

ORDINANCE NO. 819

**AN ~~URGENCY~~ ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX  
~~CONSOLIDATING ENACTING~~ TITLES 19 and 2020 (“TELECOMMUNICATIONS”)  
OF THE FAIRFAX MUNICIPAL CODE INTO A REVISED TITLE 19 WHICH  
ESTABLISHES UNIFORM AND COMPREHENSIVE ~~NEW~~ REGULATIONS FOR  
WIRELESS TELECOMMUNICATION FACILITIES**

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

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

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

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

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

(5) ~~The Federal Telecommunications Act of 1996 preempts and declares invalid state or local rules that “prohibit” the provision of interstate or intrastate telecommunications service or personal wireless services.~~

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

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

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

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

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

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

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

(12~~3~~) State and federal law have changed substantially since the Town last adopted regulations for wireless telecommunications facilities in the Town. Such changes include establishing “shot clocks” whereby the Town must approve or deny installations within a certain period of time. ~~State and f~~ederal laws and 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 ~~may automatically a~~ deemed granted remedy

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

(134) 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.

(145) 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.

(156) The Town finds that in light of more recent developments in federal and state law with respect to the regulation of small cell and other wireless telecommunications facilities, there is an urgent need for the Town to update its current ordinances based on current telecommunications trends, updates in laws, as well as aesthetic and location options for wireless facilities. ~~The Town Council also finds that the lack of specifically designed standards and regulations in the Municipal Code for wireless facilities located in the public right-of-way, the increasing requests for information about the Town's regulation of wireless telecommunications facilities, the inability to adopt a temporary moratorium, and the potential liabilities and negative consequences for noncompliance with state and federal regulations (including, without limitation, the ability for applicants to invoke deemed approval remedies) present current and immediate threat to the public health, safety and welfare. The Town Council further finds and declares that the immediate implementation of the Ordinance is necessary to preserve and protect public health, safety and welfare.~~ The Town finds that Northern California is now experiencing an unprecedented increase in the number and intensity of wildfires exacerbated by the effects of climate change, and that power lines and electrical equipment failures are a leading cause of California wildfires; that overburdened utility poles can present a hazard of collapsing and failing, that wireless facilities may present an electrical hazard and/or increase the risk of electrical fires if not properly regulated, installed and monitored.

(167) 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.

(178) The Town recognizes its responsibilities under the Federal Telecommunications Act of 1996 and state law, and believes that it is acting consistent with the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare. The Town does not intend that this Ordinance prohibit or have the effect of prohibiting telecommunications service; rather, but 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 immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted ~~as an urgency ordinance pursuant to Government Code Section 36937(b), and take effect immediately upon adoption. Therefore, this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared.~~

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

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

**Section 1.** The Fairfax Municipal Code is hereby amended as follows: A revised ~~New Section Chapter, Section Chapter 1920,~~ 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. To the extent this Section 20 conflicts with Section 19, Section 20 shall control and amend Section 19.~~

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

Moreover, even if the proposed Ordinances and Resolution comprise a project for CEQA analysis, the ordinance falls within the “common sense” CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.”

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

**Section 4. Effective Date**~~Notice.~~ 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.

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

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

**PASSED AND ADOPTED** at a special~~regular~~ meeting of the Town- Council of the Town of Fairfax on the 26~~25~~th day of September~~August~~ 2018, by the following vote:

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

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Peter Lacques, Mayor

**ATTEST:**

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Michele Gardner, Town Clerk



**Exhibit A**  
**URGENCY ORDINANCE**

**Title 1920: Telecommunications**

**REVISEDNew Chapter 1920.04. WIRELESS TELECOMMUNICATIONS FACILITIES**

**1 2019.04.010 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 ~~and more efficient~~ technology in the provision of  
14 wireless 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 **2019.04.020 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 ~~section~~chapter, supports or houses equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii)  
53 that has been reviewed and approved under the applicable zoning or siting process, or under  
54 another State or local regulatory review process, even if the structure was not built for the sole  
55 or primary purpose of providing such support. The term does not include any structure that,  
56 at the time the relevant application is filed with the State or local government under this  
57 ~~chapter~~section, does not support or house equipment described in 47 C.F.R. §  
58 1.40001(b)(1)(i)-(ii).

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

62 E. **“Collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2),  
63 as may be amended, which currently defines that term as the mounting or installation of  
64 transmission equipment on an eligible support structure for the purpose of transmitting or  
65 receiving radio frequency signals for communications purposes. ~~As an illustration and not a  
66 limitation, the FCC's definition effectively means "to add" and does not necessarily refer to  
67 more than one wireless telecommunication facility installed at a single site.~~<sup>[GT1][GT2]</sup>

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

74 G. **“Eligible Support Structure”** means the same as defined by the FCC in 47 C.F.R. §  
75 1.40001(b)(4), as may be amended, which currently defines that term as any tower or base  
76 station as defined in this section<sup>47</sup>; provided that it is existing at the time the relevant application  
77 is filed with the State or local government under this ~~section~~chapter.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

202 1. A facility that qualifies as an amateur station as defined by the FCC, 47 C.F.R. Part  
203 97, of the Commission’s Rules, or its successor regulation.

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

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

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

214 5. Telecommunications facilities owned and operated by any emergency medical care  
215 provider.

216 6. Mobile services providing public information coverage of news events of a  
217 temporary nature.

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

220 **2019.04.030 Applicability**

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

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

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

232  
233 ~~B. Title 20, including, but not limited to, this chapter 20.04, shall not apply to a wireless~~  
234 ~~telecommunications facility on property owned by the Town<sup>[3]</sup>.~~

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

239 **2019.04.040 Wireless Telecommunications Facility Permit Required**

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

243 Excluding Eligible Facilities Request applications, applications for wireless facilities shall  
244 require a use permit subject to the requirements of this chapter, to be acted upon by the  
245 Planning Commission pursuant to Chapter 17.032, and other permits as set forth in the table  
246 below, in addition to any other permit required pursuant to the Fairfax Municipal Code. Eligible  
247 Facilities Request applications shall be processed according to the requirements of Section  
248 2019.04.140.

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<i>Description of Wireless Facility</i>	<i>Private Property</i>		<i>Public Right-of Way<sup>3</sup></i>
	<i>RS, RD, RM, PDD, UR Residential Zoning Districts and CR Commercial Zoning district</i>	<i>All Other Zoning Districts</i>	<i>Non-Residential Zoning Districts except for CR</i>
Roof-mounted facility, building-mounted facility, or facility mounted on an existing pole	Not Permitted	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
Facility mounted on a replacement pole or new telecommunications tower	Not Permitted	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
New wireless telecommunications collocation facility	Not Permitted	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
Eligible facilities request <sup>1</sup> or application pursuant to California Government Code Section 65850.6 <sup>2</sup>	Permitted	Permitted	Permitted
<sup>1</sup> See requirements of section 2019.04.140. <sup>2</sup> See requirements of section 2019.04.150. <sup>3</sup> For any public right-of-way on the boundary between zoning districts, the zone applicable to the location of a wireless telecommunication facility shall be determined based upon the closest district adjacent to the facility's location. The centerline of the public right-of-way will be used as the boundary between districts.			

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

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**2019.04.050 Application for Permit**

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A. **Application content.** All applications for a permit required by this chapter must be made in writing on such form as the zoning administrator prescribes. For permit applications other than Eligible Facilities Requests (which are addressed in Section 2019.04.140), the form shall include the following information, in addition to all other information determined necessary by the zoning administrator ~~as well as all other information required by~~ or the Town



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

- 262 1. Full name and contact information for the facility owner, facility operator, agent (if  
263 any), and property owner, and related letter(s) of authorization.
- 264 2. The type of facility, including a full written description of the proposed facility, its  
265 purpose, ~~and~~ technical specifications, and an assessment of any fire hazard a  
266 proposed installation presents to surrounding vegetation and structures<sup>[GT4]</sup>;
- 267 3. A detailed site and engineering plan of the proposed facility containing the exact  
268 proposed location of the facility, created by a qualified licensed engineer and in  
269 accordance with requirements set by the zoning administrator. The site and  
270 engineering plan shall display the dimensions of each proposed facility, including  
271 its height from the ground level. The site and engineering plans shall show the  
272 proposed facility from each cardinal direction.
- 273 4. Photographs of facility equipment and an accurate visual impact analysis with photo  
274 simulations.
- 275 5. Proof of all applicable licenses or other approvals required by the FCC.
- 276 6. A technically sufficient written report certified by a qualified radio frequency  
277 emissions engineer, certifying that the facility is in compliance with such FCC  
278 standards.
- 279 7. If the application is for a facility that will be located within the public right-of-way,  
280 the applicant shall certify that it is a telephone corporation or state the basis for its  
281 claimed right to enter the right-of-way, and provide a copy of its certificate of public  
282 convenience and necessity (CPCN), if a CPCN has been issued by the California  
283 Public Utilities Commission.
- 284 8. A written description identifying the geographic service area for the subject  
285 installation, accompanied by a plan and maps showing anticipated future  
286 installations and modifications for the following two years.
- 287 9. A written report that analyzes acoustic levels for the proposed wireless  
288 telecommunications facility and all associated equipment, including, without  
289 limitation, all environmental control units, sump pumps, temporary backup power  
290 generators, and permanent backup power generators in order to demonstrate  
291 compliance with chapter 7.16 (Noise Control). The acoustic analysis must be  
292 prepared and certified by a qualified engineer and include an analysis of the  
293 manufacturer's specifications for all noise-emitting equipment and a depiction of the  
294 proposed equipment relative to all adjacent property lines. In lieu of a written report,  
295 the applicant may submit evidence from the equipment manufacturer that the  
296 ambient noise emitted from all the proposed equipment will not, both individually  
297 and cumulatively, exceed the applicable limits.

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

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

302 12. Any other studies or information determined necessary by the zoning administrator  
303 ~~may be required.~~

304 **B. Independent expert.**

305 ~~1.B.~~ The zoning administrator is authorized to retain on behalf of the Town an independent,  
306 qualified consultant to review any application for a permit for a wireless telecommunications  
307 facility. ~~The cost of this review shall be paid by the applicant through a deposit pursuant to~~  
308 ~~an adopted fee schedule resolution. The consultant may to~~ review the technical aspects of  
309 the application, including, but not limited to, the following matters:

310 The accuracy, adequacy, and completeness of submissions;

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

313 Whether any requested exception is ~~necessary~~ justified to close a significant gap in coverage  
314 ~~and is the least intrusive means of doing so;~~

315 An engineering and seismic assessment of the proposed installation to ensure that the  
316 proposed location is structurally adequate to support the proposed installation, and that the  
317 installation will meet the seismic standards set forth for “Risk Category IV” for “essential  
318 facilities” as set forth in the California Building Code (CBC), and that it is adequately  
319 engineered to withstand the maximum wind loads that could be reasonably anticipated for the  
320 location. For installations on utility poles, the assessment would be based on conformance  
321 to CPUC standards;

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

324 ~~A t~~ Technical demonstration of the unavailability of evaluation of alternative sites, facility  
325 designs or configurations, and coverage analysis; and

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

327 ~~2. The cost of this review shall be paid by the applicant through a deposit pursuant to~~  
328 ~~an adopted fee schedule resolution.~~<sup>[6]</sup>

329 **2019.04.060 Location and Configuration Preferences**

330 A. **Purpose.** The purpose of this section is to provide guidelines to applicants and the  
331 reviewing authority regarding the preferred locations and configurations for wireless

332 telecommunication facilities in the Town—, provided that nothing in this section shall be  
333 construed to permit a wireless telecommunication facility in any location or configuration that  
334 ~~it~~ is otherwise prohibited by this chapter.

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

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

- 341 1. Collocation with existing facilities outside the public rights-of-way;
- 342 2. Roof-mounted;
- 343 3. Building-mounted;
- 344 4. Mounted on an existing pole or utility pole;
- 345 5. Mounted on a new pole or utility pole that will replace an existing pole or utility pole;  
346 and
- 347 6. Mounted on a new telecommunication tower or pole.

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

- 350 1. In the CH zoning district;
- 351 2. In the CC zoning district;
- 352 3. In the CS zoning district;
- 353 4. In the CL zoning district;
- 354 5. In the PD zoning district; and
- 355 6. In the public right-of-way with the closest adjacent district being a commercial  
356 district.

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

364 **2019.04.070 Design and Development Standards for All Facilities**

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

370 B. ~~No speculative facilities. — Build-out Period. [GT8] Approvals will automatically expire one~~  
371 ~~(1) year from the issuance date, unless the permittee obtains all other permits and~~  
372 ~~approvals required to install, construct and operate the approved wireless facility, which~~  
373 ~~includes, without limitation, any permits or approvals required by the any federal, state, or~~  
374 ~~local public agencies with jurisdiction over the subject property, the wireless facility, or its~~  
375 ~~use. The zoning administrator may grant one (1) written extension to a date certain when~~  
376 ~~the permittee shows good cause to extend the limitations period in a written request for an~~  
377 ~~extension submitted at least 30 days prior to the automatic expiration date in this~~  
378 ~~subparagraph. Any further extensions may be granted by the Planning Commission, in its~~  
379 ~~sole discretion, pursuant to the same procedures to request an extension from the zoning~~  
380 ~~administrator. A wireless telecommunications facility, wireless telecommunications~~  
381 ~~collocation facility, or a telecommunications tower, which is built on speculation and for~~  
382 ~~which there is no wireless tenant is prohibited within the Town.~~

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

389 D. **Traffic safety; Roads<sup>[9]</sup>.** All facilities shall be designed and located in such a manner  
390 as to avoid adverse impacts on traffic safety. Whenever feasible, existing roads and parking  
391 areas should be used to access, build and service new telecommunications facilities. Any  
392 new access roads or parking areas constructed shall be shared with subsequent  
393 telecommunications facilities and/or other permitted uses to the extent feasible. New access  
394 roads constructed in open space areas shall have the minimum width and surfacing necessary  
395 to meet fire safety and access requirements, and shall be graded and drained consistent with  
396 Town Code Chapter 8.26, Urban Runoff Pollution Prevention. The size of new parking areas  
397 shall be limited to the minimum necessary to accommodate vehicles associated with periodic  
398 maintenance of the facility.

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

405 **F. Landscaping: Vegetation**<sup>[GT10]</sup>. Where appropriate, facilities shall be installed so as  
406 to maintain, protect, and enhance existing landscaping on the site, including trees, foliage,  
407 and shrubs, whether or not utilized for screening. Additional landscaping shall be planted,  
408 irrigated, and maintained where such vegetation is deemed necessary by the Town to provide  
409 screening or to block the line of sight between facilities and adjacent uses.

410 ~~—Applications for wireless communications facilities shall be accompanied by a~~  
411 ~~landscape plan that shows existing vegetation, indicates any vegetation proposed for~~  
412 ~~removal or trimming, and identifies proposed planting by type, size, and location. The~~  
413 ~~emphasis of the landscape plan should be to visually screen the proposed facility and~~  
414 ~~stabilize soils on sloping sites. Introduced vegetation shall be native, drought tolerant~~  
415 ~~species compatible with the predominant natural setting of the project area.~~

416 ~~—Existing trees and other screening vegetation in the vicinity of the proposed facility and~~  
417 ~~associated accessways shall be protected from damage both during and after~~  
418 ~~construction. Submission of a tree protection plan may be required to ensure~~  
419 ~~compliance with this requirement.~~

420 ~~—All vegetation disturbed during project construction shall be replanted with compatible~~  
421 ~~vegetation and soils disturbed by development shall be reseeded to control erosion.~~

422 ~~—No vegetation shall be removed subsequent to project completion, except to comply~~  
423 ~~with local and state fire safety regulations, to prevent the spread of disease as required~~  
424 ~~by the state's Food and Agriculture Department, or to prevent safety hazards to people~~  
425 ~~or property.~~

426 ~~F. The permittee shall enter into a landscape performance and maintenance agreement~~  
427 ~~with the Town of Fairfax to ensure the installation and establishment of required~~  
428 ~~landscaping. This agreement shall be secured by financial securities in an amount~~  
429 ~~equal to 150 percent of estimates to cover the cost of materials and labor for required~~  
430 ~~improvements. The duration of the landscape maintenance agreement shall be~~  
431 ~~coterminous with the permit.~~

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

435 **H. Lighting.** No wireless telecommunications facility may be illuminated, unless either  
436 specifically required by the Federal Aviation Administration or other government agency or in  
437 association with the illumination of an athletic field on Town or school property. Lightning  
438 arresters and beacon lights are not permitted, unless required by the Federal Aviation  
439 Administration or other government agency. Legally required lightning arresters and  
440 beacons shall be included when calculating the height of facilities such as telecommunications  
441 towers, lattice towers, and poles<sup>[11]</sup>. If lighting is permitted, the following requirements apply  
442 to such lighting:

- 443 1. Mechanically-operated, low wattage, hooded and downward directed exterior lighting  
444 shall be permitted for safety purposes only and shall be kept off, except when  
445 maintenance or safety personnel are present at night.  
446 2. Tower lighting required under FAA regulations should, to the greatest extent feasible,  
447 be shielded or directed to minimize light and glare impacts on nearby properties and  
448 residents.  
449 H.3. Nighttime lighting of warning signs required near publicly accessible facilities  
450 must consist of low-wattage fixtures, and must be directed downward and hooded.

451 I. **Noise.**

- 452 1. Each wireless telecommunications facility and wireless telecommunications  
453 collocation facility shall be operated in such a manner so as to minimize any  
454 possible disruption caused by noise.
- 455 2. Backup generators shall only be operated during periods of power outages, and  
456 shall not be tested on weekends, ~~or~~ holidays, or between the hours of 5:00 p.m.  
457 and 7:00 a.m.
- 458 3. At no time shall equipment noise from any facility exceed an exterior noise level of  
459 55 dBA at the facility's property line if the facility is located in a business or  
460 commercial zone that permits those uses; ~~provided~~, however, that for any such  
461 facility located within 500 feet of any property zoned residential or improved with a  
462 residential use, such equipment noise shall not exceed an exterior noise level of 40  
463 dBA at the property line of any such residential property. For any facility located  
464 within a residential zone, such equipment noise shall at no time be audible at the  
465 property line of any residentially ~~improved~~ or residential zoned property.
- 466 4. Any equipment, including, ~~but not limited to,~~ air conditioning units, that may emit  
467 noise that would be audible from either beyond three feet from the facility in the  
468 case of a facility located in the right-of-way, or ~~in the case of other facilities~~ the  
469 facility's property line in the case of other facilities, shall be enclosed or equipped  
470 with noise attenuation devices to the extent necessary to ensure compliance with  
471 applicable noise limitations under the Fairfax Municipal Code.

472 J. **Security.** Each wireless telecommunications facility shall be designed to be resistant  
473 to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti, ~~and~~  
474 other conditions that would result in hazardous situations, visual blight, or attractive  
475 nuisances. The reviewing authority may require the provision of warning signs, fencing, anti-  
476 climbing devices, or other techniques to prevent unauthorized access ~~and vandalism when,~~  
477 because of their location or accessibility, a facility has the potential to become an attractive  
478 nuisance<sup>[12]</sup>.

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



483 facilities.

484 **2019.04.080 Additional Design and Development Standards for Facilities Outside the**  
485 **Public Right-of-Way**

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

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

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

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

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

506 1.2. Facilities mounted to a telecommunications tower, including, but not limited to,  
507 the attached antennas, shall be designed to be the minimum functional height and  
508 width required to adequately support the proposed facility and meet FCC  
509 requirements. The applicant shall provide documentation satisfactory to the zoning  
510 administrator establishing compliance with this paragraph. In any event, facilities  
511 mounted to a telecommunications tower shall not exceed the applicable height limit  
512 for structures in the applicable zoning district.

513 2.3. Aside from the antenna itself, no additional equipment may be visible. All cables,  
514 including, but not limited to, electrical and utility cables, shall be laid out within the  
515 interior of the telecommunications tower and ~~shall be~~ camouflaged or hidden to the  
516 fullest extent feasible without jeopardizing the physical integrity of the tower.

517 3.4. Pole installations shall be situated so as to utilize existing natural or man-made  
518 features including topography, vegetation, buildings, or other structures to provide  
519 the greatest amount of visual screening.

520 4.5. All antenna components and accessory wireless equipment shall be treated with  
521 exterior coatings of a color and texture to match the predominant visual background  
522 or existing architectural elements so as to visually blend in with the surrounding  
523 development. Subdued colors and non-reflective materials that blend with  
524 surrounding materials and colors shall be used.

525 5.6. Poles shall be no greater in diameter or other cross-sectional dimensions than  
526 is necessary for the proper functioning of the facility.

527 6.7. If a faux tree is proposed for the pole installation, it shall be of a type of tree  
528 compatible with those existing in the immediate areas of the installation. If no trees  
529 exist within the immediate areas, the applicant shall create a landscape setting that  
530 integrates the faux tree with added species of a similar height and type. Additional  
531 camouflage of the faux tree may be required depending on the type and design of  
532 faux tree proposed.

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

537 1. Accessory equipment for roof-mounted facilities shall be installed inside the building  
538 to which it is mounted or underground, if feasible. If not feasible, such accessory  
539 equipment may be located on the roof of the building that the facility is mounted on,  
540 provided that both the equipment and screening materials are painted the color of  
541 the building, roof, or surroundings. All screening materials for roof-mounted facilities  
542 shall be of a quality and design that is architecturally integrated with the design of  
543 the building or structure.

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

553 **2019.04.090 Additional Design and Development Standards for Facilities in the Public**  
554 **Right-of-Way**

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

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

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

562 C. **Antennas.**

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

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

577 D. **Poles.**

578 1. Only pole-mounted antennas shall be permitted in the public right-of-way. All other  
579 types of telecommunications towers are prohibited, and no new poles are permitted  
580 that are not replacing an existing pole unless an exception is granted pursuant to  
581 Section 2019.04.130.

582 2. Pole height and width limitations:

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

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

593 ~~Pole-mounted equipment shall not exceed six cubic feet in dimension.~~

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

595 3.4. If an applicant proposes to replace a pole in order to accommodate the facility,  
596 the pole shall match the appearance of the original pole to the extent feasible,

597 unless another design better accomplishes the objectives of this [chaptersection](#).  
598 Such replacement pole shall not exceed the height of the pole it is replacing by  
599 more than seven (7) feet, and no facility shall exceed thirty-five (35) feet in height  
600 as measured from [where the base of the pole meets](#) the ground.

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

608 6. ~~All<sup>[GT13]</sup> new wires needed to service the wireless telecommunications facility must~~  
609 ~~be installed within the width of the existing utility pole so as to not exceed the~~  
610 ~~diameter and height of the existing utility pole. For streetlights, any replacement~~  
611 ~~pole must allow for an integrated design with wires inside the pole.~~

612 4.

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

615 F. **Location.**

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

619 2. A facility shall not be located within any portion of the public right-of-way [that would](#)  
620 [interfering](#) with access to fire hydrants, fire stations, fire escapes, water valves,  
621 underground vaults, valve housing structures, or any other vital public health and  
622 safety facility.

623 ~~3. Facilities mounted to a telecommunications tower, above-ground accessory~~  
624 ~~equipment, or walls, fences, landscaping or other screening methods shall be~~  
625 ~~setback a minimum of 18 inches from the front of a curb.<sup>[GT14]</sup>~~

626 4.3. Each pole mounted wireless telecommunications facility must be separated by  
627 at least [one thousand five hundred \(1,500\)](#) feet.

628 5.4. All cables, including, but not limited to, electrical and utility cables, between the  
629 pole and any accessory equipment shall be placed underground, if feasible.

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

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

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

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

647 **19.04.100 Conditions of Approval for All Facilities**

648 A. In addition to compliance with the requirements of this chapter, upon approval all  
649 facilities shall be subject to each of the following conditions of approval, as well as any  
650 modification of these conditions or additional conditions of approval deemed necessary by the  
651 reviewing authority [throughout the duration of the permit](#):

652 1. Before the permittee submits any application for a permit or other permits required  
653 by the Fairfax Municipal Code, the permittee must incorporate the wireless  
654 telecommunication facility permit granted under this chapter, all conditions  
655 associated with the wireless telecommunications facility permit and engineering  
656 and electrical plans, schematics and specifications and the approved plans and any  
657 photo simulations ~~(the “Approved Plans”)~~ into the project plans [\(the “Approved  
658 Plans”\)](#). The permittee must construct, install and operate the wireless  
659 telecommunications facility in strict compliance with the Approved Plans. The  
660 permittee shall submit an as built drawing within [ninety \(90\)](#) days after installation  
661 of the facility.

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

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

666 b) [replace larger, more visually-intrusive facilities with smaller, less visually-](#)  
667 [intrusive facilities, after receiving all necessary permits and approvals](#)  
668 [required pursuant to the Fairfax Municipal Code.](#)

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

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

674 ~~b)a)~~ a) Identity, including the name, address and 24-hour local or toll free contact  
675 phone number of the permittee, the owner, the operator, and the agent or  
676 person responsible for the maintenance of the facility;

677 b) The legal status of the owner of the wireless telecommunications facility,  
678 including official identification numbers and FCC certification; ~~and-~~

679 c) The nName, address, and telephone number of the property owner if  
680 different than the permittee.

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

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

690 6. At all times, the permittee shall ensure that the facility complies with the most  
691 current regulatory and operational standards including, but not limited to, radio  
692 frequency emissions standards adopted by the FCC, ~~and~~ antenna height standards  
693 adopted by the Federal Aviation Administration, ~~and as well as~~ all electrical code  
694 requirements for the equipment, wiring the equipment and providing power to the  
695 equipment, ~~to ensure the facility does not pose an undue fire risk or electrical risk.~~  
696 ~~The Town shall retain a consultant, a~~At the sole expense of the permittee and using  
697 a consultant approved by the Town, ~~to perform~~ testing shall be performed  
698 demonstrating compliance with current regulatory and operational standards, and  
699 to ensure the equipment is operating within proper specifications and does not pose  
700 an undue fire risk or electrical risk. Tests shall occur upon commencement of  
701 operations and annually thereafter, and results provided in a written report to the  
702 Town.

703 ~~7. If the zoning administrator determines there is good cause to believe that the~~  
704 ~~facility may emit radio frequency emissions that are likely to exceed<sup>[15]</sup> FCC~~  
705 ~~standards, the zoning administrator may require the permittee to submit a technically-~~  
706 ~~sufficient written report certified by a qualified radio frequency emissions engineer,~~  
707 ~~certifying that the facility is in compliance with such FCC standards.~~

708 ~~8.7.~~ 8.7. If, upon inspection, ~~the~~ Town Building Official determines there is good cause  
709 to believe that the facility (including, without limitation, its Accessory Equipment,  
710 Antenna and/or Base Station) ~~may~~ present a fire risk or electrical hazard, the  
711 Building Official may order the facility to be shut down and powered off until such



712 time as the facility is repaired and restored to its correct operating specifications, at  
713 the sole expense of the permittee.

714 9-8. Permittee shall pay for and provide a performance bond, which shall be in effect  
715 until the facilities are fully and completely removed and the site reasonably returned  
716 to its original condition, to cover permittee's obligations under these conditions of  
717 approval and the Fairfax Municipal Code. The bond coverage shall include, but not  
718 be limited to, removal of the facility, maintenance obligations and landscaping  
719 obligations. The amount of the performance bond shall be set by the zoning  
720 administrator in an amount rationally related to the obligations covered by the bond  
721 and shall be specified in the conditions of approval.

722 10-9. Permittee<sup>[GT16]</sup> shall defend, indemnify, protect, and hold harmless the Town, its  
723 elected and appointed council members, boards, commissions, officers, officials,  
724 agents, consultants, employees, and volunteers from and against any and all  
725 claims, actions, or proceeding against the Town and its elected and appointed  
726 council members, boards, commissions, officers, officials, agents, consultants,  
727 employees, and volunteers to attack, set aside, void or annul, an approval of the  
728 Town, Planning Commission or Town Council concerning ~~the~~ permit, ~~and~~ the  
729 project, and any and all claims, actions, or proceedings arising from, or related to,  
730 the installation, operation, or inspection of any facility. Such indemnification shall  
731 include damages, judgments, settlements, penalties, fines, defensive costs or  
732 expenses, including, but not limited to, interest, attorneys' fees, and expert witness  
733 fees, or liability of any kind related to or arising from such claim, action, or  
734 proceeding. The Town shall promptly notify the permittee of any claim, action, or  
735 proceeding that this indemnification obligation may cover. Nothing contained herein  
736 shall prohibit Town from participating in a defense of any claim, action or  
737 proceeding. The Town shall have the option of coordinating the defense, including,  
738 but not limited to, choosing counsel for the defense at permittee's expense.

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

741 11. The proposed facility complies with all applicable provisions of this chapter,  
742 including the technical review by the Town's Independent Expert set forth in Section  
743 19.04.050(B).

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

746 11-13. Noise generated by equipment will not be excessive, annoying nor be  
747 detrimental to the public health, safety, and welfare and will not exceed the  
748 standards set forth in this chapter.

749 14. A condition setting forth the permit expiration date in accordance with section  
750 2019.04.20 shall be included in the conditions of approval.

751 15. Record<sup>[GT17]</sup> Retention. The permittee must maintain complete and accurate copies  
752 of all permits and other regulatory approvals issued in connection with the wireless  
753 facility, including, without limitation, any approval, the approved plans and photo  
754 simulations incorporated into the approval, all conditions associated with the  
755 approval, and any other ministerial permits or approvals issued in connection with  
756 the approval. In the event that the permittee does not maintain such records as  
757 required in this condition, any ambiguities or uncertainties that would be resolved  
758 through an inspection of the missing records will be construed against the  
759 permittee.

760 12-16. Compliance<sup>[GT18]</sup> Obligations. An applicant or permittee will not be relieved of its  
761 obligation to comply with every applicable provision in the Fairfax Municipal Code,  
762 any permit, any permit condition, or any applicable law or regulation by reason of  
763 any failure by the Town to timely notice, prompt or enforce compliance by the  
764 applicant or permittee.

765 **2019.04.110 Additional Conditions of Approval for Facilities in the Public Right-of-Way**

766 A. In addition to compliance with the requirements of this chapter, upon approval all  
767 facilities in the public right-of-way shall be subject to each of the conditions of approval set  
768 forth in section 2019.04.100, each of the following conditions of approval, and any modification  
769 of these conditions or additional conditions of approval deemed necessary by the reviewing  
770 authority throughout the duration of the permit:

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

782 2. The permittee shall not move, alter, temporarily relocate, change, or interfere with  
783 any existing structure, improvement, or property without the prior consent of the  
784 owner of that structure, improvement, or property. No structure, improvement or  
785 property owned by the Town shall be moved to accommodate a wireless  
786 telecommunications facility, unless the Town determines that such movement will  
787 not adversely affect the Town or any surrounding businesses or residents, and the  
788 permittee pays all costs and expenses related to the relocation of the Town's  
789 structure, improvement, or property. Prior to commencement of any work pursuant  
790 to an encroachment permit issued for any facility within the public right-of-way, the  
791 permittee shall provide the Town with documentation establishing to the Town's  
792 satisfaction that the permittee has the legal right to use or interfere with any other

793 structure, improvement, or property within the public right-of-way to be affected by  
794 applicant's facilities.

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

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

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

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

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

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

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

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

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

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

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

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

854 &.

855 **19.04.120 Procedures for a Duly Filed Applications**

856 1. Voluntary Pre-Submittal Conference. Before application submittal, applicants are  
857 encouraged (but not required) to schedule and attend a pre-application meeting  
858 with the zoning administrator. A pre-submittal conference is intended to streamline  
859 the review process through informal discussion that includes, without limitation, the  
860 appropriate project classification, including whether the project qualifies for Section  
861 6409(a); potential concealment issues (if applicable); coordination with other Town  
862 departments responsible for application review; and application completeness  
863 issues. To mitigate unnecessary delays due to application incompleteness,  
864 applicants are encouraged (but not required) to bring any draft applications or other  
865 materials so that Town staff may provide informal feedback about whether such  
866 applications or other materials may be incomplete or unacceptable.

867 2. Submittal Appointment. All applications must be filed with the Town at a pre-  
868 scheduled appointment with the zoning administrator or his/her designee.  
869 Applicants may generally submit one (1) application per appointment, but may  
870 schedule successive appointments for multiple applications whenever feasible. Any  
871 application received without an appointment, whether delivered in-person or

872 through any other means, will not be considered duly filed, unless the applicant  
873 received a written exemption from the zoning administrator at a pre-submittal  
874 conference.

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

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

883 **19.04.120 — Findings — Conditional Use Permit**

884 ~~A. — Where a wireless telecommunication facility, excluding Eligible Facilities Requests~~  
885 ~~(20.04.140) and collocation facilities (Section 20.04.150), requires a conditional use permit~~  
886 ~~under this chapter, the reviewing authority shall not approve any application, unless, in~~  
887 ~~addition to the findings generally applicable to all conditional use permits, all of the following~~  
888 ~~additional findings are made:~~

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

891 ~~2. — The proposed facility has been designed and located to achieve compatibility with the~~  
892 ~~community to the maximum extent reasonably feasible.~~

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

897 ~~4. — Noise generated by equipment will not be excessive, annoying nor be detrimental to~~  
898 ~~the public health, safety, and welfare and will not exceed the standards set forth in this~~  
899 ~~chapter.~~

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

903 ~~1. — The applicant has provided substantial written evidence supporting the applicant's~~  
904 ~~claim that it has the right to enter the public right-of-way pursuant to state or federal~~  
905 ~~law, or the applicant has entered into by virtue of a franchise or other agreement~~  
906 ~~with the Town permitting them to use the public right-of-way.~~



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

### 2019.04.130 Exceptions

A. Exceptions pertaining to any provision of this chapter, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the reviewing authority if the reviewing authority makes the finding that a refusal to grant the exception would violate federal law, state law, or both.

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

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

B. An applicant may only request an exception at the time of applying for a wireless telecommunications facility permit. The request must include both the specific provision(s) of this chapter from which the exception is sought and the basis of the request. Any request for an exception after the Town has deemed an application complete shall be treated as a new<sup>[22]</sup> application.

~~C. Notwithstanding any other provision of this chapter, a conditional use permit shall be required for a facility when an exception is requested.~~<sup>[23]</sup>

~~D.C. The applicant shall have the burden of proving that the exception should be granted denial of the facility as proposed would violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both, using the evidentiary standards required by that law at issue. The Town shall have the right to hire an independent consultant, at the applicant's expense, to evaluate the issues raised<sup>[24]</sup> by the exception request and shall have the right to submit rebuttal evidence to refute the applicant's claim.~~

### 2019.04.140 Eligible Facilities Requests

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

B. **Approval Required.** Any Applicants for Eligible Facilities Requests must submitted ~~with~~ a written request for a 6409(a) approval consistent with this section, shall~~which will~~ be subject reviewed by the zoning administrator's who will determine whether the request should be approved~~ed~~, conditionally approved~~ed~~, or denied~~ed~~ without prejudice pursuant to the standards and procedures contained in this ~~chapter~~section.

C. **Other Regulatory Approvals.** Any ~~section 6409(a)~~Eligible Facilities Request approved~~ed~~granted under this chapter shall remain be subject to any and all lawful conditions or requirements associated with such other permits or regulatory approvals from the Town and state or federal agencies.



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

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

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

- 981 ~~1. Voluntary Pre-Submittal Conference. Before application submittal, applicants are~~  
982 ~~encouraged (but not required) to schedule and attend a pre-application meeting~~  
983 ~~with the zoning administrator for all proposed modifications submitted for approval~~

984 pursuant to Section 6409(a). A pre-submittal conference is intended to streamline  
985 the review process through informal discussion that includes, without limitation, the  
986 appropriate project classification, including whether the project qualifies for Section  
987 6409(a); potential concealment issues (if applicable); coordination with other Town  
988 departments responsible for application review; and application completeness  
989 issues. To mitigate unnecessary delays due to application incompleteness,  
990 applicants are encouraged (but not required) to bring any draft applications or other  
991 materials so that Town staff may provide informal feedback about whether such  
992 applications or other materials may be incomplete or unacceptable.

993 ~~2. *Submittal Appointment.* All Eligible Facilities Request Applications must be filed~~  
994 ~~with the Town at a pre-scheduled appointment with the zoning administrator or~~  
995 ~~his/her designee. Applicants may generally submit one (1) application per~~  
996 ~~appointment, but may schedule successive appointments for multiple applications~~  
997 ~~whenever feasible. Any application received without an appointment, whether~~  
998 ~~delivered in-person or through any other means, will not be considered duly filed,~~  
999 ~~unless the applicant received a written exemption from the zoning administrator at~~  
1000 ~~a pre-submittal conference.~~

1001 ~~3. *Appointment Scheduling Procedures.* For any event in the submittal process that~~  
1002 ~~requires an appointment, applicants must submit a written request to the zoning~~  
1003 ~~administrator.~~

1004 ~~4. *Applications Deemed Denied.* To promote efficient review and timely decisions, the~~  
1005 ~~Town may deem an application denied without prejudice to the applicant to re-file~~  
1006 ~~as a new application when the applicant fails to tender a substantive response to~~  
1007 ~~the Town within ninety (90) calendar days after the Town deems the application~~  
1008 ~~incomplete in a written notice to the applicant.~~

1009 ~~5. *Departmental Forms, Rules and Other Regulations.* The Town council authorizes<sup>[25]</sup>~~  
1010 ~~the zoning administrator to develop and publish permit application forms, checklists,~~  
1011 ~~informational handouts and other related materials that the zoning administrator~~  
1012 ~~finds necessary, appropriate or useful for processing requests for section 6409(a)~~  
1013 ~~approvals. Without further authorization from the Town council, the zoning~~  
1014 ~~administrator may from time-to-time update and alter any such permit application~~  
1015 ~~forms, checklists, informational handouts and other related materials as the zoning~~  
1016 ~~administrator deems necessary, appropriate or useful to respond to regulatory,~~  
1017 ~~technological or other changes related to this chapter. The Town council authorizes~~  
1018 ~~the zoning administrator to establish other reasonable rules and regulations, which~~  
1019 ~~may include without limitation regular hours for appointments with applicants, as~~  
1020 ~~the zoning administrator deems necessary or appropriate to organize, document~~  
1021 ~~and manage the application intake process.~~

1022 **F.E. Administrative Review; Decision Notices.** The zoning administrator shall  
1023 administratively review an application for an Eligible Facilities Request ~~Application~~ and act  
1024 on such an application without prior notice or a public hearing. Within five (5) working days  
1025 after the zoning administrator approves, conditionally approves, or denies an Eligible

1026 Facilities Request aApplication, the zoning administrator shall send a written notice to the  
1027 applicant. In the event that the zoning administrator determines that an application  
1028 submitted for approval pursuant to Section 6409(a) does not qualify for approval, the  
1029 zoning administrator will send written notice to the applicant that includes the reasons to  
1030 support the review authority's decision and states that the application will be denied without  
1031 prejudice.

1032 **G.F. Required Findings for 6409(a) Approval.** The zoning administrator may approve or  
1033 conditionally approve an application submitted for Section 6409(a) approval when the zoning  
1034 administrator finds that the proposed project:

- 1035 1. Qualifies as an Eligible Facilities Request; and  
1036 2. Complies with (or is conditioned to comply with) all generally applicable health and  
1037 safety rules.

1038 **H.G. Criteria for Denial Without Prejudice.** ~~Notwithstanding any other provisions in this~~  
1039 ~~chapter, and consistent with all applicable federal laws and regulations, t~~The zoning  
1040 administrator may deny without prejudice an application submitted for approval pursuant to  
1041 Section 6409(a) when it finds that the proposed project does not meet the criteria under  
1042 subsection (G) above.

1043 **H.H. Conditional 6409(a) Approvals.** Subject to any applicable limitations in federal or  
1044 state law, nothing in this chapter is intended to limit the Town-'s authority to conditionally  
1045 approve an application for a section 6409(a) approval to protect and promote the public health,  
1046 safety, and welfare<sup>[GT26]</sup>.

1047 ~~**J. Appeals.** Notwithstanding any provision of the Fairfax Municipal Code to the contrary,~~  
1048 ~~including but not limited to Section 17.036, an applicant may appeal a decision by the zoning~~  
1049 ~~administrator to deny without prejudice a Section 6409(a) application. The appeal must be~~  
1050 ~~filed within two (2) days afterfrom the zoning administrator's decision. The appeal must state~~  
1051 ~~in plain terms the grounds for reversal and the facts that support those grounds. The Town~~  
1052 ~~Council shall serve as the appellate authority for all such an appeals. The Town shall provide~~  
1053 ~~notice for an administrative hearing by the Town Council. The Town Council shall limit its~~  
1054 ~~review to whether the project should be approved or denied in accordance with the provisions~~  
1055 ~~in paragraphs (G) and (H) of this section. The decision of the Town Council shall be final and~~  
1056 ~~not subject to any further administrative appeals.~~

1057 **K.I. Standard Conditions of Approval.** In addition to all other conditions adopted by the  
1058 zoning administrator, all Section 6409(a) approvals, whether approved by the zoning  
1059 administrator or deemed approved by the operation of law, shall be automatically subject to  
1060 the following conditions in this sSection; provided, however, that the zoning administrator shall  
1061 have discretion to modify or amend these conditions on a case-by-case basis as may be  
1062 necessary or appropriate under the circumstances:

- 1063 1. *Approved Plans.* Before the permittee submits any application for a building permit  
1064 or other permits required by the Fairfax Municipal Code, the permittee must

1065 incorporate the wireless telecommunications facility permit granted under this  
1066 section, all conditions associated with the wireless telecommunications facility  
1067 permit and the approved plans and any photo simulations (~~the “Approved Plans”~~)  
1068 into the project plans (the “Approved Plans”). The permittee must construct, install  
1069 and operate the wireless telecommunications facility in strict compliance with the  
1070 Approved Plans. The permittee shall submit an as built drawing within ninety (90)  
1071 days after installation of the facility.

1072 2. *Permit Term.* The Town's grant or grant by operation of law of a Section 6409(a)  
1073 approval will not extend the permit term, if any, for any conditional use permit, or  
1074 other underlying prior regulatory authorization. Accordingly, the term for a Ssection  
1075 6409(a) approval shall be coterminous with the underlying permit or other prior  
1076 regulatory authorization for the subject tower or base station.

1077 3. *Accelerated Permit Terms Due to Invalidation.* In the event that any court of  
1078 competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule  
1079 that interprets Section 6409(a) such that federal law would not mandate approval  
1080 for any Section 6409(a) approval, such 6409(a) approvals shall automatically expire  
1081 one year from the effective date of the judicial order, unless the decision would not  
1082 authorize accelerated termination of previously ~~approved~~ Ssection 6409(a)  
1083 approvals or the zoning administrator grants an extension upon written request from  
1084 the permittee that shows good cause for the extension, which includes, without  
1085 limitation, extreme financial hardship. Notwithstanding anything in the previous  
1086 sentence to the contrary, the zoning administrator may not grant a permanent  
1087 exemption or indefinite extension. A permittee shall not be required to remove its  
1088 improvements approved under the invalidated Ssection 6409(a) approval when it  
1089 has submitted an application for a conditional use permit for those improvements  
1090 before the one-year period ends.

1091 4. *No Waiver of Standing.* The Town's grant or grant by operation of law of a Section  
1092 6409(a) approval does not waive, and shall not be construed to waive, any standing  
1093 by or right of the Town to challenge Section 6409(a), any FCC rules that interpret  
1094 Section 6409(a), or any Ssection 6409(a) approval.

1095 5. *Build-out Period.* The Ssection 6409(a) approval will automatically expire one (1)  
1096 year from the issuance date, unless the permittee obtains all other permits and  
1097 approvals required to install, construct and operate the approved wireless facility,  
1098 which includes, without limitation, any permits or approvals required by the any  
1099 federal, state, or local public agencies with jurisdiction over the subject property,  
1100 the wireless facility, or its use. The zoning administrator may grant one (1) written  
1101 extension to a date certain when the permittee shows good cause to extend the  
1102 limitations period in a written request for an extension submitted at least 30 days  
1103 prior to the automatic expiration date in this conditionsubparagraph. Any further  
1104 extensions may be granted by the Planning Commission, in its sole discretion,  
1105 pursuant to the same procedures to request an extension from the zoning  
1106 administrator.

- 1107 6. *Maintenance Obligations; Vandalism.* The permittee shall keep the site, which  
1108 includes, without limitation, any and all improvements, equipment, structures,  
1109 access routes, fences and landscape features, in a neat, clean, and safe condition  
1110 in accordance with the Approved Plans and all conditions in ~~the~~ Section 6409(a)  
1111 approval. The permittee shall keep the site area free from all litter and debris at all  
1112 times. The permittee, at ~~its sole~~ cost ~~to the Town~~, shall remove and remediate  
1113 any graffiti or other vandalism at the site within two (2) days ~~48 hours~~ after the  
1114 permittee receives notice or otherwise becomes aware that such graffiti or other  
1115 vandalism occurred.
- 1116 7. *Compliance with Laws.* The permittee shall maintain compliance at all times with all  
1117 federal, state, and local ~~laws, statutes, regulations, orders or other rules that carry~~  
1118 ~~the force of law ("Laws")~~ applicable to the permittee, the subject property, the  
1119 wireless facility, or any use or activities in connection with the use authorized in this  
1120 section 6409(a) approval. The permittee expressly acknowledges and agrees that  
1121 this obligation is intended to be broadly construed and that no other specific  
1122 requirements in these conditions are intended to reduce, relieve, or otherwise  
1123 lessen the permittee's obligations to maintain compliance with all applicable ~~L~~aws.
- 1124 8. *Adverse Impacts on Other Properties.* The permittee shall use all reasonable efforts  
1125 to avoid any and all undue or unnecessary adverse impacts on nearby properties  
1126 that may arise from the permittee's construction, installation, operation,  
1127 modification, maintenance, repair, removal, or other activities at the site. The  
1128 permittee shall not perform or cause others to perform any construction, installation,  
1129 operation, modification, maintenance, repair, removal, or other work that involves  
1130 heavy equipment or machines on any day and at any time prohibited under the  
1131 Fairfax Municipal Code. The restricted work hours in this condition will not prohibit  
1132 any work required to prevent an actual, immediate harm to property or persons, or  
1133 any work during an emergency declared by the Town. The zoning administrator  
1134 may issue a stop work order for any work that violates this condition.
- 1135 9. *Noise Complaints.* The permittee shall conduct all activities on the site in  
1136 compliance with the noise standards in the Fairfax Municipal Code. In the event  
1137 that any person files a noise complaint and the Town verifies that such complaint is  
1138 valid, the permittee must remedy the violation within ten (10) days after notice from  
1139 the Town, which may include a demonstration that the permittee has amended its  
1140 operational guidelines in situations where the violation arises from the permittee's  
1141 personnel rather than the permittee's equipment.
- 1142 10. *Inspections; Emergencies.* The permittee expressly acknowledges and agrees that  
1143 the Town or its designee may enter onto the site and inspect the improvements and  
1144 equipment upon reasonable prior notice to the permittee; provided, however, that  
1145 the Town or its designee may, but ~~is will~~ not be obligated to, enter onto the site area  
1146 without prior notice to support, repair, disable, or remove any improvements or  
1147 equipment in emergencies or when such improvements or equipment threatens  
1148 actual, imminent harm to property or persons. The permittee will be permitted to



1149 supervise the Town or its designee while such inspection or emergency access  
1150 occurs.

1151 11. *Contact Information.* The permittee shall furnish the Town with accurate and up-to-  
1152 date contact information for a person responsible for the wireless facility, which  
1153 includes, without limitation, such person's full name, title, direct telephone number,  
1154 facsimile number, mailing address, and email address. The permittee shall keep  
1155 such contact information up-to-date at all times.

~~1156 12. *Indemnification.* The permittee and, if applicable, the property owner upon which  
1157 the wireless facility is installed shall defend, indemnify, and hold harmless the Town  
1158 , its agents, officers, officials, employees, and volunteers from any and all (1)  
1159 damages, liabilities, injuries, losses, costs, and expenses and from any and all  
1160 claims, demands, law suits, writs, and other actions or proceedings ("Claims")  
1161 brought against the Town or its agents, officers, officials, employees, or volunteers  
1162 to challenge, attack, seek to modify, set aside, void, or annul the Town's approval  
1163 of this a section 6409(a) approval, and (2) other Claims of any kind or form, whether  
1164 including, without limitation, for personal injury, death, or property damage, that  
1165 arise from or in connection with the permittee's or its agents', directors', officers',  
1166 employees', contractors', subcontractors', licensees', or customers' acts or  
1167 omissions in connection with this section 6409(a) approval or the underlying  
1168 wireless facility. In the event the Town becomes aware any Claims, the Town will  
1169 use best efforts to promptly notify the permittee and the private property owner and  
1170 shall reasonably cooperate in the defense. The permittee expressly acknowledges  
1171 and agrees that the Town shall have the right to approve, which approval shall not  
1172 be unreasonably withheld, the legal counsel providing the Town's defense, and the  
1173 property owner or permittee (as applicable) shall promptly reimburse Town for any  
1174 costs and expenses directly and necessarily incurred by the Town in the course of  
1175 the defense. The permittee expressly acknowledges and agrees that the  
1176 permittee's indemnification obligations under this condition are a material  
1177 consideration that motivates the Town to approve this section 6409(a) approval,  
1178 and that such indemnification obligations will survive the expiration or revocation of  
1179 this section 6409(a) approval.~~

1180 ~~13.12.~~ *Performance Bond.* Before the Town issues any construction permit in  
1181 connection with the wireless facility, if, in the Town's sole discretion, the existing  
1182 performance bond for the facility is inadequate or the facility is not associated with  
1183 any existing performance bond, the permittee shall post a performance bond from  
1184 a surety and in a form acceptable to the Town manager in an amount equal to or  
1185 greater than a written estimate from a qualified contractor with experience in  
1186 wireless facilities removal. The written estimate must include the cost to remove all  
1187 equipment and other improvements, which includes, without limitation, all antennas,  
1188 radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware,  
1189 cables, wires, conduits, structures, shelters, towers, poles, footings and  
1190 foundations, whether above ground or below ground, constructed or installed in  
1191 connection with the wireless facility. In establishing or adjusting the bond amount  
1192 required under this condition, and in accordance with California Government Code



1193 § 65964(a), the Town manager shall take into consideration information provided  
1194 by the permittee regarding the cost to remove the wireless facility.

1195 ~~14. **Record Retention.** The permittee must maintain complete and accurate copies of~~  
1196 ~~all permits and other regulatory approvals issued in connection with the wireless~~  
1197 ~~facility, which including, es without limitation, any this approval, the approved plans~~  
1198 ~~and photo simulations incorporated into their approval, all conditions associated~~  
1199 ~~with their approval, and any other ministerial permits or approvals issued in~~  
1200 ~~connection with their approval. In the event that the permittee does not maintain~~  
1201 ~~such records as required in this condition, any ambiguities or uncertainties that~~  
1202 ~~would be resolved through an inspection of the missing records will be construed~~  
1203 ~~against the permittee.~~

1204 ~~15. **Compliance Obligations.** An applicant or permittee will not be relieved of its~~  
1205 ~~obligation to comply with every applicable provision in the Fairfax Municipal Code,~~  
1206 ~~any permit, any permit condition, or any applicable law or regulation by reason of~~  
1207 ~~any failure by the Town to timely notice, prompt or enforce compliance by the~~  
1208 ~~applicant or permittee.~~

1209 **20<sup>[GT27]</sup>19.04.150 Wireless Telecommunications Collocation Facilities Covered under**  
1210 **California Government Code Section 65850.6**

1211 A. **Purpose.** The purpose of this section is to comply with an application for a Wireless  
1212 Telecommunications Collocation Facility under California Government Code Section 65850.6,  
1213 for which a 6409(a) approval is not being requested. This section provides the requirements,  
1214 standards, and regulations for a wireless telecommunications collocation facility for which  
1215 subsequent collocation is a permitted use pursuant to California law. Only those facilities that  
1216 fully comply with the eligibility requirements set forth in California Government Code Section  
1217 65850.6, or its successor provision, and which strictly adhere to the requirements and  
1218 regulations set forth in this section, shall qualify as a wireless telecommunications collocation  
1219 facility.

1220 B. **Definitions.** For the purposes of this section, the following terms are defined as  
1221 follows:

1222 1. **“Collocation Facility”** means the placement or installation of wireless facilities,  
1223 including antennas, and related equipment, on, or immediately adjacent to, a  
1224 wireless telecommunications collocation facility.

1225 2. **“Wireless Telecommunications Facility”** means equipment and network  
1226 components such as towers, utility poles, transmitters, base stations, and  
1227 emergency power systems that are integral to providing wireless  
1228 telecommunications services.

1229 3. **“Wireless Telecommunications Collocation Facility”** means a wireless  
1230 telecommunications facility that includes collocation facilities.

1231 C. **Procedures.** Applications for wireless telecommunications collocation facilities shall

1232 comply with this Section and other applicable provisions of this Chapter. An application for a  
1233 wireless telecommunications collocation facility under California Government Code  
1234 Section 65850.6 shall be processed in the same manner as an application for Section 6409(a)  
1235 approval is processed, except that where the process requires justification for the Section  
1236 6409(a) approval, the applicant shall instead provide the justification for a wireless  
1237 telecommunications collocation facility under California Government Code Section  
1238 65850.6.

1239 **D. Requirements.** All requirements, regulations, and standards set forth in this chapter  
1240 for a wireless telecommunications facility shall apply to a wireless telecommunications  
1241 collocation facility; provided, however, the following shall also apply to a wireless  
1242 telecommunications collocation facility:

1243 1. The applicant for a wireless telecommunications collocation facility permit shall  
1244 describe or depict:

1245 a) The wireless telecommunications collocation facility as it will be initially  
1246 built; and

1247 b) All collocations at full build-out, including, but not limited to, all antennas,  
1248 antenna support structures, and accessory equipment.

1249 2. Any collocation shall use screening methods substantially similar to those used on  
1250 the existing wireless telecommunications facilities, unless other optional screening  
1251 methods are specified in the conditions of approval.

1252 3. A wireless telecommunications collocation facility permit shall not be approved,  
1253 unless an environmental impact report, negative declaration, or mitigated negative  
1254 declaration was prepared and approved for the wireless telecommunications  
1255 collocation facility.

1256 **E. Permitted Use.** Notwithstanding any other provision of this chapter, a subsequent  
1257 collocation facility on a wireless telecommunications collocation facility shall be a permitted  
1258 use only if all of the following requirements are satisfied:

1259 1. The wireless telecommunications collocation facility:

1260 a) Was approved after January 1, 2007, by discretionary permit;

1261 b) Was approved subject to an environmental impact report, negative  
1262 declaration, or mitigated negative declaration; and

1263 c) Otherwise complies with the requirements of California Government Code  
1264 Section 65850.6(b), or its successor provision, for addition of a collocation  
1265 facility to a wireless telecommunications collocation facility, including, but not  
1266 limited to, compliance with all performance and maintenance requirements,  
1267 regulations, and standards in this chapter and the conditions of approval in  
1268 the wireless telecommunications collocation facility permit; ~~and~~

1269 2. The collocations were specifically considered when the relevant environmental  
1270 document was prepared for the wireless telecommunications collocation facility.

1271 3. Before collocation, the applicant seeking collocation shall obtain all other applicable  
1272 non-discretionary permits, as required pursuant to the Fairfax Municipal Code.

1273 F. **New or Amended Permit.** Except as otherwise provided above, approval of a new or  
1274 amended permit shall be required when the facility is modified other than by collocation in  
1275 accordance with this section, or the proposed collocation:

1276 1. Increases the height of the existing permitted telecommunications tower or  
1277 otherwise changes the bulk, size, location, or any other physical attributes of the  
1278 existing permitted wireless telecommunications collocation facility, unless  
1279 specifically permitted under the conditions of approval applicable to such wireless  
1280 telecommunications collocation facility; or

1281 2. Adds any microwave dish or other antenna not expressly permitted to be included  
1282 in a collocation facility by the conditions of approval<sup>[GT29]</sup>.

~~1283 G. **Appeals.** Notwithstanding any provision of the Fairfax Municipal Code to the contrary,  
1284 including, but not limited to, Chapter 17.036, any applicant may appeal a decision by the  
1285 zoning administrator on an application for a collocation facility under this section. The appeal  
1286 must be filed within ten ( 10) days from the zoning administrator's decision. The appeal must  
1287 state in plain terms the grounds for reversal and the facts that support those grounds. The  
1288 Town Manager shall serve as the appellate authority for all appeals of all actions of the zoning  
1289 administrator taken pursuant to this section. The Town shall provide notice for an  
1290 administrative hearing by the Town Manager. The Town Manager shall limit its review to  
1291 whether the project should be approved or denied in accordance with the provisions in this  
1292 section. The decision of the Town Manager shall be final and not subject to any further  
1293 administrative appeals. Appeals with respect to applications for wireless telecommunications  
1294 collocation facilities are governed by Section-~~

1295 **2019.04.160 Business License**

1296 A permit issued pursuant to this chapter shall not be a substitute for any business license  
1297 otherwise required under the Fairfax Municipal Code.

1298 **2019.04.170 Emergency Deployment**

1299 In the event of a declared federal, state, or local emergency, or when otherwise warranted by  
1300 conditions that the zoning administrator deems to constitute an emergency, the zoning  
1301 administrator may approve the installation and operation of a temporary wireless  
1302 telecommunications facility (e.g., a cell on wheels or "COW"), which is subject to such  
1303 reasonable conditions that the zoning administrator deems necessary.

1304 **2019.04.180 Operation and Maintenance Standards**

1305 A. All wireless telecommunications facilities must comply at all times with the following

1306 operation and maintenance standards. All necessary repairs and restoration shall be  
1307 completed by the permittee, owner, or operator within 48 hours:

1308 1. After discovery of the need by the permittee, owner, operator or any designated  
1309 maintenance agent; or

1310 2. After permittee, owner, operator, or any designated maintenance agent receives  
1311 notification from a resident or the zoning administrator.

1312 B. All facilities, including, but not limited to, telecommunication towers, poles, accessory  
1313 equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the  
1314 facility site shall be maintained in good condition, including ensuring the facilities are  
1315 reasonably free of:

1316 1. General dirt and grease;

1317 2. Chipped, faded, peeling, and cracked paint;

1318 3. Rust and corrosion;

1319 4. Cracks, dents, and discoloration;

1320 5. Missing, discolored, or damaged artificial foliage or other camouflage;

1321 6. Graffiti, bills, stickers, advertisements, litter and debris;

1322 7. Broken and misshapen structural parts; and

1323 8. Any damage from any cause.

1324 C. All trees, foliage, ~~and~~ other landscaping elements approved as part of the facility shall  
1325 be maintained in good condition at all times, and the permittee, owner, and operator of the  
1326 facility shall be responsible for replacing any damaged, dead, or decayed landscaping. No  
1327 amendment to any approved landscaping plan may be made until it is submitted to and  
1328 approved by the zoning administrator.

1329 D. The permittee shall replace its facilities, after obtaining all required permits, if  
1330 maintenance or repair is not sufficient to return the facility to the condition it was in at the time  
1331 of installation.

1332 E. Each facility shall be operated and maintained at all times in compliance with applicable  
1333 federal regulations, including FCC radio frequency emissions standards.

1334 F. Each facility shall be operated and maintained to comply at all times with the noise  
1335 regulations of this chapter and shall be operated and maintained in a manner that will minimize  
1336 noise impacts to surrounding residents. Except for emergency repairs, any testing and  
1337 maintenance activities that will be audible beyond the property line shall only occur between  
1338 the hours of 7:00 a.m. and 5:00 p.m. on Monday through Friday, excluding holidays, unless

1339 alternative hours are approved by the zoning administrator. Backup generators, if permitted,  
1340 shall only be operated during periods of power outages or for testing.

1341 G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall  
1342 be flown and shall be properly maintained at all times.

1343 H. Each owner or operator of a facility shall routinely inspect each site to ensure  
1344 compliance with the standards set forth in this section and the conditions of approval.

1345 **2019.04.190 No Dangerous Conditions or Obstructions Allowed**

1346 No person shall install, use, or maintain any wireless telecommunications facility which in  
1347 whole or in part rests upon, in or over any public sidewalk or parkway, when such installation,  
1348 use, or maintenance endangers or is reasonably likely to endanger the safety of persons or  
1349 property, or when such site or location is used for public utility purposes, public transportation  
1350 purposes, or other governmental use, or when such facility unreasonably interferes with or  
1351 impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped  
1352 vehicle, the ingress into or egress from any residence or place of business, the use of poles,  
1353 posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street  
1354 furniture, or other objects permitted at or near said location.

1355 **2019.04.200 Permit Expiration**

1356 A. A permit for any wireless telecommunications facility shall be valid for a period of ten  
1357 (10) years, unless the Planning Commission authorizes a longer-different period, or pursuant  
1358 to another provision of the Fairfax Municipal Code the permit lapses sooner or is revoked. At  
1359 the end of such period, the permit shall expire.

1360 B. A permittee may apply for extensions-renewals<sup>[30]</sup> of its permit in increments of no more  
1361 than ten (10) years and no sooner than twelve (12) months prior to expiration of the permit.

1362 C. If a permit has not expired at the time an application is made for an extensionrenewal,  
1363 the zoning administrator may administratively extend the term of the permit for subsequent  
1364 ten (10)-year terms upon verification of continued compliance with the findings and conditions  
1365 of approval under which the application was originally approved, as well as any other  
1366 applicable provisions of the Fairfax Municipal Code that are in effect at the time the permit  
1367 extension-renewal is granted. The following may also be required for an application to  
1368 extendrenew a wireless permit:

1369 1. At the zoning administrator's discretion, additional studies and information may be  
1370 required of the applicant.

1371 2. If the zoning administrator determines that the facility is nonconforming or that  
1372 additional conditions of approval are necessary to bring the facility into compliance  
1373 with the provisions of the Fairfax Municipal Code that are then in effect at the time  
1374 of permit expiration, the zoning administrator shall refer the extension-renewal  
1375 request to the Planning Commission.

1376 D. The request for an extension-renewal shall be decided by the Planning ~~commission~~  
1377 Commission if the permit expired before the application is made for an extension-renewal or  
1378 if the zoning administrator refers the matter to the Planning commission. After notice and a  
1379 public hearing, the Planning Commission may approve, conditionally approve, or deny the  
1380 extension-renewal.

1381 **2019.04.210 Cessation of Use or Abandonment**

1382 A. A wireless telecommunications facility is considered abandoned and shall be promptly  
1383 removed as provided herein if it ceases to provide wireless telecommunications services for  
1384 ninety (90) or more consecutive days. If there are two or more users of a single facility, then  
1385 this provision shall not become effective until all users cease using the facility.

1386 B. The operator of a facility shall notify the Town in writing of its intent to abandon or cease  
1387 use of a permitted site or a nonconforming site (including unpermitted sites) within ten (10)  
1388 days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator  
1389 of the facility shall provide written notice to the zoning administrator of any discontinuation of  
1390 operations of thirty (30) days or more.

1391 C. Failure to inform the zoning administrator of cessation or discontinuation of operations  
1392 of any existing facility as required by this section shall constitute a violation of any approvals  
1393 and be grounds for:

- 1394 1. Prosecution;
- 1395 2. Revocation or modification of the permit;
- 1396 3. Calling of any bond or other assurance required by this chapter or conditions of  
1397 approval of the permit;
- 1398 4. Removal of the facilities by the Town in accordance with the procedures established  
1399 under the Fairfax Municipal Code for abatement of a public nuisance at the owner's  
1400 expense; and
- 1401 5. Any other remedies permitted under the Fairfax Municipal Code or applicable law.

1402 **2019.04.220 Removal and Restoration, Permit Expiration, Revocation or Abandonment**

1403 A. **Permittee's removal obligation.** Upon the expiration date of the permit, ~~including any~~  
1404 extensions, earlier termination or revocation of the permit or abandonment of the facility, the  
1405 permittee, owner or operator shall remove its wireless telecommunications facility and restore  
1406 the site to its natural condition, except for retaining the landscaping improvements and any  
1407 other improvements at the sole discretion of the ~~Town zoning administrator~~. Removal shall  
1408 be in accordance with proper health and safety requirements and all ordinances, rules, and  
1409 regulations of the Town-. The facility shall be removed from the property within thirty (30) days  
1410 of the permit's expiration, at no cost or expense to the Town-. If the facility is located on  
1411 private property, the private property owner shall also be independently jointly and severally  
1412 responsible for the expense of timely removal and restoration.



1413 B. **Failure to remove.** Failure of the permittee, owner, or operator to promptly remove its  
1414 facility and restore the property within thirty (30) days after expiration, earlier termination, or  
1415 revocation of the permit, or abandonment of the facility, shall be a violation of the Fairfax  
1416 Municipal Code, and be grounds for:

- 1417 1. Prosecution;
- 1418 2. Calling of any bond or other assurance required by this chapter or conditions of  
1419 approval of permit;
- 1420 3. Removal of the facilities by the Town –in accordance with the procedures  
1421 established under the Fairfax Municipal Code for abatement of a public nuisance at  
1422 the owner’s expense; or
- 1423 4. Any other remedies permitted under the Fairfax Municipal Code.

1424 C. **Summary removal.** In the event the zoning administrator determines that the  
1425 condition or placement of a wireless telecommunications facility located in the public right-of-  
1426 way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent  
1427 threat to public safety, or determines other exigent circumstances require immediate  
1428 corrective action (collectively, “exigent circumstances”), the zoning administrator may cause  
1429 the facility to be removed summarily and immediately without advance notice or a  
1430 hearing. If [GT31] the circumstances allow for it and, to the extent feasible, the zoning  
1431 administrator will notify the permittee to remove the facility and allow for the reinstallation of  
1432 the facility, subject to the permittee demonstrating to the satisfaction of the Town’s Building  
1433 Official and zoning administrator that the work can be done in safe manner compliant with the  
1434 original Approved Plans and Section 19.04.100. Written notice of the removal shall be served  
1435 upon the person who owns the facility within five (5) business days of removal and all property  
1436 removed shall be preserved for the owner’s pick-up, as is reasonably feasible. If the owner  
1437 cannot be identified following reasonable effort or if the owner fails to pick-up the property  
1438 within sixty (60) days, the facility shall be treated as abandoned property.

1439 D. **Removal of facilities by Town–.** In the event the Town –removes a facility in  
1440 accordance with this chapter nuisance abatement procedures or summary removal, any such  
1441 removal shall be without any liability to the Town for any damage to such facility that may  
1442 result from reasonable efforts of removal. In addition to the procedures for recovering costs  
1443 of nuisance abatement, the Town –may collect such costs from the performance bond posted  
1444 and to the extent such costs exceed the amount of the performance bond, collect those excess  
1445 costs in accordance with the Fairfax Municipal Code. Unless otherwise provided herein, the  
1446 Town –has no obligation to store such facility. Neither the permittee, ~~nor~~ the owner, nor the  
1447 operator shall have any claim if the Town –damages or destroys any such facility not timely  
1448 removed by the permittee, owner, or operator after notice, or removed by the Town –due to  
1449 exigent circumstances.

1450 **2019.04.230 Authorization**<sup>[GT32]</sup> **for — Departmental Forms, Rules, and Other**  
1451 **Regulations.**

1452 The Town Council authorizes the zoning administrator to develop and publish permit  
1453 application forms, checklists, informational handouts and other related materials that the  
1454 zoning administrator finds necessary, appropriate or useful for processing requests,  
1455 applications, permits, or any other matter under this chapter. Without further authorization  
1456 from the Town Council, the zoning administrator may from time-to-time update and alter any  
1457 such permit application forms, checklists, informational handouts and other related materials  
1458 as the zoning administrator deems necessary, appropriate or useful to respond to regulatory,  
1459 technological or other changes related to this chapter. The Town Council authorizes the  
1460 zoning administrator to establish other reasonable rules and regulations, which may include,  
1461 without limitation, regular hours for appointments with applicants, as the zoning administrator  
1462 deems necessary or appropriate to organize, document, and manage the application intake  
1463 and permitting process.

1464 **19.04.240 Appeals**<sup>[GT33]</sup>. Notwithstanding any provision of the Fairfax Municipal Code to the  
1465 contrary, including, but not limited to, Chapter 17.036, any applicant may appeal a decision  
1466 by the zoning administrator under this Chapter. The appeal must be filed within two (2) days  
1467 from the zoning administrator's decision. The appeal must state in plain terms the grounds for  
1468 reversal and the facts that support those grounds. The Town Council shall serve as the  
1469 appellate authority for all appeals of all actions of the zoning administrator taken pursuant to  
1470 this section. The Town shall provide notice for an administrative hearing by the Town Council.  
1471 The Town Council shall limit its review to whether the project should be approved or denied  
1472 in accordance with the provisions in this Chapter.

1473  
1474 **2019.04.2540** **Effect on Other Ordinances**

1475 Compliance with the provisions of this chapter shall not relieve a person from complying with  
1476 any other applicable provision of the Fairfax Municipal Code, including, but not limited to,  
1477 obtaining any necessary encroachment or building permits. In the event of a conflict between  
1478 any provision of this chapter and other provisions of the Fairfax Municipal Code, this chapter  
1479 shall control.

1480 **20.04.240250** **Effect of State or Federal Law**

1481 Notwithstanding any other provision of this Title to the contrary, the Town may grant an  
1482 exception to any of the requirements of this title if it makes a finding that the applicant has  
1483 demonstrated that the refusal of the Town to grant such an exception would prohibit or have  
1484 the effect of prohibiting the provision of personal wireless services within the meaning of 47  
1485 USC §332(c)(7), or otherwise is preempted or prohibited by state or federal law.<sup>[34]</sup>