

PALOS VERDES ESTATES – DRAFT

Chapter 18.55 WIRELESS COMMUNICATIONS FACILITIES

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18.55.010 Purpose.

- A. The purpose of this chapter is to reasonably regulate, to the extent permitted under California and federal law, the installations, operations, collocations, modifications, replacements and removals of various wireless communications facilities ("WCFs") in the city recognizing the benefits of wireless communications while reasonably respecting other important city needs, including the protection of public health, safety, and welfare, aesthetics and local values.
- B. The overarching intent of this chapter is to make wireless communications reasonably available while protecting scenic views and preserving the historic rural character and aesthetics of the city. This will be realized by:
 - 1. Minimizing the visual and physical effects of WCFs through appropriate design, siting, screening techniques and location standards;
 - 2. Encouraging the installation of visually-unobtrusive WCFs at locations where other such facilities already exist; and

3. Encouraging the installation of such facilities where and in a manner such that potential adverse aesthetic impacts to the community are minimized.
- C. To allow the city to better preserve the established rural character, it is the intent to limit the duration of WCF permits, in most cases, to terms of ten years, and to reevaluate existing WCFs at the end of each term for purposes of further minimizing aesthetic impacts on the community.
- D. It is not the purpose or intent of this chapter to:
1. Prohibit or to have the effect of prohibiting wireless communications services; or
 2. Unreasonably discriminate among providers of functionally equivalent wireless communications services; or
 3. Regulate the placement, construction or modification of WCFs on the basis of the environmental effects of radio frequency ("RF") emissions where it is demonstrated that the WCF does or will comply with the applicable FCC regulations; or
 4. Prohibit or effectively prohibit collocations or modifications that the city must approve under state or federal law.
- E. The provisions in this chapter shall apply to all permit applications to install, operate or change, including, without limitation, to collocate, modify, replace or remove, any new or existing wireless tower or base station within the city. This chapter does not apply to WCFs owned by or exclusively operated for government agencies, amateur radio stations, satellite dish or other television antennas or other OTARD Antennas, or towers, except to the extent that such towers may be used to support WCFs.
- F. Nothing in this chapter is intended to allow the city to preempt any state or federal law or regulation applicable to a WCF.
- G. The provisions of this chapter are in addition to, and do not replace, any obligations a WCF permit holder may have under any franchises, licenses, or other permits issued by the city.

18.55.020 Definitions.

For the purpose of this chapter, the following words and phrases shall be defined as follows:

"Antenna" means any system of wires, poles, rods, reflecting discs, dishes, whips, or other similar devices used for the transmission or reception of electromagnetic waves.

"Array" means one or more antennas mounted at approximately the same level above ground on tower or base station.

"Antenna height" means the distance from the grade of the property at the base of the antenna or, in the case of a roof-mounted antenna, from the grade at the exterior base of the building to the highest point of the antenna and its associated support structure when fully extended.

“Base station” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended, which defines that term as follows:

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. § 1.40001(b)(9)] or any equipment associated with a tower.

(i) 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.

(ii) 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).

(iii) 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 section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of [47 C.F.R. § 1.40001] 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.

(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)– (ii) of [47 C.F.R. § 1.40001].

Note: As an illustration and not a limitation, the FCC’s definition refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless communications facilities mounted on buildings, utility poles and transmission towers, light standards or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

“Camouflaged” or “concealed WCF” means a wireless communications facility that (i) is integrated as an architectural feature of an existing structure such as (but not limited to) a cupola, or (ii) is integrated in an outdoor fixture such as (but not limited to) a flagpole; or (iii) uses a design which mimics and is consistent with nearby natural, or architectural features, or is incorporated into or replaces existing permitted facilities (including but not limited to stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

"Collocation" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as "[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes." As an illustration and not a limitation, the FCC's definition effectively means "to add" new equipment to an existing facility and does not necessarily refer to more than one wireless communications facility installed at a single site.

"CPUC" means the California Public Utilities Commission or its successor agency.

"Distributed antenna system" or "DAS" means a network of one or more Antennas and related fiber optic nodes typically mounted to or located at streetlight poles, utility poles, sporting venues, arenas or convention centers which provide access and signal transfer for wireless service providers. A distributed antenna system also includes the equipment location, sometimes called a "hub" or "hotel" where the DAS network is interconnected with one or more wireless service provider's facilities to provide the signal transfer services.

"Eligible facilities request" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended, which defines that term as "[a]ny 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) [c]ollocation of new transmission equipment; (ii) [r]emoval of transmission equipment; or (iii) [r]eplacement of transmission equipment."

"Eligible support structure" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which defines that term as "[a]ny 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 section."

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

"Facility" means an installation used to transmit signals over the air from facility to facility or from facility to user equipment for any wireless service and includes, but is not limited to, personal wireless services facilities.

"FCC" means the Federal Communications Commission or its successor agency.

"Mock-up" means a temporary, full-sized, structural model built to scale chiefly for study, testing, or displaying a wireless communications facility. It is non-functional and has no power source.

"Monopole" means a single freestanding non-lattice, tubular tower that that is not camouflaged and that is used to act as or support an antenna or antenna arrays.

"OTARD antenna" means antennas covered by the "Over-the-Air Reception Devices" rule in 47 C.F.R. §§ 1.4000 et seq., as may be amended.

"Personal wireless service facilities" means facilities for the provision of personal wireless services, as defined in 47 U.S.C. Section 332(c)(7).

"Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined in 47 U.S.C. Section 332(c)(7).

"Public rights-of-way" means the same as defined in Section 12.04.010, which defines the term as "public easements or public property that are used for streets, alleys or other public purposes."

"RF" means radio frequency.

"Screening" means the effect of locating an antenna behind a building, wall, facade, fence, landscaping, berm, and/or other specially designed device so that view of the antenna from adjoining and nearby public street rights-of-way and private properties is eliminated or minimized.

"Section 6409(a)" means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.

"Section 6409(a) modification" means a collocation or modification of transmission equipment at an existing wireless tower or base station that does not result in a substantial change in the physical dimensions of the existing wireless tower or base station. For the purposes of a Section 6409(a) modification, the term "substantial change" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended, which defines that term differently based on the particular facility type and location. For clarity, the definition in this chapter organizes the FCC's criteria and thresholds for a substantial change according to the facility type and location.

1. For towers outside the public rights-of-way, a substantial change occurs when:
 - a. The proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or
 - b. The proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
 - c. The proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or

- d. The proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
2. For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
 - a. The proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
 - b. The proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or
 - c. The proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
 - d. The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or
 - e. The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
3. In addition, for all towers and base stations wherever located, a substantial change occurs when:
 - a. The proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the director; or
 - b. The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.

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

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

“Temporary Wireless Facilities” means portable wireless communication facilities intended or used to provide personal wireless services on a temporary or emergency basis, such as a large-scale special event in which more users than usual gather in a confined location or when a disaster disables permanent wireless facilities. Temporary wireless facilities include, without limitation, cells-on-wheels (“COWs”), sites-on-wheels (“SOWs”), cells-on-light-trucks (“COLTs”) or other similarly portable wireless communication facilities not permanently affixed to the land.

“Tower” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(9), as may be amended, which defines that term as “[a]ny structure built for the sole or primary purpose of supporting any [FCC]-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.” Examples include, but are not limited to, monopoles, mono-trees and lattice towers.

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

“Unconcealed” means a wireless communications facility that is not a camouflaged facility and has no or effectively no camouflage techniques applied such that the wireless equipment is plainly obvious to the observer.

“Unlicensed wireless service” means the offering of telecommunications services, using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services, as defined in 47 U.S.C. § 332(c)(7). (Ord. 700 § 2 (Exh. 1), 2012; Ord. 635, 2001)

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

“Wireless communications facility” or “WCF” means a facility used to provide personal wireless services as defined in 47 U.S.C. Section 332(c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services; or any other FCC licensed or authorized service. A WCF does not include a facility entirely enclosed within a permitted building outside of the rights-of-way where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the code. A WCF consists

of an antenna or antennas, including, but not limited to, directional, omni-directional and parabolic antennas, base station, support equipment, and (if applicable) a wireless tower. It does not include the support structure to which the WCF or its components is attached. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand held radios/telephones and their associated transmitting antennas, nor does it include other facilities specifically excluded from the coverage of this chapter.

18.55.030 Applicability.

A. Prior to the installation of a new wireless communications facility or a modification or colocation to an existing wireless communications facility that does not constitute an “eligible facilities request” nor qualify for an Eligible Facility Permit, the owner, or occupant with written permission from the owner, of the lot, premises, parcel of land or building on which a wireless communications facility is to be located shall first obtain a Conditional Wireless Facility Permit or Administrative Wireless Facility Permit from the city pursuant to Section 18.55.030.

B. Unless specifically exempt by federal or state law, all applications for the installation of wireless communications facilities that constitute “eligible facilities requests” within the meaning of 47 U.S.C. section 1455(a) require the approval of an Eligible Facility Permit as described in Chapter 18.57 prior to construction of such eligible facility.

C. **Exempted Facilities.** This chapter does not apply to the following:

1. Amateur radio facilities;
2. OTARD antennas;
3. Facilities owned and operated by the city for its use; or
4. Facilities owned and operated by CPUC-regulated electric companies authorized to deliver electrical power in the City for use in connection with electrical power generation, transmission and distribution facilities subject to CPUC General Order 131-D.

D. In addition to the subsections above, installation of a wireless communications facility on public property, including property within the public right-of-way, requires an encroachment permit from the director. At least fifteen days prior to issuing the permit, written notice of the application shall be sent to all property owners within a 300-foot radius of the proposed facility. In issuing the permit, the director shall take into consideration all comments provided by the public, and may impose conditions on the permit prior to its issuance relating to the time, place, and manner of use of the public property. The director may deny the permit if the application is incomplete, or the project does not adequately mitigate the facility’s adverse impact on the health, safety or welfare of the community, including, but not limited to, adverse aesthetic impacts arising from the proposed time, place, and manner of use of the public property. In reviewing an application for a wireless communications facility, the director may also deny the permit if he or she determines that the proposed facility is not needed to close a significant gap in coverage. Within 15 days after the determination by the director to issue or deny the

permit, any person may appeal the decision to the planning commission. Should an appeal be made, issuance of the permit shall be stayed. If no appeal is made within the 15-day period, the permit shall be issued. The director may, in his or her discretion, refer any application to the planning commission for a decision on the issuance of the permit. The hearing on the appeal or referral to the planning commission shall be held following at least 15 days' notice to the applicant and all property owners within a 300-foot radius of the proposed facility. The decision of the planning commission shall be based on the same standards as applicable to the director.

E. Required Permits. All proposed facilities and collocations or modifications to facilities governed under this chapter shall be subject to either a Conditional Wireless Facility Permit or an Administrative Wireless Facility Permit from the city, unless exempted from this chapter as an eligible facility under Chapter 18.57.

1. **Conditional Wireless Facility Permit.** A Conditional Wireless Facility Permit is required for any new facility, collocation, or modification to an existing facility not subject to Chapter 18.57 located in a public right-of-way or on private property as follows:
 - a. All unconcealed facilities;
 - b. All facilities in non-preferred locations, as defined in Section 18.55.040;
 - c. All non-camouflaged facilities in preferred locations, as defined in Section 18.55.040; and
 - d. All other facilities that do not meet the criteria for either an Administrative Wireless Facility Permit described herein or an Eligible Facility Permit described in Chapter 18.57.
2. **Conditional Wireless Facility Permit Approval.** Approval of a Conditional Wireless Facility Permit for a wireless communications facility shall be subject to the following:
 - a. All standards and regulations described in Chapter 18.55 contained herein, and any amendments or modifications to the facility as approved through resolution of the planning commission at a noticed public hearing;
 - b. No wireless communications facility proposed within 200 feet from any dwelling used or approved for a residential use may be approved unless the proposed facility meets all of the following criteria:
 - i. The proposed wireless communications facility is located on public property, including the public right-of-way;
 - ii. All non-antenna equipment associated with the proposed wireless communications facility is placed underground, unless otherwise approved by the planning commission;
 - iii. No individual antenna on the proposed wireless communications facility exceeds three cubic feet in volume, unless the planning commission otherwise approves camouflage techniques that would justify an alternative size;
 - iv. The cumulative antenna volume on any single pole does not exceed nine cubic feet;
 - v. The proposed wireless communications facility is located a minimum of two hundred feet from any other wireless communications facility located along the same side of the street; and

- vi. The proposed wireless communications facility is located a minimum of two hundred feet from any intersection along any street, unless the city in its proprietary capacity has granted a license or other access agreement for a wireless communications facility to use a city-owned, non-decorative traffic or safety sign pole at such an intersection, in which case no more than one city-owned, non-decorative traffic signal poles at any such intersection shall be permitted to be used to accommodate wireless communications facilities, unless otherwise approved pursuant to Section 18.55.041.
 - c. A wireless communications facility application must include all of the contents described in Section 18.55.035.
 - d. All decisions for a wireless communications facility must be in writing and contain the reasons for approval or denial.
 - e. All approved or deemed-approved wireless communications facilities shall be subject to all the conditions imposed by the planning commission.
 - f. Noticing requirements and appeal provisions shall follow the procedures described in Section 17.04.100.
3. **Administrative Wireless Facility Permit.** An Administrative Wireless Facility Permit is required for any new facility or collocation or modification to an existing facility as follows:
- a. All camouflaged facilities in a non-residential zone that are integrated into the façade and design of an existing building;
 - b. All camouflaged facilities on an existing structure, other than a utility pole, in a non-residential zone; or
 - c. Any camouflaged facility on a utility pole in a non-residential zone that is integrated into the pole, well designed, and does not substantially change the appearance of the pole as determined by the director.
4. **Administrative Wireless Facility Permit Approval.** Approval of an Administrative Wireless Facility Permit shall be subject to the following:
- a. All standards and regulations for an Administrative Wireless Facility Permit, and any amendments or modifications to an existing Administrative Wireless Facility Permit, must be approved by the director.
 - b. No non-camouflaged wireless communications facility proposed within 200 feet from any dwelling used or approved for a residential use may be classified as a facility unless the proposed facility meets all of the following criteria:
 - i. The proposed wireless communications facility is located in the public right of way;
 - ii. All non-antenna equipment associated with the proposed wireless communications facility is placed underground;

- iii. No individual antenna on the proposed wireless communications facility exceeds three cubic feet in volume;
 - iv. The cumulative antenna volume on any single pole does not exceed nine cubic feet;
 - v. The proposed wireless communications facility is located a minimum of two hundred feet from any other wireless communications facility located along the same side of an arterial or collector street; and
 - vi. The proposed wireless communications facility is located a minimum of two hundred feet from any intersection along any arterial street or collector street.
- c. All decisions for an Administrative Wireless Facility Permit must be in writing and contain the reasons for approval or denial.
 - d. All approved or deemed-approved wireless communications facilities shall be subject to all the conditions imposed by the director.
 - e. Noticing requirements and appeal provisions shall follow the procedures described in Section 17.04.100.

18.55.035 Application Content.

A. All applications for a permit for the installation of a wireless communications facility, whether on private or public property, including the public right-of-way, shall contain the following information:

1. **Legal description.** A legal description of the property where the wireless communications facility is to be installed.
2. **Radius map and certified list.** A radius map and a certified list of the names and addresses of all property owners within 300 feet of the exterior boundaries of the property involved, as shown on the latest assessment roll of the county assessor. For wireless communications facilities in the public right-of-way, the 300 feet shall be measured from any portion of a base station, including antennas, cables, and equipment.
3. **Plot plan.** A plot plan of the lot, premises or parcel of land, showing the exact location of the proposed wireless communications facility (including all related equipment and cables), exact location and dimensions of all buildings, parking lots, walkways, trash enclosures, and property lines.
4. **Elevations and roof plan.** Building elevations and roof plan (for building- and/or rooftop-mounted facilities) indicating exact location and dimensions of equipment proposed. For freestanding facilities, indicate surrounding grades, structures, and landscaping from all sides.
5. **Screening.** Proposed landscaping and/or non-vegetative screening (including required safety fencing) plan for all aspects of the facility.

6. **Manufacturer's specification.** Manufacturer's specifications, including installation specifications, exact location of cables, wiring, materials, color, and any support devices that may be required.

7. **Good-faith letter.** Written documentation demonstrating a good faith effort to locate the proposed facility in the least intrusive location and screened to the greatest extent feasible in accordance with the site selection and visual impact criteria of Section 18.55.040.

8. **Photographs and Photo Simulations.** Photographs and photo simulations that show the proposed facility in context of the site from reasonable line-of-sight locations from public streets or other adjacent viewpoints, together with a map that shows the photo location of each view angle.

9. **Master plan.** A master plan which identifies the location of the proposed facility in relation to all existing and potential facilities maintained by the operator intended to serve the city. The master plan shall reflect all potential locations that are reasonably anticipated for construction within two years of submittal of the application. Applicants may not file, and the city shall not accept, applications that are not consistent with the master plan for a period of two years from approval of a Conditional Wireless Facility Permit or Administrative Wireless Facility Permit unless: (i) the applicant demonstrates materially changed conditions which could not have been reasonably anticipated to justify the need for a wireless communications facility site not shown on a master plan submitted to the city within the prior two years or (ii) the applicant establishes before the planning commission that a new wireless communications facility is necessary to close a significant gap in the applicant's service area, and the proposed new installation is the least intrusive means to do so.

10. **Alternative analysis.** A siting analysis which identifies a minimum of five other feasible locations within or outside the city which could serve the area intended to be served by the facility, unless the applicant provides compelling technical reasons for providing fewer than the minimum. The alternative site analysis should include at least one collocation site, if feasible.

11. **Noise study.** A noise study prepared and certified by an acoustical engineer licensed by the State of California for the proposed facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators demonstrating compliance with the city's noise regulations. The noise study must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of a noise study, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed a one (1) dba increase over ambient noise levels as measured from the property line of any residential property. Within residential zones and properties adjacent to residential zones, sound proofing measures shall be used to reduce noise caused by the operation of a wireless

communications facility and all accessory equipment to a level which would have a no-net increase in ambient noise level as measured from the property line of any residential property.

12. **Traffic control plan.** A traffic control plan when the applicant seeks to use large equipment (e.g. crane) or requires closure or partial closure of a lane. A traffic control plan may be waived at the discretion of the director.

13. **Certificate of public convenience and necessity.** Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a true and complete copy of its CPCN.

14. **Mock-up.** A mock-up including all proposed antenna structures, antennas, cables, hardware and related accessory equipment shall be constructed prior to notice being given to the public and at least 15 calendar days prior to a public hearing, in order for the planning commission or the director to assess aesthetic impacts to surrounding land uses and public rights-of-way. This requirement may be waived by the director.

Installation of a mock-up can occur prior to submittal of a formal application provided that the public works director has reviewed the plans for the mock-up and grants approval of an encroachment permit or other valid permit. Prior to installation of a mock-up, the applicant shall provide notice to all residents and homeowners within 300 feet of the proposed mock-up at least 48 hours in advance, and shall provide proof of notice to the public works director.

15. **RF exposure compliance report.** An RF exposure compliance report prepared and certified by an RF engineer licensed by the State of California that certifies that the proposed facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radio power (ERP)) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

16. **PVHA status.** The Palos Verdes Homes Association, a private corporation established in 1923, has the responsibility for enforcing the Protective Restrictions and providing architectural review and control through an independent Art Jury. The Art Jury reviews plans for all new homes, structures, and all changes to existing properties. The Art Jury makes certain that the project not only meets its standards of architectural type and design, but also considers compatibility with existing structures, site planning, building coverage, height, color and materials. Since the Art Jury has the primary responsibility for architectural design review and

control dating back to 1923, it is recommended but not required that the application process for approval of a new or modified structure begin by submitting preliminary plans, clearly depicting the proposed project, to the Homes Association first for Art Jury preliminary approval. While an application can be submitted concurrently to the city, there may be less overall time consumed and less cost for changes if preliminary Art Jury approval is obtained before submitting plans to the city.

17. **Other information.** Any other information as deemed necessary by the city in order to consider an application for a wireless communications facility.

18. **Fees.** The application shall be accompanied by the appropriate fee as set forth in this chapter. (Ord. 700 § 2 (Exh. 1), 2012; Ord. 635, 2001)

19. **Community Meeting.** In addition to any other action otherwise required by law pertaining to the processing of a Conditional Wireless Facility Permit application, the applicant for which such review is being sought shall take all of the following actions:

- a. Send written notice to both the owner(s) of real property, as shown on the latest equalized assessment roll, within 300 feet of the proposed wireless communications facility, and the city planning department, of the pendency of the filing of such an application, including with such notice copies of preliminary drawings of the proposed project at a scale no smaller than one inch equals 16 feet. No application for neighborhood review will be accepted as complete unless it contains evidence acceptable to the director that such notice has been sent.
- b. Hold a community meeting at least four weeks before the date of the planning commission meeting at which the application will be heard, and invite the persons entitled to notice pursuant to subsection (B)(1) of this section to attend such meeting to discuss the proposed application. The community meeting shall be held on a non-holiday weekend or during daylight hours and before nine a.m. or after five p.m. on a weekday. The meeting shall be held at the subject property; provided, however, that if the occupancy of the subject property by a tenant or physical conditions at the subject property make it unsafe or infeasible to provide a table and chairs at the subject property, the meeting may be held at another location within the city. The mock-up of the proposed project shall be erected on the subject property before the meeting. The primary location and all alternative sites shall be presented to the community as well as the reasons for the selection of the primary location. Notice of the date, time and place of such meeting shall be sent at least seven days before the meeting and shall be filed with the planning department.

- c. If the hearing on the application is continued by the planning commission, the applicant is encouraged, but not required, to hold a further meeting with the persons entitled to notice pursuant to subsection (B)(1) of this section at least one week prior to the continued hearing.
- d. If a meeting pursuant to subsection B of this section results in any modifications to the project prior to the planning commission hearing on the project, the applicant shall (1) notify the director of the proposed modifications and (2) explain to the planning commission at the hearing on the matter any discrepancy between the project as proposed in the notice sent pursuant to subsection (B)(1) of this section and the project as presented to the planning commission.

A community meeting may be required at the discretion of the director for an application for an Administrative Wireless Facility Permit or an Eligible Facility Permit.

B. Effect of State or Federal Law Change. In the event a subsequent state or federal law prohibits the collection of any information described herein, the director is authorized to omit, modify or add to that request from the city's application form.

C. Independent Expert. The director is authorized to retain on behalf of the city an independent, qualified consultant to review any application for a permit for a wireless communications facility. The review is intended to be a review of technical aspects of the proposed wireless communications facility and shall address any or all of the following:

1. Compliance with applicable radio frequency emission standards;
2. Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;
3. The accuracy and completeness of submissions;
4. Technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;
5. The applicability of analysis techniques and methodologies;
6. The validity of conclusions reached or claims made by applicant;
7. The viability of alternative sites and alternative designs; and
8. Any other specific technical issues identified by the consultant or designated by the city.

The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution. No permit shall be issued to any applicant which has not fully reimbursed the city for the consultants cost.

18.55.040 Design standards.

The following general design guidelines shall be considered for regulating the location, design, and aesthetics for a wireless communications facility:

A. Site Selection Criteria.

1. **Preferred Locations.** When doing so would not conflict with one of the standards set forth in this subsection or with federal law, wireless communications facilities shall be located in the most appropriate location as described in this subsection, which range from the most appropriate to the least appropriate.

- a. Collocation on an existing building in a non-residential zone.
- b. Collocation on an existing structure or utility pole in a non-residential zone.
- c. Location on a new structure in a non-residential zone.
- d. Collocation on an existing eligible support structure in the public right-of-way or open space zone, except that the facility may be located in a residential zone if it is necessary to prevent substantial aesthetic impacts and is the least intrusive means.
- e. Location on an existing structure, utility pole or street sign pole in the public right-of-way or open space zone, except that the facility may be located in a residential zone if it is necessary to prevent substantial aesthetic impacts and is the least intrusive means.
- f. Location on a new structure in the public right-of-way or open space zone, except that the facility may be located in a residential zone if it is necessary to prevent substantial aesthetic impacts and is the least intrusive means.
- g. Location in a residential zone consisting of a non-residential use (e.g., churches, temples, etc.).

2. **Non-Preferred Locations.** To the extent feasible, wireless communications facilities shall not be sited in the following locations beginning with the least desirable:

- a. Located within a residential zone unless authorized by the commission.
- b. Located within 100 feet of a residence or residential building, unless camouflaged in or on a non-residential building.
- c. Located at the top of a ridgeline when prominently visible from public viewpoints.
- d. Located at the top of a bluff, slope or hill along or adjacent to a roadway where views of the ocean would be significantly obstructed.
- e. On a structure, site or in a district designated as a local, state or federal historical landmark, or having significant local historical value as determined by the city council.
- f. Within environmentally sensitive areas.

No new facility may be placed in a less appropriate area unless the applicant demonstrates to the satisfaction of the commission that no more appropriate location can feasibly serve the area the facility is intended to serve provided, however, that the commission may authorize a facility to be established in a less appropriate location if doing so is necessary to prevent substantial aesthetic impacts.

3. All facilities (including all related accessory cabinet(s)) shall meet the setback requirements of the underlying zone. If a facility is located in a public right-of-way, the director shall determine appropriate siting and setbacks. In no case shall any portion of a facility be located in a defined front yard or side yard. The planning commission may require additional setbacks and/or restricted location areas than that specified for the underlying zone based on the existing development of the site and/or surrounding land uses.

4. Any freestanding ground-mounted wireless communications facility, including any related accessory cabinet(s), shall apply towards the allowable lot coverage for structures/buildings of the underlying zone. In no case shall any part of a facility alter vehicular circulation within a site or impede access to and from a site. In no case shall a facility alter off-street parking spaces (such that the required number of parking spaces for a use is decreased) or interfere with the normal operation of the existing use of the site.

5. All wireless communications facilities shall utilize unmetered commercial power service, or commercial power metering in the smallest possible enclosure, or wireless power metering in flush to grade vaults. If a commercial power meter is installed and the wireless communications facility can be converted to unmetered or wireless power metering, the permittee shall apply for a permit modification to perform the conversion.

B. Visual Impact.

1. Facilities shall be designed to be as visually unobtrusive as possible. Colors and designs must be integrated and compatible with existing on-site and surrounding buildings and/or uses in the area. Facilities shall be sited to avoid or minimize obstruction of views from adjacent properties.

2. Facilities shall not be of a bright, shiny or glare-reflective finish. The facility shall be finished in a color to neutralize it and blend it with, rather than contrast it from, the sky and site improvements immediately surrounding; provided, that, wherever feasible, a light color shall be used to meet this requirement.

3. If feasible, the base station and all wires and cables necessary for the operation of a facility shall be placed underground so that the antenna is the only portion of the facility that is above ground. If the base station is located within or on the roof of a building, it may be placed in any location not visible from surrounding areas outside the building, with any wires and cables attached to the base station screened from public view. The applicant shall demonstrate to the satisfaction of the planning commission or director that it is not technically feasible to locate the base station below ground.

4. Innovative design to minimize visual impact must be used whenever the screening potential of the site is low. For example, the visual impact of a site may be mitigated by using existing light standards and telephone poles as mounting structures, or by constructing screening structures which are compatible with surrounding architecture.

5. Screening of the facility should take into account the existing improvements on or adjacent to the site, including landscaping, walls, fences, berms or other specially designed devices which preclude or minimize the visibility of the facility and the grade of the site as related to surrounding nearby grades of properties and public street rights-of-way.

6. Landscaping or other screening shall be placed so that the antenna and any other above-ground structure is screened from public view. Landscaping or other screening required by this section shall be maintained by the permittee and replaced as necessary as determined by the director. All existing landscaping that has been disturbed by the Permittee in the course of placement or maintenance of the wireless facility shall be restored to its original condition as existed prior to placement of the wireless facility by the Permittee.

7. The maximum antenna height of any wireless communications facility shall not exceed the maximum height limit of the underlying zone or the maximum permissible height of property upon which the WCF is located, or if the WCF is located in the public right-of-way the maximum permissible height for the immediately-adjacent private property.

18.55.041 Exemptions.

All exemptions granted under this chapter are subject to review and reconsideration by the city council. The applicant always bears the burden to demonstrate why an exemption should be granted. An applicant seeking an exemption under this section on the basis that a permit denial would effectively prohibit a wireless communications facility must demonstrate with clear and convincing evidence all of the following:

- A. A significant gap in the applicants service coverage exists; and
- B. All alternative sites identified in the application review process are either technically infeasible or not potentially available.

18.55.042 Compliance Report.

A. Within 30 days after installation of a WCF, the applicant shall deliver to the director a written report that demonstrates that its WCF as constructed and normally-operating fully complies with the conditions of the permit, including height restrictions, and applicable safety codes, including structural engineering codes. The demonstration shall be provided in writing to the director containing all technical details to demonstrate such compliance, and certified as true and accurate by qualified professional engineers, or, in the case of height or

size restrictions, by qualified surveyors. This report shall be prepared by the applicant and reviewed by the city at the sole expense of the applicant, which shall promptly reimburse the city for its review expenses. The director may require additional proofs of compliance as part of the application process and on an ongoing basis to the extent the city may do so consistent with federal law.

B. If the initial report required by this section shows that the WCF does not so comply, the permit shall be deemed suspended, and all rights thereunder of no force and effect, until the applicant demonstrates to the city's satisfaction that the WCF is compliant. Applicant shall promptly reimburse the city for its compliance review expenses.

C. If the initial report required by this section is not submitted within the time required, the city may, but is not required to, undertake such investigations as are necessary to prepare the report described in paragraph A. Applicant shall within five days after receiving written notice from the city that the city is undertaking the review, shall deposit such additional funds with the city to cover the estimated cost of the city obtaining the report. Once said report is obtained by the city, the city shall then timely refund any unexpended portion of the applicant's deposit. The report shall be provided to the applicant. If the report shows that the applicant is noncompliant, the city may suspend the permit until the applicant demonstrates to the city's satisfaction that the WCF is compliant. During the suspension period, the applicant shall be allowed to activate the WCF for short periods, not to exceed 120 minutes during any 24-hour period for the purpose of testing and adjusting the site to come into compliance.

D. If the WCF is not brought into compliance promptly, the city may revoke the permit and require removal of the WCF.

18.55.045 Maintenance.

The site and the facility, including but not limited to all landscaping, fencing and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.

18.55.047 Amortization of Nonconforming Facilities.

Any non-conforming facilities in existence at the time this chapter becomes effective must be brought into conformance with this chapter in accordance with the amortization schedule in this Section 18.55.047. As used in this section, the "fair market value" will be the construction costs listed on the building permit application for the subject facility and the "minimum years" allowed will be measured from the date on which this chapter becomes effective.

Fair Market Value on Effective Date	Minimum Years Allowed
Less than \$50,000	5
\$50,000 to \$500,000	10
Greater than \$500,000	15

The director may grant a written extension to a date certain not greater than one year when the facility owner shows (1) a good faith effort to cure non-conformance and (2) extreme economic hardship would result from strict compliance with the amortization schedule. Any extension must be the minimum time period necessary to avoid such extreme economic hardship. The director must not grant any permanent exemption from this section.

Nothing in this section is intended to limit any permit term to less than 10 years. In the event that the amortization required in this section would reduce the permit term to less than 10 years for any permit granted on or after , 2017, then the minimum years allowed will be automatically extended by the difference between 10 years and the number of years since the city granted such permit. Nothing in this section is intended or may be applied to prohibit any collocation or modification covered under 47 U.S.C. § 1455(a) pursuant to Chapter 18.57 on the basis that the subject wireless communication facility is a legal nonconforming facility.

18.55.048 Temporary Wireless Facilities.

- A. Temporary wireless facilities may be placed and operated within the City without an administrative temporary use permit only when a duly-authorized federal, state, county or City official declares an emergency within the City, or a region that includes the City in whole or in part at the location of the temporary wireless facility.
- B. By placing a temporary wireless facility pursuant to this Section 18.55.048(B) the entity or person placing the temporary wireless facility agrees to and shall defend, indemnify and hold harmless the City, its agents, officers, officials, employees and volunteers from any and all (1) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("Claims") brought against the City or its agents, officers, officials, employees or volunteers for any and all Claims of any nature related to the installation, use, non-use, occupancy, removal, and disposal of the temporary wireless facility.
- C. The temporary wireless facility shall prominently display upon it a legible notice identifying the entity responsible for the placement and operation of the temporary wireless facility.
- D. Any temporary wireless facilities placed pursuant to this Section 18.55.048(B) must be removed within the earlier of (a) five days after the date the emergency is lifted or (b) upon three (3) days written notice from the public works director or city manager or (c) within one hour if required for public safety reasons by City police or fire officials. In the event that the temporary facility is not removed as required

in this Section 18.55.048(B), the City may at its sole election may remove and store or remove and dispose of the temporary facility at the sole cost and risk of the person or entity placing the temporary facility.

- E. Any person or entity that places temporary wireless facilities pursuant to this section must send the public works director or city manager an email notice or deliver a written notice by hand within thirty (30) minutes of the placement followed by a written notice dispatched within twelve (12) hours to the public works director or city manager via prepaid U.S. Mail first overnight delivery, such as U.S. Postal Express Mail or its equivalent, that identifies the site location of the temporary facility and person responsible for its operation.

18.55.050 Revocation.

- A. **Grounds for Revocation.** A permit granted under this chapter may be revoked for noncompliance with any enforceable permit, permit condition or law provision applicable to the facility.
- B. **Revocation Procedures.**
 - 1. When the director finds reason to believe that grounds for permit revocation exist, the director shall send written notice by Certified U.S. Mail, Return Receipt Requested, to the permittee at the permittee's last known address that states the nature of the noncompliance as grounds for permit revocation. The permittee shall have a reasonable time from the date of the notice to cure the noncompliance or show that no noncompliance ever occurred.
 - 2. If after notice and opportunity to show that no noncompliance ever occurred or to cure the noncompliance, the permittee fails to cure the noncompliance, the city council shall conduct a noticed public hearing to determine whether to revoke the permit for the uncured noncompliance. The permittee shall be afforded an opportunity to be heard and may speak and submit written materials to the city council. After the noticed public hearing, the city council may revoke or suspend the permit when it finds that the permittee had notice of the noncompliance and an enforceable permit, permit condition or law applicable to the facility. Written notice of the city council's determination and the reasons therefor shall be dispatched by Certified U.S. Mail, Return Receipt Requested, to the permittee's last known address. Upon revocation, the city council may take any legally permissible action or combination of actions necessary to protect public health, safety and welfare.

18.55.052 Decommissioned or Abandoned Wireless Communications Facilities.

- A. **Decommissioned Wireless Facilities.** Any permittee that intends to decommission a wireless communications facility must send 30-days' prior written notice by United States Certified Mail to the director. The permit will automatically expire 30 days after the director receives such notice of intent to decommission, unless the permittee rescinds its notice within the 30- day period.

B. Procedures for Abandoned Facilities or Facilities Not Kept in Operation.

1. To promote the public health, safety and welfare, the director may declare a facility abandoned when:
 - a. The permittee notifies the director that it abandoned the use of a facility for a continuous period of 90 days; or
 - b. The permittee fails to respond within 30 days to a written notice sent by Certified U.S. Mail, Return Receipt Requested, from the director that states the basis for the director's belief that the facility has been abandoned for a continuous period of 90 days; or
 - c. The permit expires and the permittee has failed to file a timely application for renewal.
2. After the director declares a facility abandoned, the permittee shall have 90 days from the date of the declaration (or longer time as the director may approve in writing as reasonably necessary) to:
 - a. Reactivate the use of the abandoned facility subject to the provisions of this chapter and all conditions of approval;
 - b. Transfer its rights to use the facility, subject to the provisions of this chapter and all conditions of approval, to another person or entity that immediately commences use of the abandoned facility; or
 - c. Remove the facility and all improvements installed solely in connection with the facility, and restore the site to a condition compliant with all applicable codes consistent with the then-existing surrounding area.
3. If the permittee fails to act as required in Section 18.55.052(B)(2) within the prescribed time period, the city council may deem the facility abandoned and revoke the underlying permit(s) at a noticed public meeting in the same manner as provided in Section 18.55.050(B)(2). Further, the city council may take any legally permissible action or combination of actions reasonably necessary to protect the public health, safety and welfare from the abandoned wireless communications facility.

18.55.054 Wireless Communications Facilities Removal or Relocation.

- A. **Removal by Permittee.** The permittee or property owner must completely remove the wireless communications facility and all related improvements within 90 days after the (1) the permit expires, (2) the city council properly revokes a permit pursuant to Section 18.55.050(B), (3) the permittee decommissions the wireless communications facility, or (4) the city council properly deems the wireless communications facility abandoned pursuant to 18.55.052(B). In addition and within the 90-day period, the permittee or property owner must restore the former wireless communications facility site area to a condition compliant with all applicable codes and consistent with the then-existing surrounding area.
- B. **Removal by City.** The city may, but is not obligated to, remove an abandoned wireless communications facility, restore the site to a condition compliant with all applicable codes and consistent with the then-existing surrounding area, and repair any and all damages that occurred in connection with such removal and restoration work. The city may, but shall not be obligated to, store the removed wireless communications

facility or any part thereof, and may use, sell or otherwise dispose of it in any manner the city deems appropriate in its sole discretion. The last-known permittee or its successor-in-interest and, if on private property, the real property owner shall be jointly liable for all costs incurred by the city in connection with its removal, restoration, repair and storage, and shall promptly reimburse the city upon receipt of a written demand, including any interest on the balance owing at the maximum lawful rate. The city may, but shall not be obligated to, use any financial security required in connection with the granting of the facility permit to recover its costs and interest. A lien may be placed on all abandoned personal property and the real property on which the abandoned wireless communications facility is located for all costs incurred in connection with any removal, repair, restoration and storage performed by the city. The city clerk shall cause such a lien to be recorded with the County of Los Angeles Clerk-Recorder's Office.

- C. **Relocation Procedures for Facilities in the Rights-of-Way.** After reasonable written notice to the permittee, the director may require a permittee, at the permittee's sole expense and in accordance with the standards in this chapter applicable to such wireless communications facility, to relocate or reconfigure a wireless communications facility in the public rights-of-way as the director deems necessary to maintain or reconfigure the rights-of-way for other public projects or take any actions necessary to protect public health, safety and welfare. The provisions in this section are intended to include circumstances in which a wireless communications facility is installed on a pole scheduled for undergrounding.

18.55.055 Fee or tax.

The city council may, by resolution, impose any fee or tax permitted by law for the placement of a wireless communications facility. Such fee or tax shall be in addition to any fee imposed by the city council for an application for a Conditional Wireless Facility Permit or Administrative Wireless Facility Permit. (Ord. 700 § 2 (Exh. 1), 2012; Ord. 635, 2001)

18.55.060 Severability.

In the event that a court of competent jurisdiction holds any section, subsection, paragraph, sentence, clause or phrase in this section unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this section and shall not affect the validity of the remaining portions of this section. The city hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause or phrase in this section irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses or phrases in this section might be declared unconstitutional, preempted or otherwise invalid.

Chapter 18.57
ELIGIBLE FACILITIES

Sections:

Section 18.57.010 – Purpose

Section 18.57.020 – Definitions

Section 18.57.030 – Applicability

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Section 18.57.050 – Other Regulatory Approvals Required

Section 18.57.060 – Permit Applications; Submittal and Review Procedures

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Section 18.57.080 – Approvals; Denials without Prejudice

Section 18.57.090 – Standard Conditions of Approval

Section 18.57.100 – Notice of Decision; Appeals

Section 18.57.110 – Independent Consultant Review

Section 18.57.120 – Compliance Obligations

Section 18.57.130 – Conflicts with Prior Ordinances

Section 18.57.140 – Duty to Retain Records.

Section 18.57.150 – Severability

Section 18.57.010 Purpose.

A. The purpose of this chapter is to adopt reasonable regulations and procedures, consistent with and subject to federal and California state law, for compliance with Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified in Title 47 of the United States Code section 1455(a), and related Federal Communications Commission regulations codified in Title 47 of the Code of Federal Regulations section 1.40001 et seq.

1. Section 6409(a) generally requires that State and local governments “may not deny, and shall approve” requests to collocate, remove or replace transmission equipment at an existing tower or base station. FCC regulations interpret the statute and create procedural rules for local review, which generally preempt subjective land-use regulations, limit application content requirements and provide the applicant with a “deemed granted” remedy when the local government fails to approve or deny the request within sixty (60) days after submittal (accounting for any tolling periods). Moreover, whereas Section 704 of the Telecommunications Act of 1996, Pub. L. 104-104, codified in Title 47 of the United States Code section 332, applies to only “personal wireless service facilities” (e.g., cellular telephone towers and equipment), Section 6409(a) applies to all “wireless” facilities licensed or authorized by the FCC (e.g., Wi-Fi, satellite, or microwave backhaul).

2. The city council finds that the partial overlap between wireless deployments covered under Section 6409(a) and other wireless deployments, combined with the different substantive and procedural rules applicable to such deployments, creates a potential for confusion that harms the public interest in both efficient wireless communications facilities deployment and deliberately planned community development in accordance with local values. The city council further finds that a separate permit application and review process specifically designed for compliance with Section 6409(a) contained in a chapter devoted to Section 6409(a) will best prevent such confusion.
 3. Accordingly, the city of Palos Verdes Estates adopts this chapter to reasonably regulate requests submitted for approval under Section 6409(a) to collocate, remove or replace transmission equipment at an existing wireless tower or base station, in a manner that complies with federal law and protects and promotes the public health, safety and welfare of the citizens of Palos Verdes Estates.
- B. This chapter does not intend to, and shall not be interpreted or applied to: (1) prohibit or effectively prohibit personal wireless services; (2) unreasonably discriminate among providers of functionally equivalent personal wireless services; (3) regulate the installation, operation, collocation, modification or removal of wireless communications facilities on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with all applicable FCC regulations; (4) prohibit or effectively prohibit any collocation or modification that the city may not deny under California or federal law; or (5) allow the city to preempt any applicable California or federal law.

Section 18.57.020 – Definitions.

All definitions described in Section 18.55.020 are applicable to this chapter. Definitions may contain quotations and/or citations to Title 47 of the Code of Federal Regulations section 1.40001 et seq. In the event that any referenced section is amended, creating a conflict between the quoted definition and the amended language of the referenced section, the definition in the referenced section, as amended, shall control.

Section 18.57.030 – Applicability.

This chapter applies to all permit applications for a collocation or modification to an existing wireless tower or base station submitted for approval pursuant to Section 6409(a) that qualify as an eligible facility. However, the applicant may alternatively elect to seek either a Conditional Wireless Facility Permit or an Administrative Wireless Facility Permit under Chapter 18.55.

Section 18.57.040 Eligible Facility Permit.

Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted for approval under Section 6409(a) shall require an Eligible Facility Permit subject to the director's approval, conditional approval or denial under the standards and procedures contained in this chapter.

Section 18.57.050 Other Regulatory Approvals Required.

No collocation or modification approved under any Eligible Facility Permit may occur unless the applicant also obtains all other permits or regulatory approvals from other city departments and state or federal agencies. An applicant may obtain an Eligible Facility Permit concurrently with permits or other regulatory approvals from other city departments after first consulting with the director. Furthermore, any Eligible Facility Permit granted under this chapter shall remain subject to the lawful conditions and/or requirements associated with such other permits or regulatory approvals from other city departments and state or federal agencies.

Section 18.57.060 Permit Applications; Submittal and Review Procedures.

- A. Permit Application Required. The director may not grant any Eligible Facility Permit unless the applicant has submitted a complete application.

- B. Permit Application Content. This section governs minimum requirements for permit application content and procedures for additions and/or modifications to Eligible Facility Permit applications. The city council directs and authorizes the director to develop and publish application forms, checklists, informational handouts and other related materials that describe required materials and information for a complete application in any publicly stated form. Without further authorization from the city council, the director may from time-to-time update and alter the permit application forms, checklists, informational handouts and other related materials as the director deems necessary or appropriate to respond to regulatory, technological or other changes. The materials required under this section are minimum requirements for any Eligible Facility Permit application the director may develop.
 - 1. Application Fee Deposit. The applicable permit application fee established by city council resolution. In the event that the city council has not established an application fee specific to an Eligible Facility Permit, the established fee for an Administrative Wireless Facility Permit shall be required.

 - 2. Prior Regulatory Approvals. Evidence that the applicant holds all current licenses and registrations from the FCC and any other applicable regulatory bodies where such license(s) or registration(s) are necessary to provide wireless services utilizing the proposed wireless communications facility. For any prior local regulatory approval(s) associated with the wireless communications facility, the applicant must submit copies of all such approvals with any corresponding conditions of approval. Alternatively, a written justification that sets forth reasons why prior regulatory approvals were not required for the wireless communications facility at the time it was constructed or modified.

 - 3. Site Development Plans. A fully dimensioned site plan and elevation drawings prepared and sealed by a California-licensed engineer showing any existing wireless communications facilities with all existing transmission equipment and other improvements, the proposed facility with all proposed transmission

equipment and other improvements and the legal boundaries of the leased or owned area surrounding the proposed facility and any associated access or utility easements.

4. Equipment Specifications. Specifications that show the height, width, depth and weight for all proposed equipment. For example, dimensioned drawings or the manufacturer's technical specifications would satisfy this requirement.
5. Photographs and Photo Simulations. Photographs and photo simulations that show the proposed facility in context of the site from reasonable line-of-sight locations from public streets or other adjacent viewpoints, together with a map that shows the photo location of each view angle. At least one photo simulation must clearly show the impact on the concealment elements of the support structure, if any, from the proposed modification.
6. RF Exposure Compliance Report. An RF exposure compliance report prepared and certified by an RF engineer acceptable to the city that certifies that the proposed facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radio power (ERP)) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
7. Justification Analysis. A written statement that explains in plain factual detail whether and why Section 6409(a) and the related FCC regulations at 47 C.F.R. § 1.40001 et seq. require approval for the specific project. A complete written narrative analysis will state the applicable standard and all the facts that allow the city to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of this written statement the applicant must also include (i) whether and why the support structure qualifies as an existing tower or existing base station; and (ii) whether and why the proposed collocation or modification does not cause a substantial change in height, width, excavation, equipment cabinets, concealment or permit compliance.
8. Noise Study. A noise study prepared and certified by an acoustical engineer licensed by the State of California for the proposed facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators demonstrating compliance with the city's noise regulations. The noise study must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of a noise study, the applicant may submit

evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits set out in the Noise Ordinance.

- C. Pre-Application Meeting Appointment. Prior to application submittal, applicants must schedule and attend a pre-application meeting with city staff for all Eligible Facility Permit applications. Such pre-application meeting is intended to streamline the application review through discussions including, but not limited to, the appropriate project classification, including whether the project qualifies for an Eligible Facility Permit; any latent issues in connection with the existing tower or base station; potential concealment issues (if applicable); coordination with other city departments responsible for application review; and application completeness issues. Applicants must submit a written request for an appointment in the manner prescribed by the director. City staff shall endeavor to provide applicants with an appointment within five (5) working days after receipt of a written request.
- D. Application Submittal Appointment. All applications for an Eligible Facility Permit must be submitted to the city at a pre-scheduled appointment. Applicants may submit up to three (3) WCF site applications per appointment but may schedule successive appointments for additional applications whenever feasible by the director. Applicants must submit a written request for an appointment in the manner prescribed by the director. City staff shall endeavor to provide applicants with an appointment within five (5) working days after receipt of a written request.
- E. Application Resubmittal Appointment. All application resubmittals must be tendered to the city at a pre-scheduled appointment. Applicants may resubmit up to three (3) individual WCF site applications per appointment but may schedule successive appointments for additional applications whenever feasible for the city. Applicants must submit a written request for an appointment in the manner prescribed by the director. City staff shall endeavor to provide applicants with an appointment within five (5) working days after receipt of a written request.
- F. Applications Deemed Withdrawn. To promote efficient review and timely decisions, an application will be automatically deemed withdrawn when an applicant fails to tender a substantive response within ninety (90) days after the city deems the application incomplete in a written notice to the applicant. The director may in the director's discretion grant a written extension for up to an additional thirty (30) days upon a written request for an extension received prior to the 90th day. The director may grant further written extensions only for good cause, which includes circumstances outside the applicant's reasonable control.

Section 18.57.070 Notice.

- A. Manner of Notice. Within 15 days after an applicant submits an application for an Eligible Facility Permit, written notice of the application shall be sent by First Class United States Mail to:
1. Applicant or its duly authorized agent;
 2. Property owner or its duly authorized agent;
 3. All real property owners within 300 feet from the subject site as shown on the latest equalized assessment rolls;
 4. Any person who has filed a written request with either the city clerk or the city council; and
 5. Any city department that will be expected to review the application.
- B. Notice Content. The notice required under this section shall include all the following information:
1. A general explanation of the proposed collocation or modification;
 2. The following statement: "This notice is for information purposes only; no public hearing will be held for this application. Federal law may require approval for this application. Further, Federal Communications Commission regulations may deem this application granted by the operation of law unless the city approves or denies the application, or the city and applicant reach a mutual tolling agreement."; and
 3. A general description, in text or by diagram, of the location of the real property that is the subject of the application.

Section 18.57.080 Approvals; Denials without Prejudice.

Federal regulations dictate the criteria for approval or denial of approval permit application submitted under Section 6409(a). The findings for approval and criteria for denial without prejudice are derived from, and shall be interpreted and applied in a manner consistent with, such federal regulations.

- A. Findings for Approval. The director may approve or conditionally approve an application for an Eligible Facility Permit only when the director finds all of the following:
1. The application involves the collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
 2. The proposed changes would not cause a substantial change.
- B. Criteria for a Denial Without Prejudice. Notwithstanding subsection (A), the director shall not approve an application for an Eligible Facility Permit when the director finds that the proposed collocation or modification:
1. Violates any legally enforceable standard or permit condition reasonably related to public health and safety; or

2. Involves a structure constructed or modified without all approvals required at the time of the construction or modification; or
 3. Involves the replacement of the entire support structure; or
 4. Does not qualify for mandatory approval under Section 6409(a) for any lawful reason.
- C. All Eligible Facility Permit Denials Are Without Prejudice. Any "denial" of an Eligible Facility Permit application shall be limited to only the applicant request for approval pursuant to Section 6409(a) and shall be without prejudice to the applicant, the real property owner or the project. Subject to the application and submittal requirements in this chapter, the applicant may immediately resubmit a permit application for either a Conditional Wireless Facility Permit, Administrative Wireless Facility Permit or Eligible Facility Permit as appropriate.
- D. Conditional Approvals. Subject to any applicable limitations in federal or state law, nothing in this chapter is intended to limit the city's authority to conditionally approve an application for an Eligible Facility Permit to protect and promote the public health, safety and welfare.

Section 18.57.090 Standard Conditions of Approval.

Any Eligible Facility Permit approved or deemed-granted by the operation of federal law shall be automatically subject to the conditions of approval described in this section.

- A. Permit Duration. The city's grant or grant by operation of law of an Eligible Facility Permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. The city's grant or grant by operation of law of an Eligible Facility Permit will not extend the permit term for any Conditional Wireless Facility Permit, Administrative Wireless Facility Permit or other underlying regulatory approval and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.
- B. Accelerated Permit Terms Due to Invalidation. In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Eligible Facility Permit(s), such permit(s) shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved Eligible Facility Permits. A permittee shall not be required to remove its improvements approved under the invalidated Eligible Facility Permit when it has submitted an application for either a Conditional Wireless Facility Permit or an Administrative Wireless Facility Permit for those improvements before the one-year period ends. The director may extend the expiration date on the accelerated permit upon a written request from the permittee that shows good cause for an extension.

- C. No Waiver of Standing. The city's grant or grant by operation of law of an Eligible Facility Permit does not waive, and shall not be construed to waive, any standing by the city to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any Eligible Facility Permit.
- D. Compliance with All Applicable Laws. The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("Laws") applicable to the permittee, the subject property, the facility or any use or activities in connection with the use authorized in this permit. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws.
- E. Inspections; Emergencies. The city or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The city reserves the right to enter or direct its designee the facility and support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
- F. Contact Information for Responsible Parties. Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person who is responsible for the facility. All such contact information for responsible parties shall be provided to the director upon permit grant, annually thereafter, and permittee's receipt of the director's written request.
- G. Indemnities. The permittee and, if applicable, the non-government owner of the private property upon which the tower/and or base station is installed shall defend, indemnify and hold harmless the city, its agents, officers, officials and employees (i) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs of mandamus and other actions or proceedings brought against the city or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the city's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, law suits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors or independent contractors. The permittee shall be responsible for costs of determining the source of the interference, all costs associated with eliminating the interference, and all costs arising from third party claims against the city attributable to the interference. In the event the city becomes aware of any such actions or claims the city shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed that the city shall have the right to approve,

which approval shall not be unreasonably withheld, the legal counsel providing the city's defense, and the property owner and/or permittee (as applicable) shall reimburse the city for any costs and expenses directly and necessarily incurred by the city in the course of the defense.

- H. Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility. Radio frequency emissions, to the extent that they comply with all applicable FCC regulations, are not considered to be adverse impacts to adjacent properties.
- I. General Maintenance. The site and the facility, including but not limited to all landscaping, fencing and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
- J. Graffiti Abatement. Permittee shall remove any graffiti on the wireless communications facility at Permittee's sole expense subject to the provisions of Chapter 8.49.

Section 18.57.100 Notice of Decision; Appeals.

- A. An application for an eligible facilities request shall be filed with the director on a form prescribed by the director.
- B. Each decision of the director to approve an eligible facilities request shall be reported to the city council and the planning commission according to procedures established by the director. Notice of the decision shall be mailed to the applicant and all owners of real property within 300 feet of the subject site as shown on the latest equalized assessment rolls at the time the application was submitted.
- C. An interested party may appeal a decision of the director under this section to the planning commission by filing a written appeal with the director within fifteen days after such decision and paying the established appeal fee. The planning commission shall approve, approve with conditions, or disapprove the application in accordance with applicable criteria and requirements specified by law. The planning commission determination shall be final unless appealed to city council.
- D. Fees for an eligible facilities request and for an appeal of a determination thereon shall be levied as provided for by this code and established by resolution of the city council.

Section 18.57.110 Independent Consultant Review.

- A. Authorization. The city council authorizes the director to, in his or her discretion, select and retain an independent consultant with expertise in communications satisfactory to the director in connection with any permit application.

- B. Scope. Subject to the provisions of subsection (C), the director may require the applicant to provide, at applicant's sole cost, independent consultant review on any issue that involves specialized or expert knowledge in connection with the permit application. Such issues may include, but are not limited to:
1. Permit application completeness or accuracy;
 2. Planned compliance with applicable federal RF exposure standards;
 3. Whether and where a significant gap exists or may exist, and whether such a gap relates to service coverage or service capacity;
 4. Whether technically feasible and potentially available alternative locations and designs exist;
 5. The applicability, reliability and sufficiency of analyses or methodologies used by the applicant to reach conclusions about any issue within this scope; and
 6. Any other issue that requires expert or specialized knowledge identified by the director.
- C. Deposit. The applicant must pay for the cost of any review required under subsection (B) and for the technical consultant's testimony in any hearing as requested by the director and must provide a reasonable advance deposit of the estimated cost of such review with the city prior to the commencement of any work by the technical consultant. The applicant must provide an additional advance deposit to cover the consultant's testimony and expenses at any meeting where that testimony is requested by the director. Where the advance deposit(s) are insufficient to pay for the cost of such review and/or testimony, the director shall invoice the applicant who shall pay the invoice in full within 10 calendar days after receipt of the invoice. No permit shall issue to an applicant where that applicant has not timely paid a required fee, provided any required deposit or paid any invoice as required in the Code.

Section 18.57.120 Compliance Obligations.

An applicant or permittee will not be relieved of its obligation to comply with every applicable provision in the Code, this chapter, any permit, any permit condition or any applicable law or regulation by reason of any failure by the city to timely notice, prompt or enforce compliance by the applicant or permittee.

Section 18.57.130 Conflicts with Prior Ordinances.

If the provisions in this chapter conflict in whole or in part with any other city regulation or ordinance adopted prior to the effective date of this chapter, the provisions in this chapter will control.

Section 18.57.140 Duty to Retain Records.

The permittee must maintain complete and accurate copies of all permits and other regulatory approvals (collectively, the "Records") issued in connection with the wireless facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such Records as required in this condition or fails to produce true and

complete copies of such Records within a reasonable time after a written request from the city, any ambiguities or uncertainties that would be resolved through an inspection of the missing Records will be construed against the permittee.

Section 18.57.150 Severability.

In the event that a court of competent jurisdiction holds any section, subsection, paragraph, sentence, clause or phrase in this section unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this section and shall not affect the validity of the remaining portions of this section. The city hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause or phrase in this section irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses or phrases in this section might be declared unconstitutional, preempted or otherwise invalid.