible Facilities Request and act on such an  
878 application without prior notice or a public hearing. Within five (5) working days after the  
879 zoning administrator approves, conditionally approves, or denies an Eligible Facilities  
880 Request application, the zoning administrator shall send a written notice to the applicant.  
881 In the event that the zoning administrator determines that an application submitted for  
882 approval pursuant to Section 6409(a) does not qualify for approval, the zoning  
883 administrator will send written notice to the applicant that includes the reasons to support  
884 the review authority's decision and states that the application will be denied without  
885 prejudice.

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

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

892 **G. Criteria for Denial Without Prejudice.** The zoning administrator may deny without  
893 prejudice an application submitted for approval pursuant to Section 6409(a) when it finds that  
894 the proposed project does not meet the criteria under subsection (G) above.

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

899 **I. Standard Conditions of Approval.** In addition to all other conditions adopted by the  
900 zoning administrator, all Section 6409(a) approvals, whether approved by the zoning

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

905 1. *Approved Plans.* Before the permittee submits any application for a building permit  
906 or other permits required by the Fairfax Municipal Code, the permittee must  
907 incorporate the wireless telecommunications facility permit granted under this  
908 section, all conditions associated with the wireless telecommunications facility  
909 permit and the approved plans and any photo simulations into the project plans (the  
910 "Approved Plans") . The permittee must construct, install and operate the wireless  
911 telecommunications facility in strict compliance with the Approved Plans. The  
912 permittee shall submit an as built drawing within ninety (90) days after installation  
913 of the facility.

914 2. *Permit Term.* The Town's grant or grant by operation of law of a Section 6409(a)  
915 approval will not extend the permit term, if any, for any conditional use permit, or  
916 other underlying prior regulatory authorization. Accordingly, the term for a Section  
917 6409(a) approval shall be coterminous with the underlying permit or other prior  
918 regulatory authorization for the subject tower or base station.

919 3. *Accelerated Permit Terms Due to Invalidation.* In the event that any court of  
920 competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule  
921 that interprets Section 6409(a) such that federal law would not mandate approval  
922 for any Section 6409(a) approval, such 6409(a) approvals shall automatically expire  
923 one year from the effective date of the judicial order, unless the decision would not  
924 authorize accelerated termination of previously-approved Section 6409(a)  
925 approvals or the zoning administrator grants an extension upon written request from  
926 the permittee that shows good cause for the extension, which includes, without  
927 limitation, extreme financial hardship. Notwithstanding anything in the previous  
928 sentence to the contrary, the zoning administrator may not grant a permanent  
929 exemption or indefinite extension. A permittee shall not be required to remove its  
930 improvements approved under the invalidated Section 6409(a) approval when it  
931 has submitted an application for a conditional use permit for those improvements  
932 before the one-year period ends.

933 4. *No Waiver of Standing.* The Town's grant or grant by operation of law of a Section  
934 6409(a) approval does not waive, and shall not be construed to waive, any standing  
935 by or right of the Town to challenge Section 6409(a), any FCC rules that interpret  
936 Section 6409(a), or any Section 6409(a) approval.

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

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

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

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

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

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

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

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

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

994 12. *Performance Bond.* Before the Town issues any construction permit in connection  
995 with the wireless facility, if, in the Town's sole discretion, the existing performance  
996 bond for the facility is inadequate or the facility is not associated with any existing  
997 performance bond, the permittee shall post a performance bond from a surety and  
998 in a form acceptable to the Town manager in an amount equal to or greater than a  
999 written estimate from a qualified contractor with experience in wireless facilities  
1000 removal. The written estimate must include the cost to remove all equipment and  
1001 other improvements, which includes, without limitation, all antennas, radios,  
1002 batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires,  
1003 conduits, structures, shelters, towers, poles, footings and foundations, whether  
1004 above ground or below ground, constructed or installed in connection with the  
1005 wireless facility. In establishing or adjusting the bond amount required under this  
1006 condition, and in accordance with California Government Code § 65964(a), the  
1007 Town manager shall take into consideration information provided by the permittee  
1008 regarding the cost to remove the wireless facility.

1009 **19.04.150 Wireless Telecommunications Collocation Facilities Covered under**  
1010 **California Government Code Section 65850.6**

1011 A. **Purpose.** The purpose of this section is to comply with an application for a Wireless  
1012 Telecommunications Collocation Facility under California Government Code Section 65850.6,  
1013 for which a 6409(a) approval is not being requested. This section provides the requirements,  
1014 standards, and regulations for a wireless telecommunications collocation facility for which  
1015 subsequent collocation is a permitted use pursuant to California law. Only those facilities that  
1016 fully comply with the eligibility requirements set forth in California Government Code Section  
1017 65850.6, or its successor provision, and which strictly adhere to the requirements and  
1018 regulations set forth in this section, shall qualify as a wireless telecommunications collocation  
1019 facility.

1020 B. **Definitions.** For the purposes of this section, the following terms are defined as  
1021 follows:

1022 1. **"Collocation Facility"** means the placement or installation of wireless facilities,  
1023 including antennas, and related equipment, on, or immediately adjacent to, a  
1024 wireless telecommunications collocation facility.

1025 2. **“Wireless Telecommunications Facility”** means equipment and network  
1026 components such as towers, utility poles, transmitters, base stations, and  
1027 emergency power systems that are integral to providing wireless  
1028 telecommunications services.

1029 3. **“Wireless Telecommunications Collocation Facility”** means a wireless  
1030 telecommunications facility that includes collocation facilities.

1031 C. **Procedures.** Applications for wireless telecommunications collocation facilities shall  
1032 comply with this Section and other applicable provisions of this Chapter. An application for a  
1033 collocation facility under California Government Code Section 65850.6 shall be processed in  
1034 the same manner as an application for Section 6409(a) approval is processed, except that  
1035 where the process requires justification for the Section 6409(a) approval, the applicant shall  
1036 instead provide the justification for a collocation facility under California Government Code  
1037 Section 65850.6.

1038 D. **Requirements.** All requirements, regulations, and standards set forth in this chapter  
1039 for a wireless telecommunications facility shall apply to a wireless telecommunications  
1040 collocation facility; provided, however, the following shall also apply to a wireless  
1041 telecommunications collocation facility:

1042 1. The applicant for a wireless telecommunications collocation facility permit shall  
1043 describe or depict:

1044 a) The wireless telecommunications collocation facility as it will be initially built;  
1045 and

1046 b) All collocations at full build-out, including, but not limited to, all antennas,  
1047 antenna support structures, and accessory equipment.

1048 2. Any collocation shall use screening methods substantially similar to those used on  
1049 the existing wireless telecommunications facilities, unless other optional screening  
1050 methods are specified in the conditions of approval.

1051 3. A wireless telecommunications collocation facility permit shall not be approved,  
1052 unless an environmental impact report, negative declaration, or mitigated negative  
1053 declaration was prepared and approved for the wireless telecommunications  
1054 collocation facility.

1055 E. **Permitted Use.** Notwithstanding any other provision of this chapter, a subsequent  
1056 collocation facility on a wireless telecommunications collocation facility shall be a permitted  
1057 use only if all of the following requirements are satisfied:

1058 1. The wireless telecommunications collocation facility:

1059 a) Was approved after January 1, 2007, by discretionary permit;

1060 b) Was approved subject to an environmental impact report, negative



- 1061 declaration, or mitigated negative declaration; and
- 1062 c) Otherwise complies with the requirements of California Government Code  
 1063 Section 65850.6(b), or its successor provision, for addition of a collocation  
 1064 facility to a wireless telecommunications collocation facility, including, but not  
 1065 limited to, compliance with all performance and maintenance requirements,  
 1066 regulations, and standards in this chapter and the conditions of approval in  
 1067 the wireless telecommunications collocation facility permit.
- 1068 2. The collocations were specifically considered when the relevant environmental  
 1069 document was prepared for the wireless telecommunications collocation facility.
- 1070 3. Before collocation, the applicant seeking collocation shall obtain all other applicable  
 1071 non-discretionary permits, as required pursuant to the Fairfax Municipal Code.
- 1072 F. **New or Amended Permit.** Except as otherwise provided above, approval of a new or  
 1073 amended permit shall be required when the facility is modified other than by collocation in  
 1074 accordance with this section, or the proposed collocation:
- 1075 1. Increases the height of the existing permitted telecommunications tower or  
 1076 otherwise changes the bulk, size, location, or any other physical attributes of the  
 1077 existing permitted wireless telecommunications collocation facility, unless  
 1078 specifically permitted under the conditions of approval applicable to such wireless  
 1079 telecommunications collocation facility; or
- 1080 2. Adds any microwave dish or other antenna not expressly permitted to be included  
 1081 in a collocation facility by the conditions of approval.

1082 \_\_\_\_\_

1083 **19.04.160 Business License**

1084 A permit issued pursuant to this chapter shall not be a substitute for any business license  
 1085 otherwise required under the Fairfax Municipal Code.

1086 **19.04.170 Emergency Deployment**

1087 In the event of a declared federal, state, or local emergency, or when otherwise warranted by  
 1088 conditions that the zoning administrator deems to constitute an emergency, the zoning  
 1089 administrator may approve the installation and operation of a temporary wireless  
 1090 telecommunications facility (e.g., a cell on wheels or "COW"), which is subject to such  
 1091 reasonable conditions that the zoning administrator deems necessary.

1092 **19.04.180 Operation and Maintenance Standards**

1093 A. All wireless telecommunications facilities must comply at all times with the following  
 1094 operation and maintenance standards. All necessary repairs and restoration shall be  
 1095 completed by the permittee, owner, or operator within 48 hours:

- 1096 1. After discovery of the need by the permittee, owner, operator or any designated  
1097 maintenance agent; or
- 1098 2. After permittee, owner, operator, or any designated maintenance agent receives  
1099 notification from a resident or the zoning administrator.
- 1100 B. All facilities, including, but not limited to, telecommunication towers, poles, accessory  
1101 equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the  
1102 facility site shall be maintained in good condition, including ensuring the facilities are  
1103 reasonably free of:
- 1104 1. General dirt and grease;
- 1105 2. Chipped, faded, peeling, and cracked paint;
- 1106 3. Rust and corrosion;
- 1107 4. Cracks, dents, and discoloration;
- 1108 5. Missing, discolored, or damaged artificial foliage or other camouflage;
- 1109 6. Graffiti, bills, stickers, advertisements, litter and debris;
- 1110 7. Broken and misshapen structural parts; and
- 1111 8. Any damage from any cause.
- 1112 C. All trees, foliage, and other landscaping elements approved as part of the facility shall  
1113 be maintained in good condition at all times, and the permittee, owner, and operator of the  
1114 facility shall be responsible for replacing any damaged, dead, or decayed landscaping. No  
1115 amendment to any approved landscaping plan may be made until it is submitted to and  
1116 approved by the zoning administrator.
- 1117 D. The permittee shall replace its facilities, after obtaining all required permits, if  
1118 maintenance or repair is not sufficient to return the facility to the condition it was in at the time  
1119 of installation.
- 1120 E. Each facility shall be operated and maintained at all times in compliance with applicable  
1121 federal regulations, including FCC radio frequency emissions standards.
- 1122 F. Each facility shall be operated and maintained to comply at all times with the noise  
1123 regulations of this chapter and shall be operated and maintained in a manner that will minimize  
1124 noise impacts to surrounding residents. Except for emergency repairs, any testing and  
1125 maintenance activities that will be audible beyond the property line shall only occur between  
1126 the hours of 7:00 a.m. and 5:00 p.m. on Monday through Friday, excluding holidays, unless  
1127 alternative hours are approved by the zoning administrator. Backup generators, if permitted,  
1128 shall only be operated during periods of power outages or for testing.

1129 G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall  
1130 be flown and shall be properly maintained at all times.

1131 H. Each owner or operator of a facility shall routinely inspect each site to ensure  
1132 compliance with the standards set forth in this section and the conditions of approval.

1133 **19.04.190 No Dangerous Conditions or Obstructions Allowed**

1134 No person shall install, use, or maintain any wireless telecommunications facility which in  
1135 whole or in part rests upon, in or over any public sidewalk or parkway, when such installation,  
1136 use, or maintenance endangers or is reasonably likely to endanger the safety of persons or  
1137 property, or when such site or location is used for public utility purposes, public transportation  
1138 purposes, or other governmental use, or when such facility unreasonably interferes with or  
1139 impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped  
1140 vehicle, the ingress into or egress from any residence or place of business, the use of poles,  
1141 posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street  
1142 furniture, or other objects permitted at or near said location.

1143 **19.04.200 Permit Expiration**

1144 A. A permit for any wireless telecommunications facility shall be valid for a period of ten  
1145 (10) years, unless the Planning Commission authorizes a different period, or pursuant to  
1146 another provision of the Fairfax Municipal Code the permit lapses sooner or is revoked. At  
1147 the end of such period, the permit shall expire.

1148 B. A permittee may apply for renewals of its permit in increments of no more than ten (10)  
1149 years and no sooner than twelve (12) months prior to expiration of the permit.

1150 C. If a permit has not expired at the time an application is made for a renewal, the zoning  
1151 administrator may administratively extend the term of the permit for subsequent ten (10) year  
1152 terms upon verification of continued compliance with the findings and conditions of approval  
1153 under which the application was originally approved, as well as any other applicable  
1154 provisions of the Fairfax Municipal Code that are in effect at the time the permit renewal is  
1155 granted. The following may also be required for an application to renew a wireless permit:

1156 1. At the zoning administrator's discretion, additional studies and information may be  
1157 required of the applicant.

1158 2. If the zoning administrator determines that the facility is nonconforming or that  
1159 additional conditions of approval are necessary to bring the facility into compliance  
1160 with the provisions of the Fairfax Municipal Code that are then in effect, the zoning  
1161 administrator shall refer the renewal request to the Planning Commission.

1162 D. The request for a renewal shall be decided by the Planning Commission if the permit  
1163 expired before the application is made for a renewal or if the zoning administrator refers the  
1164 matter to the Planning commission. After notice and a public hearing, the Planning  
1165 Commission may approve, conditionally approve, or deny the renewal.

1166 **19.04.210 Cessation of Use or Abandonment**

1167 A. A wireless telecommunications facility is considered abandoned and shall be promptly  
1168 removed as provided herein if it ceases to provide wireless telecommunications services for  
1169 ninety (90) or more consecutive days. If there are two or more users of a single facility, then  
1170 this provision shall not become effective until all users cease using the facility.

1171 B. The operator of a facility shall notify the Town in writing of its intent to abandon or cease  
1172 use of a permitted site or a nonconforming site (including unpermitted sites) within ten (10)  
1173 days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator  
1174 of the facility shall provide written notice to the zoning administrator of any discontinuation of  
1175 operations of thirty (30) days or more.

1176 C. Failure to inform the zoning administrator of cessation or discontinuation of operations  
1177 of any existing facility as required by this section shall constitute a violation of any approvals  
1178 and be grounds for:

1179 1. Prosecution;

1180 2. Revocation or modification of the permit;

1181 3. Calling of any bond or other assurance required by this chapter or conditions of  
1182 approval of the permit;

1183 4. Removal of the facilities by the Town in accordance with the procedures established  
1184 under the Fairfax Municipal Code for abatement of a public nuisance at the owner's  
1185 expense; and

1186 5. Any other remedies permitted under the Fairfax Municipal Code or applicable law.

1187 **19.04.220 Removal and Restoration, Permit Expiration, Revocation or Abandonment**

1188 A. **Permittee's removal obligation.** Upon the expiration date of the permit, earlier  
1189 termination or revocation of the permit or abandonment of the facility, the permittee, owner or  
1190 operator shall remove its wireless telecommunications facility and restore the site to its natural  
1191 condition, except for retaining the landscaping improvements and any other improvements at  
1192 the sole discretion of the zoning administrator. Removal shall be in accordance with proper  
1193 health and safety requirements and all ordinances, rules, and regulations of the Town. The  
1194 facility shall be removed from the property within thirty (30) days of the permit's expiration, at  
1195 no cost or expense to the Town. If the facility is located on private property, the private  
1196 property owner shall also be jointly and severally responsible for the expense of timely  
1197 removal and restoration.

1198 B. **Failure to remove.** Failure of the permittee, owner, or operator to promptly remove its  
1199 facility and restore the property within thirty (30) days after expiration, earlier termination, or  
1200 revocation of the permit, or abandonment of the facility, shall be a violation of the Fairfax  
1201 Municipal Code, and be grounds for:

- 1202 1. Prosecution;
- 1203 2. Calling of any bond or other assurance required by this chapter or conditions of
- 1204 approval of permit;
- 1205 3. Removal of the facilities by the Town in accordance with the procedures established
- 1206 under the Fairfax Municipal Code for abatement of a public nuisance at the owner's
- 1207 expense; or
- 1208 4. Any other remedies permitted under the Fairfax Municipal Code.

1209 C. **Summary removal.** In the event the zoning administrator determines that the  
1210 condition or placement of a wireless telecommunications facility located in the public right-of-  
1211 way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent  
1212 threat to public safety, or determines other exigent circumstances require immediate  
1213 corrective action (collectively, "exigent circumstances"), the zoning administrator may cause  
1214 the facility to be removed summarily and immediately without advance notice or a hearing. If  
1215 the circumstances allow for it and, to the extent feasible, the zoning administrator will notify  
1216 the permittee to remove the facility and allow for the reinstallation of the facility, subject to the  
1217 permittee demonstrating to the satisfaction of the Town's Building Official and zoning  
1218 administrator that the work can be done in safe manner compliant with the original Approved  
1219 Plans and Section 19.04.100. Written notice of the removal shall be served upon the person  
1220 who owns the facility within five (5) business days of removal and all property removed shall  
1221 be preserved for the owner's pick-up, as is reasonably feasible. If the owner cannot be  
1222 identified following reasonable effort or if the owner fails to pick-up the property within sixty  
1223 (60) days, the facility shall be treated as abandoned property.

1224 D. **Removal of facilities by Town.** In the event the Town removes a facility in  
1225 accordance with this chapter , any such removal shall be without any liability to the Town for  
1226 any damage to such facility that may result from reasonable efforts of removal. In addition to  
1227 the procedures for recovering costs of nuisance abatement, the Town may collect such costs  
1228 from the performance bond posted and to the extent such costs exceed the amount of the  
1229 performance bond, collect those excess costs in accordance with the Fairfax Municipal  
1230 Code. Unless otherwise provided herein, the Town has no obligation to store such facility.  
1231 Neither the permittee, the owner, nor the operator shall have any claim if the Town damages  
1232 or destroys any such facility not timely removed by the permittee, owner, or operator after  
1233 notice, or removed by the Town due to exigent circumstances.

1234 **19.04.230 Authorization for Departmental Forms, Rules, and Other Regulations.**

1235 The Town Council authorizes the zoning administrator to develop and publish permit  
1236 application forms, checklists, informational handouts and other related materials that the  
1237 zoning administrator finds necessary, appropriate or useful for processing requests,  
1238 applications, permits, or any other matter under this chapter. Without further authorization  
1239 from the Town Council, the zoning administrator may from time-to-time update and alter any  
1240 such permit application forms, checklists, informational handouts and other related materials  
1241 as the zoning administrator deems necessary, appropriate or useful to respond to regulatory,  
1242 technological or other changes related to this chapter. The Town Council authorizes the  
1243 zoning administrator to establish other reasonable rules and regulations, which may include,  
1244 without limitation, regular hours for appointments with applicants, as the zoning administrator  
1245 deems necessary or appropriate to organize, document, and manage the application intake  
1246 and permitting process.

1247 **19.04.240 Appeals.** Notwithstanding any provision of the Fairfax Municipal Code to the  
1248 contrary, including, but not limited to, Chapter 17.036, any applicant may appeal a decision  
1249 by the zoning administrator under this Chapter. The appeal must be filed within two (2) days  
1250 from the zoning administrator's decision. The appeal must state in plain terms the grounds for  
1251 reversal and the facts that support those grounds. The Town Council shall serve as the  
1252 appellate authority for all appeals of all actions of the zoning administrator taken pursuant to  
1253 this section. The Town shall provide notice for an administrative hearing by the Town Council.  
1254 The Town Council shall limit its review to whether the project should be approved or denied  
1255 in accordance with the provisions in this Chapter.

1256

1257 **19.04.250 Effect on Other Ordinances**

1258 Compliance with the provisions of this chapter shall not relieve a person from complying with  
1259 any other applicable provision of the Fairfax Municipal Code, including, but not limited to,  
1260 obtaining any necessary encroachment or building permits. In the event of a conflict between  
1261 any provision of this chapter and other provisions of the Fairfax Municipal Code, this chapter  
1262 shall control.

1263

- She referred to the ordinance and stated she wanted to get away from using the word "marijuana"- it is cannabis.
- She referred to the ordinance, page 2, the first "Whereas" and suggested the following modification: ""Whereas, at a special meeting...and adult use *cannabis* retail uses;"
- She referred to Section 17.110.230 "A" and suggested the following modification: "A medical marijuana...may operate *the non-store front retail business* as a permitted use..."
- She referred to Section 17.110.023 "A" 1. (b) and stated she did not agree with this approach.
- She referred to Section 17.110.023 "A" 2. and suggested the following modification: "All cannabis deliveries...and Safety Act *except as set forth herein regarding the buffer zone*".
- She referred to Section 17.110.023 "A" 3. and suggested the following modification: "No adult-use...*in the currently leased premises*..."
- She was concerned about redundancies in the ordinance.
- She referred to page 2 of the staff report (top of the page) and suggested eliminating the following requirements: 1) "A" 2 ; 2) "B"; 3) "D"; and 4) "F". Commissioner Frago stated it was nice to have those up front- it was a good summary.
- She referred to Resolution No. 2018-17, the fifth "Whereas" and suggested the following modification: "Whereas, staff has prepared such an ordinance *as commented on and modified by the Planning Commission*..."

M/s, Green/Fragoso, motion to adopt Resolution No. 2018-17, recommending that the Council adopt the ordinance as amended tonight.

AYES: Frago, Gonzalez-Parber, Green, Swift, Chair Newton

NOES: Rodriguez

ABSENT: Kehrlin

Commissioner Rodriguez indicated that she does not agree that the recreational cannabis delivery standards should be placed in the business license chapter of the Town Code to accommodate existing businesses and believes that Town should be moving forward with an amendment to the Zoning Code for the regulations related to this type of use as a whole.

The Commission took a 5-minute break at 9:15 p.m.

**2. Discussion/consideration of an Ordinance consolidating Title 19 and 20 of the Town Code into a revised Title 19 ("Telecommunications") which establishes uniform and comprehensive regulations for wireless telecommunications facilities in Town, on both private property and within the public right-of-way; CEQA exempt per Sections 15060(c)(2), 15378, 15061(b)(3), 15305 and 15303.**

Assistant Town Attorney Karish presented the staff report, noting the proposed ordinance was modeled after other jurisdictions'.

Commissioner Swift referred to the staff report and asked what type of ADA development standards the Town has regulated in the past. Assistant Town Attorney Karish stated this refers to applying the Zoning and permitting process to installations in the public right-of-way, modifications to buildings, etc.

Commissioner Swift asked for the background on AB 57 and "shot clock" timing.

Commissioner Swift referred to the Public Domain Zoning District and noted the Fairfax Library was a County facility and she asked who would have oversight on the infrastructure around the building. Town Attorney Coleson stated the County has independent authority but has a history of coming to the Town for building permits. She assumed there would be communication and cooperation between the Town and the County.

Commissioner Swift had a question about what Title 19 would cover. Town Attorney Coleson stated there was a section that discussed this.

Commissioner Swift asked if public right-of-ways included utility easements. Planning Director Berto stated that was a term of art- there could be instances where the easement runs over private property. Town Attorney stated that definition relates to the streets.

Commissioner Green asked if towers were allowed in the CR (Commercial Recreational) zones. Planning Director Berto stated they would be excluded in those areas.

Commissioner Fragoso referred to page 3 of the staff report and asked about the consolidation of Titles 19 and 20. Assistant Town Attorney Karish stated Title 20 was the Urgency Ordinance and that was used as the base document.

Commissioner Green referred to Exhibit "A" (Resolution 2018-18), and asked for clarification on the chart on page 8. Planning Director Berto noted the CR district was being lumped in with the residential districts as an area where most of these facilities would not be permitted.

Commissioner Green asked for a clarification on what the Commission can and cannot do under State and Federal law. Assistant Town Attorney Karish answered with a detailed explanation: Police departments originally enforced zoning laws but the state and local jurisdictions took over this enforcement and the first laws related to telephone lines and coverage. Current laws allow jurisdictions to consider aesthetics. Wireless regulations are made at the Federal and State level which state that jurisdictions cannot consider EMF emissions and a jurisdiction has to act on wireless applications in a reasonable time period. Denial of an application must be based on substantial information in the record. A carrier must show that there is a significant gap in service and that they have chosen the least obtrusive way to close a gap. Jurisdictions cannot discriminate against any one type of technology. These new laws contain 2 major orders – a jurisdiction cannot have a moratorium on applications and with Senate Bill 649 the industry focuses on small cell deployments and limiting local control even over a jurisdiction's ability to prohibit the use of their own infrastructure for the installations. She indicated that she filed an appeal of the new regulations on the town's behalf and in conjunction with other Marin cities on October 17<sup>th</sup>, 2018.

Chair Newton stated in addition to the assessments for the applications there should be a buffer zone for owl nests and other avian threatened species. She is also concerned about having a wireless facility installed in an area where there are historic structures. The Council talked about fire safety and aesthetic issues and she would like to add the issue with respect to property values.

Chair Newton opened the Public Hearing.

Mr. Andy Peri, representing 5G Free Marin, made the following comments:

- He passed out some literature.
- The Commission may be compelled to look at the ordinance similar to a conventional room addition or road closure. The ordinance is being produce in a very different context.
- Many Federal agencies, including the FCC, are being controlled by wealthy corporations just looking to make money.
- Many of the health studies show very troubling health impacts.
- The Town needs to find a way to maintain its autonomy and make protection, security, and benefit for the public good a priority.

Ms. Jess Lerner made the following comments:

- She has several key suggestions to strengthen the ordinance including the way they address where the towers would go.



- The small cell devices can reach over 3,000 feet, 24/7.
- They are talking about choice and local control.
- 5G is a completely new power grid network- unnatural, around-the-clock microwave radiation.
- It generates 24 to 90 billion waves per second.

Ms. Holly Beatty made the following comments:

- She has been a shaman for 12 years and helps people heal through vibrational medicine.
- The radiation waves that come from these cell towers break down cell walls and can create irritability, headaches, etc. It is a danger you cannot see.
- She believes in the ability and right of local government to create safe zones for its citizens.

Ms. Roberta Anthes, Snowden Lane, made the following comments:

- She asked the Commission to look at the exceptions chapter.
- The term “sufficient facts” and was far too vague and she suggested the wording “substantial written evidence supporting the claim”.
- The Federal ADA law recognizes EMS [electromagnetic sensitivity] as a disability and prohibits discrimination.
- She noted the revised ordinance does not include compliance with ADA. It should be put back in.

Mr. Robert Earnst, San Rafael, made the following comments:

- He discussed an article in The Union magazine about how a Firefighter’s Union was able to halt construction of cell towers on their fire stations due to “radiation concerns” and how t was adversely affecting them.
- The World Health Organization has called cell phone radiation a “possible human carcinogen”.
- The Town should be more concerned about the health and safety of its residents than what the industry might think.

Ms. Anna Hare, Greenbrae, made the following comments:

- This is a big concern to Marin.
- She had the following questions: 1) Who was paying for the 5G rollouts?; 2) Who has done the research to prove the infrastructure was safe?; 3) Who has decided that this type of radiation is safe for our bodies?

Mr. Alan Wiggin made the following comments:

- He is sensitive to EMFs and chemicals.
- The 5G rollout would change his life drastically.
- Fairfax can set a precedent for other communities and make a statement to the corporate conglomerates.

Ms. Aurora Brankus, Fairfax, made the following comments:

- She feels adverse effects of EMS radiation every day.
- She asked about the ultimate medical costs to communities vs. profits that would be realized by these companies pushing the 5G network.

Ms. Valerie Hood, Fairfax, made the following comments:

- They were told by the telecommunication companies that they could not fight cell towers- they did and they won.
- The community stands against 5G.
- The County should be the legal umbrella organization under which the cities and town come together to share legal costs in resisting the takeover of public commons.

Ms. Cathleen Boggs, San Anselmo, made the following comments:

- The laws and regulations around telecomm are not stringent or protective.
- The only protection is for industry profits.
- The technology has not been proven safe.

Ms. Kim Hahn, San Rafael, made the following comments:

- We have no idea how big a “bad-ass” the FCC is.
- Danger is coming into the sidewalks, parks, play fields.

Mr. Richard Applebaum, Woodland Road, made the following comments:

- They should direct the attorneys to be as creative and aggressive as possible to come up with a gnarly ordinance.
- The Mill Valley Ordinance is not strong enough.
- Fairfax should push the envelope and adopt a strong ordinance to stand up to the FCC and large corporations supporting the fast roll out of 5G.

Mr. David Glick, Cascade Drive, made the following comments:

- It is important to place the discussion in the context of the historical period in which we are living.
- Democracy is at stake.
- Fairfax needs to be on the side of the health of its citizens.

Ms. Vicki Seavers, representing the EMF Safety Network, made the following comments:

- The organization is trying to deal with these issues.
- She urged the Commission to read all the material that has been distributed.
- The Sebastopol City Council passed a moratorium on this technology pending further action.

Ms. Lynchen Bell, Dominga Avenue, made the following comments:

- Fiber optic cable would be a much better solution.
- It is the most secure, reliable, and energy efficient way to stream Internet.

Ms. Janet Fitzgerald, Cascades, made the following comments:

- She agreed with everything that has been said.
- They need to band together for the sake of everyone's health.

Ms. Bonnie McMurray, San Anselmo, made the following comments:

- She got vibrating in her ears and super anxious after her Smartmeter was installed.
- Fairfax needs to be Fairfax so San Anselmo can be San Anselmo with Fairfax.

Mr. Frank Egger, Meadow Way, made the following comments:

- Fairfax has three ordinances that address antennas in a public right-of-way.
- As written, the ordinance presented tonight is a capitulation to the telecomm industry.
- It is not true that Title 19 was adopted to address large cellphone towers- the ordinance includes public right-of-ways.
- It is debatable that the installation of these devices is exempt from CEQA- an environmental checklist would answer a lot of questions.
- Keep Titles 13 and 19 and rewrite Title 20 to be a standalone 5G small cell ordinance.

Chair Newton closed the Public Hearing.

Chair Newton asked the Commission for some “Big Picture” comments.

Commissioner Green provided the following comments:

- They are not ignoring the issue, and this ordinance was developed in response.
- Perhaps they should not be basing this on a Mill Valley Ordinance and take another look at what San Anselmo has done.
- They cannot ignore the testimony about health concerns- they need to come up with a better solution.
- He would like to hear from a few medical doctors.

Commissioner Swift provided the following comment:

- She referred to endangered species and historic designations and asked how they would be addressed by the FCC. Assistant Town Attorney Karish stated she was not sure how or when the Endangered Species Act would be applied. The Commissioner can add in consideration of aesthetics with respect to historical preservation.

Commissioner Gonzalez-Parber provided the following comments:

- It is not personal or a reflection of her opinion on a subject if she does not respond to emails. She wants this to happen in a public forum.
- They have to get creative.
- She does not know what the answer is but she does not want the Town to get sued.
- Many people are being affected, including young persons.
- She wants to delay or continue the matter.

Commissioner Green provided the following comments:

- He agreed that the matter should probably be continued.
- They cannot ignore the strong sentiments with one viewpoint from the public.

Chair Newton provided the following comment:

- She is not eager to continue something that would cause them to delay other matters.
- It is hard to craft something in a vacuum when she does not have a template to review. She does not have the San Anselmo Ordinance in front of her.

Commissioner Swift provided the following comments:

- It is late at night and she has numerous questions and comments.
- They will not be able to sign off on something tonight.
- There are some areas that they could point out to staff for them to review and perhaps incorporate into the draft.

Commissioner Green provided the following comments:

- He agreed with the suggestions made by Commissioner Swift.
- He went over the ordinance and found it needs a lot of revisions to address public issues.

Commissioner Fragoso provided the following comments:

- She asked staff about the schedule and “drop-dead” date after which they would not be able to establish any criteria and standards. Assistant Town Attorney Karish stated the FCC order is supposed to go into effect January 14<sup>th</sup> but it does not prohibit them from doing something after that date. They still have existing Chapters 19 and 20 that have standards. Town Attorney Coleson stated when the Council adopted the Urgency Ordinance (Title 20) they wanted the Commission to continue with the work of creating a cohesive ordinance. There are no applications pending.
- She asked if the service providers were just going through and installing the small cell devices or was it based on a request for service. Assistant Town Attorney Karish stated they were not installing 5G's locally although there were some test cities (two in California).

There are no 5G phones. Small cells are being deployed in a lot of places to provide more capacity due to the demand.

Commissioner Green provided the following comments:

- They do not need two separate telecommunication sections- a separate one addressing 5G could be a "red flag", and check the numbering sequence.
- He referred to Attachment "B", the first "Whereas" (13), and suggested the following modification: "The public right-of-way...the Town's natural beauty and *history*..." He would like to see this change when applicable.
- He referred to the same section, last sentence, and suggested the following modification: "The reasonably regulated...deployment represents an ever-increasing *nuisance potential*..."
- He referred to Attachment "B", the second "Whereas", and suggested the following modification: "The Town's General Plan...small Town-character, *history*, aesthetics..."
- He referred to Exhibit "A", Section 19.04.010, A. (2), and suggested the following modification: "promote and protect...visual resources, *history*, and the aesthetic..."
- He referred to Exhibit "A", Section 19.04.050, A. (4), and suggested the following modification: "Photographs.... photo simulations *and videos*."
- He stated all lighting should comply with "dark sky" ideas.
- He referred to Exhibit "A", Section 19.04.090, C. (2), and suggested the following modification: "The maximum... *and it must not threaten existing lighting*".
- When referring to FCC standards, he would like to replace the word "such" with "all applicable".
- He would like to add a broad clause about not shutting down telecommunications during an emergency to any telecommunications ordinance.

Commissioner Frago provided the following comments:

- She noted there was a restriction to installation in every zone except the public right-of-way with the closest adjacent district being the commercial district. She asked if they were required to do this by land use zone. There are residential properties that sit in a commercial or PDD zone. She asked if they could carve out a residential corner or border within a commercial zone. Assistant Town Attorney Karish stated the FCC does not have a rule that says this has to be done by zone or property.
- She asked if there could be a 600 foot barrier to residential property. Assistant Town Attorney Karish stated "yes".

Commissioner Swift provided the following comments:

- She referred to Attachment "B", Section 19.04.040 A, and stated the table did not include the UR Zone.
- Her broad brush strokes would be: 1) Endangered species; 2) Historic buildings; 3) Reviewing the exceptions piece of the code.
- She will send her comments to staff.

Commissioner Rodriguez provided the following comments:

- She was trying to figure out how the Smartmeter prohibition techniques might apply here.
- She referred to the comments made from Commission Frago and stated they might want to choose a location where the devices are allowed but prohibit the installations within 3,000 feet of residential zones.
- She wants to add the EMF compliance and the ADA sensitivity issues.
- She wants the ordinance to be a lot more restrictive.
- She would like to see more analysis regarding alternatives and coverage area.
- The design standards did not address ground mounted, building mounted, façade mounted, or free-standing. The existing standards are very weak.

Chair Newton provided the following comments:

- She echoed Commissioner Swift's thoughts regarding protecting endangered species habitats, impacts to historic or culturally significant properties, and protections for people suffering from EMF sensitivity.
- She would include additional language in the findings and in the requirements.
- The location standards should include additional buffer zones around historic parts of Town.
- She likes the 3,000 foot buffer zones.

M/s, Green/Rodriguez, motion to continue this item to November 29<sup>th</sup>.

AYES: Fragoso, Gonzalez-Parber, Green, Rodriguez, Swift, Chair Newton

ABSENT: Kehrlein

**3. Discussion/consideration of an Ordinance amending the text of the Fairfax Zoning Ordinance, Town Code Title 17, Chapter 17.112, PDD Planned Development District Zone, pertaining to development standards and submittal procedures; CEQA exempt per Sections 15305 and 15183.**

Chair Newton suggested this item be continued.

M/s, Fragoso/Swift, motion to continue this item to November 15<sup>th</sup>.

AYES: Fragoso, Gonzalez-Parber, Green, Rodriguez, Swift, Chair Newton

ABSENT: Kehrlein

## **DISCUSSION ITEMS**

There were no discussion items.

## **ADJOURNMENT**

A motion was made, seconded and unanimously approved to adjourn the meeting at 12:05 a.m.

Respectfully submitted,

Toni DeFrancis,  
Recording Secretary



# TOWN OF FAIRFAX

## STAFF REPORT

### October 25, 2018

**TO:** Planning Commission

**FROM:** Garrett Toy, Town Manager

**SUBJECT:** Consideration of an ordinance of the Town of Fairfax to consolidate Titles 19 & 20 ("Telecommunications") of the Fairfax Municipal Code into a revised Title 19 which establishes uniform and comprehensive regulations for wireless telecommunication facilities including the regulation of the installation, operation and maintenance of wireless telecommunications within the Town on private property and within the Town's public rights-of-way; CEQA exempt Section 15060(c)(2), Section 15378, Section 15061(b)(3), Section 15305, and Section 15303

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#### **RECOMMENDATION**

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

#### **BACKGROUND**

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

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

In addition to the actions currently being contemplated at the federal level, there have been a number of state and federal laws and regulations adopted since 1999, including Federal Communications Commission orders establishing "shot clocks" for local decisions on wireless applications, a federal law adopted in 2012 (Spectrum Act) that requires applications for certain types of modifications to existing wireless facilities to be approved, and a state law adopted in 2015 (AB 57) that can operate to "deem approved" applications that are not acted on before the applicable federal "shot clock" expires. With all the changes in technology and state and federal

**ATTACHMENT D**

law, the Town will need to revise and update the existing code which would include addressing small cell attachments.

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

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

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

In response to this FCC action, the increased industry interest in construction of small-cell facilities in the public right-of-way, and the lack of clear criteria to process applications for small wireless telecommunications facilities in a consistent and expeditious manner and within the limits of federal and state law, the Council adopted Urgency Ordinance No. 819, at a special Council meeting on September 26<sup>th</sup>, to immediately establish standards for WCF to ensure that the Town's regulations reflected current federal and state law and recent trends in wireless facilities deployment. The urgency ordinance provided an extensive and comprehensive list of procedures and regulations that allow the community, applicant and Town staff to understand how facilities are regulated, installed, maintained and operated within the Town.

## **DISCUSSION**

The urgency ordinance is an interim ordinance until the Town can adopt a permanent ordinance through the regular ordinance approval process which requires Planning Commission review and recommendation to the Town Council. At the September 26<sup>th</sup> Council meeting, staff reported we would take a similar ordinance to the Planning Commission for consideration. It should be noted that the FCC's Declaratory Ruling and Report and Order *will not take effect until January 14, 2019*. This should provide sufficient time for the Council to adopt a permanent ordinance prior to the effective date of the FCC Ruling.

## **Proposed Ordinance**

The proposed ordinance provides uniform and comprehensive regulations for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the Town. The ordinance is similar to recent regulations enacted in Mill Valley, which is modeled after those of San Anselmo and Ross. In essence, staff and the

Town Attorney modified the Mill Valley ordinance to reflect Fairfax's zoning code and to clarify some provisions, otherwise the ordinances are almost identical in content.

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

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

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

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

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

1. Ensures that the FCC standards regulating radio frequency emissions are strictly followed. The conditions of approval will require annual documentation demonstrating compliance with current FCC regulatory and operational standards including, but not limited to, radio frequency emissions. The Town may retain a consultant, at the sole expense of the permittee, to perform the required testing.
2. Establishes an application process for a conditional use permit and design review, with additional specific conditions for those use permits in the public right-of-way. The CUP expires in 10 years unless a renewal is requested and approved by the Town. Projects in the public right-of-way are also required to obtain encroachment permits.
3. Prescribes the content for an application for a wireless telecommunications facility permit. The application requires the submission of detailed site and engineering plans,



photographs of facility equipment, a visual impact analysis with photo simulations, a noise study, and certification that the applicant has a right under state law to install facilities in the public right of way if that is the proposed location of the facilities. Also, the Town may retain a technical consultant to assist the Town in the review of the application at the expense of the applicant.

4. *Prohibits wireless facilities in residential zones and public right-of-way in residential zones.*
5. Limits the location of new or updated wireless facilities to private property within commercial (except for the CR- commercial recreation zone) and public domain (e.g., library and town hall) zoning districts and the adjacent public rights-of-way with an order of preference in terms of location within commercial areas and configuration aimed toward existing facilities.
6. Limits the installation of new wireless facilities in the public right-of-way to existing poles *that must be at least 1,500 feet away from the nearest facility.* Similar to Mill Valley, we did not include a buffer zone from residential units. However, the Planning Commission can further evaluate if such a provision would be legally feasible to include in a regular ordinance.
7. Establishes design standards for the appearance and maintenance of facilities, including, but not limited to, limiting the height and bulk of facilities, concealing/hiding accessory equipment to the extent feasible such as undergrounding, setting preferences in collocating facilities, and complying with ADA standards.
8. Imposes strict noise standards pursuant to Town Code.
9. Where feasible, requires upgrades to existing facilities as new technology becomes available to replace larger more visually intrusive facilities with smaller facilities.
10. Requires the relocation of any facility in the public right-of-way that would interfere with a future public project or improvements.
11. Requires a performance bond to ensure that facilities are promptly removed when they are no longer permitted or needed.
12. Requires the permittee to defend and indemnify the Town from any liabilities arising from the permits issued by the Town and the installation, operation and maintenance of the facilities.
13. As required, the proposed ordinance allows an applicant to request an exception from the standards in the event that denial of a permit would violate federal or state law. The applicant has the burden of providing sufficient facts to support the request.
14. Based on existing provisions of the Town's Zoning Code, initial wireless facility CUP applications will be heard by the Planning Commission. Smaller subsequent amendments to wireless facility CUPs, such as modifying or collocating equipment, will undergo Zoning Administrator (Planning Director) approval. Amendments to CUPs that involve significant

design review issues or are deemed as significant projects by the Planning Director will be heard by the Planning Commission.

15. Provides an expedited approval process for those wireless telecommunications facility applications that qualify as “eligible facilities requests” under federal law, and therefore must be approved within sixty (60) days. These applications are evaluated and acted on by the Zoning Administrator, with the opportunity for appeal to the Town Council.
16. Please note the ordinance does not discuss the actual FCC “shot clocks” and/or timeframes. Instead the shot clock and timeframes would be addressed as part of the application and informational handouts.

### **EFFECTIVE DATE/NEXT STEPS**

As stated above, the urgency ordinance is an interim ordinance until the Town can process a permanent ordinance through the regular ordinance approval process which requires Planning Commission review and recommendation to the Town Council. Should the Planning Commission make a recommendation this evening, staff will take the ordinance to the Council at its November 7<sup>th</sup> meeting.

### **ENVIRONMENTAL REVIEW**

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

### **FISCAL IMPACT**

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

### **ATTACHMENT**

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