

ORDINANCE NO.

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

WHEREAS, This Ordinance is adopted as follows:

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

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

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

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

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

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

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

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

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

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

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

(11) The Town finds that in light of more recent developments in federal and state law with respect to the regulation of small cell and other wireless telecommunications facilities, there is a need for the Town to update its current ordinances based on current telecommunications trends, updates in laws, as well as aesthetic and location options for wireless facilities. The Town finds that Northern California is now experiencing an unprecedented increase in the number and intensity of wildfires exacerbated by the effects of climate change, and that power lines and electrical equipment failures are a leading cause of California wildfires; that overburdened utility poles can present a hazard of collapsing and

failing, that wireless facilities may present an electrical hazard and/or increase the risk of electrical fires if not properly regulated, installed and monitored.

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

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

(14) Accordingly, regulating the installation of Wireless Telecommunications Facilities in the Town is 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.

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

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

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

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

Section 2. The Town Council hereby finds that Adoption of this Ordinance will enact only minor changes in land use regulations, and it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for the

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

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

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

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Fairfax on the ___th day of 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Barbara Coler, Mayor

ATTEST:

Michele Gardner, Town Clerk

**Exhibit A
ORDINANCE**

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

1 19.04.010 Purpose

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

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

29 **19.04.020 Definitions.** For the purposes of this chapter, the following defined terms shall
30 have the meaning set forth in this section, unless otherwise defined or the context clearly
31 indicates or requires a different meaning.

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

36 B. **“Antenna”** means that part of a wireless telecommunications facility designed to
37 radiate or receive radio frequency signals or electromagnetic waves for the provision of
38 services, including, but not limited to, cellular, paging, personal communications services
39 (PCS) and microwave communications. Such devices include, but are not limited to,
40 directional antennas, such as panel antenna, microwave dishes, and satellite dishes;
41 omnidirectional antennas; wireless access points (Wi-Fi); and strand-mounted wireless
42 access points. This definition does not apply to broadcast antennas, antennas designed for
43 amateur radio use, or satellite dishes designed for residential or household purposes.

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

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

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

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

76 G. **“Eligible Support Structure”** means the same as defined by the FCC in 47 C.F.R. §
77 1.40001(b)(4), as may be amended, which currently defines that term as any tower or base

78 station as defined in this section; provided that it is existing at the time the relevant
79 application is filed with the State or local government under this chapter.

80 H. **“Existing”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as
81 may be amended, which currently provides that a constructed tower or base station is
82 existing for purposes of the FCC's Section 6409(a) regulations if it has been reviewed and
83 approved under the applicable zoning or siting process, or under another State or local
84 regulatory review process; provided that, a tower that has not been reviewed and approved
85 because it was not in a zoned area when it was built, but was lawfully constructed, is
86 existing for purposes of this definition.

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

89 J. **“Listed Species”** means any species, endangered, threatened or rare species as listed
90 by the Department of Fish and ~~Game~~Wildlife (Cal. Fish and Game Code §§ 2050 et
91 seq.), the United State Fish and Wildlife Service (Endangered Species Act, 16 U.S.C. §§
92 1531 et seq.) or the National Marine Fisheries Service (re: anadromous fish), or locally
93 designated, such as heritage trees, and natural communities, including wetland habitat
94 or wildlife dispersal or migration corridors.

95 K. **“Modification”** means any change to an existing wireless telecommunications facility
96 that involves any of the following: collocation, expansion, modification, alteration,
97 enlargement, intensification, reduction, or augmentation, including, but not limited to, a
98 change in size, shape, color, visual design, or exterior material. Modification does not
99 include repair, replacement, or maintenance if those actions do not involve a change to the
100 existing facility involving any of the following: collocation, expansion, modification, alteration,
101 enlargement, intensification, reduction, or augmentation.

102 L. **“Monopole”** means a wireless communication facility support structure which consists of
103 a self-supported monopolar structure, usually rounded, erected on the ground to support
104 antennas and connecting appurtenances.

105 M. **“Non-Ionizing Electromagnetic Radiation”** means electromagnetic radiation primarily
106 in the visible, infrared and radio frequency portions of the electromagnetic spectrum).

107

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

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

114 P. **“Zoning administrator”** means the Town’s Planning and Building Services Director
115 or his/her designee.

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

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

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

125 T. **“RF”** means radio frequency or electromagnetic waves.

126 U. **“Roof-mounted”** means mounted directly on the roof of any building or structure,
127 above the eave line of such building or structure.

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

131 W. **“Section 6409(a) Approval”** means the approval required by Section 6409(a).

132 X. **“Shared-Location”** means more than one wireless communications facility comprised
133 of multiple structures used to support antennas operated by one or more carriers where the
134 structures are located within proximity to each other.

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

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

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

147 a) the proposed collocation or modification increases the overall height more than
148 10% or the height of one additional antenna array not to exceed 20 feet
149 (whichever is greater); or

150 b) the proposed collocation or modification increases the width more than 20 feet
151 from the edge of the wireless tower or the width of the wireless tower at the

- 152 level of the appurtenance (whichever is greater); or
- 153 c) the proposed collocation or modification involves the installation of more than
154 the standard number of equipment cabinets for the technology involved, not to
155 exceed four; or
- 156 d) the proposed collocation or modification involves excavation outside the
157 current boundaries of the leased or owned property surrounding the wireless
158 tower, including any access or utility easements currently related to the site.
- 159 2. For towers in the public rights-of-way and for all base stations, a substantial
160 change occurs when:
- 161 a) the proposed collocation or modification increases the overall height more than
162 10% or 10 feet (whichever is greater); or
- 163 b) the proposed collocation or modification increases the width more than 6 feet
164 from the edge of the wireless tower or base station; or
- 165 c) the proposed collocation or modification involves the installation of any new
166 equipment cabinets on the ground when there are no existing ground-mounted
167 equipment cabinets; or
- 168 d) the proposed collocation or modification involves the installation of any new
169 ground-mounted equipment cabinets that are ten percent (10%) larger in
170 height or volume than any existing ground-mounted equipment cabinets; or
- 171 e) the proposed collocation or modification involves excavation outside the area
172 in proximity to the structure and other transmission equipment already
173 deployed on the ground.
- 174 3. In addition, for all towers and base stations wherever located, a substantial
175 change occurs when:
- 176 a) the proposed collocation or modification would defeat the existing concealment
177 elements of the support structure as determined by the zoning administrator;
178 or
- 179 b) the proposed collocation or modification violates a prior condition of approval,
180 provided however that the collocation need not comply with any prior condition
181 of approval related to height, width, equipment cabinets or excavation that is
182 inconsistent with the thresholds for a substantial change described in this
183 section.

184 The thresholds for a substantial change outlined above are disjunctive. The failure to meet
185 any one or more of the applicable thresholds means that a substantial change would occur.
186 The thresholds for height increases are cumulative limits. For sites with horizontally
187 separated deployments, the cumulative limit is measured from the originally-permitted

188 support structure without regard to any increases in size due to wireless equipment not
189 included in the original design. For sites with vertically separated deployments, the
190 cumulative limit is measured from the permitted site dimensions as they existed on February
191 22, 2012—the date that Congress passed Section 6409(a).

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

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

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

213 DD. **“Wireless Services”** means any FCC-licensed or authorized wireless
214 communication service transmitted over frequencies in the electromagnetic spectrum.

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

- 221 1. A ground-, building- or tower-mounted antenna facility operated by a federally
222 licensed amateur radio operator as part of the Amateur Radio Service that
223 qualifies as an amateur station as defined by the FCC, 47 C.F.R. Part 97, of the
224 Commission’s Rules, or its successor regulation, provided that the antenna does
225 not exceed 30 feet above grade and is subject to the allowable setbacks pursuant
226 to Title 17.

- 227 2. A single ground- or building-mounted receive-only radio or television antenna
228 facility, for the sole use of the owner or tenant occupying a parcel on which the
229 antenna is located, that is subject to the FCC Over-The-Air-Reception Devices
230 rule, 47 C.F.R. Section 1.4000, or any successor regulation, including, but not
231 limited to, TV antennas used to receive television broadcast signals and wireless
232 cable antennas. The antenna is not to exceed 30 feet above grade and must be
233 subject to the allowable setbacks pursuant to Title 17.
- 234 3. A single ground-, pole- or building- mounted receive-only radio or television
235 satellite dish antenna, not to exceed 48 inches in diameter, for the sole use of the
236 owner or tenant occupying a parcel on which the antenna is located; satellite dish
237 antenna height not to exceed the height of the roof ridge of the host structure; (All
238 such applications shall be subject to regulations pursuant to Title 17.)
- 239 4. Portable radios and devices including, but not limited to, hand-held, vehicular, or
240 other portable receivers, transmitters or transceivers, cellular phones, CB radios,
241 emergency services radio, and other similar portable devices as determined by
242 the zoning administrator.
- 243 5. Wireless telecommunications facilities owned and operated by any government
244 agency.
- 245 6. Wireless telecommunications facilities owned and operated by any emergency
246 medical care provider.
- 247 7. Mobile services providing public information coverage of news events of a
248 temporary nature.
- 249 8. Any wireless telecommunications facilities exempted from the Fairfax Municipal
250 Code by federal law or state law.

251 **19.04.030 Applicability**

- 252 A. This chapter applies to all wireless telecommunications facilities as follows:
- 253 1. All facilities for which applications were pending prior to the effective date of this
254 chapter shall be subject to and comply with all provisions of this chapter;
- 255 All facilities, notwithstanding the date approved, shall be subject immediately to
256 the provisions of this chapter governing the operation and maintenance, cessation
257 of use and abandonment, removal and restoration of wireless telecommunications
258 facilities and wireless telecommunications collocation facilities and the prohibition
259 of dangerous conditions or obstructions by such facilities; provided, however, that
260 in the event a condition of approval conflicts with a provision of this chapter, the
261 condition of approval shall control unless and until the permit is amended or
262 revoked.

263

264 B. Notwithstanding any provision of the Fairfax Municipal Code to the contrary, provisions
265 governing the installation of a public utility structure or facility shall not apply to wireless
266 telecommunications facilities. Title 19 shall govern all applications for wireless
267 telecommunications facilities.

268 **19.04.040 Wireless Telecommunications Facility Permit Required**

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

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

278
279 Notwithstanding any other provision of this chapter, a conditional use permit shall be
280 required for a facility when an exception is requested. Subject to any applicable limitations
281 in federal or state law, nothing in this Chapter is intended to limit the approval authority's
282 ability to conditionally approve or deny without prejudice any application for a use permit as
283 may be necessary or appropriate to protect and promote the public health, safety and
284 welfare, and to advance the goals or policies in the Fairfax Municipal Code or the General
285 Plan.
286

Description of Wireless Facility	Private Property			Public Right-of-Way ³
	RS, RD, RM, PDD, UR Residential Zoning Districts and CR Commercial Zoning district	<u>OA and PD Zoning district</u>	All Other Zoning Districts	Non-Residential Zoning Districts except for <u>OA, PD</u> and <u>CR</u>
Roof-mounted facility, building-mounted facility, or facility mounted on an existing pole	Not Permitted	<u>Not Permitted</u>	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
Facility mounted on a replacement pole or new telecommunications tower	Not Permitted	<u>Not Permitted</u>	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
New wireless telecommunications collocation facility	Not Permitted	<u>Not Permitted</u>	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
Eligible facilities request ¹ or application pursuant to California Government Code Section 65850.6 ²	Permitted	<u>Not Permitted</u>	Permitted	Permitted
¹ See requirements of section 19.04.140. ² See requirements of section 19.04.150. ³ For any public right-of-way on the boundary between zoning districts, the zoning district applicable to the location of a <u>W</u> 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 zoning districts.				

287

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

292 **19.04.050 Application for Permit**

293 A. **Application content.** All applications for a permit required by this chapter must be
294 made in writing on such form as the zoning administrator prescribes. The ~~Pzoning~~
295 ~~administrator~~ ~~Planning Director~~ may waive the requirements for submittal of any information
296 described herein only when determined that it is inapplicable based on project-specific
297 factors, and documentation is provided to that effect. For permit applications other than
298 Eligible Facilities Requests (which are addressed in Section 19.04.140), the form shall
299 include the following information, in addition to all other information determined necessary
300 by the zoning administrator or the Town as part of an application for a conditional use
301 permit, variance, and design review:

- 302 1. Full name and contact information for the facility owner, facility operator, agent (if
303 any), and property owner, and related letter(s) of authorization.
- 304 2. The type of facility, including a full written description of the proposed facility, its
305 purpose, technical specifications, and an assessment of any fire hazard a
306 proposed installation presents to surrounding vegetation and structures;
- 307 3. A detailed site and engineering plan of the proposed facility containing the exact
308 proposed location of the facility, created by a qualified licensed engineer and in
309 accordance with requirements set by the zoning administrator. The site and
310 engineering plan shall display the dimensions of each proposed facility, including
311 its height from the ground level. Applicants must demonstrate that facilities have
312 been designed to attain the minimum height required from a technological
313 standpoint for the proposed site. The site and engineering plans shall show the
314 proposed facility from each cardinal direction. The site and engineering plan shall
315 also include technical information, including, but not limited to visual analysis,
316 alternative sites analysis, landscape plans, lighting plans, and architectural and
317 engineering plans. Technical information, including, but not limited to Radio
318 frequency reports, visual analysis, alternative sites analysis, landscape plans,
319 lighting plans, and architectural and engineering plans shall be prepared by an
320 appropriate qualified professional acceptable to the ~~Planning Director~~ zoning
321 administrator
- 322 4. The visual analysis shall include, but not necessarily be limited to, a photo
323 montage or photo simulation and ~~or~~ story poles erected at the proposed site (and
324 surrounded by temporary construction fencing) or other similar technique. The
325 visual analysis shall address visually distinctive areas and scenic corridors as
326 depicted and described in the Fairfax general plan, views from public vantage
327 points and private residences if determined appropriate by the Town. The visual
328 analysis shall also depict cumulative conditions by including information pertaining
329 to existing, approved and proposed telecommunications facilities that will or may
330 eventually be constructed at the site by all carriers based upon permit applications
331 which have been filed with or approved by the Town. The visual analysis may be
332 expanded to include alternative locations within the proposed service area.

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5. Photographs of facility equipment and an accurate visual impact analysis with photo simulations.

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6. Proof of all applicable licenses or other approvals required by the FCC.

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7. A technically sufficient written report certified by a qualified radio frequency emissions engineer, certifying that the facility, operating by itself and in combination with other existing or approved facilities which can be measured at the proposed facility site, is in compliance with such FCC standards. Measurements for radio frequency emissions shall be based on all proposed, approved and existing facilities operating at maximum power densities at all relevant and frequencies being used. Posting of a financial security may be required as a condition of approval to pay the cost for preparation of radio frequency reports evaluating the conformance of approved and operative facilities with applicable health standards adopted by the FCC. The carrier may post a single financial security in an amount not to exceed \$25,000 and indexed to the annual construction index hereafter, to satisfy radio frequency performance reports for buildout of the carrier's network facilities plan.

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8. If the application is for a facility that will be located within the public right-of-way, the applicant shall certify that it is a telephone corporation or state the basis for its claimed right to enter the right-of-way, and provide a copy of its certificate of public convenience and necessity (CPCN), if a CPCN has been issued by the California Public Utilities Commission.

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9. A written description identifying the geographic service area for the subject installation, accompanied by a plan and maps showing anticipated future installations and modifications for the following two years.

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10. A written report that analyzes acoustic levels for the proposed wireless telecommunications facility and all associated equipment, including, without limitation, all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators in order to demonstrate compliance with chapter 8.207.16 (Noise Control). The acoustic analysis must be prepared and certified by a qualified engineer and include an analysis of the manufacturer specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of a written report, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.

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

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

373 13. A copy of any land use easement or restriction (access, open space, public utility
374 and the like) which encumbers the proposed facility site, as well as a copy of the
375 proposed site's title report.

376 14. A detailed lighting plan including the location and type of all exterior lighting
377 fixtures.

378 15. Public Notification. Proof that the applicant has provided public notification, at its
379 own cost, via mail to all property owners and occupants within a radius of 300 feet
380 from its proposed facilities. Information regarding the application shall be
381 displayed on the outside of the envelope.

382 ~~14.~~

383 ~~15-16.~~ Any other studies or information determined necessary by the zoning
384 administrator.

385 B. **Independent expert.** The zoning administrator is authorized to retain on behalf of
386 the Town an independent, qualified consultant to review any application for a permit for a
387 wireless telecommunications facility. The cost of this review shall be paid by the applicant
388 through a deposit pursuant to an adopted fee schedule resolution. Such fee resolution may
389 include the contract price of a third party consultant and the Town's overhead costs for staff
390 time expended on administration of the consultant contract. The independent consultant
391 shall have maximum latitude as to how and when monitoring is done. The consultant may
392 review the technical aspects of the application, including, but not limited to, the following
393 matters:

394 The accuracy, adequacy, and completeness of submissions;

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

397 Whether any requested exception is justified;

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

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

407 An assessment of any impact on trees or flora;

408 A technical evaluation of alternative sites, facility designs or configurations, and coverage

409 analysis; and

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

411 **C. Procedures for a Duly Filed Applications**

412 1. *Voluntary Pre-Submittal Conference.* Before application submittal, applicants are
413 encouraged (but not required) to schedule and attend a pre-application meeting
414 with the zoning administrator. A pre-submittal conference is intended to
415 streamline the review process through informal discussion that includes, without
416 limitation, the appropriate project classification, including whether the project
417 qualifies for Section 6409(a); potential concealment issues (if applicable);
418 coordination with other Town departments responsible for application review; and
419 application completeness issues. To mitigate unnecessary delays due to
420 application incompleteness, applicants are encouraged (but not required) to bring
421 any draft applications or other materials so that Town staff may provide informal
422 feedback about whether such applications or other materials may be incomplete
423 or unacceptable.

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

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

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

440

441 **19.04.060 Location and Configuration Preferences**

442 A. **Purpose.** The purpose of this section is to provide guidelines to applicants and the
443 reviewing authority regarding the preferred locations and configurations for wireless
444 Telecommunication Facilities in the Town, provided that nothing in this section shall be
445 construed to permit a wireless Telecommunication Facility in any location or configuration
446 that is otherwise prohibited by this chapter.

447 B. **Review of Location and Configuration.** The reviewing authority shall consider the
448 extent to which a proposed wireless Telecommunication Facility complies with these
449 preferences and whether there are feasible alternative locations or configurations to the
450 proposed facility that are more preferred under this section.

451 C. **Order of Preference - Configurations.** The order of preference for the configuration
452 for wireless Telecommunication Facilities from most preferred to least preferred is:

- 453 1. Collocation with existing facilities outside the public rights-of-way;
- 454 2. Roof-mounted;
- 455 3. Building-mounted;
- 456 4. Mounted on an existing pole or utility pole;
- 457 5. Mounted on a new pole or utility pole that will replace an existing pole or utility
458 pole; and
- 459 6. Mounted on a new telecommunication tower or pole.

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

- 462 1. In the CH zoning district;
- 463 2. In the CS zoning district~~In the CC zoning district;~~
- 464 3. In the CC zoning district~~In the CS zoning district;~~
- 465 4. In the CL zoning district;
- 466 5. In the PD zoning district; and
- 467 6. In the public right-of-way with the closest adjacent district being a commercial
468 district.

469 E. Applications for new wireless communications facilities shall only be for placement avoid
470 sites located within or near a minimum of 50 feet from all residences, residential areas,
471 and a minimum 300 feet from child day care centers, schools, playgrounds, parks,
472 ballfields, and/or medical facilities~~Listed Species sites~~ unless the applications include
473 information sufficient to demonstrate:

474 (1) The location and type of preferred sites which exist within the proposed or
475 technically feasible coverage area is mapped;

476 (2) The preferred location site was not available as shown by the good faith efforts and
477 measures taken by the carrier to secure the preferred location sites;

- 478 (3) Specific reasons why such efforts and measures were unsuccessful;
- 479 (4) Specific reasons why the location of the proposed facility site is essential to meet
480 the service demands of the carrier; and
- 481 (5) Through reports required pursuant to § 19.04.050 demonstrating compliance with
482 current federal health standards.
- 483 F. Wireless communications facilities shall be attached or sited adjacent to existing
484 structures unless the carrier demonstrates to the satisfaction of the Town that no other
485 technically feasible site exists or that construction of a freestanding facility on or at a
486 distant location from an existing structure will mitigate adverse effects related to land use
487 compatibility, visual resources, public safety and other environmental factors addressed
488 by CEQA. Appropriate types of existing structures may include, but not be limited to:
489 buildings, water tanks and some telephone/utility poles.
- 490 G. Monopoles for wireless communications facilities should not be located in residential or
491 open space areas unless technical evidence demonstrates to the satisfaction of the
492 Town that no other alternative facility site or type of antenna support structure is feasible
493 and/or if the use of a Monopole for the proposed facility by itself or in combination with
494 other existing, approved and proposed facilities will avoid or mitigate adverse effects
495 related to land use compatibility, visual resources and public safety.
- 496 H. **Accessory equipment.** In order of preference from most preferred to least
497 preferred, accessory equipment for wireless ~~T~~telecommunication ~~F~~facilities and wireless
498 telecommunications collocation facilities (excluding antennas and electric meters) shall be
499 located underground ~~(where possible)~~, within a building or structure, on a screened roof top
500 area or structure, or in a rear yard if not readily visible from surrounding properties and the
501 roadway, unless the reviewing authority finds that another location is preferable under the
502 circumstances of the application. The applicant shall bear the burden of demonstrating that
503 accessory equipment cannot be placed in the most preferred location.
- 504 I. Collocation and Shared-Location of wireless telecommunications facilities should be
505 required when it is feasible and mitigates adverse effects related to land use compatibility,
506 visual resources, public safety and other environmental factors addressed by
507 CEQA. Collocation and Shared-Location sites should not be required when it creates or
508 significantly increases such adverse effects and/or technical evidence demonstrates to the
509 satisfaction of the Town that it is not feasible due to service impairment or operational
510 failures. To ensure adequate and complete consideration of Collocation and Shared-
511 Location siting of proposed wireless communications facilities, the carrier may be required to
512 submit to the Town a graphic and written analysis which identifies all technically feasible
513 sites within the coverage area that would accommodate the proposed service. The analysis
514 shall include:
- 515
- 516 1. Enough information to provide adequate consideration of technically feasible
517 alternative sites and/or facility designs that would avoid or minimize adverse effects related
518 to land use compatibility, visual resources, public safety and other environmental factors

519 addressed by CEQA;

520

521 2. In writing, the specific factors for selection of the proposed facility site over
522 alternative sites;

523

524 3. Facilities which are not proposed to be sited on a Collocation or Shared-
525 Location site shall provide information substantiating the unfeasibility of the sites; and

526

527 4. The Town may require independent peer review of the analysis prior to making
528 a decision on the permit applications. The analysis should, to the extent practical, be
529 incorporated with the coverage area map.

530

531 J. The Town should, to the extent practicable and legal, discourage leases which convey
532 exclusive (i.e., single user) rights for new wireless communications facilities to the extent
533 that the leases may preclude development of a suitable Collocation facilities site.

534

535 K. The design of Collocation sites should promote shared use among different carriers. To
536 the extent feasible, antenna support and equipment structures should be designed to
537 consolidate future planned facilities to eliminate or minimize the visual clutter resulting
538 from multiple telecommunications structures. Where appropriate, as demonstrated by the
539 carrier and determined by the Town, multiple antenna support structures may be
540 approved (Shared-Location) rather than a single larger/higher structure. Facilities should
541 make available unutilized space for Collocation of other antennas and equipment,
542 including space for competing service carriers.

543

544 **19.04.070 Design and Development Standards for All Facilities**

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

551 B. **Build-out Period.** Approvals will automatically expire six (6) months~~one (1) year~~ from
552 the issuance date, unless the permittee obtains all other permits and approvals required
553 to install, construct and operate the approved wireless facility, which includes, without
554 limitation, permits required pursuant to Title 15, and any other permits or approvals
555 required by any federal, state, or local public agencies with jurisdiction over the subject
556 property, the wireless facility, or its use and constructs the approved facility. The zoning
557 administrator may grant one (1) written extension to a date certain when the permittee
558 shows good cause to extend the limitations period in a written request for an extension
559 submitted at least 30 days prior to the automatic expiration date in this subparagraph.
560 Any~~No~~ further extensions may be granted but the permittee may resubmit a complete
561 application, including all application fees for the same or substantially similar project.

562 ~~the Planning Commission, in its sole discretion, pursuant to the same procedures to~~
563 ~~request an extension from the zoning administrator.~~

564 C. **General guidelines.**

- 565 1. The applicant shall employ screening and camouflage design techniques in the
566 design and placement of wireless telecommunications facilities in order to ensure that
567 the facility is as visually inconspicuous as possible, to prevent the facility from
568 dominating and disrupting the surrounding area, and to hide the facility from
569 predominant views from surrounding properties, all in a manner that achieves
570 compatibility with the community.
- 571 2. For open space or hillside locations that would be generally viewed from a distance,
572 innovative design solutions may be appropriate where the screening potential of a
573 site is low (i.e., disguise facility as a landscape element, public art and the like).
- 574 3. Facilities should not be located on historically or architecturally significant structures
575 unless the Secretary of Interior's guidelines determine that facilities can be visually
576 and architecturally integrated with the structure; historical landscapes shall be
577 avoided.
- 578 4. Facilities should be sited to avoid adverse impacts to existing views from surrounding
579 residences.

580
581
582 D. **Traffic safety; Roads.** All facilities shall be designed and located in such a manner
583 as to avoid adverse impacts on traffic safety. Whenever feasible, existing roads and parking
584 areas should be used to access, build and service new telecommunications facilities. Any
585 new access roads or parking areas constructed shall be shared with subsequent
586 telecommunications facilities and/or other permitted uses to the extent feasible. New
587 access roads constructed in open space areas shall have the minimum width and surfacing
588 necessary to meet fire safety and access requirements, and shall be graded and drained
589 consistent with Town Code Chapter 8.26, Urban Runoff Pollution Prevention. The size of
590 new parking areas shall be limited to the minimum necessary to accommodate vehicles
591 associated with periodic maintenance of the facility.

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

598 F. **Landscaping; Vegetation.**

- 599 1. Where appropriate, facilities shall be installed so as to maintain, protect, and enhance
600 existing landscaping on the site, including trees, foliage, and shrubs, whether or not
601 utilized for screening. Additional landscaping shall be planted, irrigated, and
602 maintained where such vegetation is deemed necessary by the Town to provide
603 screening or to block the line of sight between facilities and adjacent uses.
604
- 605 2. Applications for Wireless Facilities shall be accompanied by a landscape plan that
606 shows existing vegetation, indicates any vegetation proposed for removal or
607 trimming, and identifies proposed planting by type, size and location. The emphasis
608 of the landscape plan should be to visually screen the proposed facility and stabilize
609 soils on sloping sites. Introduced vegetation shall be native, drought tolerant species
610 compatible with the predominant natural setting of the project area.
611
- 612 3. Existing trees and other screening vegetation in the vicinity of the proposed
613 facility and associated accessways shall be protected from damage both during and
614 after construction. Submission of a tree protection plan may be required to ensure
615 compliance with this requirement.
616
- 617 4. All vegetation disturbed during project construction shall be replanted with
618 compatible vegetation and soils disturbed by development shall be reseeded to
619 control erosion.
620
- 621 5. No vegetation shall be removed subsequent to project completion, except to
622 comply with local and state fire safety regulations, to prevent the spread of disease
623 as required by the state's Food and Agriculture Department, or to prevent safety
624 hazards to people and property.
625
- 626 6. The carrier shall enter into a landscape performance and maintenance agreement
627 with the Town to ensure the installation and establishment of required
628 landscaping. This agreement shall be secured by financial securities in an amount
629 equal to 150 percent of estimates to cover the cost of materials and labor for required
630 improvements. The duration of the landscape maintenance agreement shall be for a
631 minimum period of no less than one year and may be extended for an additional
632 period of up to two additional years upon renewal of the permit applications.
633
- 634 7. Antennas and associated structures and equipment shall be painted to blend with the
635 structures, vegetation, sky or landscape against which they will be primarily viewed.
636
- 637 7.8. Wireless telecommunications facilities are not permitted on ridgelines.
- 638 G. **Signage.** Wireless telecommunications facilities and wireless telecommunications
639 collocation facilities shall not bear any signs or advertising devices other than certification,
640 warning, or other signage required by law or permitted by the Town.
- 641 H. **Lighting.** No wireless telecommunications facility may be illuminated, unless either
642 specifically required by the Federal Aviation Administration or other government agency or
643 in association with the illumination of an athletic field on Town or school property. Lightning

644 arresters and beacon lights are not permitted, unless required by the Federal Aviation
645 Administration, FCC or other applicable regulations for health and safety government
646 agency. Legally-required lightning arresters and beacons shall be included when calculating
647 the height of facilities. If lighting is permitted, the following requirements apply to such
648 lighting:

- 649 1. Mechanically-operated, low wattage, hooded and downward directed exterior lighting
650 shall be permitted for safety purposes only and shall be kept off, except when
651 maintenance or safety personnel are present at night.
- 652 2. Tower lighting required under FAA regulations should, to the greatest extent feasible,
653 be shielded or directed to minimize light and glare impacts visible from publicly
654 accessible areason nearby properties and residents.
- 655 3. Nighttime lighting of warning signs required near publicly accessible facilities must
656 consist of low-wattage fixtures, and must be directed downward and hooded to
657 mitigate impacts visible from publicly accessible areas.

658 I. **Noise.**

- 659 1. Each wireless telecommunications facility and wireless telecommunications
660 collocation facility shall be operated in such a manner so as to minimize any
661 possible disruption caused by noise.
- 662 2. Normal testing and maintenance activities shall not take place weekends, holidays
663 or between the hours of 5:00 p.m. and 7:00 a.m., excluding emergency
664 repairs. Normal testing and maintenance activities, which do not involve the use
665 or operation of telecommunications and maintenance equipment that is audible
666 from residences and other nearby sensitive receptors, may occur at all other
667 times.
- 668 3. Backup generators shall only be operated during periods of power outages or
669 emergency occurrences, and shall not be tested on weekends, holidays, or
670 between the hours of 5:00 p.m. and 7:00 a.m.
- 671 4. At no time shall equipment noise from any facility exceed an exterior noise level of
672 50 dBA at the facility's property line if the facility is located in a business or
673 commercial zone that permits those uses; provided, however, that for any such
674 facility located within 500 feet of any property zoned residential or improved with a
675 residential use, such equipment noise shall not exceed an exterior noise level of
676 40 dBA at the property line of any such residential property. For any facility
677 located within a residential zone, such equipment noise shall at no time be audible
678 at the property line of any residentially-improved or residential zoned property.
- 679 5. Any equipment, including, but not limited to, air conditioning units, that may emit
680 noise that would be audible from either beyond three feet from the facility in the
681 case of a facility located in the right-of-way, or the facility's property line in the
682 case of other facilities, shall be enclosed or equipped with noise attenuation

683 devices to the extent necessary to ensure compliance with applicable noise
684 limitations under the Fairfax Municipal Code.

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

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

695 **19.04.080 Additional Design and Development Standards for Facilities Outside the**
696 **Public Right-of-Way**

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

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

703 C. **Roof-mounted facilities.** Roof-mounted facilities shall be designed and constructed
704 to be fully concealed or screened in a manner compatible with the existing architecture of
705 the building the facility is mounted to in color, texture, and type of material. Screening shall
706 not increase the bulk of the structure nor alter the character of the structure. Roof-mounted
707 antennas and associated equipment shall be located as far back from the edge of the roof
708 as possible to minimize visibility from street level locations. Where appropriate, construction
709 of a roof-top parapet wall to hide the facility may be required. To avoid or mitigate the
710 appearance of visual clutter on rooftops, proposed facilities should, to the extent feasible, be
711 located adjacent to existing rooftop antennas or equipment, incorporated into rooftop
712 antenna or equipment enclosures, or otherwise screened from view. In addition, existing
713 rooftop antennas and equipment should be consolidated where practical and shall be
714 removed if abandoned.

715 D. Wall-mounted antennas shall be integrated architecturally with the style and
716 character of the structure or otherwise made as unobtrusive as possible. If possible,
717 antennas should be located entirely within an existing or newly-created architectural feature
718 so as to be completely screened from view. To the extent feasible, wall-mounted antennas
719 should not be located on the front, or most prominent facade of a structure, and should be
720 located above the pedestrian line-of-sight.

721 E. **Facilities mounted to a telecommunications tower.**

- 722 1. Facilities mounted to a telecommunications tower shall be located in close
723 proximity to existing above-ground utilities, such as electrical towers or utility
724 poles (which are not scheduled for removal or under grounding for at least 18
725 months after the date of application), light poles, trees of comparable heights, and
726 in areas where they will not detract from the appearance of the Town.
- 727 2. Facilities mounted to a telecommunications tower, including, but not limited to, the
728 attached antennas, shall be designed to be the minimum functional height and
729 width required to adequately support the proposed facility and meet FCC
730 requirements. The applicant shall provide documentation satisfactory to the
731 zoning administrator establishing compliance with this paragraph. In any event,
732 facilities mounted to a telecommunications tower shall not exceed the applicable
733 height limit for structures in the applicable zoning district.
- 734 3. Aside from the antenna itself, no additional equipment may be visible. All cables,
735 including, but not limited to, electrical and utility cables, shall be laid within the
736 interior of the telecommunications tower and camouflaged or hidden to the fullest
737 extent feasible without jeopardizing the physical integrity of the tower.
- 738 4. Pole installations shall be situated so as to utilize existing natural or man-made
739 features including topography, vegetation, buildings, or other structures to provide
740 the greatest amount of visual screening.
- 741 5. All antenna components and accessory wireless equipment shall be treated with
742 exterior coatings of a color and texture to match the predominant visual
743 background or existing architectural elements so as to visually blend in with the
744 surrounding development. Subdued colors and non-reflective materials that blend
745 with surrounding materials and colors shall be used.
- 746 6. Poles shall be no greater in diameter or other cross-sectional dimensions than is
747 necessary for the proper functioning of the facility.
- 748 7. If a faux tree is proposed for the pole installation, it shall be of a type of tree
749 compatible with those existing in the immediate areas of the installation. If no
750 trees exist within the immediate areas, the applicant shall create a landscape
751 setting that integrates the faux tree with added species of a similar height and
752 type. Additional camouflage of the faux tree may be required depending on the
753 type and design of faux tree proposed.

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

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

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

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

774 3. Whenever possible, base stations, equipment cabinets, back-up generators and
775 other equipment associated with building-mounted antennas should be installed
776 within the existing building envelope or underground. If this is not feasible, the
777 equipment shall be painted, screened, fenced, landscaped or otherwise treated
778 architecturally to minimize its appearance from off-site locations and to visually
779 blend with the surrounding natural and built environments. Equipment buildings
780 should be designed in an architectural style and constructed of exterior building
781 materials that are consistent with surrounding development and/or land use
782 setting.

783 **19.04.090 Additional Design and Development Standards for Facilities in the Public**
784 **Right-of-Way**

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

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

792 C. **Antennas.**

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

800 2. *Street light poles.* The maximum height of any antenna mounted to a street light
801 pole shall not exceed seven (7) feet above the existing height of the street light

802 pole in a location with its closest adjacent district being a commercial zoning
803 district, and shall not exceed three (3) feet above the existing height of the street
804 light pole in any other zoning district. Any portion of the antenna or equipment
805 mounted on a street light pole shall be no less than eighteen (18) feet above any
806 drivable road surface.

807 **D. Poles.**

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

812 2. Pole height and width limitations:

813 a) All replacement poles shall be designed to be the minimum functional
814 height and width required to support the proposed antenna installation and
815 meet FCC and CPUC requirements. Replacement poles and antennas and
816 similar structures shall be no greater in diameter or other cross-sectional
817 dimensions than is necessary for the proper functioning of the facility.
818 Replacement poles must match existing poles, as determined by the
819 zoning administrator.;

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

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

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

832 5. Mounting any and all hardware or antennas on decorative light poles is prohibited
833 except as a replacement pole that matches the existing decorative light poles in
834 the vicinity.

835 5.6. If an exception is granted for placement of new poles in the public right-of-way,
836 new poles shall be designed to resemble existing poles in the public right-of-way,
837 including size, height, color, materials and style, with the exception of any existing
838 pole designs that are scheduled to be removed and not replaced, unless another
839 design better accomplishes the objectives of this section. Such new poles that

840 are not replacement poles shall be located no closer than ninety (90) feet to an
841 existing pole.

842 7. All new wires needed to service the wireless telecommunications facility must be
843 installed within the width of the existing utility pole so as to not exceed the
844 diameter and height of the existing utility pole. For streetlights, any replacement
845 pole must allow for an integrated design with wires inside the pole.

846

847

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

850 F. **Location.**

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

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

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

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

862 4.5. For all applications in undergrounding districts, all undergrounding district
863 regulations apply.

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

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

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

878 **19.04.100 Conditions of Approval for All Facilities**

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

883 1. Before the permittee submits any application for a permit or other permits required
884 by the Fairfax Municipal Code, the permittee must incorporate the wireless
885 Telecommunication Facility permit granted under this chapter, all conditions
886 associated with the wireless telecommunications facility permit and engineering
887 and electrical plans, schematics and specifications and the approved plans and
888 any photo simulations into the project plans (the "Approved Plans"). The permittee
889 must construct, install and operate the wireless telecommunications facility in
890 strict compliance with the Approved Plans. The permittee shall submit an as built
891 drawing within ninety (90) days after installation of the facility.

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

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

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

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

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

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

909 c) The name, address, and telephone number of the property owner if
910 different than the permittee.

911 4. The permittee shall not place any facilities that will deny access to, or otherwise
912 interfere with, any public utility, easement, or right-of-way located on the site. The

913 permittee shall allow the Town reasonable access to, and maintenance of, all
914 utilities and existing public improvements within or adjacent to the site, including,
915 but not limited to, pavement, trees, public utilities, lighting, and public signage.

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

920 6. At all times, the permittee shall ensure that the facility complies with the most
921 current regulatory and operational standards including, but not limited to, radio
922 frequency emissions standards adopted by the FCC, antenna height standards
923 adopted by the Federal Aviation Administration, and all electrical code
924 requirements for the equipment, wiring the equipment and providing power to the
925 equipment. At the sole expense of the permittee and using a consultant approved
926 by the Town, testing shall be performed demonstrating compliance with current
927 regulatory and operational standards, and to ensure the equipment is operating
928 within proper specifications and does not pose an undue fire risk or electrical risk.
929 Tests shall occur upon commencement of operations and annually thereafter, and
930 results provided in a written report to the Town.

931

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

938 8. Permittee shall pay for and provide a performance bond, which shall be in effect
939 until the facilities are fully and completely removed and the site reasonably
940 returned to its original condition, to cover permittee's obligations under these
941 conditions of approval and the Fairfax Municipal Code. The bond coverage shall
942 include, but not be limited to, removal of the facility, maintenance obligations and
943 landscaping obligations. The amount of the performance bond shall be set by the
944 zoning administrator in an amount rationally related to the obligations covered by
945 the bond and shall be specified in the conditions of approval.

946 9. Permittee shall defend, indemnify, protect, and hold harmless the Town, its
947 elected and appointed council members, boards, commissions, officers, officials,
948 agents, consultants, employees, and volunteers from and against any and all
949 claims, actions, or proceeding against the Town and its elected and appointed
950 council members, boards, commissions, officers, officials, agents, consultants,
951 employees, and volunteers to attack, set aside, void or annul, an approval of the
952 Town, Planning Commission or Town Council concerning the permit, the project,
953 and any and all claims, actions, or proceedings arising from, or related to, the

954 installation, operation, or inspection of any facility. Such indemnification shall
955 include damages, judgments, settlements, penalties, fines, defensive costs or
956 expenses, including, but not limited to, interest, attorneys' fees, and expert
957 witness fees, or liability of any kind related to or arising from such claim, action, or
958 proceeding. The Town shall promptly notify the permittee of any claim, action, or
959 proceeding that this indemnification obligation may cover. Nothing contained
960 herein shall prohibit Town from participating in a defense of any claim, action or
961 proceeding. The Town shall have the option of coordinating the defense,
962 including, but not limited to, choosing counsel for the defense at permittee's
963 expense. The Town shall retain the right to participate in any claim, action or
964 proceeding if the Town bears its own attorney's fees and costs, and the Town
965 defends the action in good faith.

966 9-10. Permittee shall obtain and maintain insurance for the coverages and in the
967 amounts reasonably specified by the zoning administrator.

968 ~~40-11.~~ All conditions of approval shall be binding as to the applicant and all
969 successors in interest to permittee.

970 ~~44-12.~~ The proposed facility complies with all applicable provisions of this chapter,
971 including the technical review by the Town's Independent Expert set forth in
972 Section 19.04.050(B).

973 ~~42-13.~~ The proposed facility has been designed and located to achieve compatibility
974 with the community to the maximum extent reasonably feasible.

975 ~~43-14.~~ Noise generated by equipment will not be excessive, annoying nor be
976 detrimental to the public health, safety, and welfare and will not exceed the
977 standards set forth in this chapter.

978 ~~44-15.~~ A condition setting forth the permit expiration date in accordance with section
979 19.04.200 shall be included in the conditions of approval.

980 ~~45-16.~~ *Record Retention.* The permittee must maintain complete and accurate copies
981 of all permits and other regulatory approvals issued in connection with the
982 wireless facility, including, without limitation, any approval, the approved plans
983 and photo simulations incorporated into the approval, all conditions associated
984 with the approval, and any other ministerial permits or approvals issued in
985 connection with the approval. In the event that the permittee does not maintain
986 such records as required in this condition, any ambiguities or uncertainties that
987 would be resolved through an inspection of the missing records will be construed
988 against the permittee.

989 17. Compliance Obligations. An applicant or permittee will not be relieved of its
990 obligation to comply with every applicable provision in the Fairfax Municipal Code,
991 any permit, any permit condition, or any applicable law or regulation by reason of
992 any failure by the Town to timely notice, prompt or enforce compliance by the
993 applicant or permittee.

994 **19.04.110 Additional Conditions of Approval for Facilities in the Public Right-of-**
995 **Way**

996 A. In addition to compliance with the requirements of this chapter, upon approval all
997 facilities in the public right-of-way shall be subject to each of the conditions of approval set
998 forth in section 19.04.100, each of the following conditions of approval, and any modification
999 of these conditions or additional conditions of approval deemed necessary by the reviewing
1000 authority throughout the duration of the permit:

1001 1. The wireless telecommunications facility shall be subject to such conditions,
1002 changes or limitations as are from time to time deemed necessary by the Town
1003 Manager or his/her designee for the purpose of: (a) protecting the public health,
1004 safety, and welfare, (b) preventing interference with pedestrian and vehicular
1005 traffic, and (c) preventing damage to the public right-of-way or any property
1006 adjacent to it. The Town may modify the permit to reflect such conditions,
1007 changes or limitations by following the same notice and public hearing procedures
1008 as are applicable to the grant of a wireless telecommunications facility permit for
1009 similarly located facilities, except the permittee shall be given notice by personal
1010 service or by registered or certified mail at the last address provided to the Town
1011 by the permittee.

1012 2. The permittee shall not move, alter, temporarily relocate, change, or interfere with
1013 any existing structure, improvement, or property without the prior consent of the
1014 owner of that structure, improvement, or property. No structure, improvement or
1015 property owned by the Town shall be moved to accommodate a wireless
1016 telecommunications facility, unless the Town determines that such movement will
1017 not adversely affect the Town or any surrounding businesses or residents, and the
1018 permittee pays all costs and expenses related to the relocation of the Town's
1019 structure, improvement, or property. Prior to commencement of any work
1020 pursuant to an encroachment permit issued for any facility within the public right-
1021 of-way, the permittee shall provide the Town with documentation establishing to
1022 the Town's satisfaction that the permittee has the legal right to use or interfere
1023 with any other structure, improvement, or property within the public right-of-way to
1024 be affected by applicant's facilities.

1025 3. The permittee shall assume full liability for damage or injury caused to any
1026 property or person by the facility.

1027 4. The permittee shall repair, at its sole cost and expense, any damage including,
1028 but not limited to, subsidence, cracking, erosion, collapse, weakening, or loss of
1029 lateral support to Town streets, sidewalks, walks, curbs, gutters, trees, parkways,
1030 street lights, traffic signals, improvements of any kind or nature, utility lines and
1031 systems, underground utility lines and systems, or sewer systems and sewer lines
1032 that result from any activities performed in connection with the installation or
1033 maintenance of a wireless telecommunications facility in the public right-of-way.
1034 The permittee shall restore such areas, structures and systems to the condition in
1035 which they existed prior to the installation or maintenance that necessitated the

- 1036 repairs. In the event the permittee fails to complete such repair within the number
1037 of days stated on a written notice by the zoning administrator, the zoning
1038 administrator shall cause such repair to be completed at permittee's sole cost and
1039 expense.
- 1040 5. Prior to issuance of a building permit, the applicant shall obtain the zoning
1041 administrator's approval of a tree protection plan prepared by a certified arborist if
1042 the installation of the wireless Telecommunication Facility will be located within
1043 the canopy of a street tree, or a protected tree on private property, or within a ten
1044 (10)-foot radius of the base of such a tree. Depending on site specific criteria
1045 (e.g., location of tree, size, and type of tree, etc.), a radius greater than ten (10)
1046 feet may be required by the zoning administrator.
- 1047 6. If a meter cabinet has been approved for the facility and subsequently any utility
1048 company offers electrical service that does not require the use of a meter cabinet,
1049 the permittee shall seek approval of the utility company to switch to the unmetered
1050 service and, at its sole cost and expense, remove the meter cabinet and any
1051 related foundation within thirty (30) days of such service being obtained and
1052 reasonably restore the area to its prior condition.
- 1053 7. The permittee shall modify, remove, or relocate its facility, or portion thereof,
1054 without cost or expense to Town, if and when made necessary by:
- 1055 a) Any public improvement project, including, but not limited to, the construction,
1056 maintenance, or operation of any underground or aboveground facilities,
1057 including, but not limited to, sewers, storm drains, conduits, gas, water, electric
1058 or other utility systems, or pipes owned by Town or any other public agency;
- 1059 b) Any abandonment of any street, sidewalk, or other public facility;
- 1060 c) Any change of grade, alignment or width of any street, sidewalk, or other
1061 public facility; or
- 1062 d) A determination by the zoning administrator that the wireless
1063 telecommunications facility has become incompatible with public health,
1064 safety, or welfare or the public's use of the public right-of-way.
- 1065 8. Any modification, removal, or relocation of the facility shall be completed within
1066 ninety (90) days of written notification by Town, unless exigencies dictate a
1067 shorter period for removal or relocation. Modification or relocation of the facility
1068 shall require submittal, review, and approval of a permit amendment pursuant to
1069 the Fairfax Municipal Code. The permittee shall be entitled, on permittee's
1070 election, to either a pro-rata refund of fees paid for the original permit or to a new
1071 permit, without additional fee, at a location as close to the original location as the
1072 standards set forth in the Fairfax Municipal Code allow. In the event the facility is
1073 not modified, removed, or relocated within said period of time, the Town may
1074 cause the same to be done at the sole cost and expense of permittee. Further,
1075 due to exigent circumstances as provided in the Fairfax Municipal Code, the Town

1076 may modify, remove, or relocate wireless telecommunications facilities without
1077 prior notice to permittee, provided permittee is notified within a reasonable period
1078 thereafter.

1079 9. The applicant has the right to enter the public right-of-way pursuant to state or
1080 federal law, or by virtue of a franchise or other agreement with the Town
1081 permitting them to use the public right-of-way.

1082 10. The facility will not interfere with the use of the public right-of-way, existing
1083 subterranean infrastructure, or the Town's plans for modification or use of such
1084 location and infrastructure.

1085

1086 **19.04.120 Findings**

1087 A. Where a wireless telecommunication facility requires a conditional use permit under
1088 this chapter, the reviewing authority shall not approve any application unless, in addition to
1089 the findings generally applicable to all conditional use permits, all of the following additional
1090 findings are made:

1091 1. The proposed facility complies with all applicable provisions of this chapter.

1092 2. The proposed facility has been designed and located to achieve compatibility with
1093 the community to the maximum extent reasonably feasible.

1094 3. The applicant has submitted a statement of its willingness to allow other carriers
1095 to collocate on the proposed wireless telecommunications facility wherever
1096 technically and economically feasible and where collocation would not harm
1097 community compatibility.

1098 4. Noise generated by equipment will not be excessive, annoying nor be detrimental
1099 to the public health, safety, and welfare and will not exceed the standards set forth
1100 in this chapter.

1101 B. In addition to the findings in paragraph (A) above, approval of a wireless
1102 telecommunications facility permit for a facility that will be located in the public right-of-way
1103 may be granted only if the following findings are made by the reviewing authority:

1104 1. The applicant has provided substantial written evidence supporting the applicant's
1105 claim that it has the right to enter the public right-of-way pursuant to state or
1106 federal law, or the applicant has entered into a franchise or other agreement with
1107 the Town permitting them to use the public right-of-way.

1108 2. The applicant has demonstrated that the facility will not interfere with the use of
1109 the public right-of-way, existing subterranean infrastructure, or the Town 's plans
1110 for modification or use of such location and infrastructure.

1111

1112 **19.04.130 Exceptions**

1113 A. Exceptions pertaining to any provision of this chapter, including, but not limited to,
1114 exceptions from findings that would otherwise justify denial, may be granted by the
1115 reviewing authority if the reviewing authority makes the finding that a refusal to grant the
1116 exception would violate federal law, state law, or both. Such exceptions may ~~also~~ be granted
1117 ~~if~~ if the reviewing authority finds, without limitation, that:

1118 1. A provision of this chapter, as applied to applicant, would deprive applicant of its
1119 rights under federal law, state law, or both; and

1120 2. The proposed wireless facility qualifies as a “personal wireless service facility” as
1121 defined in _____, as may be amended or superseded; and

1122 3. The applicant has provided the reviewing authority with a reasonable and clearly
1123 defined technical service objective to be achieved by the proposed wireless facility;
1124 and

1125 4. The applicant has provided the reviewing authority with a written statement that
1126 contains a detailed and fact-specific explanation as to why the proposed wireless
1127 facility cannot be deployed in compliance with the applicable provisions in
1128 _____, the Fairfax Municipal Code, the General Plan and/or any specific
1129 plan; and

1130 5. The applicant has provided the reviewing authority with a meaningful comparative
1131 analysis with the factual reasons why all alternative locations and/or designs
1132 identified in the administrative record (whether suggested by the applicant, the Town,
1133 public comments or any other source) are not technically feasible or potentially
1134 available to reasonably achieve the applicant’s reasonable and clearly defined
1135 technical service objective to be achieved by the proposed wireless facility; and

1136 6. The applicant has demonstrated to the reviewing authority that the proposed
1137 location and design is the least non-compliant configuration that will reasonably
1138 achieve the applicant’s reasonable and clearly defined technical service objective to
1139 be achieved by the proposed wireless facility, which includes without limitation a
1140 meaningful comparative analysis into multiple smaller or less intrusive wireless
1141 facilities dispersed throughout the intended service area; and

1142 7. The applicant has demonstrated that its proposed wireless facility will be in
1143 compliance with all applicable health, safety, and environmental regulations, which
1144 include without limitation the Americans with Disabilities Act, the Endangered Species
1145 Act, and all FCC rules and regulations for human exposure to RF emissions.

1146 B. An applicant may only request an exception at the time of applying for a wireless
1147 telecommunications facility permit. The request must include both the specific provision(s)
1148 of this chapter from which the exception is sought and the basis of the request. Any request

1149 for an exception after the Town has deemed an application complete shall be treated as a
1150 new application.

1151 C. The applicant shall have the burden of proving that the exception should be granted.

1152 **19.04.140 Eligible Facilities Requests**

1153 A. **Applicability.** This Section applies to all Eligible Facilities Requests pursuant to
1154 Section 6409(a).

1155 B. **Approval Required.** Applicants for Eligible Facilities Requests must submit a written
1156 request for a 6409(a) approval consistent with this section, which will be reviewed by the
1157 zoning administrator who will determine whether the request should be approved,
1158 conditionally approved, or denied without prejudice pursuant to the standards and
1159 procedures contained in this section.

1160 C. **Other Regulatory Approvals.** Any Eligible Facilities Request approved under this
1161 chapter shall be subject to any and all lawful conditions or requirements associated with
1162 such other permits or regulatory approvals from the Town and state or federal agencies.

1163 D. **Eligible Facilities Request Application Requirement.** An application must include
1164 the following information:

1165 1. Full name and contact information for the facility owner, facility operator, agent (if
1166 any), and property owner, and related letter(s) of authorization. If the applicant
1167 does not own the subject property, the application must include a written
1168 authorization signed by the property owner that empowers the applicant to file the
1169 application and perform all wireless facility construction, installation, operation,
1170 and maintenance to the extent described in the application.

1171 2. The type of facility, including a full, written description of the proposed facility, its
1172 purpose, and technical specifications.

1173 3. A detailed site and engineering plan of the proposed facility containing the exact
1174 proposed location of the facility, created by a qualified, licensed engineer and in
1175 accordance with requirements set by the zoning administrator. The site and
1176 engineering plan shall display the dimensions of each proposed facility, including,
1177 but not limited to, its height from the ground level. The site and engineering plans
1178 shall show the proposed facility from each cardinal direction.

1179 4. Photographs of facility equipment and an accurate visual impact analysis with
1180 photo simulations.

1181 5. A written statement that explains why the applicant believes Section 6409(a) and
1182 the related FCC regulations require approval. A complete written narrative
1183 analysis will state the applicable standard and all the facts that allow the Town to
1184 conclude the standard has been met. Bare conclusions not factually supported do
1185 not constitute a complete written analysis. As part of this written statement the

1186 applicant must also include (a) whether and why the support structure qualifies as
1187 an existing tower or existing base station; and (b) whether and why the proposed
1188 Eligible Facilities Request does not cause a substantial change in height, width,
1189 excavation, equipment cabinets, concealment, or permit compliance. The analysis
1190 provided under (b) shall include a copy of all prior conditions of approval and an
1191 explanation as to why the prior conditions of approval are met by the proposed
1192 wireless facility application.

1193 6. A technically-sufficient written report by a qualified radio frequency emissions
1194 engineer, certifying that the facility is in compliance with such FCC standards.

1195 **E. Administrative Review; Decision Notices.** The zoning administrator shall
1196 administratively review an application for an Eligible Facilities Request and act on such
1197 an application without prior notice or a public hearing. Within five (5) working days after
1198 the zoning administrator approves, conditionally approves, or denies an Eligible Facilities
1199 Request application, the zoning administrator shall send a written notice to the applicant.
1200 In the event that the zoning administrator determines that an application submitted for
1201 approval pursuant to Section 6409(a) does not qualify for approval, the zoning
1202 administrator will send written notice to the applicant that includes the reasons to support
1203 the review authority's decision and states that the application will be denied without
1204 prejudice.

1205 **F. Required Findings for 6409(a) Approval.** The zoning administrator may approve or
1206 conditionally approve an application submitted for Section 6409(a) approval when the
1207 zoning administrator finds that the proposed project:

- 1208 1. Qualifies as an Eligible Facilities Request; and
- 1209 2. Complies with (or is conditioned to comply with) all generally applicable health
1210 and safety rules.

1211 **G. Criteria for Denial Without Prejudice.** The zoning administrator may deny without
1212 prejudice an application submitted for approval pursuant to Section 6409(a) when it finds
1213 that the proposed project does not meet the criteria under subsection (D) above.

1214 **H. Conditional 6409(a) Approvals.** Subject to any applicable limitations in federal or
1215 state law, nothing in this chapter is intended to limit the Town's authority to conditionally
1216 approve an application for a section 6409(a) approval to protect and promote the public
1217 health, safety, and welfare.

1218 **I. Standard Conditions of Approval.** In addition to all other conditions adopted by the
1219 zoning administrator, all Section 6409(a) approvals, whether approved by the zoning
1220 administrator or deemed approved by the operation of law, shall be automatically subject to
1221 the following conditions in this section; provided, however, that the zoning administrator
1222 shall have discretion to modify or amend these conditions on a case-by-case basis as may
1223 be necessary or appropriate under the circumstances:

- 1224 1. *Approved Plans.* Before the permittee submits any application for a building
1225 permit or other permits required by the Fairfax Municipal Code, the permittee must
1226 incorporate the wireless telecommunications facility permit granted under this
1227 section, all conditions associated with the wireless telecommunications facility
1228 permit and the approved plans and any photo simulations into the project plans
1229 (the "Approved Plans") . The permittee must construct, install and operate the
1230 wireless telecommunications facility in strict compliance with the Approved Plans.
1231 The permittee shall submit an as built drawing within ninety (90) days after
1232 installation of the facility.
- 1233 2. *Permit Term.* The Town's grant or grant by operation of law of a Section 6409(a)
1234 approval will not extend the permit term, if any, for any conditional use permit, or
1235 other underlying prior regulatory authorization. Accordingly, the term for a Section
1236 6409(a) approval shall be coterminous with the underlying permit or other prior
1237 regulatory authorization for the subject tower or base station.
- 1238 3. *Accelerated Permit Terms Due to Invalidation.* In the event that any court of
1239 competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule
1240 that interprets Section 6409(a) such that federal law would not mandate approval
1241 for any Section 6409(a) approval, such 6409(a) approvals shall automatically
1242 expire one year from the effective date of the judicial order, unless the decision
1243 would not authorize accelerated termination of previously-approved Section
1244 6409(a) approvals or the zoning administrator grants an extension upon written
1245 request from the permittee that shows good cause for the extension, which
1246 includes, without limitation, extreme financial hardship. Notwithstanding anything
1247 in the previous sentence to the contrary, the zoning administrator may not grant a
1248 permanent exemption or indefinite extension. A permittee shall not be required to
1249 remove its improvements approved under the invalidated Section 6409(a)
1250 approval when it has submitted an application for a conditional use permit for
1251 those improvements before the one-year period ends.
- 1252 4. *No Waiver of Standing.* The Town's grant or grant by operation of law of a Section
1253 6409(a) approval does not waive, and shall not be construed to waive, any
1254 standing by or right of the Town to challenge Section 6409(a), any FCC rules that
1255 interpret Section 6409(a), or any Section 6409(a) approval.
- 1256 5. *Build-out Period.* The Section 6409(a) approval will automatically expire one (1)
1257 year from the issuance date, unless the permittee obtains all other permits and
1258 approvals required to install, construct and operate the approved wireless facility,
1259 which includes, without limitation, any permits or approvals required by the any
1260 federal, state, or local public agencies with jurisdiction over the subject property,
1261 the wireless facility, or its use. The zoning administrator may grant one (1) written
1262 extension to a date certain when the permittee shows good cause to extend the
1263 limitations period in a written request for an extension submitted at least 30 days
1264 prior to the automatic expiration date in this subparagraph. Any further extensions
1265 may be granted by the Planning Commission, in its sole discretion, pursuant to
1266 the same procedures to request an extension from the zoning administrator.

- 1267 6. *Maintenance Obligations; Vandalism.* The permittee shall keep the site, which
1268 includes, without limitation, any and all improvements, equipment, structures,
1269 access routes, fences and landscape features, in a neat, clean, and safe condition
1270 in accordance with the Approved Plans and all conditions in the Section 6409(a)
1271 approval. The permittee shall keep the site area free from all litter and debris at all
1272 times. The permittee, at its sole cost, shall remove and remediate any graffiti or
1273 other vandalism at the site within two (2) days after the permittee receives notice
1274 or otherwise becomes aware that such graffiti or other vandalism occurred.
- 1275 7. *Compliance with Laws.* The permittee shall maintain compliance at all times with
1276 all federal, state, and local laws applicable to the permittee, the subject property,
1277 the wireless facility, or any use or activities in connection with the use authorized
1278 in this section 6409(a) approval. The permittee expressly acknowledges and
1279 agrees that this obligation is intended to be broadly construed and that no other
1280 specific requirements in these conditions are intended to reduce, relieve, or
1281 otherwise lessen the permittee's obligations to maintain compliance with all
1282 applicable laws.
- 1283 8. *Adverse Impacts on Other Properties.* The permittee shall use all reasonable
1284 efforts to avoid any and all undue or unnecessary adverse impacts on nearby
1285 properties that may arise from the permittee's construction, installation, operation,
1286 modification, maintenance, repair, removal, or other activities at the site. The
1287 permittee shall not perform or cause others to perform any construction,
1288 installation, operation, modification, maintenance, repair, removal, or other work
1289 that involves heavy equipment or machines on any day and at any time prohibited
1290 under the Fairfax Municipal Code. The restricted work hours in this condition will
1291 not prohibit any work required to prevent an actual, immediate harm to property or
1292 persons, or any work during an emergency declared by the Town. The zoning
1293 administrator may issue a stop work order for any work that violates this condition.
- 1294 9. *Noise Complaints.* The permittee shall conduct all activities on the site in
1295 compliance with the noise standards in the Fairfax Municipal Code. In the event
1296 that any person files a noise complaint and the Town verifies that such complaint
1297 is valid, the permittee must remedy the violation within ten (10) days after notice
1298 from the Town, which may include a demonstration that the permittee has
1299 amended its operational guidelines in situations where the violation arises from
1300 the permittee's personnel rather than the permittee's equipment.
- 1301 10. *Inspections; Emergencies.* The permittee expressly acknowledges and agrees
1302 that the Town or its designee may enter onto the site and inspect the
1303 improvements and equipment upon reasonable prior notice to the permittee;
1304 provided, however, that the Town or its designee may, but is not obligated to,
1305 enter onto the site area without prior notice to support, repair, disable, or remove
1306 any improvements or equipment in emergencies or when such improvements or
1307 equipment threatens actual, imminent harm to property or persons. The permittee
1308 will be permitted to supervise the Town or its designee while such inspection or
1309 emergency access occurs.

1310 11. *Contact Information.* The permittee shall furnish the Town with accurate and up-
1311 to-date contact information for a person responsible for the wireless facility, which
1312 includes, without limitation, such person's full name, title, direct telephone
1313 number, facsimile number, mailing address, and email address. The permittee
1314 shall keep such contact information up-to-date at all times.

1315 12. *Performance Bond.* Before the Town issues any construction permit in connection
1316 with the wireless facility, if, in the Town's sole discretion, the existing performance
1317 bond for the facility is inadequate or the facility is not associated with any existing
1318 performance bond, the permittee shall post a performance bond from a surety and
1319 in a form acceptable to the Town manager in an amount equal to or greater than a
1320 written estimate from a qualified contractor with experience in wireless facilities
1321 removal. The written estimate must include the cost to remove all equipment and
1322 other improvements, which includes, without limitation, all antennas, radios,
1323 batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables,
1324 wires, conduits, structures, shelters, towers, poles, footings and foundations,
1325 whether above ground or below ground, constructed or installed in connection
1326 with the wireless facility. In establishing or adjusting the bond amount required
1327 under this condition, and in accordance with California Government Code §
1328 65964(a), the Town manager shall take into consideration information provided by
1329 the permittee regarding the cost to remove the wireless facility.

1330 13. Conditions of approval shall specify a maximum number of trips on a case-by-
1331 case basis based upon the carrier's maintenance and testing schedule.

1332 **19.04.150 Wireless Telecommunications Collocation Facilities Covered under**
1333 **California Government Code Section 65850.6**

1334 A. **Purpose.** The purpose of this section is to comply with an application for a Wireless
1335 Telecommunications Collocation Facility under California Government Code Section
1336 65850.6, for which a 6409(a) approval is not being requested. This section provides the
1337 requirements, standards, and regulations for a wireless telecommunications collocation
1338 facility for which subsequent collocation is a permitted use pursuant to California law. Only
1339 those facilities that fully comply with the eligibility requirements set forth in California
1340 Government Code Section 65850.6, or its successor provision, and which strictly adhere to
1341 the requirements and regulations set forth in this section, shall qualify as a wireless
1342 telecommunications collocation facility.

1343 B. **Definitions.** For the purposes of this section, the following terms are defined as
1344 follows:

1345 1. **"Collocation Facility"** means the placement or installation of wireless facilities,
1346 including antennas, and related equipment, on, or immediately adjacent to, a
1347 wireless telecommunications collocation facility.

1348 2. **"Wireless Telecommunications Facility"** means equipment and network
1349 components such as towers, utility poles, transmitters, base stations, and

1350 emergency power systems that are integral to providing wireless
1351 telecommunications services.

1352 3. **“Wireless Telecommunications Collocation Facility”** means a wireless
1353 telecommunications facility that includes collocation facilities.

1354 C. **Procedures.** Applications for wireless telecommunications collocation facilities shall
1355 comply with this Section and other applicable provisions of this Chapter. An application for a
1356 collocation facility under California Government Code Section 65850.6 shall be processed in
1357 the same manner as an application for Section 6409(a) approval is processed, except that
1358 where the process requires justification for the Section 6409(a) approval, the applicant shall
1359 instead provide the justification for a collocation facility under California Government Code
1360 Section 65850.6.

1361 D. **Requirements.** All requirements, regulations, and standards set forth in this chapter
1362 for a wireless telecommunications facility shall apply to a wireless telecommunications
1363 collocation facility; provided, however, the following shall also apply to a wireless
1364 telecommunications collocation facility:

1365 1. The applicant for a wireless telecommunications collocation facility permit shall
1366 describe or depict:

1367 a) The wireless telecommunications collocation facility as it will be initially
1368 built; and

1369 b) All collocations at full build-out, including, but not limited to, all antennas,
1370 antenna support structures, and accessory equipment.

1371 2. Any collocation shall use screening methods substantially similar to those used on
1372 the existing wireless telecommunications facilities, unless other optional screening
1373 methods are specified in the conditions of approval.

1374 3. A wireless telecommunications collocation facility permit shall not be approved,
1375 unless an environmental impact report, negative declaration, or mitigated negative
1376 declaration was prepared and approved for the wireless telecommunications
1377 collocation facility.

1378 E. **Permitted Use.** Notwithstanding any other provision of this chapter, a subsequent
1379 collocation facility on a wireless telecommunications collocation facility shall be a permitted
1380 use only if all of the following requirements are satisfied:

1381 1. The wireless telecommunications collocation facility:

1382 a) Was approved after January 1, 2007, by discretionary permit;

1383 b) Was approved subject to an environmental impact report, negative
1384 declaration, or mitigated negative declaration; and

1385 c) Otherwise complies with the requirements of California Government Code
1386 Section 65850.6(b), or its successor provision, for addition of a collocation
1387 facility to a wireless telecommunications collocation facility, including, but
1388 not limited to, compliance with all performance and maintenance
1389 requirements, regulations, and standards in this chapter and the conditions
1390 of approval in the wireless telecommunications collocation facility permit.

1391 2. The collocations were specifically considered when the relevant environmental
1392 document was prepared for the wireless telecommunications collocation facility.

1393 3. Before collocation, the applicant seeking collocation shall obtain all other
1394 applicable non-discretionary permits, as required pursuant to the Fairfax Municipal
1395 Code.

1396 F. **New or Amended Permit.** Except as otherwise provided above, approval of a new
1397 or amended permit shall be required when the facility is modified other than by collocation in
1398 accordance with this section, or the proposed collocation:

1399 1. Increases the height of the existing permitted telecommunications tower or
1400 otherwise changes the bulk, size, location, or any other physical attributes of the
1401 existing permitted wireless telecommunications collocation facility, unless
1402 specifically permitted under the conditions of approval applicable to such wireless
1403 telecommunications collocation facility; or

1404 2. Adds any microwave dish or other antenna not expressly permitted to be included
1405 in a collocation facility by the conditions of approval.

1406 **19.04.160 Business License**

1407 A permit issued pursuant to this chapter shall not be a substitute for any business license
1408 otherwise required under the Fairfax Municipal Code.

1409 **19.04.170 Emergency Deployment**

1410 In the event of a declared federal, state, or local emergency, or when otherwise warranted
1411 by conditions that the zoning administrator deems to constitute an emergency, the zoning
1412 administrator may approve the installation and operation of a temporary wireless
1413 telecommunications facility (e.g., a cell on wheels or "COW"), which is subject to such
1414 reasonable conditions that the zoning administrator deems necessary.

1415 **19.04.180 Operation and Maintenance Standards**

1416 A. All wireless telecommunications facilities must comply at all times with the following
1417 operation and maintenance standards. All necessary repairs and restoration shall be
1418 completed by the permittee, owner, or operator within 48 hours:

1419 1. After discovery of the need by the permittee, owner, operator or any designated
1420 maintenance agent; or

1421 2. After permittee, owner, operator, or any designated maintenance agent receives
1422 notification from a resident or the zoning administrator.

1423 B. All facilities, including, but not limited to, telecommunication towers, poles, accessory
1424 equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the
1425 facility site shall be maintained in good condition, including ensuring the facilities are
1426 reasonably free of:

1427 1. General dirt and grease;

1428 2. Chipped, faded, peeling, and cracked paint;

1429 3. Rust and corrosion;

1430 4. Cracks, dents, and discoloration;

1431 5. Missing, discolored, or damaged artificial foliage or other camouflage;

1432 6. Graffiti, bills, stickers, advertisements, litter and debris;

1433 7. Broken and misshapen structural parts; and

1434 8. Any damage from any cause.

1435 C. All trees, foliage, and other landscaping elements approved as part of the facility shall
1436 be maintained in good condition at all times, and the permittee, owner, and operator of the
1437 facility shall be responsible for replacing any damaged, dead, or decayed landscaping. No
1438 amendment to any approved landscaping plan may be made until it is submitted to and
1439 approved by the zoning administrator.

1440 D. The permittee shall replace its facilities, after obtaining all required permits, if
1441 maintenance or repair is not sufficient to return the facility to the condition it was in at the
1442 time of installation.

1443 E. Each facility, operating alone and in conjunction with other telecommunications facilities,
1444 shall be operated and maintained at all times in compliance with applicable federal
1445 regulations, including FCC radio frequency emissions standards. Within one month post-
1446 construction and annually thereafter, permittee must provide a radio frequency report as
1447 a condition of project approval to verify that actual levels of radio frequency emitted by
1448 the approved facilities, operating alone and in combination with other approved facilities,
1449 substantially conform to the pre-approved radio frequency report and do not exceed
1450 current standards for permissible human exposure to radio frequency as adopted by the
1451 FCC. In the event of an increase over accepted levels is detected, the permittee shall be
1452 responsible for immediately making the necessary adjustments to comply with FCC
1453 standards.

1454 F. Each facility shall be operated and maintained to comply at all times with the noise
1455 regulations of this chapter and shall be operated and maintained in a manner that will

1456 minimize noise impacts to surrounding residents. Except for emergency repairs, any testing
1457 and maintenance activities that will be audible beyond the property line shall only occur
1458 between the hours of 7:00 a.m. and 5:00 p.m. on Monday through Friday, excluding
1459 holidays, unless alternative hours are approved by the zoning administrator. Backup
1460 generators, if permitted, shall only be operated during periods of power outages or for
1461 testing.

1462 G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags
1463 shall be flown and shall be properly maintained at all times.

1464 H. Each owner or operator of a facility shall routinely inspect each site to ensure
1465 compliance with the standards set forth in this section and the conditions of approval.

1466 I. Annual Certification. Each year on July 1, the permittee shall submit an affidavit
1467 which shall list, by location, all facilities it owns within the Town by location, and shall certify
1468 (1) each such installation remains in use; (2) that such in use facility remains covered by
1469 insurance; and (3) each such installation which is no longer in use, and pay applicable
1470 recertification fees established by the Town. Any facility which is no longer in use shall be
1471 removed by permittee within 60 days of delivery of the affidavit, or be subject to a fine of
1472 \$100 per day until removal.

1473 **19.04.190 No Dangerous Conditions or Obstructions Allowed**

1474 No person shall install, use, or maintain any wireless telecommunications facility which in
1475 whole or in part rests upon, in or over any public sidewalk or parkway, when such
1476 installation, use, or maintenance endangers or is reasonably likely to endanger the safety of
1477 persons or property, or when such site or location is used for public utility purposes, public
1478 transportation purposes, or other governmental use, or when such facility unreasonably
1479 interferes with or impedes the flow of pedestrian or vehicular traffic including any legally
1480 parked or stopped vehicle, the ingress into or egress from any residence or place of
1481 business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted
1482 sidewalk dining, permitted street furniture, or other objects permitted at or near said location.

1483 **19.04.200 Permit Expiration**

1484 A. A permit for any wireless telecommunications facility shall be valid for a period of ten
1485 (10) years, unless the Planning Commission authorizes a different period, or pursuant to
1486 another provision of the Fairfax Municipal Code the permit lapses sooner or is revoked. At
1487 the end of such period, the permit shall expire.

1488 B. A permittee may apply for renewals of its permit in increments of no more than ten
1489 (10) years and no sooner than twelve (12) months prior to expiration of the permit.

1490 C. ~~If a permit has not expired at the time an application is made for a renewal, the~~
1491 ~~zoning administrator may administratively extend the term of the permit for subsequent ten~~
1492 ~~(10) year terms upon verification of continued compliance with the findings and conditions of~~
1493 ~~approval under which the application was originally approved, as well as any other~~
1494 ~~applicable provisions of the Fairfax Municipal Code that are in effect at the time the permit~~

1495 ~~renewal is granted.~~An application for renewal shall be evaluated based on federal, state,
1496 and local law as it exists at the time applicant seeks renewal. The following may also be
1497 required for an application to renew a wireless permit:

1498 1. At the zoning administrator's discretion, additional studies and information may be
1499 required of the applicant.

1500 2. If the zoning administrator determines that the facility is nonconforming or that
1501 additional conditions of approval are necessary to bring the facility into
1502 compliance with the provisions of the Fairfax Municipal Code that are then in
1503 effect, the zoning administrator shall refer the renewal request to the Planning
1504 Commission.

1505 D. The request for a renewal shall be decided by the Planning Commission if the permit
1506 expired before the application is made for a renewal or if the zoning administrator refers
1507 the matter to the Planning commission. After notice and a public hearing, the Planning
1508 Commission may approve, conditionally approve, or deny the renewal. A permit
1509 application may not be renewed if the facility is not upgraded to mitigate its impacts,
1510 including land use compatibility, visual resources, public safety or other factors
1511 addressed by CEQA, to the greatest extent permitted by technology which exists at the
1512 time of renewal and is consistent with the provisions of adequate service at affordable
1513 rates.

1514 **19.04.210 Cessation of Use or Abandonment**

1515 A. A wireless telecommunications facility is considered abandoned and shall be
1516 promptly removed as provided herein if it ceases to provide wireless telecommunications
1517 services for ninety (90) or more consecutive days. If there are two or more users of a single
1518 facility, then this provision shall not become effective until all users cease using the facility.

1519 B. The operator of a facility shall notify the Town in writing of its intent to abandon or
1520 cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten
1521 (10) days of ceasing or abandoning use. Notwithstanding any other provision herein, the
1522 operator of the facility shall provide written notice to the zoning administrator of any
1523 discontinuation of operations of thirty (30) days or more.

1524 C. Failure to inform the zoning administrator of cessation or discontinuation of
1525 operations of any existing facility as required by this section shall constitute a violation of
1526 any approvals and be grounds for:

1527 1. Prosecution;

1528 2. Revocation or modification of the permit;

1529 3. Calling of any bond or other assurance required by this chapter or conditions of
1530 approval of the permit;

1531 4. Removal of the facilities by the Town in accordance with the procedures
1532 established under the Fairfax Municipal Code for abatement of a public nuisance
1533 at the owner's expense; and

1534 5. Any other remedies permitted under the Fairfax Municipal Code or applicable law.

1535 **19.04.220 Removal and Restoration, Permit Expiration, Revocation or Abandonment**

1536 A. **Permittee's removal obligation.** Upon the expiration date of the permit, earlier
1537 termination or revocation of the permit or abandonment of the facility, the permittee, owner
1538 or operator shall remove its wireless telecommunications facility and restore the site to its
1539 natural condition, except for retaining the landscaping improvements and any other
1540 improvements at the sole discretion of the zoning administrator. Removal shall be in
1541 accordance with proper health and safety requirements and all ordinances, rules, and
1542 regulations of the Town. The facility shall be removed from the property within thirty (30)
1543 days of the permit's expiration, at no cost or expense to the Town. If the facility is located
1544 on private property, the private property owner shall also be jointly and severally responsible
1545 for the expense of timely removal and restoration.

1546 B. **Failure to remove.** Failure of the permittee, owner, or operator to promptly remove
1547 its facility and restore the property within thirty (30) days after expiration, earlier termination,
1548 or revocation of the permit, or abandonment of the facility, shall be a violation of the Fairfax
1549 Municipal Code, and be grounds for:

1550 1. Prosecution;

1551 2. Calling of any bond or other assurance required by this chapter or conditions of
1552 approval of permit;

1553 3. Removal of the facilities by the Town in accordance with the procedures
1554 established under the Fairfax Municipal Code for abatement of a public nuisance
1555 at the owner's expense; or

1556 4. Any other remedies permitted under the Fairfax Municipal Code.

1557 C. **Summary removal.** In the event the zoning administrator determines that the
1558 condition or placement of a wireless telecommunications facility located in the public right-
1559 of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an
1560 imminent threat to public safety, or determines other exigent circumstances require
1561 immediate corrective action (collectively, "exigent circumstances"), the zoning administrator
1562 may cause the facility to be removed summarily and immediately without advance notice or
1563 a hearing. If the circumstances allow for it and, to the extent feasible, the zoning
1564 administrator will notify the permittee to remove the facility and allow for the reinstallation of
1565 the facility, subject to the permittee demonstrating to the satisfaction of the Town's Building
1566 Official and zoning administrator that the work can be done in safe manner compliant with
1567 the original Approved Plans and Section 19.04.100. Written notice of the removal shall be
1568 served upon the person who owns the facility within five (5) business days of removal and
1569 all property removed shall be preserved for the owner's pick-up, as is reasonably feasible. If

1570 the owner cannot be identified following reasonable effort or if the owner fails to pick-up the
1571 property within sixty (60) days, the facility shall be treated as abandoned property.

1572 **D. Removal of facilities by Town.** In the event the Town removes a facility in
1573 accordance with this chapter , any such removal shall be without any liability to the Town
1574 for any damage to such facility that may result from reasonable efforts of removal. In
1575 addition to the procedures for recovering costs of nuisance abatement, the Town may
1576 collect such costs from the performance bond posted and to the extent such costs exceed
1577 the amount of the performance bond, collect those excess costs in accordance with the
1578 Fairfax Municipal Code. Unless otherwise provided herein, the Town has no obligation to
1579 store such facility. Neither the permittee, the owner, nor the operator shall have any claim if
1580 the Town damages or destroys any such facility not timely removed by the permittee, owner,
1581 or operator after notice, or removed by the Town due to exigent circumstances.

1582 **19.04.230 Authorization for Departmental Forms, Rules, and Other Regulations.**

1583 The Town Council authorizes the zoning administrator to develop and publish permit
1584 application forms, checklists, informational handouts and other related materials that the
1585 zoning administrator finds necessary, appropriate or useful for processing requests,
1586 applications, permits, or any other matter under this chapter. Without further authorization
1587 from the Town Council, the zoning administrator may from time-to-time update and alter any
1588 such permit application forms, checklists, informational handouts and other related materials
1589 as the zoning administrator deems necessary, appropriate or useful to respond to
1590 regulatory, technological or other changes related to this chapter. The Town Council
1591 authorizes the zoning administrator to establish other reasonable rules and regulations,
1592 which may include, without limitation, regular hours for appointments with applicants, as the
1593 zoning administrator deems necessary or appropriate to organize, document, and manage
1594 the application intake and permitting process.

1595 **19.04.240 Appeals.**

1596 **A. Appeals by Applicants.** Notwithstanding any provision of the Fairfax Municipal Code
1597 the contrary, including, but not limited to, Chapter 17.036, any applicant may appeal a
1598 decision by the zoning administrator under this Chapter. The appeal must be filed within two
1599 (2) days from the zoning administrator's decision. The appeal must state in plain terms the
1600 grounds for reversal and the facts that support those grounds. The Town Council shall serve
1601 as the appellate authority for all appeals of all actions of the zoning administrator taken
1602 pursuant to this section. The Town shall provide notice for an administrative hearing by the
1603 Town Council. The Town Council shall limit its review to whether the project should be
1604 approved or denied in accordance with the provisions in this Chapter.

1605 **B. Appeals by the General Public.** Any interested person or entity may appeal any
1606 decision by the approval authority in accordance with the standards and procedures in Title
1607 17.036, except as modified in this Section. On the next available meeting date after the
1608 appeal period lapses, or as soon as reasonably feasible thereafter, the appellate body shall
1609 hold a public hearing to consider and act on the application in accordance with the
1610 applicable provisions in the General Plan, any applicable specific plan and all applicable
1611 provisions in the Fairfax Municipal Code. Appeals from an approval will not be permitted to
1612 the extent that the appeal is based on environmental effects from RF emissions that comply
1613 with all applicable FCC regulations.

1614 **19.04.250 Effect on Other Ordinances**

1615 Compliance with the provisions of this chapter shall not relieve a person from complying with
1616 any other applicable provision of the Fairfax Municipal Code, including, but not limited to,
1617 obtaining any necessary encroachment or building permits. In the event of a conflict
1618 between any provision of this chapter and other provisions of the Fairfax Municipal Code,
1619 this chapter shall control.

1620