

ORDINANCE NO. 833

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. §§ 1.6100 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.

The foregoing ordinance was introduced at a regular meeting of the Town Council of the Town of Fairfax held in said Town on the 17th day of July 2019, and duly adopted at the next regular meeting of the Town Council on the 7th day of July 2019 by the following vote, to wit:

AYES: ACKERMAN, COLER, LACQUES, REED

NOES: None

ABSENT: GODDARD

ABSTAIN: None

ATTEST:


Hannah Politzer, Deputy Town Clerk


Barbara Coler, Mayor

**Exhibit A
ORDINANCE**

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

19.04.010 Purpose

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

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

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

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

B. **"Antenna"** means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals or electromagnetic waves for the provision of

services, including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such devices include, but are not limited to, directional antennas, such as panel antenna, microwave dishes, and satellite dishes; omnidirectional antennas; wireless access points (Wi-Fi); and strand-mounted wireless access points. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

C. **“Base Station”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(1), as may be amended, which currently defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.6100(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this chapter, supports or houses equipment described in 47 C.F.R. § 1.6100(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this chapter, does not support or house equipment described in 47 C.F.R. § 1.6100(b)(1)(i)-(ii).

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

E. **“Collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), as may be amended, which currently defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting or receiving radio frequency signals for communications purposes.

F. **“Eligible Facilities Request”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(3), as may be amended, which currently defines that term as any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

G. **“Eligible Support Structure”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4), as may be amended, which currently defines that term as any tower or base station as defined in this section; provided that it is existing at the time the relevant application is filed with the State or local government under this chapter.

- 78 H. **“Existing”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4), as
79 may be amended, which currently provides that a constructed tower or base station is existing
80 for purposes of the FCC's Section 6409(a) regulations if it has been reviewed and approved
81 under the applicable zoning or siting process, or under another State or local regulatory review
82 process; provided that, a tower that has not been reviewed and approved because it was not
83 in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this
84 definition.
- 85 I. **“FCC”** means the Federal Communications Commission or its duly appointed
86 successor agency.
- 87 J. **“Listed Species”** means any species, endangered, threatened or rare species as listed by
88 the Department of Fish and Wildlife (Cal. Fish and Game Code §§ 2050 et seq.), the United
89 State Fish and Wildlife Service (Endangered Species Act, 16 U.S.C. §§ 1531 et seq.) or
90 the National Marine Fisheries Service (re: anadromous fish), or locally designated, such
91 as heritage trees, and natural communities, including wetland habitat or wildlife dispersal
92 or migration corridors.
- 93 K. **“Modification”** means any change to an existing wireless telecommunications facility
94 that involves any of the following: collocation, expansion, modification, alteration,
95 enlargement, intensification, reduction, or augmentation, including, but not limited to, a
96 change in size, shape, color, visual design, or exterior material. Modification does not include
97 repair, replacement, or maintenance if those actions do not involve a change to the existing
98 facility involving any of the following: collocation, expansion, modification, alteration,
99 enlargement, intensification, reduction, or augmentation.
- 100 L. **“Monopole”** means a wireless communication facility support structure which consists of a
101 self-supported monopolar structure, usually rounded, erected on the ground to support
102 antennas and connecting appurtenances.
- 103 M. **“Non-Ionizing Electromagnetic Radiation”** means electromagnetic radiation primarily in
104 the visible, infrared and radio frequency portions of the electromagnetic spectrum).
- 105
- 106 N. **“Personal Wireless Services”** means the same as defined in 47 U.S.C. §
107 332(c)(7)(C)(i), as may be amended, which defines the term as commercial mobile services,
108 unlicensed wireless services and common carrier wireless exchange access services.
- 109 O. **“Personal Wireless Service Facilities”** means the same as defined in 47 U.S.C. §
110 332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal
111 wireless services.
- 112 P. **“Zoning administrator”** means the Town's Planning and Building Services Director
113 or his/her designee.

- 114 Q. **“Pole”** means a single shaft of wood, steel, concrete, or other material capable of
115 supporting the equipment mounted thereon in a safe and adequate manner and as required
116 by provisions of the Fairfax Municipal Code.
- 117 R. **“Public Right-of-Way or “Right-of-Way”** means any public street, public way, public
118 alley or public place, laid out or dedicated, and the space on, above or below it, and all
119 extensions thereof, and additions thereto, under the jurisdiction of the Town.
- 120 S. **“Reviewing Authority”** means the person or body who has the authority to review
121 and either grant or deny a wireless telecommunications facility permit pursuant to this chapter.
- 122 T. **“RF”** means radio frequency or electromagnetic waves.
- 123 U. **“Roof-mounted”** means mounted directly on the roof of any building or structure,
124 above the eave line of such building or structure.
- 125 V. **“Section 6409(a)”** means Section 6409(a) of the Middle Class Tax Relief and Job
126 Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as
127 such law may be amended from time to time.
- 128 W. **“Section 6409(a) Approval”** means the approval required by Section 6409(a).
- 129 X. **“Shared-Location”** means more than one wireless communications facility comprised
130 of multiple structures used to support antennas operated by one or more carriers where the
131 structures are located within proximity to each other.
- 132 Y. **“Site”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(6), as may be
133 amended, which provides that for towers other than towers in the public rights-of-way, the
134 current boundaries of the leased or owned property surrounding the tower and any access or
135 utility easements currently related to the site, and, for other eligible support structures, further
136 restricted to that area in proximity to the structure and to other transmission equipment already
137 deployed on the ground.
- 138 Z. **“Substantial Change”** means the same as defined by the FCC in 47 C.F.R. §
139 1.6100(b)(7), as may be amended, which currently defines that term differently based on the
140 particular wireless facility type (tower or base station) and location (in or outside the public
141 right-of-way). For clarity, this definition organizes the FCC's criteria and thresholds for a
142 substantial change according to the wireless facility type and location.
- 143 1. For towers outside the public rights-of-way, a substantial change occurs when:
- 144 a) the proposed collocation or modification increases the overall height more than
145 10% or the height of one additional antenna array not to exceed 20 feet
146 (whichever is greater); or
- 147 b) the proposed collocation or modification increases the width more than 20 feet
148 from the edge of the wireless tower or the width of the wireless tower at the level
149 of the appurtenance (whichever is greater); or

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

180 The thresholds for a substantial change outlined above are disjunctive. The failure to meet
181 any one or more of the applicable thresholds means that a substantial change would occur.
182 The thresholds for height increases are cumulative limits. For sites with horizontally separated
183 deployments, the cumulative limit is measured from the originally-permitted support structure
184 without regard to any increases in size due to wireless equipment not included in the original
185 design. For sites with vertically separated deployments, the cumulative limit is measured from

186 the permitted site dimensions as they existed on February 22, 2012—the date that Congress
187 passed Section 6409(a).

188 AA. **“Telecommunications Tower”** or **“Tower”** means a freestanding mast, pole, guyed
189 tower, lattice tower, free standing tower or other structure designed and primarily used to
190 support wireless telecommunications facility antennas. For the purposes of “Eligible
191 Facilities Requests”, the term “Tower” means the same as defined by the FCC in 47 C.F.R.
192 § 1.6100(b)(9), as may be amended, which currently defines that as any structure built for
193 the sole or primary purpose of supporting any FCC-licensed or authorized antennas and
194 their associated facilities, including structures that are constructed for wireless
195 communications services including, but not limited to, private, broadcast, and public safety
196 services, as well as unlicensed wireless services and fixed wireless services such as
197 microwave backhaul, and the associated site.

198 BB. **“Transmission Equipment”** means the same as defined by the FCC in 47 C.F.R. §
199 1.6100(b)(8), as may be amended, which currently defines that term as equipment that
200 facilitates transmission for any FCC-licensed or authorized wireless communication service,
201 including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and
202 regular and backup power supply. The term includes equipment associated with wireless
203 communications services, including, but not limited to, private, broadcast, and public safety
204 services, as well as unlicensed wireless services and fixed wireless services such as
205 microwave backhaul.

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

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

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

- 217 1. A ground-, building- or tower-mounted antenna facility operated by a federally
218 licensed amateur radio operator as part of the Amateur Radio Service that qualifies
219 as an amateur station as defined by the FCC, 47 C.F.R. Part 97, of the
220 Commission’s Rules, or its successor regulation, provided that the antenna does
221 not exceed 30 feet above grade and is subject to the allowable setbacks pursuant
222 to Title 17.
- 223 2. A single ground- or building-mounted receive-only radio or television antenna
224 facility, for the sole use of the owner or tenant occupying a parcel on which the
225 antenna is located, that is subject to the FCC Over-The-Air-Reception Devices rule,

- 226 47 C.F.R. Section 1.4000, or any successor regulation, including, but not limited to,
227 TV antennas used to receive television broadcast signals and wireless cable
228 antennas. The antenna is not to exceed 30 feet above grade and must be subject
229 to the allowable setbacks pursuant to Title 17.
- 230 3. A single ground-, pole- or building- mounted receive-only radio or television satellite
231 dish antenna, not to exceed 48 inches in diameter, for the sole use of the owner or
232 tenant occupying a parcel on which the antenna is located; satellite dish antenna
233 height not to exceed the height of the roof ridge of the host structure; (All such
234 applications shall be subject to regulations pursuant to Title 17.)
- 235 4. Portable radios and devices including, but not limited to, hand-held, vehicular, or
236 other portable receivers, transmitters or transceivers, cellular phones, CB radios,
237 emergency services radio, and other similar portable devices as determined by the
238 zoning administrator.
- 239 5. Wireless telecommunications facilities owned and operated by any government
240 agency.
- 241 6. Wireless telecommunications facilities owned and operated by any emergency
242 medical care provider.
- 243 7. Mobile services providing public information coverage of news events of a
244 temporary nature.
- 245 8. Any wireless telecommunications facilities exempted from the Fairfax Municipal
246 Code by federal law or state law.

247 **19.04.030 Applicability**

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

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

251 All facilities, notwithstanding the date approved, shall be subject immediately to the
252 provisions of this chapter governing the operation and maintenance, cessation of
253 use and abandonment, removal and restoration of wireless telecommunications
254 facilities and wireless telecommunications collocation facilities and the prohibition
255 of dangerous conditions or obstructions by such facilities; provided, however, that
256 in the event a condition of approval conflicts with a provision of this chapter, the
257 condition of approval shall control unless and until the permit is amended or
258 revoked.

259

260 B. Notwithstanding any provision of the Fairfax Municipal Code to the contrary, provisions
261 governing the installation of a public utility structure or facility shall not apply to wireless

262 telecommunications facilities. Title 19 shall govern all applications for wireless
263 telecommunications facilities.

264 **19.04.040 Wireless Telecommunications Facility Permit Required**

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

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

274
275 Notwithstanding any other provision of this chapter, a conditional use permit shall be required
276 for a facility when an exception is requested. Subject to any applicable limitations in federal
277 or state law, nothing in this Chapter is intended to limit the approval authority's ability to
278 conditionally approve or deny without prejudice any application for a use permit as may be
279 necessary or appropriate to protect and promote the public health, safety and welfare, and to
280 advance the goals or policies in the Fairfax Municipal Code or the General Plan.
281

| Description of Wireless Facility | Private Property | | | Public Right-of Way³ |
|---|--|----------------------------------|---------------------------------------|---|
| | RS, RD, RM, PDD, UR Residential Zoning Districts and CR Commercial Zoning district | OA and PD Zoning district | All Other Zoning Districts | Non-Residential Zoning Districts except for OA, PD, and CR |
| Roof-mounted facility, building-mounted facility, or facility mounted on an existing pole | Not Permitted | Not Permitted | Conditional Use Permit/ Design Review | Conditional Use Permit/ Design Review |
| Facility mounted on a replacement pole or new telecommunications tower | Not Permitted | Not Permitted | Conditional Use Permit/ Design Review | Conditional Use Permit/ Design Review |
| New wireless telecommunications collocation facility | Not Permitted | Not Permitted | Conditional Use Permit/ Design Review | Conditional Use Permit/ Design Review |
| Eligible facilities request ¹ or application pursuant to California Government Code Section 65850.6 ² | Permitted | Not Permitted | Permitted | Permitted |
| | ¹ See requirements of section 19.04.140. ² See requirements of section 19.04.150. ³ For any public right-of-way on the boundary between zoning districts, the zone applicable to the location of a Wireless Telecommunication Facility shall be determined based upon the closest district adjacent to the facility's location. The centerline of the public right-of-way will be used as the boundary between districts. | | | |

282

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

287 **19.04.050 Application for Permit**

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

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

326

- 327 5. Photographs of facility equipment and an accurate visual impact analysis with photo
328 simulations.
- 329 6. Proof of all applicable licenses or other approvals required by the FCC.
- 330 7. A technically sufficient written report certified by a qualified radio frequency
331 emissions engineer, certifying that the facility, operating by itself and in combination
332 with other existing or approved facilities which can be measured at the proposed
333 facility site, is in compliance with such FCC standards. Measurements for radio
334 frequency emissions shall be based on all proposed, approved and existing facilities
335 operating at maximum power densities at all relevant frequencies being used.
336 Posting of a financial security may be required as a condition of approval to pay the
337 cost for preparation of radio frequency reports evaluating the conformance of
338 approved and operative facilities with applicable health standards adopted by the
339 FCC. The carrier may post a single financial security in an amount not to exceed
340 \$25,000 and indexed to the annual construction index hereafter, to satisfy radio
341 frequency performance reports for buildout of the carrier's network facilities plan.
- 342 8. If the application is for a facility that will be located within the public right-of-way,
343 the applicant shall certify that it is a telephone corporation or state the basis for its
344 claimed right to enter the right-of-way, and provide a copy of its certificate of public
345 convenience and necessity (CPCN), if a CPCN has been issued by the California
346 Public Utilities Commission.
- 347 9. A written description identifying the geographic service area for the subject
348 installation, accompanied by a plan and maps showing anticipated future
349 installations and modifications for the following two years.
- 350 10. A written report that analyzes acoustic levels for the proposed wireless
351 telecommunications facility and all associated equipment, including, without
352 limitation, all environmental control units, sump pumps, temporary backup power
353 generators, and permanent backup power generators in order to demonstrate
354 compliance with chapter 8.20 (Noise Control). The acoustic analysis must be
355 prepared and certified by a qualified engineer and include an analysis of the
356 manufacturer specifications for all noise-emitting equipment and a depiction of the
357 proposed equipment relative to all adjacent property lines. In lieu of a written report,
358 the applicant may submit evidence from the equipment manufacturer that the
359 ambient noise emitted from all the proposed equipment will not, both individually
360 and cumulatively, exceed the applicable limits.
- 361 11. If the applicant claims it requires an exception to the requirements of this chapter,
362 all information and studies necessary for the Town to evaluate that claim.
- 363 12. An application and processing fee and a deposit for a consultant review as set forth
364 in paragraph (B) of this section.

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

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

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

373

374 16. Any other studies or information determined necessary by the zoning administrator.

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

383 The accuracy, adequacy, and completeness of submissions;

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

386 Whether any requested exception is justified;

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

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

396 An assessment of any impact on trees or flora;

397 A technical evaluation of alternative sites, facility designs or configurations, and coverage
398 analysis; and

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

C. Procedures for a Duly Filed Applications

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

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

19.04.060 Location and Configuration Preferences

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

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

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

- 440 1. Collocation with existing facilities outside the public rights-of-way;
441 2. Roof-mounted;
442 3. Building-mounted;
443 4. Mounted on an existing pole or utility pole;
444 5. Mounted on a new pole or utility pole that will replace an existing pole or utility pole;
445 and
446 6. Mounted on a new telecommunication tower or pole.
- 447 D. **Order of Preference - Location.** The order of preference for the location of wireless
448 telecommunications facilities from most preferred to least preferred is:
- 449 1. In the CH zoning district;
450 2. In the CS zoning district;
451 3. In the CC zoning district;
452 4. In the CL zoning district;
453 5. In the PD zoning district; and
454 6. In the public right-of-way with the closest adjacent district being a commercial
455 district.
- 456 E. Applications for new wireless communications facilities shall only be for placement a
457 minimum of 50 feet from all residences and a minimum 300 feet from child day care
458 centers, schools, playgrounds, parks, ballfields, and medical facilities unless the
459 applications include information sufficient to demonstrate:
- 460 (1) The location and type of preferred sites which exist within the proposed or technically
461 feasible coverage area is mapped;
- 462 (2) The preferred location site was not available as shown by the good faith efforts and
463 measures taken by the carrier to secure the preferred location sites;
- 464 (3) Specific reasons why such efforts and measures were unsuccessful;
- 465 (4) Specific reasons why the location of the proposed facility site is essential to meet the
466 service demands of the carrier; and
- 467 (5) Through reports required pursuant to § 19.04.050 demonstrating compliance with
468 current federal health standards.
- 469 F. Wireless communications facilities shall be attached or sited adjacent to existing

structures unless the carrier demonstrates to the satisfaction of the Town that no other technically feasible site exists or that construction of a freestanding facility on or at a distant location from an existing structure will mitigate adverse effects related to land use compatibility, visual resources, public safety and other environmental factors addressed by CEQA. Appropriate types of existing structures may include, but not be limited to: buildings, water tanks and some telephone/utility poles.

G. Monopoles for wireless communications facilities should not be located in residential or open space areas unless technical evidence demonstrates to the satisfaction of the Town that no other alternative facility site or type of antenna support structure is feasible and/or if the use of a Monopole for the proposed facility by itself or in combination with other existing, approved and proposed facilities will avoid or mitigate adverse effects related to land use compatibility, visual resources and public safety.

H. **Accessory equipment.** In order of preference from most preferred to least preferred, accessory equipment for wireless telecommunication facilities and wireless telecommunications collocation facilities (excluding antennas and electric meters) shall be located underground where possible, within a building or structure, on a screened roof top area or structure, or in a rear yard if not readily visible from surrounding properties and the roadway, unless the reviewing authority finds that another location is preferable under the circumstances of the application. The applicant shall bear the burden of demonstrating that accessory equipment cannot be placed in the most preferred location.

I. Collocation and Shared-Location of wireless telecommunications facilities should be required when it is feasible and mitigates adverse effects related to land use compatibility, visual resources, public safety and other environmental factors addressed by CEQA. Collocation and Shared-Location sites should not be required when it creates or significantly increases such adverse effects and/or technical evidence demonstrates to the satisfaction of the Town that it is not feasible due to service impairment or operational failures. To ensure adequate and complete consideration of Collocation and Shared-Location siting of proposed wireless communications facilities, the carrier may be required to submit to the Town a graphic and written analysis which identifies all technically feasible sites within the coverage area that would accommodate the proposed service. The analysis shall include:

1. Enough information to provide adequate consideration of technically feasible alternative sites and/or facility designs that would avoid or minimize adverse effects related to land use compatibility, visual resources, public safety and other environmental factors addressed by CEQA;

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

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

4. The Town may require independent peer review of the analysis prior to making a decision on the permit applications. The analysis should, to the extent practical, be

incorporated with the coverage area map.

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

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

19.04.070 Design and Development Standards for All Facilities

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

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

C. General guidelines.

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

2. For open space or hillside locations that would be generally viewed from a distance, innovative design solutions may be appropriate where the screening potential of a site

- 555 is low (i.e., disguise facility as a landscape element, public art and the like).
- 556 3. Facilities should not be located on historically or architecturally significant structures
557 unless the Secretary of Interior's guidelines determine that facilities can be visually and
558 architecturally integrated with the structure; historical landscapes shall be avoided.
- 559 4. Facilities should be sited to avoid adverse impacts to existing views from surrounding
560 residences.
- 561
- 562
- 563 D. **Traffic safety; Roads.** All facilities shall be designed and located in such a manner
564 as to avoid adverse impacts on traffic safety. Whenever feasible, existing roads and parking
565 areas should be used to access, build and service new telecommunications facilities. Any
566 new access roads or parking areas constructed shall be shared with subsequent
567 telecommunications facilities and/or other permitted uses to the extent feasible. New access
568 roads constructed in open space areas shall have the minimum width and surfacing necessary
569 to meet fire safety and access requirements, and shall be graded and drained consistent with
570 Town Code Chapter 8.26, Urban Runoff Pollution Prevention. The size of new parking areas
571 shall be limited to the minimum necessary to accommodate vehicles associated with periodic
572 maintenance of the facility.
- 573 E. **Antennas.** The applicant shall use the least visible antennas possible to accomplish
574 the coverage objectives. Antenna elements shall be flush mounted, to the extent reasonably
575 feasible. All antenna mounts shall be designed so as not to preclude possible future
576 collocation by the same or other operators or carriers. Antennas shall be situated as to reduce
577 visual impact without materially compromising their function. Whip antennas need not be
578 screened.
- 579 F. **Landscaping; Vegetation.**
- 580 1. Where appropriate, facilities shall be installed so as to maintain, protect, and enhance
581 existing landscaping on the site, including trees, foliage, and shrubs, whether or not
582 utilized for screening. Additional landscaping shall be planted, irrigated, and
583 maintained where such vegetation is deemed necessary by the Town to provide
584 screening or to block the line of sight between facilities and adjacent uses.
585
- 586 2. Applications for Wireless Facilities shall be accompanied by a landscape plan that
587 shows existing vegetation, indicates any vegetation proposed for removal or trimming,
588 and identifies proposed planting by type, size and location. The emphasis of the
589 landscape plan should be to visually screen the proposed facility and stabilize soils on
590 sloping sites. Introduced vegetation shall be native, drought tolerant species
591 compatible with the predominant natural setting of the project area.
592

3. Existing trees and other screening vegetation in the vicinity of the proposed facility and associated accessways shall be protected from damage both during and after construction. Submission of a tree protection plan may be required to ensure compliance with this requirement.
4. All vegetation disturbed during project construction shall be replanted with compatible vegetation and soils disturbed by development shall be reseeded to control erosion.
5. No vegetation shall be removed subsequent to project completion, except to comply with local and state fire safety regulations, to prevent the spread of disease as required by the state's Food and Agriculture Department, or to prevent safety hazards to people and property.
6. The carrier shall enter into a landscape performance and maintenance agreement with the Town to ensure the installation and establishment of required landscaping. This agreement shall be secured by financial securities in an amount equal to 150 percent of estimates to cover the cost of materials and labor for required improvements. The duration of the landscape maintenance agreement shall be for a minimum period of no less than one year and may be extended for an additional period of up to two additional years upon renewal of the permit applications.
7. Antennas and associated structures and equipment shall be painted to blend with the structures, vegetation, sky or landscape against which they will be primarily viewed.
8. Wireless telecommunications facilities are not permitted on ridgelines

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

H. **Lighting.** No wireless telecommunications facility may be illuminated, unless either specifically required by the Federal Aviation Administration or other government agency or in association with the illumination of an athletic field on Town or school property. Lightning arresters and beacon lights are not permitted, unless required by the Federal Aviation Administration, FCC or other applicable regulations for health and safety. Legally-required lightning arresters and beacons shall be included when calculating the height of facilities. If lighting is permitted, the following requirements apply to such lighting:

1. Mechanically-operated, low wattage, hooded and downward directed exterior lighting shall be permitted for safety purposes only and shall be kept off, except when maintenance or safety personnel are present at night.
2. Tower lighting required under FAA regulations should, to the greatest extent feasible, be shielded or directed to minimize light and glare impacts visible from publicly accessible areas.

- 635 3. Nighttime lighting of warning signs required near publicly accessible facilities must
636 consist of low-wattage fixtures, and must be directed downward and hooded to mitigate
637 impacts visible from publicly accessible areas.

638 I. **Noise.**

- 639 1. Each wireless telecommunications facility and wireless telecommunications
640 collocation facility shall be operated in such a manner so as to minimize any
641 possible disruption caused by noise.
- 642 2. Normal testing and maintenance activities shall not take place weekends, holidays
643 or between the hours of 5:00 p.m. and 7:00 a.m., excluding emergency
644 repairs. Normal testing and maintenance activities, which do not involve the use or
645 operation of telecommunications and maintenance equipment that is audible from
646 residences and other nearby sensitive receptors, may occur at all other times.
- 647 3. Backup generators shall only be operated during periods of power outages or
648 emergency occurrences, and shall not be tested on weekends, holidays, or
649 between the hours of 5:00 p.m. and 7:00 a.m.
- 650 4. At no time shall equipment noise from any facility exceed an exterior noise level of
651 50 dBA at the facility's property line if the facility is located in a business or
652 commercial zone that permits those uses; provided, however, that for any such
653 facility located within 500 feet of any property zoned residential or improved with a
654 residential use, such equipment noise shall not exceed an exterior noise level of 40
655 dBA at the property line of any such residential property. For any facility located
656 within a residential zone, such equipment noise shall at no time be audible at the
657 property line of any residentially-improved or residential zoned property.
- 658 5. Any equipment, including, but not limited to, air conditioning units, that may emit
659 noise that would be audible from either beyond three feet from the facility in the
660 case of a facility located in the right-of-way, or the facility's property line in the case
661 of other facilities, shall be enclosed or equipped with noise attenuation devices to
662 the extent necessary to ensure compliance with applicable noise limitations under
663 the Fairfax Municipal Code.

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

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

674 **19.04.080 Additional Design and Development Standards for Facilities Outside the**
675 **Public Right-of-Way**

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

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

682 C. **Roof-mounted facilities.** Roof-mounted facilities shall be designed and constructed
683 to be fully concealed or screened in a manner compatible with the existing architecture of the
684 building the facility is mounted to in color, texture, and type of material. Screening shall not
685 increase the bulk of the structure nor alter the character of the structure. Roof-mounted
686 antennas and associated equipment shall be located as far back from the edge of the roof as
687 possible to minimize visibility from street level locations. Where appropriate, construction of
688 a roof-top parapet wall to hide the facility may be required. To avoid or mitigate the
689 appearance of visual clutter on rooftops, proposed facilities should, to the extent feasible, be
690 located adjacent to existing rooftop antennas or equipment, incorporated into rooftop antenna
691 or equipment enclosures, or otherwise screened from view. In addition, existing rooftop
692 antennas and equipment should be consolidated where practical and shall be removed if
693 abandoned.

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

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

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

706 2. Facilities mounted to a telecommunications tower, including, but not limited to, the
707 attached antennas, shall be designed to be the minimum functional height and width
708 required to adequately support the proposed facility and meet FCC
709 requirements. The applicant shall provide documentation satisfactory to the zoning
710 administrator establishing compliance with this paragraph. In any event, facilities
711 mounted to a telecommunications tower shall not exceed the applicable height limit
712 for structures in the applicable zoning district.

3. Aside from the antenna itself, no additional equipment may be visible. All cables, including, but not limited to, electrical and utility cables, shall be laid within the interior of the telecommunications tower and camouflaged or hidden to the fullest extent feasible without jeopardizing the physical integrity of the tower.
4. Pole installations shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening.
5. All antenna components and accessory wireless equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background or existing architectural elements so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.
6. Poles shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility.
7. If a faux tree is proposed for the pole installation, it shall be of a type of tree compatible with those existing in the immediate areas of the installation. If no trees exist within the immediate areas, the applicant shall create a landscape setting that integrates the faux tree with added species of a similar height and type. Additional camouflage of the faux tree may be required depending on the type and design of faux tree proposed.

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

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

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

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

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

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

C. Antennas.

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

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

D. Poles.

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

2. Pole height and width limitations:

- 791 a) All replacement poles shall be designed to be the minimum functional height
792 and width required to support the proposed antenna installation and meet
793 FCC and CPUC requirements. Replacement poles and antennas and similar
794 structures shall be no greater in diameter or other cross-sectional
795 dimensions than is necessary for the proper functioning of the facility.
796 Replacement poles must match existing poles, as determined by the zoning
797 administrator.
- 798 b) Notwithstanding (a) above, no facility shall be located on a pole that is less
799 than twenty (20) feet in height, and no facility shall exceed thirty-five (35) feet
800 in height as measured from the ground, including, but not limited to, the pole
801 or replacement pole and any antenna that protrudes above the pole or
802 replacement pole.
- 803 3. Pole-mounted equipment shall not exceed six (6) cubic feet in dimension per pole.
- 804 4. If an applicant proposes to replace a pole in order to accommodate the facility, the
805 pole shall match the appearance of the original pole to the extent feasible, unless
806 another design better accomplishes the objectives of this chapter. Such
807 replacement pole shall not exceed the height of the pole it is replacing by more than
808 seven (7) feet, and no facility shall exceed thirty-five (35) feet in height as measured
809 from where the base of the pole meets the ground.
- 810 5. Mounting any and all hardware or antennas on decorative light poles is prohibited
811 except as a replacement pole that matches the existing decorative light poles in the
812 vicinity.
- 813 6. If an exception is granted for placement of new poles in the public right-of-way, new
814 poles shall be designed to resemble existing poles in the public right-of-way,
815 including size, height, color, materials and style, with the exception of any existing
816 pole designs that are scheduled to be removed and not replaced, unless another
817 design better accomplishes the objectives of this section. Such new poles that are
818 not replacement poles shall be located no closer than ninety (90) feet to an existing
819 pole.
- 820 7. All new wires needed to service the wireless telecommunications facility must be
821 installed within the width of the existing utility pole so as to not exceed the diameter
822 and height of the existing utility pole. For streetlights, any replacement pole must
823 allow for an integrated design with wires inside the pole.
- 824
- 825
- 826 E. **Space occupied.** Facilities shall be designed to occupy the least amount of space in
827 the public right-of-way that is technically feasible.
- 828 F. **Location.**

- 829 1. Each component part of a facility shall be located so as not to cause any physical
830 or visual obstruction to pedestrian or vehicular traffic, inconvenience to the public's
831 use of the right-of-way, or safety hazards to pedestrians and motorists.
- 832 2. A facility shall not be located within any portion of the public right-of-way that would
833 interfere with access to fire hydrants, fire stations, fire escapes, water valves,
834 underground vaults, valve housing structures, or any other vital public health and
835 safety facility.
- 836 3. Each pole mounted wireless telecommunications facility must be separated by at
837 least one thousand five hundred (1,500) feet.
- 838 4. All cables, including, but not limited to, electrical and utility cables, between the pole
839 and any accessory equipment shall be placed underground, if feasible.
- 840 5. For all applications in undergrounding districts, all undergrounding district
841 regulations apply.

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

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

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

856 **19.04.100 Conditions of Approval for All Facilities**

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

- 861 1. Before the permittee submits any application for a permit or other permits required
862 by the Fairfax Municipal Code, the permittee must incorporate the wireless
863 Telecommunication Facility permit granted under this chapter, all conditions
864 associated with the wireless telecommunications facility permit and engineering
865 and electrical plans, schematics and specifications and the approved plans and any
866 photo simulations into the project plans (the "Approved Plans"). The permittee must

- 867 construct, install and operate the wireless telecommunications facility in strict
868 compliance with the Approved Plans. The permittee shall submit an as built drawing
869 within ninety (90) days after installation of the facility.
- 870 2. Where feasible, as new technology becomes available, the permittee shall:
- 871 a) place above-ground wireless telecommunications facilities below ground,
872 including, but not limited to, accessory equipment that has been mounted to
873 a telecommunications tower or mounted on the ground; and
- 874 b) replace larger, more visually-intrusive facilities with smaller, less visually-
875 intrusive facilities, after receiving all necessary permits and approvals
876 required pursuant to the Fairfax Municipal Code.
- 877 3. The permittee shall submit and maintain current at all times basic contact and site
878 information, in a form as may be required by the Town. The permittee shall notify
879 the Town of any changes to the information submitted within seven (7) days of any
880 change, including change of the name or legal status of the owner or operator. This
881 information shall include, but is not limited to, the following:
- 882 a) Identity, including the name, address and 24-hour local or toll free contact
883 phone number of the permittee, the owner, the operator, and the agent or
884 person responsible for the maintenance of the facility;
- 885 b) The legal status of the owner of the wireless telecommunications facility,
886 including official identification numbers and FCC certification; and
- 887 c) The name, address, and telephone number of the property owner if different
888 than the permittee.
- 889 4. The permittee shall not place any facilities that will deny access to, or otherwise
890 interfere with, any public utility, easement, or right-of-way located on the site. The
891 permittee shall allow the Town reasonable access to, and maintenance of, all
892 utilities and existing public improvements within or adjacent to the site, including,
893 but not limited to, pavement, trees, public utilities, lighting, and public signage.
- 894 5. At all times, all required notices and signs shall be posted on the site as required
895 by the FCC and California Public Utilities Commission, and as approved by the
896 Town. The location and dimensions of a sign bearing the emergency contact name
897 and telephone number shall be posted pursuant to the approved plans.
- 898 6. At all times, the permittee shall ensure that the facility complies with the most
899 current regulatory and operational standards including, but not limited to, radio
900 frequency emissions standards adopted by the FCC, antenna height standards
901 adopted by the Federal Aviation Administration, and all electrical code requirements
902 for the equipment, wiring the equipment and providing power to the equipment. At
903 the sole expense of the permittee and using a consultant approved by the Town,
904 testing shall be performed demonstrating compliance with current regulatory and

operational standards, and to ensure the equipment is operating within proper specifications and does not pose an undue fire risk or electrical risk. Tests shall occur upon commencement of operations and annually thereafter, and results provided in a written report to the Town.

7. If, upon inspection, the Town Building Official determines there is good cause to believe that the facility (including, without limitation, its Accessory Equipment, Antenna and/or Base Station) may present a fire risk or electrical hazard, the Building Official may order the facility to be shut down and powered off until such time as the facility is repaired and restored to its correct operating specifications, at the sole expense of the permittee.
8. Permittee shall pay for and provide a performance bond, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and the Fairfax Municipal Code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping obligations. The amount of the performance bond shall be set by the zoning administrator in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.
9. Permittee shall defend, indemnify, protect, and hold harmless the Town, its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers from and against any and all claims, actions, or proceeding against the Town and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers to attack, set aside, void or annul, an approval of the Town, Planning Commission or Town Council concerning the permit, the project, and any and all claims, actions, or proceedings arising from, or related to, the installation, operation, or inspection of any facility. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees, and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The Town shall promptly notify the permittee of any claim, action, or proceeding that this indemnification obligation may cover. Nothing contained herein shall prohibit Town from participating in a defense of any claim, action or proceeding. The Town shall have the option of coordinating the defense, including, but not limited to, choosing counsel for the defense at permittee's expense. The Town shall retain the right to participate in any claim, action or proceeding if the Town bears its own attorney's fees and costs, and the Town defends the action in good faith.
10. Permittee shall obtain and maintain insurance for the coverages and in the amounts reasonably specified by the zoning administrator.

- 945 11. All conditions of approval shall be binding as to the applicant and all successors in
946 interest to permittee.
- 947 12. The proposed facility complies with all applicable provisions of this chapter,
948 including the technical review by the Town's Independent Expert set forth in Section
949 19.04.050(B).
- 950 13. The proposed facility has been designed and located to achieve compatibility with
951 the community to the maximum extent reasonably feasible.
- 952 14. Noise generated by equipment will not be excessive, annoying nor be detrimental
953 to the public health, safety, and welfare and will not exceed the standards set forth
954 in this chapter.
- 955 15. A condition setting forth the permit expiration date in accordance with section
956 19.04.200 shall be included in the conditions of approval.
- 957 16. *Record Retention.* The permittee must maintain complete and accurate copies of
958 all permits and other regulatory approvals issued in connection with the wireless
959 facility, including, without limitation, any approval, the approved plans and photo
960 simulations incorporated into the approval, all conditions associated with the
961 approval, and any other ministerial permits or approvals issued in connection with
962 the approval. In the event that the permittee does not maintain such records as
963 required in this condition, any ambiguities or uncertainties that would be resolved
964 through an inspection of the missing records will be construed against the
965 permittee.
- 966 17. *Compliance Obligations.* An applicant or permittee will not be relieved of its
967 obligation to comply with every applicable provision in the Fairfax Municipal Code,
968 any permit, any permit condition, or any applicable law or regulation by reason of
969 any failure by the Town to timely notice, prompt or enforce compliance by the
970 applicant or permittee.

971 **19.04.110 Additional Conditions of Approval for Facilities in the Public Right-of-Way**

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

- 977 1. The wireless telecommunications facility shall be subject to such conditions,
978 changes or limitations as are from time to time deemed necessary by the Town
979 Manager or his/her designee for the purpose of: (a) protecting the public health,
980 safety, and welfare, (b) preventing interference with pedestrian and vehicular traffic,
981 and (c) preventing damage to the public right-of-way or any property adjacent to it.
982 The Town may modify the permit to reflect such conditions, changes or limitations
983 by following the same notice and public hearing procedures as are applicable to the

- 984 grant of a wireless telecommunications facility permit for similarly located facilities,
985 except the permittee shall be given notice by personal service or by registered or
986 certified mail at the last address provided to the Town by the permittee.
- 987 2. The permittee shall not move, alter, temporarily relocate, change, or interfere with
988 any existing structure, improvement, or property without the prior consent of the
989 owner of that structure, improvement, or property. No structure, improvement or
990 property owned by the Town shall be moved to accommodate a wireless
991 telecommunications facility, unless the Town determines that such movement will
992 not adversely affect the Town or any surrounding businesses or residents, and the
993 permittee pays all costs and expenses related to the relocation of the Town's
994 structure, improvement, or property. Prior to commencement of any work pursuant
995 to an encroachment permit issued for any facility within the public right-of-way, the
996 permittee shall provide the Town with documentation establishing to the Town's
997 satisfaction that the permittee has the legal right to use or interfere with any other
998 structure, improvement, or property within the public right-of-way to be affected by
999 applicant's facilities.
- 1000 3. The permittee shall assume full liability for damage or injury caused to any property
1001 or person by the facility.
- 1002 4. The permittee shall repair, at its sole cost and expense, any damage including, but
1003 not limited to, subsidence, cracking, erosion, collapse, weakening, or loss of lateral
1004 support to Town streets, sidewalks, walks, curbs, gutters, trees, parkways, street
1005 lights, traffic signals, improvements of any kind or nature, utility lines and systems,
1006 underground utility lines and systems, or sewer systems and sewer lines that result
1007 from any activities performed in connection with the installation or maintenance of
1008 a wireless telecommunications facility in the public right-of-way. The permittee shall
1009 restore such areas, structures and systems to the condition in which they existed
1010 prior to the installation or maintenance that necessitated the repairs. In the event
1011 the permittee fails to complete such repair within the number of days stated on a
1012 written notice by the zoning administrator, the zoning administrator shall cause such
1013 repair to be completed at permittee's sole cost and expense.
- 1014 5. Prior to issuance of a building permit, the applicant shall obtain the zoning
1015 administrator's approval of a tree protection plan prepared by a certified arborist if
1016 the installation of the wireless Telecommunication Facility will be located within the
1017 canopy of a street tree, or a protected tree on private property, or within a ten (10)-
1018 foot radius of the base of such a tree. Depending on site specific criteria (e.g.,
1019 location of tree, size, and type of tree, etc.), a radius greater than ten (10) feet may
1020 be required by the zoning administrator.
- 1021 6. If a meter cabinet has been approved for the facility and subsequently any utility
1022 company offers electrical service that does not require the use of a meter cabinet,
1023 the permittee shall seek approval of the utility company to switch to the unmetered
1024 service and, at its sole cost and expense, remove the meter cabinet and any related

- 1025 foundation within thirty (30) days of such service being obtained and reasonably
1026 restore the area to its prior condition.
- 1027 7. The permittee shall modify, remove, or relocate its facility, or portion thereof, without
1028 cost or expense to Town, if and when made necessary by:
- 1029 a) Any public improvement project, including, but not limited to, the construction,
1030 maintenance, or operation of any underground or aboveground facilities,
1031 including, but not limited to, sewers, storm drains, conduits, gas, water, electric
1032 or other utility systems, or pipes owned by Town or any other public agency;
- 1033 b) Any abandonment of any street, sidewalk, or other public facility;
- 1034 c) Any change of grade, alignment or width of any street, sidewalk, or other public
1035 facility; or
- 1036 d) A determination by the zoning administrator that the wireless
1037 telecommunications facility has become incompatible with public health, safety,
1038 or welfare or the public's use of the public right-of-way.
- 1039 8. Any modification, removal, or relocation of the facility shall be completed within
1040 ninety (90) days of written notification by Town, unless exigencies dictate a shorter
1041 period for removal or relocation. Modification or relocation of the facility shall
1042 require submittal, review, and approval of a permit amendment pursuant to the
1043 Fairfax Municipal Code. The permittee shall be entitled, on permittee's election, to
1044 either a pro-rata refund of fees paid for the original permit or to a new permit, without
1045 additional fee, at a location as close to the original location as the standards set
1046 forth in the Fairfax Municipal Code allow. In the event the facility is not modified,
1047 removed, or relocated within said period of time, the Town may cause the same to
1048 be done at the sole cost and expense of permittee. Further, due to exigent
1049 circumstances as provided in the Fairfax Municipal Code, the Town may modify,
1050 remove, or relocate wireless telecommunications facilities without prior notice to
1051 permittee, provided permittee is notified within a reasonable period thereafter.
- 1052 9. The applicant has the right to enter the public right-of-way pursuant to state or
1053 federal law, or by virtue of a franchise or other agreement with the Town permitting
1054 them to use the public right-of-way.
- 1055 10. The facility will not interfere with the use of the public right-of-way, existing
1056 subterranean infrastructure, or the Town's plans for modification or use of such
1057 location and infrastructure.

1058

1059 **19.04.120 Findings**

- 1060 A. Where a wireless telecommunication facility requires a conditional use permit under
1061 this chapter, the reviewing authority shall not approve any application unless, in addition to

1062 the findings generally applicable to all conditional use permits, all of the following additional
1063 findings are made:

- 1064 1. The proposed facility complies with all applicable provisions of this chapter.
- 1065 2. The proposed facility has been designed and located to achieve compatibility with
1066 the community to the maximum extent reasonably feasible.
- 1067 3. The applicant has submitted a statement of its willingness to allow other carriers to
1068 collocate on the proposed wireless telecommunications facility wherever technically
1069 and economically feasible and where collocation would not harm community
1070 compatibility.
- 1071 4. Noise generated by equipment will not be excessive, annoying nor be detrimental
1072 to the public health, safety, and welfare and will not exceed the standards set forth
1073 in this chapter.

1074 B. In addition to the findings in paragraph (A) above, approval of a wireless
1075 telecommunications facility permit for a facility that will be located in the public right-of-way
1076 may be granted only if the following findings are made by the reviewing authority:

- 1077 1. The applicant has provided substantial written evidence supporting the applicant's
1078 claim that it has the right to enter the public right-of-way pursuant to state or federal
1079 law, or the applicant has entered into a franchise or other agreement with the Town
1080 permitting them to use the public right-of-way.
- 1081 2. The applicant has demonstrated that the facility will not interfere with the use of the
1082 public right-of-way, existing subterranean infrastructure, or the Town's plans for
1083 modification or use of such location and infrastructure.

1084

1085 **19.04.130 Exceptions**

1086 A. Exceptions pertaining to any provision of this chapter, including, but not limited to,
1087 exceptions from findings that would otherwise justify denial, may be granted by the reviewing
1088 authority if the reviewing authority makes the finding that a refusal to grant the exception would
1089 violate federal law, state law, or both. Such exceptions may be granted if the reviewing
1090 authority finds, without limitation, that:

- 1091 1. A provision of this chapter, as applied to applicant, would deprive applicant of its
1092 rights under federal law, state law, or both; and
- 1093 2. The proposed wireless facility qualifies as a "personal wireless service facility" as
1094 defined in 19.04.020(N), as may be amended or superseded; and

- 1095 3. The applicant has provided the reviewing authority with a reasonable and clearly
1096 defined technical service objective to be achieved by the proposed wireless facility;
1097 and
- 1098 4. The applicant has provided the reviewing authority with a written statement that
1099 contains a detailed and fact-specific explanation as to why the proposed wireless
1100 facility cannot be deployed in compliance with the applicable provisions in this Chapter,
1101 the Fairfax Municipal Code, the General Plan and/or any specific plan; and
- 1102 5. The applicant has provided the reviewing authority with a meaningful comparative
1103 analysis with the factual reasons why all alternative locations and/or designs identified
1104 in the administrative record (whether suggested by the applicant, the Town, public
1105 comments or any other source) are not technically feasible or potentially available to
1106 reasonably achieve the applicant's reasonable and clearly defined technical service
1107 objective to be achieved by the proposed wireless facility; and
- 1108 6. The applicant has demonstrated to the reviewing authority that the proposed
1109 location and design is the least non-compliant configuration that will reasonably
1110 achieve the applicant's reasonable and clearly defined technical service objective to
1111 be achieved by the proposed wireless facility, which includes without limitation a
1112 meaningful comparative analysis into multiple smaller or less intrusive wireless
1113 facilities dispersed throughout the intended service area; and
- 1114 7. The applicant has demonstrated that its proposed wireless facility will be in
1115 compliance with all applicable health, safety, and environmental regulations, which
1116 include without limitation the Americans with Disabilities Act, the Endangered Species
1117 Act, and all FCC rules and regulations for human exposure to RF emissions.
- 1118 B. An applicant may only request an exception at the time of applying for a wireless
1119 telecommunications facility permit. The request must include both the specific provision(s) of
1120 this chapter from which the exception is sought and the basis of the request. Any request for
1121 an exception after the Town has deemed an application complete shall be treated as a new
1122 application.
- 1123 C. The applicant shall have the burden of proving that the exception should be granted.
- 1124 **19.04.140 Eligible Facilities Requests**
- 1125 A. **Applicability.** This Section applies to all Eligible Facilities Requests pursuant to
1126 Section 6409(a).
- 1127 B. **Approval Required.** Applicants for Eligible Facilities Requests must submit a written
1128 request for a 6409(a) approval consistent with this section, which will be reviewed by the
1129 zoning administrator who will determine whether the request should be approved,
1130 conditionally approved, or denied without prejudice pursuant to the standards and procedures
1131 contained in this section.
- 1132 C. **Other Regulatory Approvals.** Any Eligible Facilities Request approved under this

1133 chapter shall be subject to any and all lawful conditions or requirements associated with such
1134 other permits or regulatory approvals from the Town and state or federal agencies.

1135 D. **Eligible Facilities Request Application Requirement.** An application must include
1136 the following information:

- 1137 1. Full name and contact information for the facility owner, facility operator, agent (if
1138 any), and property owner, and related letter(s) of authorization. If the applicant does
1139 not own the subject property, the application must include a written authorization
1140 signed by the property owner that empowers the applicant to file the application and
1141 perform all wireless facility construction, installation, operation, and maintenance to
1142 the extent described in the application.
- 1143 2. The type of facility, including a full, written description of the proposed facility, its
1144 purpose, and technical specifications.
- 1145 3. A detailed site and engineering plan of the proposed facility containing the exact
1146 proposed location of the facility, created by a qualified, licensed engineer and in
1147 accordance with requirements set by the zoning administrator. The site and
1148 engineering plan shall display the dimensions of each proposed facility, including,
1149 but not limited to, its height from the ground level. The site and engineering plans
1150 shall show the proposed facility from each cardinal direction.
- 1151 4. Photographs of facility equipment and an accurate visual impact analysis with photo
1152 simulations.
- 1153 5. A written statement that explains why the applicant believes Section 6409(a) and
1154 the related FCC regulations require approval. A complete written narrative analysis
1155 will state the applicable standard and all the facts that allow the Town to conclude
1156 the standard has been met. Bare conclusions not factually supported do not
1157 constitute a complete written analysis. As part of this written statement the applicant
1158 must also include (a) whether and why the support structure qualifies as an existing
1159 tower or existing base station; and (b) whether and why the proposed Eligible
1160 Facilities Request does not cause a substantial change in height, width, excavation,
1161 equipment cabinets, concealment, or permit compliance. The analysis provided
1162 under (b) shall include a copy of all prior conditions of approval and an explanation
1163 as to why the prior conditions of approval are met by the proposed wireless facility
1164 application.
- 1165 6. A technically-sufficient written report by a qualified radio frequency emissions
1166 engineer, certifying that the facility is in compliance with such FCC standards.
- 1167 7. Public Notification. Proof that the applicant has provided public notification, at its
1168 own cost, via mail to all property owners and occupants within a radius of 300 feet
1169 from its proposed facilities. Information regarding the application shall be displayed
1170 on the outside of the envelope.

1171

1172 E. **Administrative Review; Decision Notices.** The zoning administrator shall
1173 administratively review an application for an Eligible Facilities Request and act on such an
1174 application without prior notice or a public hearing. Within five (5) working days after the
1175 zoning administrator approves, conditionally approves, or denies an Eligible Facilities
1176 Request application, the zoning administrator shall send a written notice to the applicant.
1177 In the event that the zoning administrator determines that an application submitted for
1178 approval pursuant to Section 6409(a) does not qualify for approval, the zoning
1179 administrator will send written notice to the applicant that includes the reasons to support
1180 the review authority's decision and states that the application will be denied without
1181 prejudice.

1182 F. **Required Findings for 6409(a) Approval.** The zoning administrator may approve or
1183 conditionally approve an application submitted for Section 6409(a) approval when the zoning
1184 administrator finds that the proposed project:

- 1185 1. Qualifies as an Eligible Facilities Request; and
1186 2. Complies with (or is conditioned to comply with) all generally applicable health and
1187 safety rules.

1188 G. **Criteria for Denial Without Prejudice.** The zoning administrator may deny without
1189 prejudice an application submitted for approval pursuant to Section 6409(a) when it finds that
1190 the proposed project does not meet the criteria under subsection (D) above.

1191 H. **Conditional 6409(a) Approvals.** Subject to any applicable limitations in federal or
1192 state law, nothing in this chapter is intended to limit the Town's authority to conditionally
1193 approve an application for a section 6409(a) approval to protect and promote the public health,
1194 safety, and welfare.

1195 I. **Standard Conditions of Approval.** In addition to all other conditions adopted by the
1196 zoning administrator, all Section 6409(a) approvals, whether approved by the zoning
1197 administrator or deemed approved by the operation of law, shall be automatically subject to
1198 the following conditions in this section; provided, however, that the zoning administrator shall
1199 have discretion to modify or amend these conditions on a case-by-case basis as may be
1200 necessary or appropriate under the circumstances:

- 1201 1. *Approved Plans.* Before the permittee submits any application for a building permit
1202 or other permits required by the Fairfax Municipal Code, the permittee must
1203 incorporate the wireless telecommunications facility permit granted under this
1204 section, all conditions associated with the wireless telecommunications facility
1205 permit and the approved plans and any photo simulations into the project plans (the
1206 "Approved Plans"). The permittee must construct, install and operate the wireless
1207 telecommunications facility in strict compliance with the Approved Plans. The
1208 permittee shall submit an as built drawing within ninety (90) days after installation
1209 of the facility.

- 1210 2. *Permit Term.* The Town's grant or grant by operation of law of a Section 6409(a)
1211 approval will not extend the permit term, if any, for any conditional use permit, or
1212 other underlying prior regulatory authorization. Accordingly, the term for a Section
1213 6409(a) approval shall be coterminous with the underlying permit or other prior
1214 regulatory authorization for the subject tower or base station.
- 1215 3. *Accelerated Permit Terms Due to Invalidation.* In the event that any court of
1216 competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule
1217 that interprets Section 6409(a) such that federal law would not mandate approval
1218 for any Section 6409(a) approval, such 6409(a) approvals shall automatically expire
1219 one year from the effective date of the judicial order, unless the decision would not
1220 authorize accelerated termination of previously-approved Section 6409(a)
1221 approvals or the zoning administrator grants an extension upon written request from
1222 the permittee that shows good cause for the extension, which includes, without
1223 limitation, extreme financial hardship. Notwithstanding anything in the previous
1224 sentence to the contrary, the zoning administrator may not grant a permanent
1225 exemption or indefinite extension. A permittee shall not be required to remove its
1226 improvements approved under the invalidated Section 6409(a) approval when it
1227 has submitted an application for a conditional use permit for those improvements
1228 before the one-year period ends.
- 1229 4. *No Waiver of Standing.* The Town's grant or grant by operation of law of a Section
1230 6409(a) approval does not waive, and shall not be construed to waive, any standing
1231 by or right of the Town to challenge Section 6409(a), any FCC rules that interpret
1232 Section 6409(a), or any Section 6409(a) approval.
- 1233 5. *Build-out Period.* The Section 6409(a) approval will automatically expire one (1)
1234 year from the issuance date, unless the permittee obtains all other permits and
1235 approvals required to install, construct and operate the approved wireless facility,
1236 which includes, without limitation, any permits or approvals required by the any
1237 federal, state, or local public agencies with jurisdiction over the subject property,
1238 the wireless facility, or its use. The zoning administrator may grant one (1) written
1239 extension to a date certain when the permittee shows good cause to extend the
1240 limitations period in a written request for an extension submitted at least 30 days
1241 prior to the automatic expiration date in this subparagraph. Any further extensions
1242 may be granted by the Planning Commission, in its sole discretion, pursuant to the
1243 same procedures to request an extension from the zoning administrator.
- 1244 6. *Maintenance Obligations; Vandalism.* The permittee shall keep the site, which
1245 includes, without limitation, any and all improvements, equipment, structures,
1246 access routes, fences and landscape features, in a neat, clean, and safe condition
1247 in accordance with the Approved Plans and all conditions in the Section 6409(a)
1248 approval. The permittee shall keep the site area free from all litter and debris at all
1249 times. The permittee, at its sole cost, shall remove and remediate any graffiti or
1250 other vandalism at the site within two (2) days after the permittee receives notice or
1251 otherwise becomes aware that such graffiti or other vandalism occurred.

- 1252 7. *Compliance with Laws.* The permittee shall maintain compliance at all times with all
1253 federal, state, and local laws applicable to the permittee, the subject property, the
1254 wireless facility, or any use or activities in connection with the use authorized in this
1255 section 6409(a) approval, including, but not limited to, compliance with the
1256 Americans with Disability Act.. The permittee expressly acknowledges and agrees
1257 that this obligation is intended to be broadly construed and that no other specific
1258 requirements in these conditions are intended to reduce, relieve, or otherwise
1259 lessen the permittee's obligations to maintain compliance with all applicable laws.
- 1260 8. *Adverse Impacts on Other Properties.* The permittee shall use all reasonable efforts
1261 to avoid any and all undue or unnecessary adverse impacts on nearby properties
1262 that may arise from the permittee's construction, installation, operation,
1263 modification, maintenance, repair, removal, or other activities at the site. The
1264 permittee shall not perform or cause others to perform any construction, installation,
1265 operation, modification, maintenance, repair, removal, or other work that involves
1266 heavy equipment or machines on any day and at any time prohibited under the
1267 Fairfax Municipal Code. The restricted work hours in this condition will not prohibit
1268 any work required to prevent an actual, immediate harm to property or persons, or
1269 any work during an emergency declared by the Town. The zoning administrator
1270 may issue a stop work order for any work that violates this condition.
- 1271 9. *Noise Complaints.* The permittee shall conduct all activities on the site in
1272 compliance with the noise standards in the Fairfax Municipal Code. In the event
1273 that any person files a noise complaint and the Town verifies that such complaint is
1274 valid, the permittee must remedy the violation within ten (10) days after notice from
1275 the Town, which may include a demonstration that the permittee has amended its
1276 operational guidelines in situations where the violation arises from the permittee's
1277 personnel rather than the permittee's equipment.
- 1278 10. *Inspections; Emergencies.* The permittee expressly acknowledges and agrees that
1279 the Town or its designee may enter onto the site and inspect the improvements and
1280 equipment upon reasonable prior notice to the permittee; provided, however, that
1281 the Town or its designee may, but is not obligated to, enter onto the site area without
1282 prior notice to support, repair, disable, or remove any improvements or equipment
1283 in emergencies or when such improvements or equipment threatens actual,
1284 imminent harm to property or persons. The permittee will be permitted to supervise
1285 the Town or its designee while such inspection or emergency access occurs.
- 1286 11. *Contact Information.* The permittee shall furnish the Town with accurate and up-to-
1287 date contact information for a person responsible for the wireless facility, which
1288 includes, without limitation, such person's full name, title, direct telephone number,
1289 facsimile number, mailing address, and email address. The permittee shall keep
1290 such contact information up-to-date at all times.
- 1291 12. *Performance Bond.* Before the Town issues any construction permit in connection
1292 with the wireless facility, if, in the Town's sole discretion, the existing performance
1293 bond for the facility is inadequate or the facility is not associated with any existing

1294 performance bond, the permittee shall post a performance bond from a surety and
1295 in a form acceptable to the Town manager in an amount equal to or greater than a
1296 written estimate from a qualified contractor with experience in wireless facilities
1297 removal. The written estimate must include the cost to remove all equipment and
1298 other improvements, which includes, without limitation, all antennas, radios,
1299 batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires,
1300 conduits, structures, shelters, towers, poles, footings and foundations, whether
1301 above ground or below ground, constructed or installed in connection with the
1302 wireless facility. In establishing or adjusting the bond amount required under this
1303 condition, and in accordance with California Government Code § 65964(a), the
1304 Town manager shall take into consideration information provided by the permittee
1305 regarding the cost to remove the wireless facility.

1306 13. Conditions of approval shall specify a maximum number of trips on a case-by-case
1307 basis based upon the carrier's maintenance and testing schedule.

1308 **19.04.150 Wireless Telecommunications Collocation Facilities Covered under**
1309 **California Government Code Section 65850.6**

1310 A. **Purpose.** The purpose of this section is to comply with an application for a Wireless
1311 Telecommunications Collocation Facility under California Government Code Section 65850.6,
1312 for which a 6409(a) approval is not being requested. This section provides the requirements,
1313 standards, and regulations for a wireless telecommunications collocation facility for which
1314 subsequent collocation is a permitted use pursuant to California law. Only those facilities that
1315 fully comply with the eligibility requirements set forth in California Government Code Section
1316 65850.6, or its successor provision, and which strictly adhere to the requirements and
1317 regulations set forth in this section, shall qualify as a wireless telecommunications collocation
1318 facility.

1319 B. **Definitions.** For the purposes of this section, the following terms are defined as
1320 follows:

1321 1. **"Collocation Facility"** means the placement or installation of wireless facilities,
1322 including antennas, and related equipment, on, or immediately adjacent to, a
1323 wireless telecommunications collocation facility.

1324 2. **"Wireless Telecommunications Facility"** means equipment and network
1325 components such as towers, utility poles, transmitters, base stations, and
1326 emergency power systems that are integral to providing wireless
1327 telecommunications services.

1328 3. **"Wireless Telecommunications Collocation Facility"** means a wireless
1329 telecommunications facility that includes collocation facilities.

1330 C. **Procedures.** Applications for wireless telecommunications collocation facilities shall
1331 comply with this Section and other applicable provisions of this Chapter. An application for a
1332 collocation facility under California Government Code Section 65850.6 shall be processed in
1333 the same manner as an application for Section 6409(a) approval is processed, except that

where the process requires justification for the Section 6409(a) approval, the applicant shall instead provide the justification for a collocation facility under California Government Code Section 65850.6.

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

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

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

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

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

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

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

1. The wireless telecommunications collocation facility:

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

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

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

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

1369 3. Before collocation, the applicant seeking collocation shall obtain all other applicable
1370 non-discretionary permits, as required pursuant to the Fairfax Municipal Code.

1371 F. **New or Amended Permit.** Except as otherwise provided above, approval of a new or
1372 amended permit shall be required when the facility is modified other than by collocation in
1373 accordance with this section, or the proposed collocation:

1374 1. Increases the height of the existing permitted telecommunications tower or
1375 otherwise changes the bulk, size, location, or any other physical attributes of the
1376 existing permitted wireless telecommunications collocation facility, unless
1377 specifically permitted under the conditions of approval applicable to such wireless
1378 telecommunications collocation facility; or

1379 2. Adds any microwave dish or other antenna not expressly permitted to be included
1380 in a collocation facility by the conditions of approval.

1381 **19.04.160 Business License**

1382 A permit issued pursuant to this chapter shall not be a substitute for any business license
1383 otherwise required under the Fairfax Municipal Code.

1384 **19.04.170 Emergency Deployment**

1385 In the event of a declared federal, state, or local emergency, or when otherwise warranted by
1386 conditions that the zoning administrator deems to constitute an emergency, the zoning
1387 administrator may approve the installation and operation of a temporary wireless
1388 telecommunications facility (e.g., a cell on wheels or "COW"), which is subject to such
1389 reasonable conditions that the zoning administrator deems necessary.

1390 **19.04.180 Operation and Maintenance Standards**

1391 A. All wireless telecommunications facilities must comply at all times with the following
1392 operation and maintenance standards. All necessary repairs and restoration shall be
1393 completed by the permittee, owner, or operator within 48 hours:

1394 1. After discovery of the need by the permittee, owner, operator or any designated
1395 maintenance agent; or

1396 2. After permittee, owner, operator, or any designated maintenance agent receives
1397 notification from a resident or the zoning administrator.

1398 B. All facilities, including, but not limited to, telecommunication towers, poles, accessory
1399 equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the
1400 facility site shall be maintained in good condition, including ensuring the facilities are
1401 reasonably free of:

1402 1. General dirt and grease;

- 1403 2. Chipped, faded, peeling, and cracked paint;
- 1404 3. Rust and corrosion;
- 1405 4. Cracks, dents, and discoloration;
- 1406 5. Missing, discolored, or damaged artificial foliage or other camouflage;
- 1407 6. Graffiti, bills, stickers, advertisements, litter and debris;
- 1408 7. Broken and misshapen structural parts; and
- 1409 8. Any damage from any cause.
- 1410 C. All trees, foliage, and other landscaping elements approved as part of the facility shall
- 1411 be maintained in good condition at all times, and the permittee, owner, and operator of the
- 1412 facility shall be responsible for replacing any damaged, dead, or decayed landscaping. No
- 1413 amendment to any approved landscaping plan may be made until it is submitted to and
- 1414 approved by the zoning administrator.
- 1415 D. The permittee shall replace its facilities, after obtaining all required permits, if
- 1416 maintenance or repair is not sufficient to return the facility to the condition it was in at the time
- 1417 of installation.
- 1418 E. Each facility, operating alone and in conjunction with other telecommunications facilities,
- 1419 shall be operated and maintained at all times in compliance with applicable federal
- 1420 regulations, including FCC radio frequency emissions standards. Within one month post-
- 1421 construction and annually thereafter, permittee must provide a radio frequency report as
- 1422 a condition of project approval to verify that actual levels of radio frequency emitted by the
- 1423 approved facilities, operating alone and in combination with other approved facilities,
- 1424 substantially conform to the pre-approved radio frequency report and do not exceed
- 1425 current standards for permissible human exposure to radio frequency as adopted by the
- 1426 FCC. In the event of an increase over accepted levels is detected, the permittee shall be
- 1427 responsible for immediately making the necessary adjustments to comply with FCC
- 1428 standards.
- 1429 F. Each facility shall be operated and maintained to comply at all times with the noise
- 1430 regulations of this chapter and shall be operated and maintained in a manner that will minimize
- 1431 noise impacts to surrounding residents. Except for emergency repairs, any testing and
- 1432 maintenance activities that will be audible beyond the property line shall only occur between
- 1433 the hours of 7:00 a.m. and 5:00 p.m. on Monday through Friday, excluding holidays, unless
- 1434 alternative hours are approved by the zoning administrator. Backup generators, if permitted,
- 1435 shall only be operated during periods of power outages or for testing.
- 1436 G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall
- 1437 be flown and shall be properly maintained at all times.
- 1438 H. Each owner or operator of a facility shall routinely inspect each site to ensure

1439 compliance with the standards set forth in this section and the conditions of approval.

1440 I. Annual Certification. Each year on July 1, the permittee shall submit an affidavit which
1441 shall list, by location, all facilities it owns within the Town by location, and shall certify (1)
1442 each such installation remains in use; (2) that such in use facility remains covered by
1443 insurance; and (3) each such installation which is no longer in use, and pay applicable
1444 recertification fees established by the Town. Any facility which is no longer in use shall be
1445 removed by permittee within 60 days of delivery of the affidavit, or be subject to a fine of
1446 \$100 per day until removal.

1447
1448 Where such annual re-certification has not timely submitted, or equipment no longer in use
1449 has not been removed within the required 60-day period, no further application for that
1450 small cell wireless installation will be accepted by the Town until such time as the annual
1451 re-certification has been submitted and fee and fines paid.

1452 **19.04.190 No Dangerous Conditions or Obstructions Allowed**

1453 No person shall install, use, or maintain any wireless telecommunications facility which in
1454 whole or in part rests upon, in or over any public sidewalk or parkway, when such installation,
1455 use, or maintenance endangers or is reasonably likely to endanger the safety of persons or
1456 property, or when such site or location is used for public utility purposes, public transportation
1457 purposes, or other governmental use, or when such facility unreasonably interferes with or
1458 impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped
1459 vehicle, the ingress into or egress from any residence or place of business, the use of poles,
1460 posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street
1461 furniture, or other objects permitted at or near said location.

1462 **19.04.200 Permit Expiration**

1463 A. A permit for any wireless telecommunications facility shall be valid for a period of ten
1464 (10) years, unless the Planning Commission authorizes a different period, or pursuant to
1465 another provision of the Fairfax Municipal Code the permit lapses sooner or is revoked. At
1466 the end of such period, the permit shall expire.

1467 B. A permittee may apply for renewals of its permit in increments of no more than ten (10)
1468 years and no sooner than twelve (12) months prior to expiration of the permit.

1469 C. An application for renewal shall be evaluated based on federal, state, and local law as
1470 it exists at the time applicant seeks renewal. The following may also be required for an
1471 application to renew a wireless permit:

1472 1. At the zoning administrator's discretion, additional studies and information may be
1473 required of the applicant.

1474 2. If the zoning administrator determines that the facility is nonconforming or that
1475 additional conditions of approval are necessary to bring the facility into compliance
1476 with the provisions of the Fairfax Municipal Code that are then in effect, the zoning
1477 administrator shall refer the renewal request to the Planning Commission.

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

19.04.210 Cessation of Use or Abandonment

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

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

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

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

19.04.220 Removal and Restoration, Permit Expiration, Revocation or Abandonment

A. **Permittee's removal obligation.** Upon the expiration date of the permit, earlier termination or revocation of the permit or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to its natural condition, except for retaining the landscaping improvements and any other improvements at the sole discretion of the zoning administrator. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the Town. The facility shall be removed from the property within thirty (30) days of the permit's expiration, at

1515 no cost or expense to the Town. If the facility is located on private property, the private
1516 property owner shall also be jointly and severally responsible for the expense of timely
1517 removal and restoration.

1518 B. **Failure to remove.** Failure of the permittee, owner, or operator to promptly remove its
1519 facility and restore the property within thirty (30) days after expiration, earlier termination, or
1520 revocation of the permit, or abandonment of the facility, shall be a violation of the Fairfax
1521 Municipal Code, and be grounds for:

- 1522 1. Prosecution;
- 1523 2. Calling of any bond or other assurance required by this chapter or conditions of
1524 approval of permit;
- 1525 3. Removal of the facilities by the Town in accordance with the procedures established
1526 under the Fairfax Municipal Code for abatement of a public nuisance at the owner's
1527 expense; or
- 1528 4. Any other remedies permitted under the Fairfax Municipal Code.

1529 C. **Summary removal.** In the event the zoning administrator determines that the
1530 condition or placement of a wireless telecommunications facility located in the public right-of-
1531 way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent
1532 threat to public safety, or determines other exigent circumstances require immediate
1533 corrective action (collectively, "exigent circumstances"), the zoning administrator may cause
1534 the facility to be removed summarily and immediately without advance notice or a hearing. If
1535 the circumstances allow for it and, to the extent feasible, the zoning administrator will notify
1536 the permittee to remove the facility and allow for the reinstallation of the facility, subject to the
1537 permittee demonstrating to the satisfaction of the Town's Building Official and zoning
1538 administrator that the work can be done in safe manner compliant with the original Approved
1539 Plans and Section 19.04.100. Written notice of the removal shall be served upon the person
1540 who owns the facility within five (5) business days of removal and all property removed shall
1541 be preserved for the owner's pick-up, as is reasonably feasible. If the owner cannot be
1542 identified following reasonable effort or if the owner fails to pick-up the property within sixty
1543 (60) days, the facility shall be treated as abandoned property.

1544 D. **Removal of facilities by Town.** In the event the Town removes a facility in
1545 accordance with this chapter, any such removal shall be without any liability to the Town for
1546 any damage to such facility that may result from reasonable efforts of removal. In addition to
1547 the procedures for recovering costs of nuisance abatement, the Town may collect such costs
1548 from the performance bond posted and to the extent such costs exceed the amount of the
1549 performance bond, collect those excess costs in accordance with the Fairfax Municipal
1550 Code. Unless otherwise provided herein, the Town has no obligation to store such facility.
1551 Neither the permittee, the owner, nor the operator shall have any claim if the Town damages
1552 or destroys any such facility not timely removed by the permittee, owner, or operator after
1553 notice, or removed by the Town due to exigent circumstances.

1554 **19.04.230 Authorization for Departmental Forms, Rules, and Other Regulations.**

1555 The Town Council authorizes the zoning administrator to develop and publish permit
1556 application forms, checklists, informational handouts and other related materials that the
1557 zoning administrator finds necessary, appropriate or useful for processing requests,
1558 applications, permits, or any other matter under this chapter. Without further authorization
1559 from the Town Council, the zoning administrator may from time-to-time update and alter any
1560 such permit application forms, checklists, informational handouts and other related materials
1561 as the zoning administrator deems necessary, appropriate or useful to respond to regulatory,
1562 technological or other changes related to this chapter. The Town Council authorizes the
1563 zoning administrator to establish other reasonable rules and regulations, which may include,
1564 without limitation, regular hours for appointments with applicants, as the zoning administrator
1565 deems necessary or appropriate to organize, document, and manage the application intake
1566 and permitting process.

1567 **19.04.240 Appeals.**

1568 **A. Appeals by Applicants.** Notwithstanding any provision of the Fairfax Municipal Code to
1569 the contrary, including, but not limited to, Chapter 17.036, any applicant may appeal a decision
1570 by the zoning administrator under this Chapter. The appeal must be filed within two (2) days
1571 from the zoning administrator's decision. The appeal must state in plain terms the grounds for
1572 reversal and the facts that support those grounds. The Town Council shall serve as the
1573 appellate authority for all appeals of all actions of the zoning administrator taken pursuant to
1574 this section. The Town shall provide notice for an administrative hearing by the Town Council.
1575 The Town Council shall limit its review to whether the project should be approved or denied
1576 in accordance with the provisions in this Chapter.

1577 **B. Appeals by the General Public.** Any interested person or entity may appeal any decision
1578 by the approval authority in accordance with the standards and procedures in Title 17.036,
1579 except as modified in this Section. On the next available meeting date after the appeal period
1580 lapses, or as soon as reasonably feasible thereafter, the appellate body shall hold a public
1581 hearing to consider and act on the application in accordance with the applicable provisions in
1582 the General Plan, any applicable specific plan and all applicable provisions in the Fairfax
1583 Municipal Code. Appeals from an approval will not be permitted to the extent that the appeal
1584 is based on environmental effects from RF emissions that comply with all applicable FCC
1585 regulations.

1586 **19.04.250 Effect on Other Ordinances**

1587 Compliance with the provisions of this chapter shall not relieve a person from complying with
1588 any other applicable provision of the Fairfax Municipal Code, including, but not limited to,
1589 obtaining any necessary encroachment or building permits. In the event of a conflict between
1590 any provision of this chapter and other provisions of the Fairfax Municipal Code, this chapter
1591 shall control.

1592