



TOWN OF FAIRFAX

STAFF REPORT

December 20, 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

(NOTE: This item was discussed at the Planning Commission's October 25th and November 29th meetings and continued to this meeting.)

RECOMMENDATION

- 1) Conduct Public Hearing.
- 2) Adopt a resolution recommending the Town Council: a) strongly consider the Planning Commission's comments and direct staff to revise the proposed ordinance as the Council deems appropriate prior to the ordinance's adoption and b) after the Council's discussion/consideration of the Planning Commission's comments, adopt the ordinance, with any Council amendments/modifications, to consolidate Titles 19 and 20 into a revised Title 19 of the Fairfax Town Code to establish uniform and comprehensive regulations for wireless telecommunication facilities.

BACKGROUND

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 the November 29th meeting. At its November 29th meeting, the Planning Commission agreed that it would 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.

DISCUSSION

After receiving public comment at its November 29th meeting, the PC provided staff with its comments and requested that staff return with a summary of the PC's comments. The PC comments are included in Attachment 2 to the resolution. The resolution has been modified (see the "Now, Therefore" sections) to request the Council to consider the PC's comment prior to the

adoption of the ordinance. The PC comments also reference two documents presented by residents to the PC at its November 29th meeting: re-certification process from Burlington, MA and hand-out entitled "ordinance recommendations". We have also attached responses to some questions raised at the meeting which includes information on the Town's six (6) utility undergrounding districts. The 6 districts primarily include the commercial properties along Sir Francis Drake Blvd, Center Blvd, Broadway, and Bolinas Rd. Please note that legal counsel is unable to attend the December 20th meeting.

As we reported at the November 29th meeting, the PC's comments would be placed on the agenda for discussion/consideration at the Council's January 16, 2019 meeting. This will allow the Council the opportunity to direct staff to make modifications/amendments to the ordinance prior to its consideration by the Council. Staff would return with an amended ordinance for Council consideration at its February 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

- A** Resolution w/ Proposed Ordinance and PC comments w/attachments
- B** Responses to questions with utility undergrounding maps.

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, heard the presentation of a staff report, and received 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 strongly consider the Planning Commission’s comments in Attachment 2 and direct staff to revise the proposed ordinance in Attachment 1 as the Council deems appropriate prior to the ordinance’s adoption.

SECTION 4. After the Council’s discussion/consideration of the Planning Commission’s comments in Attachment 2, the Planning Commission hereby recommends that the Town Council adopt Attachment 1, with any Council amendments/modifications, 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 20th day of December 2018 by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mimi Newton, Chair

Attest:

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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

(13) 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 ___th day of 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Barbara Coler, Mayor

ATTEST:

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, at
56 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</i> ³
	<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 ¹ or application pursuant to California Government Code Section 65850.6 ²	Permitted	Permitted	Permitted
¹ See requirements of section 19.04.140. ² See requirements of section 19.04.150. ³ For any public right-of-way on the boundary between zoning districts, the zone applicable to the location of a wireless telecommunication facility shall be determined based upon the closest district adjacent to the facility's location. The centerline of the public right-of-way will be used as the boundary between districts.			

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 telecommunications 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 (D) 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 **19.04.160 Business License**
- 1083 A permit issued pursuant to this chapter shall not be a substitute for any business license
 1084 otherwise required under the Fairfax Municipal Code.
- 1085 **19.04.170 Emergency Deployment**
- 1086 In the event of a declared federal, state, or local emergency, or when otherwise warranted by
 1087 conditions that the zoning administrator deems to constitute an emergency, the zoning
 1088 administrator may approve the installation and operation of a temporary wireless
 1089 telecommunications facility (e.g., a cell on wheels or "COW"), which is subject to such
 1090 reasonable conditions that the zoning administrator deems necessary.
- 1091 **19.04.180 Operation and Maintenance Standards**
- 1092 A. All wireless telecommunications facilities must comply at all times with the following
 1093 operation and maintenance standards. All necessary repairs and restoration shall be
 1094 completed by the permittee, owner, or operator within 48 hours:

- 1095 1. After discovery of the need by the permittee, owner, operator or any designated
1096 maintenance agent; or
- 1097 2. After permittee, owner, operator, or any designated maintenance agent receives
1098 notification from a resident or the zoning administrator.
- 1099 B. All facilities, including, but not limited to, telecommunication towers, poles, accessory
1100 equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the
1101 facility site shall be maintained in good condition, including ensuring the facilities are
1102 reasonably free of:
- 1103 1. General dirt and grease;
- 1104 2. Chipped, faded, peeling, and cracked paint;
- 1105 3. Rust and corrosion;
- 1106 4. Cracks, dents, and discoloration;
- 1107 5. Missing, discolored, or damaged artificial foliage or other camouflage;
- 1108 6. Graffiti, bills, stickers, advertisements, litter and debris;
- 1109 7. Broken and misshapen structural parts; and
- 1110 8. Any damage from any cause.
- 1111 C. All trees, foliage, and other landscaping elements approved as part of the facility shall
1112 be maintained in good condition at all times, and the permittee, owner, and operator of the
1113 facility shall be responsible for replacing any damaged, dead, or decayed landscaping. No
1114 amendment to any approved landscaping plan may be made until it is submitted to and
1115 approved by the zoning administrator.
- 1116 D. The permittee shall replace its facilities, after obtaining all required permits, if
1117 maintenance or repair is not sufficient to return the facility to the condition it was in at the time
1118 of installation.
- 1119 E. Each facility shall be operated and maintained at all times in compliance with applicable
1120 federal regulations, including FCC radio frequency emissions standards.
- 1121 F. Each facility shall be operated and maintained to comply at all times with the noise
1122 regulations of this chapter and shall be operated and maintained in a manner that will minimize
1123 noise impacts to surrounding residents. Except for emergency repairs, any testing and
1124 maintenance activities that will be audible beyond the property line shall only occur between
1125 the hours of 7:00 a.m. and 5:00 p.m. on Monday through Friday, excluding holidays, unless
1126 alternative hours are approved by the zoning administrator. Backup generators, if permitted,
1127 shall only be operated during periods of power outages or for testing.

1128 G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall
1129 be flown and shall be properly maintained at all times.

1130 H. Each owner or operator of a facility shall routinely inspect each site to ensure
1131 compliance with the standards set forth in this section and the conditions of approval.

1132 **19.04.190 No Dangerous Conditions or Obstructions Allowed**

1133 No person shall install, use, or maintain any wireless telecommunications facility which in
1134 whole or in part rests upon, in or over any public sidewalk or parkway, when such installation,
1135 use, or maintenance endangers or is reasonably likely to endanger the safety of persons or
1136 property, or when such site or location is used for public utility purposes, public transportation
1137 purposes, or other governmental use, or when such facility unreasonably interferes with or
1138 impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped
1139 vehicle, the ingress into or egress from any residence or place of business, the use of poles,
1140 posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street
1141 furniture, or other objects permitted at or near said location.

1142 **19.04.200 Permit Expiration**

1143 A. A permit for any wireless telecommunications facility shall be valid for a period of ten
1144 (10) years, unless the Planning Commission authorizes a different period, or pursuant to
1145 another provision of the Fairfax Municipal Code the permit lapses sooner or is revoked. At
1146 the end of such period, the permit shall expire.

1147 B. A permittee may apply for renewals of its permit in increments of no more than ten (10)
1148 years and no sooner than twelve (12) months prior to expiration of the permit.

1149 C. If a permit has not expired at the time an application is made for a renewal, the zoning
1150 administrator may administratively extend the term of the permit for subsequent ten (10) year
1151 terms upon verification of continued compliance with the findings and conditions of approval
1152 under which the application was originally approved, as well as any other applicable
1153 provisions of the Fairfax Municipal Code that are in effect at the time the permit renewal is
1154 granted. The following may also be required for an application to renew a wireless permit:

1155 1. At the zoning administrator's discretion, additional studies and information may be
1156 required of the applicant.

1157 2. If the zoning administrator determines that the facility is nonconforming or that
1158 additional conditions of approval are necessary to bring the facility into compliance
1159 with the provisions of the Fairfax Municipal Code that are then in effect, the zoning
1160 administrator shall refer the renewal request to the Planning Commission.

1161 D. The request for a renewal shall be decided by the Planning Commission if the permit
1162 expired before the application is made for a renewal or if the zoning administrator refers the
1163 matter to the Planning commission. After notice and a public hearing, the Planning
1164 Commission may approve, conditionally approve, or deny the renewal.

1165 **19.04.210 Cessation of Use or Abandonment**

1166 A. A wireless telecommunications facility is considered abandoned and shall be promptly
1167 removed as provided herein if it ceases to provide wireless telecommunications services for
1168 ninety (90) or more consecutive days. If there are two or more users of a single facility, then
1169 this provision shall not become effective until all users cease using the facility.

1170 B. The operator of a facility shall notify the Town in writing of its intent to abandon or cease
1171 use of a permitted site or a nonconforming site (including unpermitted sites) within ten (10)
1172 days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator
1173 of the facility shall provide written notice to the zoning administrator of any discontinuation of
1174 operations of thirty (30) days or more.

1175 C. Failure to inform the zoning administrator of cessation or discontinuation of operations
1176 of any existing facility as required by this section shall constitute a violation of any approvals
1177 and be grounds for:

- 1178 1. Prosecution;
- 1179 2. Revocation or modification of the permit;
- 1180 3. Calling of any bond or other assurance required by this chapter or conditions of
1181 approval of the permit;
- 1182 4. Removal of the facilities by the Town in accordance with the procedures established
1183 under the Fairfax Municipal Code for abatement of a public nuisance at the owner's
1184 expense; and
- 1185 5. Any other remedies permitted under the Fairfax Municipal Code or applicable law.

1186 **19.04.220 Removal and Restoration, Permit Expiration, Revocation or Abandonment**

1187 A. **Permittee's removal obligation.** Upon the expiration date of the permit, earlier
1188 termination or revocation of the permit or abandonment of the facility, the permittee, owner or
1189 operator shall remove its wireless telecommunications facility and restore the site to its natural
1190 condition, except for retaining the landscaping improvements and any other improvements at
1191 the sole discretion of the zoning administrator. Removal shall be in accordance with proper
1192 health and safety requirements and all ordinances, rules, and regulations of the Town. The
1193 facility shall be removed from the property within thirty (30) days of the permit's expiration, at
1194 no cost or expense to the Town. If the facility is located on private property, the private
1195 property owner shall also be jointly and severally responsible for the expense of timely
1196 removal and restoration.

1197 B. **Failure to remove.** Failure of the permittee, owner, or operator to promptly remove its
1198 facility and restore the property within thirty (30) days after expiration, earlier termination, or
1199 revocation of the permit, or abandonment of the facility, shall be a violation of the Fairfax
1200 Municipal Code, and be grounds for:

- 1201 1. Prosecution;
- 1202 2. Calling of any bond or other assurance required by this chapter or conditions of
- 1203 approval of permit;
- 1204 3. Removal of the facilities by the Town in accordance with the procedures established
- 1205 under the Fairfax Municipal Code for abatement of a public nuisance at the owner's
- 1206 expense; or
- 1207 4. Any other remedies permitted under the Fairfax Municipal Code.

1208 C. **Summary removal.** In the event the zoning administrator determines that the
1209 condition or placement of a wireless telecommunications facility located in the public right-of-
1210 way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent
1211 threat to public safety, or determines other exigent circumstances require immediate
1212 corrective action (collectively, "exigent circumstances"), the zoning administrator may cause
1213 the facility to be removed summarily and immediately without advance notice or a hearing. If
1214 the circumstances allow for it and, to the extent feasible, the zoning administrator will notify
1215 the permittee to remove the facility and allow for the reinstallation of the facility, subject to the
1216 permittee demonstrating to the satisfaction of the Town's Building Official and zoning
1217 administrator that the work can be done in safe manner compliant with the original Approved
1218 Plans and Section 19.04.100. Written notice of the removal shall be served upon the person
1219 who owns the facility within five (5) business days of removal and all property removed shall
1220 be preserved for the owner's pick-up, as is reasonably feasible. If the owner cannot be
1221 identified following reasonable effort or if the owner fails to pick-up the property within sixty
1222 (60) days, the facility shall be treated as abandoned property.

1223 D. **Removal of facilities by Town.** In the event the Town removes a facility in
1224 accordance with this chapter , any such removal shall be without any liability to the Town for
1225 any damage to such facility that may result from reasonable efforts of removal. In addition to
1226 the procedures for recovering costs of nuisance abatement, the Town may collect such costs
1227 from the performance bond posted and to the extent such costs exceed the amount of the
1228 performance bond, collect those excess costs in accordance with the Fairfax Municipal
1229 Code. Unless otherwise provided herein, the Town has no obligation to store such facility.
1230 Neither the permittee, the owner, nor the operator shall have any claim if the Town damages
1231 or destroys any such facility not timely removed by the permittee, owner, or operator after
1232 notice, or removed by the Town due to exigent circumstances.

1233 **19.04.230 Authorization for Departmental Forms, Rules, and Other Regulations.**

1234 The Town Council authorizes the zoning administrator to develop and publish permit
1235 application forms, checklists, informational handouts and other related materials that the
1236 zoning administrator finds necessary, appropriate or useful for processing requests,
1237 applications, permits, or any other matter under this chapter. Without further authorization
1238 from the Town Council, the zoning administrator may from time-to-time update and alter any
1239 such permit application forms, checklists, informational handouts and other related materials
1240 as the zoning administrator deems necessary, appropriate or useful to respond to regulatory,
1241 technological or other changes related to this chapter. The Town Council authorizes the
1242 zoning administrator to establish other reasonable rules and regulations, which may include,
1243 without limitation, regular hours for appointments with applicants, as the zoning administrator
1244 deems necessary or appropriate to organize, document, and manage the application intake
1245 and permitting process.

1246 **19.04.240 Appeals.** Notwithstanding any provision of the Fairfax Municipal Code to the
1247 contrary, including, but not limited to, Chapter 17.036, any applicant may appeal a decision
1248 by the zoning administrator under this Chapter. The appeal must be filed within two (2) days
1249 from the zoning administrator's decision. The appeal must state in plain terms the grounds for
1250 reversal and the facts that support those grounds. The Town Council shall serve as the
1251 appellate authority for all appeals of all actions of the zoning administrator taken pursuant to
1252 this section. The Town shall provide notice for an administrative hearing by the Town Council.
1253 The Town Council shall limit its review to whether the project should be approved or denied
1254 in accordance with the provisions in this Chapter.

1255

1256 **19.04.250 Effect on Other Ordinances**

1257 Compliance with the provisions of this chapter shall not relieve a person from complying with
1258 any other applicable provision of the Fairfax Municipal Code, including, but not limited to,
1259 obtaining any necessary encroachment or building permits. In the event of a conflict between
1260 any provision of this chapter and other provisions of the Fairfax Municipal Code, this chapter
1261 shall control.

1262

SUMMARY OF THE PLANNING COMMISSION'S COMMENTS ON ORDINANCE REGARDING WIRELESS COMMUNICATION FACILITIES

November 29, 2018 Special Meeting

Below is a summary of the Planning Commission's comments regarding the proposed ordinance regulating wireless communication facilities.

- Require equipment owners of wireless communication facilities (WCF) to follow an annual recertification and affidavit process similar to the process adopted by Burlington, Massachusetts (see attached).
- Strengthen the wording "if feasible" in the application process.
- Allow the Tree Committee to have some input in the process if trees are affected.
- Do not allow WCF on the decorative streetlights.
- Require public noticing for eligible facility requests. The Town should publish this information on its website.
- Add provisions for addressing endangered species, including the creation of buffer zones.
- Require equipment mock-ups or story poles, if applicable, for new applications.
- Require applications to include a map of the geographic service area.
- Establish a time limit for the design and development standards extension.
- Any lighting on poles should be dark sky compliant and the color should be regulated.
- Prohibit WCF in the Open Space Zone (OA) and any deeded public access areas; add OA to the table which identifies the zoning districts WCF's are not permitted.
- Strengthen the provisions for compliance with ADA including protection for those with EMF disabilities.
- Add recitals to ordinance to better describe the historic character and rural nature of the community.
- The resolution and ordinance should better define "small cell".
- If permitted, require CEQA review and, if appropriate, preparation of initial study for eligible facility requests.
- Beef up the "Exceptions" provisions and pull together all "Exceptions" into one "Exceptions Section."
- Add locational restrictions to include "not on ridgelines, in flood zones, near a mural, not affecting protected species or heritage trees, not by historic buildings (50 years or more)".
- Reduce size of WCF from six cubic feet to as small as possible.
- Consider adding the Town of San Anselmo exception standards.
- Reduce the Permit Expiration period to less than 10 years.
- Ensure that PG&E Smart Meter protections are not affected by this ordinance.
- Suggested staff obtain letters from doctors that support the assertions about health risks.
- Consider ordinance recommendations submitted by the local group.
- Require facilities to be a minimal distance from schools and day care centers.
- Add a buffer distance between WCF and residential units.
- Strengthen insurance requirements, including evidence of liability coverage, to better protect the Town.
- Concerns that consolidating the two titles into the new Title 19 may inadvertently omit key protection.
- Ensure the ordinance includes strong design criteria addressing fire hazards, view sheds, and aesthetic considerations.
- Only allow in utility undergrounding districts which requires equipment to be undergrounded.

Questions from PC meeting

In utility undergrounding districts, are applicants required to underground all equipment with the exception of the antennas?

Response: The ordinance is written to require undergrounding “where possible.” There is no specific reference to underground districts in the current draft. Antennas cannot be required to be placed underground because they will not function properly. Depending on the site, some radios may also need to be aboveground to function properly with the antennas. The FCC has stated that undergrounding requirements, like other aesthetic requirements, must be reasonable, no more burdensome than those applied to other types of infrastructure deployments, and objective and published in advance.

Can the Town restrict WCF to utility undergrounding districts?

Response: Our research indicates the six utility undergrounding districts are, in essence, the commercial areas in downtown and along SFD (see attached maps). Please note that the Town would have to be able to articulate an aesthetic purpose for restricting WCFs to utility undergrounding districts. In other words, if the Town were to exclude wireless deployments from areas where the Town allows other aboveground utilities, the Town needs to have a solid rationale.

Can we require some type of public notice for eligible facility request? For example, can applicants be required to send out notice to properties within 300 ft, that it has submitted such a request?

Response: Nothing in the FCC order says that public noticing is not permitted. Presumably, the Town can do this and can have applicants submit evidence that they gave the required notice with their applications. The Town would still have to comply with the shot clocks which are quite short (60--90 days).

Can the Town require a carrier to provide/maintain a certain level of service such as during emergencies or require better service for “dead” zones?

Response: The Town cannot regulate their business operations – so cannot prioritize operations in the Town.

Can we require new technology replacement or upgrades?

Response: Section 19.04.100 A.2. addresses that requirement with “Where feasible, as new technology becomes available, the permittee shall...” In general, however, local governments cannot regulate or mandate that certain technologies be used.

Can the Town reduce the minimum number of years for the permit (reduce from 10 years to a lower amount)?

Response: Cal. Gov. Code Section 65964(b) says the Town cannot “unreasonably limit the duration of any permit for a wireless telecommunications facility. Limits of less than 10

years are presumed to be unreasonable absent public safety reasons or substantial land use reasons. However, cities and counties may establish a build-out period for a site.

Please explain how the ordinance can better address ADA EMF disabilities?

Response: The ADA does not identify particular conditions as covered. Instead, it defines disability as any physical impairment affecting a major life activity.

Title II of the ADA requires public agencies to make all their services, programs, and activities ADA accessible. The ADA is a discrimination statute, not a prohibition on matters impacting health. Unless there is some sort of discrimination (i.e., persons with disabilities are prevented from some activity), there is no ADA claim. To the extent a person may claim that 5G or other small cell installations will prevent access to public facilities, such as streets and sidewalks where deployed, there are no regulations on point. The DOJ's website (www.ada.gov) has nothing indicating any DOJ application of the ADA to RF sensitivity/sickness. The DOJ has never regulated this issue, although it does regulate things like sidewalk width, amount of slope, etc.

Under the proposed ordinance, the Town is not providing a service, program, or activity and instead would merely be considering the merits of a wireless application.

The Access Board is a federal organization that provides architectural "guidelines". It does not implement the ADA. Only the DOJ can actually enforce the ADA and adopt enforceable regulations. The DOJ must consider the Access Board's guidelines when adopting regulations, but the Access Board has no ability to make law.

The Access Board item that was provided appears to be part of an Access Board study, in which the Access Board recommends going through the process to adopt guidelines for indoor chemical/electromagnetic sensitivity. So basically, this is a preliminary step to adopting guidelines that are not rules and do not have the force of law. The Access Board's report references studies relating to electromagnetic sensitivity, but the Access Board is an architectural, not medical, board. The Access Board does not make findings as to the types of conditions that qualify as "disabilities" under the ADA. It's also worth noting that the recommendations related to accommodating affected individuals on a case-by-case basis, rather than prohibitions on specific communications facilities.

As we have previously stated, federal communications law prohibits local governments from regulating communications facilities based on RF emissions if the facility complies with the FCC standards. Thus, there is not really a conflict in federal laws – the Town is bound by the FCC limits on its ability to regulate communications facilities. The decisions under the ordinance have to be made within those limits. This is not to say that the Town would not consider case-by-case reasonable accommodations – say, meeting with concerned citizens in a facility that is not as close to wireless infrastructure.

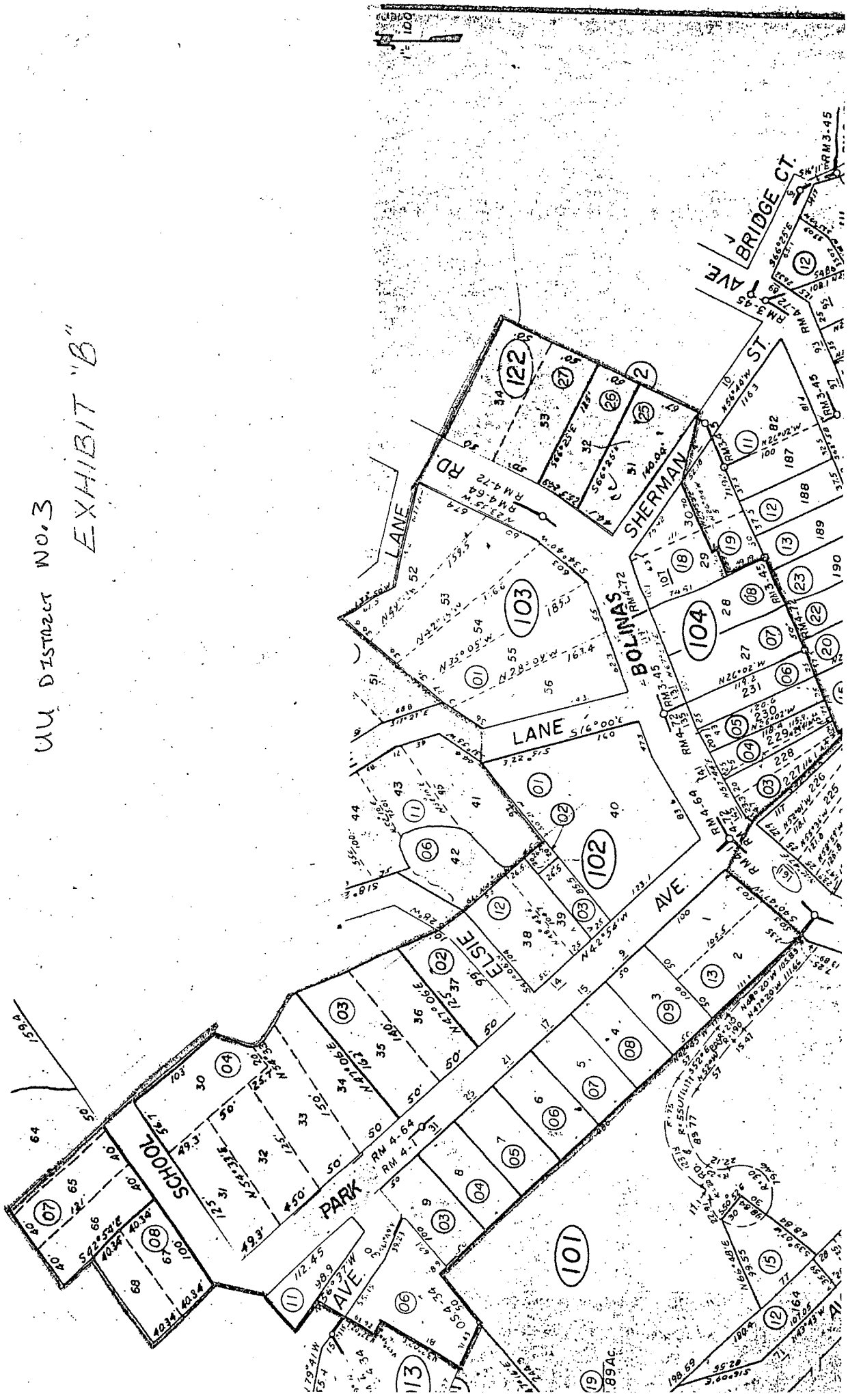
EXHIBIT "A"

All that certain real property in the Town of Fairfax described as follows:

<u>LOT NO.</u>	<u>ASSESSOR'S PARCEL NO.</u>	<u>OWNER</u>
<u>PACHECO TRACT</u>		
A (Ptn.)	2-121-01	Ann C. & James L. Wheeler, 1 Bolinas Road, Fairfax
A (Ptn.)	2-121-02	Ann C. & James L. Wheeler, 1 Bolinas Road, Fairfax
46 (Ptn.)	2-122-01	Harold W. White, et al., 29 Bolinas Rd., Fairfax
45 & 44	2-122-37	John M. & Claire T. McNaboe, 55 Alder Ave., San Anselmo
43 & 42	2-122-34	Elsie L. Frustuck, 300 Bolinas Rd., Fairfax
41	2-122-33	Lester & Pauline McCaullic, 1555 Vallejo St., San Francisco
40 & 39	2-122-32	Elmer W. & Odella Snyder, et al., 6 Redwood Ave., Corte Madera
38	2-122-31	Charles & Rosetta Peri, 8 Cypress Dr., Fairfax
37	2-122-30	Lester & Pauline McCaullic, 1555 Vallejo St., San Francisco
36	2-122-29	Albert G. Messec, 69 Bolinas Rd., Fairfax
35	2-122-28	Elsie Louise Frustuck, 300 Bolinas Rd., Fairfax
34 & 33	2-122-27	Elsie Louise Frustuck, 300 Bolinas Rd., Fairfax
32	2-122-26	Elsie Louise Frustuck, 300 Bolinas Rd., Fairfax
31	2-122-25	James H. & Angela Dismuke, 101 Bolinas Rd., Fairfax
<u>FRUSTUCK-WREDEN TRACT</u>		
17A	2-115-07	Frank & Catherine Healion, 176 Fairhills Drive, San Rafael
17 (Ptn.)	2-115-20	Tom C. Fong, 14 Bolinas Rd., Fairfax
17 (Ptn.)	2-115-09	Louis Pietronave, et al., P. O. Box 257, Fairfax
17 (Ptn.)	2-115-10	Elmer M. & Esther L. Beasley, 127 Butterfield Rd., San Anselmo
1	2-115-11	City of Fairfax
2	2-115-12	City of Fairfax
3	2-115-13	Harry H. & Ethel T. Fong, 52 Bolinas Rd., Fairfax
4	2-115-14	Harry H. & Ethel T. Fong, 52 Bolinas Rd., Fairfax
5 & 6	2-115-15	Harry Jung, 52 Bolinas Rd., Fairfax
7 & 8	2-115-16	Jean & Anna C. Lestanguet, P. O. Box 7, Fairfax
9	2-115-17	Jeanne Marie Fanlo et al., P. O. Box 7, Fairfax

ALSO, all those certain portions of Broadway, Bolinas Road, and other public streets and thoroughfares which are contiguous to the above-described properties, and within the periphery of said properties.

UU DISTRICT NO. 3
EXHIBIT "B"



UU District No. 5

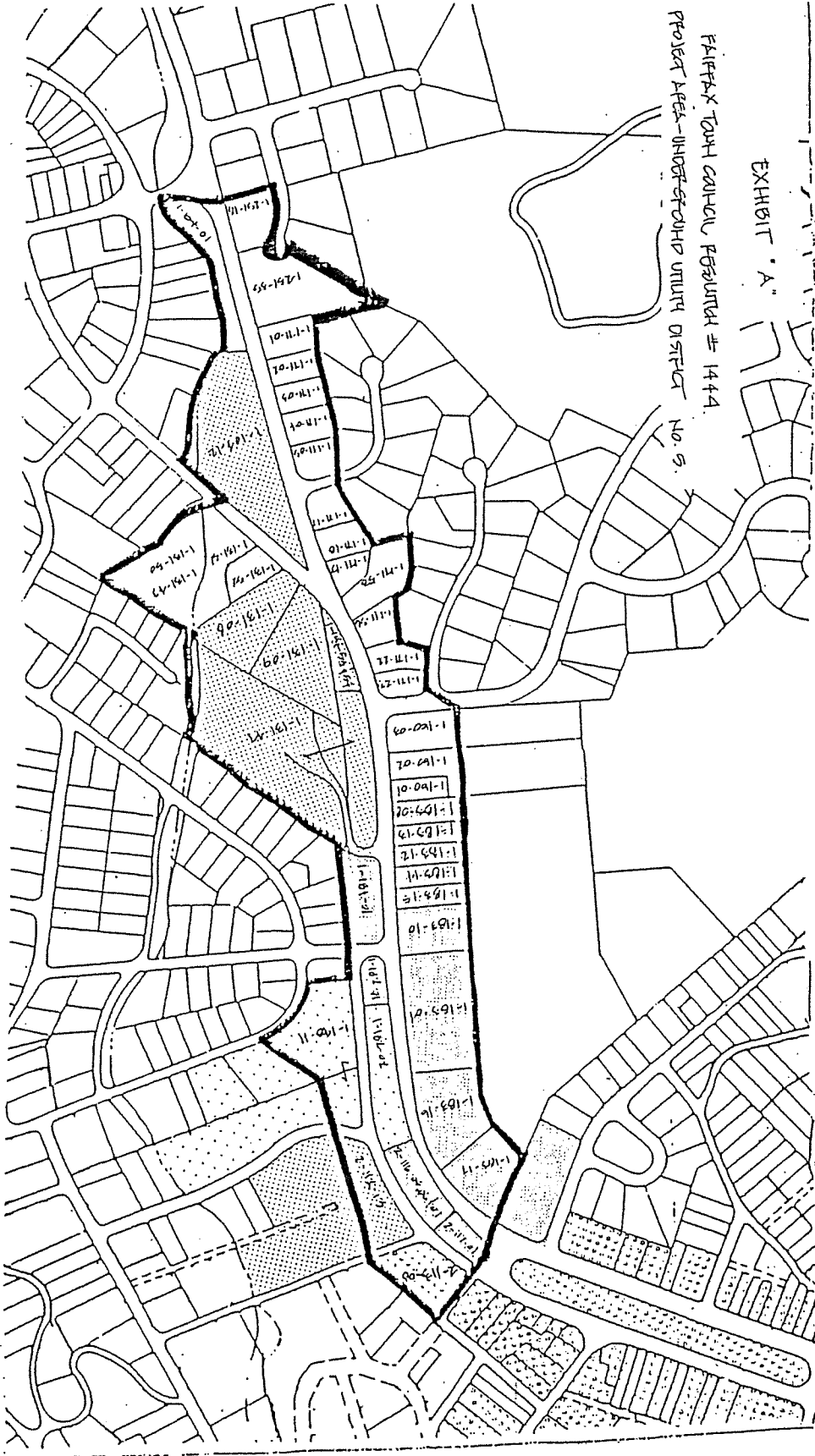


EXHIBIT "A"

FALFAX TOWN COUNCIL RESOLUTION # 1444.
PROJECT AREA - UNDEVELOPED UTMUT DISTRICT NO. 5.

Exhibit "A"

Town Of Fairfax

Underground Utilities District No. 6

Boundry Map

