

City of South Lake Tahoe Wireless Code Draft Emergency Ordinance

Derived from City of Calabassas Wireless Code [here](#)

A. Purpose and Intent.

The purpose of this section is to regulate the installation, operation and maintenance of wireless telecommunication facilities in the city. The city recognizes that the unrestricted installation of redundant wireless telecommunication facilities is contrary to the city's efforts to stabilize economic and social aspects of neighborhood environments, and to promote safety and aesthetic considerations, family environments and a basic residential character within the city.

In enacting this section, the city intends to:

1. Promote and protect the health, safety, comfort, convenience and general welfare of residents and business in accord with [Section 17.01.020](#) of this title and the City of South Lake Tahoe General Plan;
2. Protect the benefits derived by the city, its residents and the general public from access to wireless telecommunications services while **minimizing, to the greatest extent feasible, the redundancy of wireless telecommunication facilities in the city;**
3. Balance these goals, by permitting the installation and operation of wireless telecommunication facilities where they are needed, while **reducing, to the greatest extent feasible, adverse economic, safety and/or aesthetic impacts** on nearby properties and the community as a whole; and
4. Comply with applicable law, including the 1996 Telecommunications Act.

5. In enacting this section, it is the intent of the city council that **no additional rights or entitlements be conferred to construct or maintain wireless telecommunication facilities**, other than those rights or entitlements existing under applicable state or federal law.
6. This section is intended to **regulate all uses of wireless communications in the city, including uses by public utilities**, to the extent of the city's power to regulate the use of land under federal and state law, but not to exceed the scope of the city's authority.

B. Applicability.

This section applies to all proposed antennas and modifications and related wireless telecommunication facilities, as follows:

1. All applications for approval of the installation of new wireless telecommunication facilities in the city.
2. All facilities for which applications were received by the department but not approved prior to the effective date of the ordinance codifying this section, shall comply with the regulations and guidelines of this section.
3. All facilities for which applications were approved by the city on or prior to the effective date of the ordinance codifying this section shall be exempt from this section, except for the requirements of subsection (C)(6)(c).
4. **All facilities for which applications have been previously approved, but are now or hereafter modified.**

C. Standards For All Wireless Telecommunication Facilities.

All wireless telecommunication facilities, **including small wireless facilities**, shall comply with the following requirements:

1. Permit Requirements. — No new wireless telecommunication facility shall be installed until the applicant or operator has obtained:

(i) a wireless facility permit or small wireless facility permit (as specified in [Section 17.12.050\(G\)](#)),

(ii) an encroachment permit from the public works department (if applicable), and

(iii) any other permit required by applicable provisions of this Code including a building permit, an electrical permit, or an oak tree permit.

All modifications to an existing wireless telecommunications facility **that do not meet the findings of approval required for** a wireless facility **minor modification permit** as specified in [Section 17.12.050\(F\)](#) or a **small wireless facility** permit as specified in [Section 17.12.050\(G\)](#), **shall be subject to** the approval of

(i) a wireless facility permit, in addition to

(ii) an encroachment permit from the public works department (if applicable), and

(iii) any other permit required by applicable provisions of this Code including a building permit, an electrical permit, or an oak tree permit.

Applications for wireless facility permits shall be first reviewed by the development review committee. All applications for wireless facility permits will be scheduled for a public hearing before the commission in accordance with [Section 17.12.050\(L\)](#) and [Chapter 17.78](#) of this Code.

The commission shall **determine if a proposed project** for which a wireless facility permit is required is **the least intrusive means to close a significant gap in the applicant's telecommunications service coverage**. All modifications to an existing wireless facility that meet the conditions of approval required for a wireless facility minor modification permit as specified in [Section 17.12.050\(F\)](#) shall be subject to the approval of

- (i) a wireless facility minor modification permit, in addition to
- (ii) an encroachment permit from the public works department (if applicable), and
- (iii) any other permit required by applicable provisions of this Code including a building permit, an electrical permit, or an oak tree permit.

2. Wireless Facility Permit Application Content. — Applications for the approval of wireless facility permits for wireless telecommunication facilities shall include, but are not necessarily limited to, an application fee and the following information, in addition to all other information required by the city for a wireless facility permit application pursuant to [Chapter 17.60](#) of this title:

- a. Written documentation demonstrating **a good faith effort to locate the proposed facility in the least intrusive location** in accordance with the location requirements of [Section 17.12.050\(C\)\(3\)](#);
- b. Scaled visual simulations showing the proposed facility superimposed on photographs of the site and surroundings, to assist the commission in assessing the visual impacts of the proposed facility and its compliance with the provisions of this section;
- c. For new facilities, the plans shall include (in plan view and elevations) **a scaled depiction of the maximum permitted increase as authorized by Section 6409(a)** of the 2012 Middle Class Tax Relief

Act, using the proposed project as a baseline;

d. **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 (2) 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 (2) years from approval of a 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 telecommunication facility site not shown on a master plan submitted to the city within the prior two (2) years or

(ii) the applicant establishes before the commission that a new wireless telecommunication facility is **necessary to close a significant gap** in the applicant's wireless [telecommunications] service, and the proposed new installation is **the least intrusive means** to do so;

e. **A siting analysis which identifies a minimum of five (5) other feasible locations** within or without 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 **shall include at least one (1) collocation site;**

f. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, in that it will not cause members of the general public to be exposed to RF levels that exceed the MPE levels deemed safe by the FCC. A copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled

"Optional Checklist for Determination Of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. **All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the application.** All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of "**effective radiated power**";

g. **A statement signed by a person with legal authority to bind the applicant attesting under penalty of perjury to the accuracy of the information** provided in the application;

h.** A noise study**, prepared by a qualified engineer, for the proposed wireless telecommunication facility including, but not limited to, equipment, such as air conditioning units and back-up generators;

i. **A written statement of the applicant's willingness to allow other carriers to collocate** on the proposed wireless telecommunication facility wherever technically and economically feasible and aesthetically desirable; and

j. Such other information as the director shall establish from time to time pursuant to the Permit Streamlining Act, Government Code Section 65940, or to respond to changes in law or technology.

k. An application for a wireless telecommunication facility in a public right-of-way for which the applicant claims entitlement under California Public Utilities Code Section 7901 shall be accompanied by evidence satisfactory to the director that the applicant is a telephone corporation or has written authorization to act as an agent for a telephone corporation.

3. New Wireless Facility Preferred Zones and Locations. — **When** doing so would **not conflict** with one (1) of the standards set forth in this subsection (C) or **with federal law**, wireless telecommunication

facilities subject to the approval of a wireless facility permit or **small wireless facility** permit shall be **located in the most appropriate location** as described in this subsection (3), which range from the most appropriate to the least appropriate. Nothing in this section shall detract from the requirements of [Section 17.12.050\(C\)\(4\)\(a\)](#) below.

- i. Collocation on an existing facility in a commercial zone;
- ii. Collocation on an existing structure or utility pole in a commercial zone;
- iii. Location on a new structure in a commercial zone;
- iv. Collocation on an existing facility in a public facility or recreation zone;
- v. Location on an existing structure or utility pole in a public facility or recreation zone;
- vi. Location on a new structure in a public facility or recreation zone.

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

4. Design and Development Standards. — wireless telecommunication facilities, including small wireless facilities, shall be designed and maintained as follows:

- a. All new wireless telecommunication facilities that do not meet the findings of approval for a small wireless facility permit as specified in [Section 17.12.050\(G\)](#), shall be **set back at least one thousand five**

hundred (1,500) feet from schools, dwelling units and parks, as measured from the closest point of the wireless telecommunication facility (including accessory equipment) to the applicable property line, unless an applicant establishes that a lesser setback is **necessary to close a significant gap** in the applicant's wireless [telecommunications] service, and the proposed wireless telecommunication facility is the **least intrusive means to do so**. An applicant who seeks to increase the height of an existing wireless telecommunication facility, or of its antennas, located less than one thousand five hundred (1,500) feet from a school, dwelling unit or park and who is subject to the approval of a wireless facility permit for the proposed height increase must establish that such increase is necessary to close a significant gap in the applicant's communication service, and the proposed increase is the least intrusive means to do so.

b. Facilities shall have subdued colors and non-reflective materials which blend with the materials and colors of the surrounding area and structures.

c. Unless otherwise prohibited by state or federal law, **all equipment not located on a roof shall be underground**; any equipment that is not undergrounded shall be **screened from adjacent uses** to the maximum extent feasible.

d. The facilities shall not bear any signs or advertising devices other than certification, warning or other signage required by law or expressly permitted by the city.

e. At no time shall equipment noise (including air conditioning units) from any facility exceed the applicable noise limit established in [Section 17.20.160](#) of this title at the facility's property line; provided, however, that for any such facility located within one thousand five hundred (1,500) feet of any property zoned open space or residential, or improved with a residential use, such **equipment noise shall at no time be audible at the property line of any open space or residentially zoned, or residentially**

improved property.

f. If the majority of radio frequency coverage from the proposed facility is outside the city limits, the **applicant must**, in addition to the other requirements of this section, **prove that the applicant is unable to locate the proposed new facility within the locale or locales that will receive the majority of the coverage** from the proposed wireless telecommunications facility, and that no other feasible location for the facility exists outside of the city limits. That an applicant for a wireless facility permit in the city has been denied a wireless facility, antenna, or wireless coverage in another jurisdiction shall not be considered evidence or proof that the applicant is unable to locate in another jurisdiction.

1. **Independent Expert Review.** — The city shall retain one (1) or more independent, qualified consultants to review any application for a wireless facility permit for a wireless telecommunication facility, for a wireless facility minor modification permit, or for a small wireless facility permit. The review is intended to be a review of technical aspects of the proposed wireless telecommunication facility or modification of an existing wireless telecommunication facility and shall address any or all of the following, as applicable:

- a. For wireless facility permits, whether the proposed wireless telecommunication facility is **necessary to close a significant gap in coverage** and is the **least intrusive means** of doing so;
- b. The accuracy and completeness of submissions;
- c. For wireless facility permits, technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;
- d. The applicability of analysis techniques and methodologies;

- e. For wireless facility permits, the viability of alternative sites and alternative designs; and
- f. For wireless facility permits, an **analysis of the potential expansion** that would be considered an eligible facility request under Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012; and
- g. Any other specific technical issues designated by the city.

The cost of the review shall be paid by the applicant through a deposit estimated to cover the cost of the independent review, as established by the director or city council.

6. Conditions of Approval. — All facilities subject to a wireless facility permit approved under this section shall be subject to the following conditions, as applicable:

- a. Facilities shall not bear any signs or advertising devices other than legally required certification, warning, or other required seals or signage, or as expressly authorized by the city.
- b. Abandonment:
 - 1) wireless telecommunications facilities facilities that are no longer operating shall be removed at the expense of the applicant, operator, or owner no later than ninety (90) days after the discontinuation of use. Disuse for ninety (90) days or more shall also constitute a voluntary termination by the applicant of any land use entitlement under this Code or any predecessor to this Code.
 - 2) The director shall send a written notice of the determination of non-operation to the owner and operator of the wireless telecommunication facility, who shall be entitled to a hearing on that determination before the city manager or a hearing officer appointed by the city manager, provided that written request for such a hearing is received by the city clerk within ten (10) days of the date of the

notice. Any such hearing shall be conducted pursuant to [Chapter 17.74](#) of this title, although no further appeal from the decision of the city manager may be had other than pursuant to Code of Civil Procedure Section 1094.5. Upon a final decision of the city manager or the running of the time for a request for a hearing without such a request, the operator shall have ninety (90) days to remove the facility.

3) The operator of a facility shall notify the city in writing of its intent to abandon a permitted site. Removal shall comply with applicable health and safety regulations. Upon completion of abandonment, the site shall be restored to its original condition at the expense of the applicant, operator, or owner.

4) All facilities not removed within the required ninety-day period shall be in violation of this Code. In the event the city removes a disused facility upon the failure of the applicant, operator, or owner to timely do so, the applicant, operator, and owner shall be jointly and severally liable for the payment of all costs and expenses the city incurs for the removal of the facilities, including legal fees and costs.

c. The applicant, operator of a facility and property owner (when applicable) shall **defend, indemnify and hold** the city and its elective and appointed boards, commissions, officers, agents, consultants and employees **harmless** from and against all demands, liabilities, costs (including attorneys' fees), or damages arising from the city's review and/or approval of the design, construction, operation, location, inspection or maintenance of the facility.

d. Removal of Unsafe Facilities. **If**, at any time after ten (10) years of the issuance of a building permit or encroachment permit, or any shorter period permitted by Government Code Section 65964(b), **any wireless telecommunication facility becomes incompatible with public health, safety or welfare**, the applicant or operator of the facility shall, upon notice from the city and at the applicant's or operator's own expense, **remove that facility**. Written notice of a determination pursuant to this paragraph shall be

sent to the owner and operator of the wireless telecommunication facility, who shall be entitled to a hearing on that determination before the city manager or a hearing officer appointed by the city manager, provided that written request for such a hearing is received by the city clerk within ten (10) days of the date of the notice. Any such hearing shall be conducted pursuant to [Chapter 17.74](#) of this title, although no further appeal from the decision of the city manager may be had other than pursuant to Code of Civil Procedure Section 1094.5. Upon a final decision of the city manager or the running of the time for a request for a hearing without such a request, **the operator shall have ninety (90) days to remove the facility.**

e. The owner or operator of any wireless telecommunication facility approved by a wireless facility permit under this subsection (C) of this [Section 17.12.050](#) shall cooperate with the director to: (1) verify that the facility design conforms with relevant building and safety requirements; and (2) verify that the facility complies with the requirements of [Section 17.12.050](#) of the South Lake Tahoe Municipal Code.

f. Prior to the issuance of a building permit or encroachment permit, the **applicant or owner/operator of the facility shall pay for and provide a performance bond**, which shall be in effect until all facilities are fully and completely removed and the site reasonably returned to its original condition. The purpose of this bond is to cover the applicant's or owner/operator of the facility's obligation under the conditions of approval and the City of South Lake Tahoe Municipal Code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping obligations. (The amount of the performance bond shall be set by the director on a case-specific basis and in an amount reasonably related to the obligations required under this Code and all conditions of approval, and shall be specified in the conditions of approval.)

- g. An applicant shall not transfer a permit to any person or entity prior to completion of construction of a wireless telecommunication facility.
- h. The applicant shall submit as-built photographs of the facility within ninety (90) days of installation of the facility, detailing the installed equipment.
- i. A wireless telecommunication facility approved by a wireless facility permit may operate only until the tenth anniversary of the date it is first placed into service, unless that sunset date is extended by additional term(s) not to exceed ten (10) years pursuant to a wireless facility permit issued under this [Section 17.12.050](#). There is no limit to the number of times the sunset date for a facility may be extended.

7. Wireless Facility Permit Findings. — In addition to the findings required in [Section 17.62.060](#) of this Code, **no wireless facility permit** for a proposed wireless telecommunication facility **may be approved unless** the commission or council finds as follows:

- a. The applicant has demonstrated by clear and convincing evidence that the **facility is necessary to close a significant gap** in the operator's service coverage. Such evidence shall **include in-kind call testing of existing facilities** within the area the applicant contends is a significant gap in coverage to be served by the facility.
- b. The applicant has demonstrated by clear and convincing evidence that **no feasible alternate site exists that would close a significant gap** in the operator's service coverage which alternative site is a more appropriate location for the facility under the standards of [Section 17.12.050](#) of the South Lake Tahoe Municipal Code.
- c. The facility satisfies the location requirements of [Section 17.12.050\(C\)\(3\)](#) of the South Lake Tahoe

Municipal Code.

8. Violations. — The city may revoke a wireless facility permit for any wireless telecommunication facility in violation of this section in accordance with [Section 17.80.070](#) of this Code. The remedies specified in this section shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one (1) remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

D. Standards for Wireless Telecommunication Facilities Not Located Within a Public Right-of-Way.

In addition to the requirements in section (C) above, all wireless telecommunication facilities subject to the approval of a wireless facility permit or small wireless facility permit, and not located within a public right-of-way, shall comply with the following requirements:

1. Location Requirements. — To minimize aesthetic and visual impacts on the community, wireless telecommunication facilities shall be located according to the following standards:

a. General Requirements.

i. A freestanding telecommunications tower or monopole shall be **set back a distance of at least one hundred fifty (150) percent of the height of the tower from the nearest property line of any residentially zoned or occupied lot.**

b. Restricted Locations. wireless telecommunications facilities facilities located in any of the following locations must be designed as a **stealth facility**:

- i. Within any nonresidential zone on a site that contains a legally established residential use;
- ii. Within the Old Town overlay zone;
- iii. On any property that is designated historic by the city council;
- iv. Within the area subject to the South Lake Tahoe Park Centre Master Plan;
- v. Within a scenic corridor designated by the city; and
- vi. Within a historic district designated by the city.

c. **Prohibited Locations.** No wireless telecommunication facility shall be established on any ridgeline or within any residential or open space zoning district described in subparagraphs (i), (ii) and (iii) herein.

- i. **Ridgelines.** No wireless telecommunication facility shall be placed on or near a ridgeline.
- ii. **Residential Zones.** No facility shall be located within a residential zone, including areas set aside for open space, parks or playgrounds.
- iii. **Open Space.** No facility shall be located within an open space zone or park.

Any wireless telecommunication facility proposed for a site within any open space zone shall not be deemed a "public utility" as that term is otherwise defined and understood in the South Lake Tahoe Municipal Code regarding development in such open space zones.

d. **Guidelines for Placement on Structures.** Antennas shall be mounted on structures utilizing the methods described below. If an antenna cannot be mounted as set forth in subsection (i), it may be mounted in accordance with subsection (ii). If an antenna cannot be mounted as set forth in either subsection (i) or (ii), it may be mounted in accordance with subsection (iii):

- i. A stealth facility mounted on an existing structure or collocated on an existing tower;
- ii. A stealth facility mounted on an existing steel or concrete pole, including a light standard; or
- iii. A stealth facility mounted on a new steel, wood or concrete pole.

2. Design and Development Standards. — wireless telecommunications facilities facilities shall be designed and maintained as follows:

- a. Building-mounted facilities shall be designed and constructed to be fully screened in a manner that is compatible in color, texture and type of material with the architecture of the building on which the facility is mounted.
- b. All accessory equipment associated with the operation of a wireless telecommunication facility shall be located within a building enclosure or underground vault that complies with the development standards of the zoning district in which the accessory equipment is located.

3. City Council Approval Required. — Notwithstanding [Section 17.12.050\(D\)\(1\)\(c\)](#), wireless telecommunication facilities subject to the approval of a wireless facility permit may be permitted in a prohibited location only if the applicant obtains a wireless facility permit from the city council following a public hearing and recommendation from the communication and technology commission, and provides technically sufficient and conclusive proof that the proposed location is necessary for provision of wireless services to substantial areas of the city, that it is **necessary to close a significant gap** in the operator's coverage and that **there are no less intrusive alternative means** to close that significant gap.

E. Standards for Wireless Telecommunication Facilities Located Within Public

Rights-of-Way.

In addition to the requirements in section (C) above, all wireless telecommunication facilities subject to the approval of a wireless facility permit or small wireless facility permit, and located within public rights-of-way, shall comply with the following requirements to the fullest extent permitted by state and federal law:

1. Construction. — **These standards are intended to exert the maximum authority available to the city** in the regulation of wireless telecommunication facilities under applicable state and federal law but not to exceed that authority. Accordingly, this section shall be construed and applied in light of any such limits on the city's authority. The purpose of this subsection (E) is to regulate wireless telecommunications facilities proposed for sites within public rights-of-way consistently with the rights conferred on telephone corporations by Public Utilities Code §§ 7901 and 7901.1 and to address the aesthetic and safety concerns unique to such proposals due to their highly visible location in rights-of-way that must be safely shared with pedestrians, motorists and other utility infrastructure.

2. Application Content. Applications for the approval of wireless telecommunication facilities within the public right-of-way shall **include the following information, in addition to all other information required by subsection (C)(2) above:**

a. The applicant shall provide certification that the facility is for the use of a telephone corporation or state 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 copy of its CPCN.

3. Guidelines. — All wireless telecommunication facilities, including small wireless facilities as specified in [Section 17.12.050\(G\)](#), located within a public right-of-way shall be designed as follows:

a. **Ground-mounted equipment shall be screened**, to the fullest extent possible, through the use of landscaping, walls, or other decorative feature, as approved by the commission.

b. Facilities located within a designated scenic corridor or historic districts shall be **stealth facilities**, with all **equipment**, excluding required electrical meter cabinets, **located underground or pole-mounted**. Required electrical meter cabinets shall be screened as approved by the commission.

c. Wireless telecommunications facilities not located within a scenic corridor or historic district designated by the city shall be designed to place **all equipment underground**, excluding required electrical meters. However, if such facilities cannot be placed underground, ground-mounted equipment **may be installed up to a height of five (5) feet and to a footprint of fifteen (15) square feet**.

d. **Pole-mounted equipment shall not exceed six (6) cubic feet**.

e. Pole-mounted antennas shall adhere to the following guidelines:

i. If an antenna cannot be mounted as set forth in subsection (a), it may be mounted in accordance with subsection (b). If an antenna cannot be mounted as set forth in either subsection (a) or (b), it may be mounted in accordance with subsection (c):

(a) A stealth facility mounted on an existing, **collocated monopole** or tower;

(b) A stealth facility mounted on an **existing steel or concrete pole**, including a light standard; or

(c) A stealth facility mounted on a **new steel, wood or concrete pole** but **only if** an operator shows that

it cannot otherwise close a **significant gap** in its service coverage, and that the proposal is the **least intrusive means** of doing so.

ii. All installations shall be engineered to withstand high wind loads. An evaluation of high wind load capacity shall include the impact of an additional antenna installation on a pole with existing antennae.

iii. The maximum height of any antenna shall not exceed twenty-four (24) inches above the height of a pole or tower other than a streetlight pole, nor six (6) feet above the height of a streetlight pole, nor shall any portion of the antenna or equipment mounted on a pole be **less than sixteen (16) feet above any drivable road surface**. All installations on utility poles shall fully comply with California Public Utilities Commission General Order 95 as it now exists or may hereafter be amended.

iv. A freestanding telecommunications tower or monopole shall be **set back a distance of at least one hundred fifty (150) percent of the height of the tower** to the nearest structure designed for occupancy.

v. **No antenna associated with a small wireless facility** as specified in [Section 17.12.050\(G\)](#) **shall exceed three (3) cubic feet in volume** including all physically-integrated mounting apparatus attached thereto, including without limitation connectors, mounting brackets, antenna element aiming equipment, and other antenna equipment.

f. Equipment shall be located so as not to cause: (i) any physical or visual obstruction to pedestrian or vehicular traffic, (ii) inconvenience to the public's use of a public right-of-way, or (iii) safety hazards to pedestrians and motorists. In no case shall ground-mounted equipment, walls, or landscaping be less than eighteen (18) inches from the front of the curb.

g. **Facilities shall not be located within five hundred (500) feet of another wireless facility** on the same side of a street.

h. No facility shall be built so as to cause the right-of-way in which the facility is located to fail to comply with the Americans with Disabilities Act.

4. Findings. — In addition to the findings required in subsection (C)(7) above, no proposed wireless telecommunication facility subject to the approval of a wireless facility permit or small wireless facility permit within a public right-of-way may be approved unless the following findings are made:

a. The proposed facility has been designed to blend with the surrounding environment, with minimal visual impact on the public right-of-way.

b. The proposed facility will not have an adverse impact on the use of the public right-of-way, including but not limited to, the safe movement and visibility of vehicles and pedestrians.

5. Conditions of Approval. — In addition to compliance with the guidelines outlined in paragraph (3) of this subsection and the conditions of approval listed in subsection (C)(6) above, all facilities approved under this subsection (E) shall be subject to the following conditions:

a. **Any approved wireless communication facility within a public right-of-way shall be subject to** such conditions, changes or limitations as are from time to time deemed necessary by the public works director to:

(i) **protect the public health, safety, and welfare;**

(ii) prevent interference with pedestrian and vehicular traffic; or

(iii) **prevent damage to** a public right-of-way or any **property adjacent** to it.

Before the director of public works imposes conditions, changes, or limitations pursuant to this paragraph, he or she shall notify the applicant or operator, in writing, by mail to the address set forth in the application or such other address as may be on file with the city. Such change, new limitation or condition shall be effective twenty-four (24) hours after deposit of the notice in the United States mail.

b. The applicant or operator of the wireless telecommunication facility shall not move, alter, temporarily relocate, change, or interfere with any existing public facility, structure or improvement without the prior written consent of the city, and the owner in the circumstance where the owner is not the city. No structure, improvement or facility owned by the city shall be moved to accommodate a wireless telecommunication facility unless:

(i) the city determines, in its sole and absolute discretion, that such movement will not adversely affect the city or surrounding residents or businesses, and

(ii) the applicant or operator pays all costs and expenses related to the relocation of the city's facilities.

Every applicant or operator of any wireless telecommunication facility shall assume full liability for damage or injury caused to any property or person by his, her, or its facility. applicant or operator shall show proof of insurance for damage or injury caused to any property or person by his, her, or its facility — or in the absence of insurance, post a \$500,000 bond per pole.

Before commencement of any work pursuant to an encroachment permit issued for any wireless telecommunication facility within a public right-of-way, an applicant shall provide the city with documentation establishing to the city's satisfaction that the applicant has the legal right to use or

interfere with any other facilities within the public right-of-way to be affected by applicant's facilities.

c. Should any utility company offer electrical service to a wireless facility which service does not require the use of a meter cabinet, the applicant or operator of the facility shall at its cost remove the meter cabinet and any foundation thereof and **restore the area to its prior condition.**

F. Requirements for Wireless Telecommunications Facilities Subject to a Wireless Facility Minor Modification Permit.

This subsection governs applications for certain modifications to existing wireless telecommunications facilities, as specified.

1. Purpose. — Subsection (F) is intended to comply with the city's obligations under federal law, which provides that the city "may not deny, and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." (47 U.S.C. § 1455, subd. (a)(1), adopted as Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub.L No. 112-96, 126 Stat. 156.) This subsection creates a process for the city to review an application for a wireless facility minor modification permit submitted by an applicant who asserts that a proposed collocation or modification to an existing wireless telecommunications facility is covered by this federal law and to determine whether the city must approve the proposed collocation or modification. The city's review of these applications is structured to comply with the requirements of Title 47, United States Code, section 1455 and the Federal Communications Commission's regulations implementing this federal law, adopted on December 17, 2014 and codified at 47 C.F.R. §§ 1.40001, et seq. Consistent with [section 17.12.050\(A\)\(6\)](#), **this subsection is intended to**

promote the public's health, safety, and welfare, and shall be interpreted consistent with the federal Telecommunications Act of 1996 (Pub.L. No. 104-104, 110 Stat. 56), Title 47, United States Code, section 1455, and applicable Federal Communications Commission regulations and court decisions considering these laws and regulations.

2. Applicability. — An applicant seeking approval of a collocation or modification to an existing wireless telecommunication facility which the applicant contends is within the protection of Title 47, United States Code, section 1455 shall apply for the following at the same time:

- (i) a wireless facility minor modification permit, in addition to
- (ii) an encroachment permit from the public works department (if the required by applicable provisions of this Code), and
- (iii) any other permit required by applicable provisions of this Code including a building permit, an electrical permit, or an oak tree permit.

No collocation or modification to an existing wireless telecommunication facility shall be installed unless the applicant or operator has obtained either a wireless facility minor modification permit or a wireless facility permit.

3. Application Content. All applications for a wireless facility minor modification permit must include the following items.

- a. Application Form. The city's standard application form, available on the city's website or from the community development department, as may be amended.
- b. Application Fee. An application fee as established by the council by resolution under the authority of

Section 17.60.040.

c. Independent Consultant Deposit. An independent consultant fee deposit, if required by the council by resolution under the authority of [Section 17.60.040](#), to reimburse the city for its costs to retain an independent consultant to review the technical aspects of the application.

d. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.

(1) A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.

(2) A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.

(3) A depiction of all existing and proposed utility runs and points of contact.

(4) A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.

(5) For proposed collocations or modifications to wireless towers, the plans must include scaled plan views and all four (4) elevations that depict the physical dimensions of the wireless tower as it existed on February 22, 2012, or as approved if constructed after February 22, 2012. For proposed collocations or modifications to base stations, the plans must include scaled plan views and all four (4) elevations that depict the physical dimensions of the base station as it existed on February 22, 2012, or as approved if constructed after February 22, 2012.

(6) A demolition plan.

e. Visual Simulations. A visual analysis that includes

(i) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four (4) angles, together with a map that shows the location of each view angle;

(ii) a color and finished material palate for proposed screening materials; and

(iii) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.

f. Statement Asserting that Section 6409 Applies. A written statement asserting that the proposed collocation or modification is an "eligible facilities request" and does not result in a substantial change in the physical dimensions of the facility's wireless tower or base station, as defined by Section 6409, Title 47, United States Code, section 1455, and justifying that assertion. The written statement shall identify and discuss each required finding for approval of a wireless facility minor modification permit under [Section 17.12.050\(F\)\(5\)](#) and explain the facts that justify the request for the director to make each finding.

g. Prior Permits. **True and correct copies of all previously issued permits, including all required conditions of approval and a certification by the applicant that the proposal will not violate any previous permit or conditions of approval** or why any violated permit or conditions does not prevent approval under Title 47, United States Code, section 1455 and the Federal Communications Commission's regulations implementing this federal law.

h. Affirmation of Radio Frequency Standards Compliance. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, because it will not cause members of the general public

to be exposed to RF levels that exceed the MPE levels deemed safe by the FCC. A copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination Of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. **All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s)** attached to the application. **All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power"**.

i. Structural Analysis. A structural analysis, prepared, signed, and sealed by a California-licensed engineer that assesses whether the proposed wireless telecommunications facility complies with all applicable building codes.

j. Noise Study. A noise study, prepared, signed, and sealed by a California-licensed engineer, for the proposed wireless telecommunication facility including, but not limited to, equipment, such as air conditioning units and back-up generators; or a written statement signed and sealed by a California-licensed engineer indicating that the proposed modification(s) will not alter the existing noise levels or operational equipment which creates noise. Noise is not just audible frequencies, but any vibration that deprives the public of the quiet enjoyment of streets.

k. Other Permits. An application for a wireless facility minor modification permit shall include all permit applications with all required application materials for each and every separate permit required by the city for the proposed collocation or modification to an existing wireless telecommunications facility, including a building permit, an encroachment permit (if applicable), and an electrical permit (if applicable).

I. Other Information. Such other information as the city may require, as specified in publically available materials, including information required as stated on the city's website.

4. Application Review, Notice, and Hearing. — **Each application for a wireless facility minor modification permit shall be reviewed by the director at a public hearing.** Notice of the public hearing shall be provided in accord with [Chapter 17.78](#), except that written notice shall be mailed to the record owner of each property within **three hundred (300) feet of the site** of the proposed modification. Under federal law, the city must approve or deny an application for a wireless facility minor modification permit, together with any other city permits required for a proposed wireless facility modification, within sixty (60) days after the applicant submits the application for a wireless facility minor modification permit, unless tolled due to issuance of any notice of incomplete filing or by mutual agreement between the city and the applicant. Under federal law, failure to act on a wireless facility minor modification permit application within the sixty-day review period, excluding tolling period, will result in the permit being deemed granted by operation of law.

5. Findings Required for Approval by Director at Public Hearing.

a. The director must approve an application for a wireless facility minor modification permit for a collocation or modification to an existing wireless tower on private property **only if each of the following findings can be made:**

(1) The applicant proposes a collocation or modification to a structure constructed and maintained with all necessary permits in good standing for the sole or primary purpose of supporting any Federal Communications Commission licensed or authorized antennas and their associated facilities;

- (2) The proposed collocation or modification does not increase the height of the existing wireless telecommunication facility above its lowest height on February 22, 2012, or as approved if constructed after February 22, 2012, by more than ten (10) percent or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater;
- (3) The proposed collocation or modification does not increase the width of the facility by more than twenty (20) feet or the width of the tower at the level of the appurtenance, whichever is greater;
- (4) The proposed collocation or modification does not involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four (4);
- (5) The proposed collocation or modification does not involve any excavation outside the lease or license area of the facility, including any access or utility easements;
- (6) The proposed collocation or modification does not defeat any existing concealment elements of the support structure; and
- (7) **The proposed collocation or modification does not violate any prior conditions of approval**, except as may be preempted by Section 6409, Title 47, United States Code, section 1455, subdivision (a).
 - b. The director must approve an application for a wireless facility minor modification permit for a collocation or modification to an existing base station on private property only if each of the following findings can be made:
 - (1) The applicant proposes a collocation or modification to a structure constructed and maintained with all necessary permits in good standing, whether built for the sole or primary purpose of supporting any Federal Communications Commission licensed or authorized antennas and their associated facilities or

not, that currently supports existing wireless transmission equipment;

(2) The proposed collocation or modification **does not increase the height** of the existing wireless telecommunication facility above its lowest height on February 22, 2012, or as approved if constructed after February 22, 2012, **by more than ten (10) percent or ten (10) feet**, whichever is greater;

(3) The proposed collocation or modification **does not increase the width** of the facility **by more than six (6) feet**;

(4) The proposed collocation or modification does not involve the installation of more than the standard number of **new equipment cabinets** for the technology involved, **not to exceed four (4)**;

(5) The proposed collocation or modification does not involve any excavation outside the lease or license area of the facility, including any access and utility easements;

(6) The proposed collocation or modification does not defeat any existing concealment elements of the support structure; and

(7) The proposed collocation or modification does not violate any prior conditions of approval, except as may be preempted by Section 6409, Title 47, United States Code, section 1455, subdivision (a).

c. The director must approve an application for a wireless facility minor modification permit for a collocation or modification to an existing wireless tower or base station in the public right-of-way only if each of the following findings can be made:

(1) The applicant proposes a collocation or modification to either

(i) a structure constructed and maintained with all necessary permits in good standing for the sole or

primary purpose of supporting any Federal Communications Commission licensed or authorized antennas and their associated facilities or

(ii) a structure constructed and maintained with all necessary permits in good standing, whether built for the sole or primary purpose of supporting any Federal Communications Commission licensed or authorized antennas and their associated facilities or not, that currently supports existing wireless transmission equipment;

(2) The proposed collocation or modification does not increase the height of the existing wireless telecommunication facility above its lowest height on February 22, 2012, or as approved if constructed after February 22, 2012, by more than ten (10) percent or ten (10) feet, whichever is greater;

(3) The proposed collocation or modification does not increase the width of the facility by more than six (6) feet;

(4) The proposed collocation or modification does not involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four (4);

(5) The proposed collocation or modification does not involve either (i) the installation of any new equipment cabinets on the ground, if none already exist, or (ii) the installation of ground equipment cabinets that are more than ten (10) percent larger in height or overall volume than any existing ground cabinets;

(6) The proposed collocation or modification does not involve any excavation outside the area in proximity to the existing ground-mounted equipment in the public right-of-way;

(7) The proposed collocation or modification does not defeat any existing concealment elements of the

existing structure; and

(8) The proposed collocation or modification does not violate any prior conditions of approval, except as may be preempted by Section 6409, Title 47, United States Code, section 1455, subdivision (a).

6. Conditions of Approval for Wireless Facility Minor Modification Permits. — In addition to any other conditions of approval permitted under federal and state law and this Code that the director deems appropriate or required under this Code, all wireless facility minor modification permits under this subsection, whether approved by the director or deemed granted by the operation of law, shall include the following conditions of approval:

a. No Automatic Renewal. The grant or approval of a **wireless facility minor modification permit shall not renew or extend the underlying permit term.**

b. Compliance with Previous Approvals. **The grant or approval of a wireless facility minor modification permit shall be subject to the conditions of approval of the underlying permit,** except as may be preempted by Section 6409, subdivision (a).

c. As-Built Plans. The applicant shall submit to the director an as-built set of plans and photographs depicting the entire wireless telecommunications facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.

d. Indemnification. To the fullest extent permitted by law, the applicant and any successors and assigns, shall **defend, indemnify and hold harmless** city, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees,

litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the wireless facility minor modification permit and the issuance of any permit or entitlement in connection therewith. **The applicant shall pay such obligations as they are incurred by city, its employees, agents and officials**, and in the event of any claim or lawsuit, **shall submit a deposit in such amount as the city reasonably determines** necessary to protect the city from exposure to fees, costs or liability with respect to such claim or lawsuit.

e. Compliance with Applicable Laws. The applicant shall comply with all applicable provisions of this Code, any permit issued under this Code, and all other applicable federal, state, and local laws. Any failure by the city to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this Code, any permit issued under this Code, or all other applicable laws and regulations.

f. Compliance with Approved Plans. The proposed project shall be built in compliance with the approved plans on file with the planning division.

g. Violations. The facility shall be developed, maintained, and operated in full compliance with the conditions of the wireless facility minor modification permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this Code, the conditions of approval for the wireless facility minor modification permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this section shall be cumulative and the city may resort to any other remedy available at law or in equity

and resort to any one (1) remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

h. In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, Title 47, United States Code, section 1455, such that such statute would not mandate approval for the collocation or modification granted or deemed granted under a wireless facility minor modification permit, such permit shall automatically expire twelve (12) months from the date of that opinion.

i. The grant, deemed-grant or acceptance of wireless facility minor modification permit shall not waive and shall not be construed or deemed to waive the city's standing in a court of competent jurisdiction to challenge Title 47, United States Code, section 1455 or any wireless facility minor modification permit issued pursuant to Title 47, United States Code, section 1455 or this Code.

7. Wireless Facility Minor Modification Permit Denial Without Prejudice.

a. Grounds for denial without prejudice. The director may deny without prejudice an application for a wireless facility minor modification permit in any of the following circumstances:

(1) The director cannot make all findings required for approval of a wireless facility minor modification permit;

(2) The proposed collocation or modification would **cause the violation of an objective, generally applicable law protecting public health or safety;**

(3) The proposed collocation or modification involves the removal and replacement of the facility's entire supporting structure; or

(4) The proposed collocation modification does not qualify for mandatory approval under Title 47, United

States Code, section 1455, as may be amended or superseded, and as may be interpreted by any order of the Federal Communications Commission or any court of competent jurisdiction.

b. Procedures For Denial Without Prejudice. All wireless facility minor modification permit application denials shall be in writing and shall include (i) the decision date; (ii) a statement that the city denies the permit without prejudice; (iii) a short and plain statement of the basis for the denial; and (iv) that the applicant may submit the same or substantially the same permit application in the future.

c. Submittal After Denial Without Prejudice. After the director denies a wireless facility minor modification permit application, and subject to the generally applicable permit application submittal provisions in this chapter, an applicant shall be allowed to:

- (1) Submit a new wireless facility minor modification permit application for the same or substantially the same proposed collocation or modification;
- (2) Submit a new wireless facility permit application for the same or substantially the same proposed collocation or modification; or
- (3) Submit an appeal of the director's decision.

d. Costs to Review a Denied Permit. The city shall be entitled to recover the reasonable costs for its review of any wireless facility minor modification permit application. In the event that the director denies a wireless facility minor modification permit application, the city shall return any unused deposit fees within sixty (60) days after a written request from the applicant. An applicant shall not be allowed to submit a wireless facility permit application or submit a wireless facility minor modification permit application for the same or substantially the same proposed modification unless all costs for the previously denied

permit application are paid in full.

G. Requirements for Small Wireless Facility Permits.

This subsection governs applications for small wireless facilities permits.

1. Purpose. — Subsection (G) is intended to comply with the city's obligations under 47 C.F.R. section 1.6001 et seq., which implements 47 U.S.C. sections 332(c)(7) and 1455. This subsection creates a process for the city to review an application for a small wireless facility permit submitted by an applicant who asserts that a proposed collocation of a small wireless facility using an existing structure or the deployment of a small wireless facility using a new structure, and the modifications of such small wireless facilities, is covered by federal law and to determine whether the city must approve the proposed collocation or deployment.

2. Applicability. — An applicant seeking approval of a collocation to an existing structure or a deployment to a new structure which the applicant contends is within the protection of Title 47, United States Code, section 1455 shall apply for the following at the same time:

- (i) a small wireless facility permit,
- (ii) an encroachment permit from the public works department (if required by applicable provisions of this Code), and
- (iii) any other permit required by applicable provisions of this Code including a building permit, an electrical permit, or an oak tree permit.

3. Application Content. — All applications for a small wireless facility permit must include the following

items:

- a. Application Forms. The city's standard application form, available on the city's website or from the community development department, as may be amended by the community development director.
- b. Application Fee. An application fee as established by the council by resolution under the authority of [Section 17.60.040](#).
- c. Independent Consultant Deposit. An independent consultant fee deposit, if required by the council by resolution under the authority of [Section 17.60.040](#), to reimburse the city for its costs to retain an independent consultant to review the technical aspects of the application.
- d. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.
 - i. A site plan and elevation drawings for the facility as existing and as proposed with all height, depth, and width measurements explicitly stated.
 - ii. A depiction, with height, depth, and width measurements explicitly stated, of all existing and proposed transmission equipment.
 - iii. A depiction of all existing and proposed utility runs and points of contact.
 - iv. A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.
 - v. All four (4) elevations that depict the physical dimensions of the wireless tower or support structure and all transmission equipment, antennas and attachments.

vi. A demolition plan.

e. Visual Simulations. A visual analysis that includes (i) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four (4) angles, together with a map that shows the location of each view angle; (ii) a color and finished material palate for proposed screening materials; and (iii) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.

f. Statement Asserting That 47 C.F.R. Section 1.6001 Et Seq. Applies. A written statement asserting that the proposed collocation or deployment qualifies as a "small wireless facility" as defined by the FCC in 47 C.F.R. section 1.6002.

g. Prior Permits. True and correct copies of all previously issued permits, including all required conditions of approval and a certification by the applicant that the proposal will not violate any previous permit or conditions of approval or why any violated permit or conditions does not prevent approval under Title 47, United States Code, section 1455 and the Federal Communications Commission's regulation implementing this federal law.

h. Affirmation of Radio Frequency Standards Compliance. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, because it will not cause members of the general public to be exposed to RF levels that exceed the MPE levels deemed safe by the FCC. A copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. **All planned radio frequency emissions**

on all frequency bands must be shown on the Appendix A form(s) attached to the application. All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power".

i. Structural Analysis. A structural analysis, prepared, signed, and sealed by a California-licensed engineer that assesses whether the proposed small wireless facility complies with all applicable building codes.

j. Noise Study. A noise study or written statement, prepared by a qualified engineer, for the proposed wireless telecommunication facility including, but not limited to, equipment, such as air conditioning units and back-up generators. The noise study shall assess compliance with [Section 17.12.050\(C\)\(4\)\(e\)](#).

k. Site Survey. For any small wireless facility proposed to be located within the public right-of-way, the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer or surveyor. The survey shall identify and depict all existing boundaries, encroachments and other structures with two hundred fifty (250) feet from the proposed project site, which includes without limitation all:

(i) traffic lanes;

(ii) all private properties and property lines;

(iii) above and below grade utilities and related structures and encroachments;

(iv) fire hydrants, roadside call boxes and other public safety infrastructure;

(v) streetlights, decorative poles, traffic signals and permanent signage;

(vi) sidewalks, driveways, parkways, curbs, gutters and storm drains;

(vii) benches, trash cans, mailboxes, kiosks, and other street furniture; and

(viii) existing trees, oak trees, planters and other landscaping features.

I. Other Permits. An application for a small wireless facility permit shall include all permit applications with all required application materials for each and every separate permit required by the city for the proposed collocation or deployment, including a building permit, an encroachment permit (if applicable) and an electrical permit (if applicable).

4. Application Review. — Each application for a new or modified small wireless facility permit shall be reviewed by the director. The city must approve or deny an application for a small wireless facility permit, together with any other city permits required for a proposed small wireless facility, within sixty (60) days after the applicant submits an application to collocate a small wireless facility using an existing structure, and within ninety (90) days after the applicant submits an application to deploy a small wireless facility using a new structure. At the time an application is deemed complete, the director shall provide written notice to all property owners within three hundred (300) feet of the site of a proposed small wireless facility.

Applicants may submit up to five (5) individual applications for a small wireless facility permit in a batch; provided, however, that small wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type.

Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each application in the batch. If any application in a batch is incomplete, the entire batch shall be deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch, the entire batch shall be deemed withdrawn. If any application in a batch fails to

meet the required findings for approval, the entire batch shall be denied.

5. Tolling Period. — Unless a written agreement between the applicant and the city provides otherwise, the application is tolled when the city notifies the applicant within ten (10) days of the applicant's submission of the application that the application is materially incomplete and identifies the missing documents or information. The shot clock may again be tolled if the city provides notice within ten (10) days of the application's resubmittal that it is materially incomplete and identifies the missing documents or information. For an application to deploy small wireless facilities, if the city notifies the applicant on or before the tenth day after submission that the application is materially incomplete, and identifies the missing documents or information and the rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation will restart at zero on the date the applicant submits a completed application.

6. Standards Governing Approval by Director.

a. The director shall approve or deny an application to collocate a small wireless facility using an existing structure by evaluating the following standards:

i. The existing structure was constructed and maintained with all necessary permits in good standing.

ii. **The existing structure is fifty (50) feet or less in height**, including any antennas, **or** the existing structure is **no more than ten (10) percent taller** than other adjacent structures.

iii. Each **antenna** associated with the deployment, excluding associated antenna equipment, is **no more than three (3) cubic feet in volume**.

iv. **All other wireless equipment** associated with the structure, including the wireless equipment

associated with the antenna and any pre-existing associated equipment serving the facility, is **no more than twenty-eight (28) cubic feet in volume**.

v. The small wireless facilities **do not extend** the existing structure on which they are located **to a height of more than fifty (50) feet** or by more than ten (10) percent, whichever is greater.

vi. The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.

vii. The small wireless facility is not located on Tribal lands, as defined under 36 C.F.R. section 800.16(x).

viii. The proposed collocation is **consistent with the wireless facility permit preferred zones and locations requirement** of [section 17.12.050\(C\)\(3\)](#).

ix. The proposed collocation is consistent with the design and development standards of subsection [17.12.050\(C\)\(4\)](#), except that subsections [17.12.050\(C\)\(4\)\(a\)](#) and (f) do not apply.

x. The proposed collocation is consistent with the independent expert review provisions of subsection [17.12.050\(C\)\(5\)](#).

xi. The proposed collocation is consistent with the conditions of approval provisions of subsection [17.12.050\(C\)\(6\)](#).

xii. For collocations not located within the public right-of-way, the proposed collocation shall be consistent with the standards of subsection [17.12.050\(D\)](#).

xiii. For collocation located within the public right-of-way, the proposed collocation shall be consistent with subsection [17.12.050\(E\)](#), except that subsections [17.12.050\(E\)\(3\)\(e\)\(i\)\(c\)](#) and [17.12.050\(E\)\(3\)\(g\)](#) **do not**

apply.

xiv. The proposed collocation would be in the most preferred location and configuration within two hundred fifty (250) feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location or configuration within two hundred fifty (250) feet would be technically infeasible, applying the preference standards of this section.

xv. The proposed collocation is designed as a stealth facility, to the maximum feasible extent.

b. The director may approve an application for a small wireless facility permit only if each of the following findings can be made:

i. The proposed project meets the definition for a "small wireless facility" as defined by the FCC;

ii. The proposed project would be in the most preferred location as identified in [Section 17.12.050\(C\)\(3\)](#), within two hundred fifty (250) feet from the proposed site in any direction, or the applicant has demonstrated with clear and convincing evidence that any more preferred location(s) within two hundred fifty (250) feet would be technically infeasible;

iii. The proposed project complies with the standards for a small wireless facility as specified in [Section 17.12.050\(G\)\(6\)](#).

iv. For proposed project not located within the public right-of-way, the proposed project complies with subsection [17.12.050\(D\)](#).

v. For proposed projects located within the public right-of-way, the proposed project complies with subsection [17.12.050\(E\)](#), except that subsections [17.12.050\(E\)\(3\)\(e\)\(i\)\(c\)](#) and [17.12.050\(E\)\(3\)\(g\)](#), do not

apply.

vi. The proposed collocation is designed as a stealth facility, to the maximum feasible extent.

7. Conditions of Approval for Small Wireless Facility Permits. — In addition to any other conditions of approval permitted under federal and state law and this Code that the director deems appropriate or required under this Code, all small wireless facility permits under this subsection shall include the following conditions of approval:

a. **No Automatic Renewal.** The grant or approval of a small wireless facility permit shall not renew or extend the underlying permit term.

b. **Compliance with Previous Approvals.** The grant or approval of a small wireless facility permit shall be subject to the conditions of approval of the underlying permit.

c. **As-Built Plans.** The applicant shall submit to the director an as-built set of plans and photographs depicting the entire small wireless facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.

d. **Indemnification.** To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless [the] city, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the small wireless facility permit and the issuance of any permit or entitlement in

connection therewith. **The applicant shall pay such obligations as they are incurred by [the] city, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the city reasonably determines necessary** to protect the city from exposure to fees, costs or liability with respect to such claim or lawsuit.

e. Compliance with applicable laws. The applicant shall comply with all applicable provisions of this Code, any permit issued under this Code, and all other applicable federal, state, and local laws. Any failure by the city to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this Code, any permit issued under this Code, or all other applicable laws and regulations.

f. Compliance with approved plans. The proposed project shall be built in compliance with the approved plans on file with the planning division.

g. Violations. The small wireless facility shall be developed, maintained, and operated in full compliance with the conditions of the small wireless facility permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this Code, the conditions of approval for the small wireless facility permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this section shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one (1) remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

h. In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, Title 47, United States Code, section 1455, such that such statute would not mandate approval for the collocation

or deployment granted or deemed granted under a small wireless facility permit, such permit shall automatically expire twelve (12) months from the date of that opinion.

i. The grant, deemed-grant or acceptance of a small wireless facility permit shall not waive and shall not be construed or deemed to waive the city's standing in a court of competent jurisdiction to challenge Title 47, United States Code, section 1455 or any small wireless facility permit issued pursuant to Title 47, United States Code, section 1455 or this Code.

8. Small Wireless Facility Permit Denial Without Prejudice.

a. Grounds for denial without prejudice. The director may deny without prejudice an application for a small wireless facility permit in any of the following circumstances:

i. The director cannot make all findings required for approval of a small wireless facility permit;

ii. **The proposed collocation or deployment would cause the violation of an objective, generally applicable law protecting public health or safety;**

iii. The proposed collocation or deployment **involves the removal and replacement of an existing facility's entire supporting structure;** or

iv. The proposed collocation or deployment does not qualify for mandatory approval under Title 47, United States Code, section 1455, as may be amended or superseded, and as may be interpreted by any order of the Federal Communications Commission or any court of competent jurisdiction.

b. Procedures for denial without prejudice. All small wireless facility permit application denials shall be in writing and shall include

- (i) the decision date;
 - (ii) a statement that the city denies the permit without prejudice;
 - (iii) a short and plain statement of the basis for the denial; and
 - (iv) that the applicant may submit the same or substantially the same permit application in the future.
- c. Submittal after denial without prejudice. After the director denies a small wireless facility permit application, and subject to the generally applicable permit application submittal provisions in this chapter, an applicant shall be allowed to:
- i. Submit a new small wireless facility permit application for the same or substantially the same proposed collocation or deployment;
 - ii. Submit a new small wireless facility permit application for the same or substantially the same proposed collocation or deployment; or
 - iii. Submit an appeal of the director's decision.
- d. Costs to review a denied permit. The city shall be entitled to recover the reasonable costs for its review of any small wireless facility permit application. In the event that the director denies a small wireless facility permit application, the city shall return any unused deposit fees within sixty (60) days after a written request from the applicant. An applicant shall not be allowed to submit a small wireless facility permit application for the same or substantially the same proposed modification unless all costs for the previously denied permit application are paid in full.

H. Standards for Satellite Antennas.

Satellite antennas, including portable units and dish antennas, shall be designed, installed and maintained in compliance with the regulations of the Federal Communications Commission. Satellite antennas with diameters larger than one (1) meter in residential zones and two (2) meters in nonresidential zones shall also comply with the following requirements provided these provisions do not conflict with applicable state and federal regulations.

1. Permit Requirement. — Zoning clearance shall be required for satellite antennas with diameters of one (1) meter or less; administrative plan review approval shall be required for antennas larger than one meter. A conditional use permit shall be required for antennas larger than one meter located within a designated scenic corridor.

2. Application; Plans. — Plans for satellite antennas shall be submitted with applications for a building permit, and shall include a site plan and elevation drawings indicating the height, diameter, color, setbacks, foundation details, landscaping, and method of screening. The plans shall be subject to approval of the director.

3. Location. — No satellite antenna shall be located within any required front-yard or street-side-yard setbacks in any zone. In addition, no portion of a satellite antenna shall extend beyond a property line.

4. Color. — A satellite antenna and its supporting structure shall be painted a single, neutral, non-glossy color; such as an earth tone, gray, or black; and, to the extent possible, be compatible with the appearance and character of the surrounding neighborhood.

5. Wiring. — All wiring shall be placed underground whenever possible.

6. Residential Zones. — In any residential zone, satellite antennas shall be subject to the following

standards:

- a. Only ground-mounted satellite antennas shall be permitted. Ground-mounted antennas shall be located in the rear yard of any property to the extent technically possible;
- b. Satellite antennas shall not exceed fifteen (15) feet in height;
- c. Only one (1) satellite antenna may be permitted on any single-family residential site;
- d. Only one (1) antenna shall be permitted per dwelling unit on any multiple family residential site;
- e. A satellite antenna shall be separated from adjacent properties by at least a six- foot-high solid wall or fence or by trees or other plants of equal minimum height;
- f. Any satellite antenna that is taller than an adjacent property-line fence shall be located away from the side or rear property line a distance equal to or greater than the height of the antenna;
- g. The diameter of a satellite antenna shall not exceed two (2) meters. This provision may be modified by the director if the applicant provides a sufficient technical study prepared by a qualified engineer demonstrating to the director's satisfaction that strict compliance would result in no satellite reception; and
- h. A satellite antenna shall be used for private, noncommercial purposes only.

7. Nonresidential Zones. — In any nonresidential zone, satellite antennas may be roof- or ground-mounted and shall be subject to the following standards:

- a. If roof-mounted, satellite antennas shall be screened from ground view by a parapet or other screening approved by the city. The minimum height and design of a parapet, wall, or other screening shall be

subject to the approval of the director;

b. If ground-mounted, satellite antennas shall not be located between a structure and an adjacent street and shall be screened from public view and neighboring properties;

c. The location and height of satellite antennas shall comply with all requirements of the underlying zone; and

d. If the subject site abuts a residential zone, all antennas shall be set back a minimum distance from the property line equal to the height of the antenna, unless screened from view.

I. Standards for Amateur Radio Antennas.

All amateur radio antennas shall be designed, constructed and maintained as follows:

1. The maximum height shall not exceed forty (40) feet, measured from finished grade;
2. Any boom or other active element or accessory structure shall not exceed twenty-five (25) feet in length;
3. Antennas may be roof- or ground-mounted; and
4. Antennas may not be located in any front-yard or side-yard setbacks;
5. These standards in this subsection (H) are subject to modification or waiver by the director on a case-by-case basis where required for the city to comply with FCC PRB-1 and California Government Code Section 65850.3 and where such modification or waiver is based on sufficient technical information provided in writing by the applicant at the request of the city.

J. Effects of Development on Antenna Reception. — The city shall not be liable if development within

the city after installation of an antenna impairs antenna reception, transmission, utility, or function to any degree.

K. Communications and Technology Commission as Planning Commission for Specified Purposes.

For purposes of approvals required by this [Section 17.12.050](#) and any other entitlement under this Code required only because the application seeks to construct or operate a wireless telecommunication facility (including, but not limited to, a scenic corridor permit, a variance, or an oak tree permit), "commission" means the communications and technology commission created pursuant to [Chapter 2.38](#) of this Code, which is hereby constituted as a planning commission of the city for that purpose pursuant to Government Code Section 65100. As to any application that seeks approvals for both (i) new structures, or uses of existing structures or of land other than construction and operation of a wireless telecommunication facility and (ii) for the construction and operation of a wireless telecommunication facility, the communications and technology commission shall be the "commission" for purposes of approvals required only because the application seeks to construct and operate a wireless telecommunication facility. The planning commission created pursuant to [Chapter 2.28](#) of this Code shall be the "commission" for all other entitlements sought by the application. In addition, the communications and technology commission shall be the "commission" for purposes of review of proposed amendments to this [Section 17.12.050](#).

L. Private Enforcement.

In addition to any other remedy available to the city under this Code, at law or in equity, violations of this

Section 17.12.050 may be remedied as follows:

- 1.** The city attorney or city prosecutor may bring a civil action to enforce this section and to obtain the remedies specified below or otherwise available in equity or at law.
- 2.** Any person acting for the interests of himself, herself, or itself, or of its members, or of the general public (hereinafter "a private enforcer") may bring a civil action to enforce this section with the remedies specified below, if both the following requirements are met:
 - a. The action is commenced more than sixty (60) days after the private enforcer gives written notice of an alleged violation of this section to the city attorney and to the alleged violator.
 - b. No person acting on behalf of the city has commenced or is prosecuting an action regarding the violation(s) which was or were the subject of the notice on the date the private action is filed.
- 3.** A private enforcer shall provide a copy of his, her, or its action to the city attorney within seven days of filing it.
- 4.** Upon settlement of or entry of judgment in an action brought pursuant to paragraph (7) of this subsection (I), the private enforcer shall give the city attorney a notice of that settlement or judgment. No private enforcer may settle such an action unless the city attorney or the court determines the settlement to be reasonable in light of the purposes of this section. Any settlement in violation of this requirement shall be set aside upon motion of the city attorney or city prosecutor to a court of competent jurisdiction.
- 5.** Upon proof of a violation of this section, the court shall award the following:
 - a. Appropriate injunctive relief and damages in the amount of either:

- i. Upon proof, actual damages;
 - ii. With insufficient or no proof of damages, a minimum of five hundred dollars (\$500.00) for each violation of this section (hereinafter "statutory damages"). Unless otherwise specified in this section, each day of a continuing violation shall constitute a separate violation. Notwithstanding any other provision of this section, no private enforcer suing on behalf of the general public shall recover statutory damages based upon a violation of this section if a previous claim brought on behalf of the general public for statutory damages and based upon the same violation has been adjudicated, whether or not the private enforcer was a party to that earlier adjudication.
- b. Restitution to the appropriate party or parties of gains obtained due to a violation of this section.
 - c. Exemplary damages, where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud, malice, or a conscious disregard for public health and safety.
 - d. Attorney's fees and costs reasonably incurred by a successful party in prosecuting or defending an action.

Any damages awarded in an action brought by the city attorney or city prosecutor shall be paid into the city's general fund, unless the court determines that they should be paid to a damaged third party.

6. Upon proof of at least one violation of this section, a private enforcer, the city prosecutor, city attorney, any peace officer or code enforcement official may obtain an injunction against further violations of this section or, as to small claims court actions, a judgment payable on condition that a further violation of this section occur within a time specified by the court.

7. Notwithstanding any legal or equitable bar, a private enforcer may bring an action to enforce this

section solely on behalf of the general public. When a private enforcer does so, nothing about such an action shall act to preclude or bar the private enforcer from bringing a subsequent action on his, her, or its own behalf based upon the same facts.

8. Nothing in this section shall prohibit a private enforcer from bringing an action to enforce this section in small claims court, provided the relief sought is within the jurisdiction of that court.

M. Additional Notice to Neighbors.

After an application to allow the installation of a wireless facility subject to the approval of a wireless facility permit pursuant to subsections (C), (D) and (E) of this section is complete, the city shall endeavor to provide property owners **at least thirty (30) days' prior notice of the initial public hearing** on the matter as follows:

1. **Written notice** shall be mailed to the record owner of each property within **one thousand five hundred (1,500) feet of the proposed site.**
2. **Telephone notice** via the city's reverse 911 service shall be given to owners or occupants of properties within **one thousand five hundred (1,500) feet of the proposed site.**

A public hearing may be set on less than thirty (30) days' notice if necessary to comply with applicable law, including but not limited the Federal Communications Commission Declaratory Ruling 09-99, WT docket number 08-165, released November 18, 2009, (the "Shot Clock" ruling) and Title 47, United States Code, section 1455 and the Federal Communications Commission's regulations implementing this section, adopted on December 17, 2014, and codified at 47 C.F.R. §§ 1.40001, et seq., as they now exist or may hereafter be amended.

Failure of the city to provide notice pursuant to this subsection (L) shall not be grounds to challenge a determination provided that the notice otherwise required by law has been provided.

N. Definitions.

In addition to the definitions provided in [Chapter 17.90](#) of this title and in [Chapter 1.08](#) of [Title 1](#) of this Code, this [Section 17.12.050](#) shall be construed in light of the following definitions:

- "**Accessory equipment**" means any equipment installed, mounted, operated or maintained in close proximity to a wireless telecommunication facility to provide power to the wireless telecommunication facility or to receive, transmit or store signals or information received by or sent from a wireless telecommunication facility.
- "**Antenna structure**" means any antenna, any structure designed specifically to support an antenna and/or any appurtenances mounted on such a structure or antenna.
- "**Applicable law**" means all applicable federal, state and local law, ordinances, codes, rules, regulations and orders, as the same may be amended from time to time.
- "**Applicant**" includes any person or entity submitting an application to install a wireless telecommunication facility under this section and the persons within the scope of the term "applicant" as defined by [Section 17.90.020](#) of this Code.
- "**Base station**" means the equipment and non-tower supporting structure at a fixed location that enables Federal Communications Commission licensed or authorized wireless telecommunications between user equipment and a communications network.
- "**City**" means the City of South Lake Tahoe and is further defined in [Section 1.08.020](#) of this Code.
- "**Collocation**" means the mounting or installation of additional wireless transmission equipment at an

existing wireless facility.

- "**Commission**" has the meaning set forth in paragraph (I) of this section.
- "**Director**" means the City of South Lake Tahoe Community Development Director or his or her designee.
- "**FCC**" means the Federal Communications Commission or any successor to that agency.
- "**In-kind call testing**" means testing designed to measure the gap in coverage asserted by an applicant. If a claimed gap is for in-building coverage, then in-building call testing must be performed to establish the existence or absence of such a gap unless the applicant provides a sworn affidavit demonstrating good faith but unsuccessful attempts to secure access to buildings to conduct such testing and the circumstances that prevented the applicant from conducting such testing. Claimed gaps in service for "in-vehicle" or "open-air" service may be demonstrated by call testing performed in vehicles or in the open.
- "**Least intrusive means**" means that the location or design of a wireless telecommunication facility addresses a significant gap in an applicant's communication service while doing the least disservice to the policy objectives of this chapter as stated in [Section 17.12.050\(A\)](#). Analysis of whether a proposal constitutes the least intrusive means shall include consideration of means to close an asserted significant gap by co-locating a new wireless telecommunication facility on the site, pole, tower, or other structure of an existing wireless telecommunication facility.
- "**Monopole**" means a structure composed of a single spire, pole, or tower used to support antennas or related equipment. A monopole also includes a monopine, monopalm, and similar monopoles camouflaged to resemble faux objects attached on a monopole.
- "**MPE**" means maximum permissible exposure.

- **"Non-tower supporting structure"** means any structure, whether built for wireless communications purposes or not, that supports wireless transmission equipment under a valid permit at the time an applicant submits an application for a permit under this Code and which is not a wireless tower.
- **"OET"** or **"FCC OET"** means the Office of Engineering and Technology of the Federal Communications Commission.
- **"Open space"** includes (1) land which is zoned OS, OS-DR, or REC, (2) land in residential zones upon which structures may not be developed by virtue of a restriction on title, (3) all common areas, private parks, slope easements, and (4) any other area owned by a homeowners association or similar entity.
- **"Park"** and **"playground"** shall have their ordinary, dictionary meanings.
- *"Wireless telecommunications facilities (WTF) , "wireless telecommunication facility wireless facility"* means a structure, antenna, pole, tower, equipment, accessory equipment and related improvements used, or designed to be used, to provide wireless transmission of voice.
- **"Private enforcer"** has the meaning provided in subsection (K)(2) of this [Section 17.12.050](#).
- **"Residential zone"** means a zone created by [Chapter 17.13](#) of this title.
- **"RF"** means radio frequency.
- **"Significant gap"** as applied to an applicant's Wireless Telecommunications service is intended to be defined in this chapter consistently with the use of that term in the Telecommunications Act of 1996. The following guidelines shall be used to identify such a significant gap:
 - A significant gap may be demonstrated by in-kind call testing or industry-standard drive tests that establish signal strength at lower than -120 dBm from all frequenci

- The commission shall accept evidence of call testing by the applicant and any other interested person and shall not give greater weight to such evidence based on the identity of the person who provides it but shall consider (i) the number of calls conducted in the call test, (ii) whether the calls were taken on multiple days, at various times, and under differing weather and vehicular traffic conditions, and (iii) whether calls could be successfully initiated, received and maintained in the area within which a significant gap is claimed.

3. A significant gap may be measured by:

- a. The number of people affected by the asserted gap in service;
- b. Whether a wireless communication facility is needed to fill a complete void in coverage;
- c. Whether the asserted gap affects Highway 50, a state highway, or an arterial street which carries significant amounts of traffic.

"Small wireless facility" means a wireless telecommunication facility that also meets the definition of a small wireless facility by the FCC in 47 C.F.R. Section 1.6002, as may be amended or superseded.

"Stealth facility" means any wireless telecommunication facility which is designed to substantially blend into the surrounding environment by, among other things, architecturally integrating into a structure or otherwise using design elements to conceal antennas, antenna supports, poles, equipment, cabinets, equipment housing and enclosure; and related above-ground accessory equipment.

"Transmission equipment" or **"wireless transmission equipment"** means any equipment that facilitates transmission for any Federal Communications Commission licensed or authorized wireless communication service, including but not limited to, radio transceivers, antennas and other equipment associated with

and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supplies.

"Wireless" means any Federal Communications Commission licensed or authorized wireless telecommunications service.

"Wireless facility minor modification permit" means a permit issued under this chapter authorizing the modification of an existing wireless telecommunications facility. The procedures for the application for, approval of, and revocation of such a permit shall be those required by this title, including but not limited to [Section 17.12.050\(F\)](#).

"Wireless facility permit" means a permit issued under this chapter authorizing the installation, operation and maintenance of a wireless telecommunications facility. Except as otherwise provided by this chapter, the procedures for the application for, approval of, and revocation of such a permit shall be those required by this title (including, but not limited to, those of [Section 17.62.060](#)) for a conditional use permit.

"Wireless tower" or **"telecommunications tower"** mean any structure, including a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure, designed and constructed for the primary purpose of supporting any Federal Communications Commission licensed or authorized wireless telecommunications facility antennas and their associated facilities.