

CHAPTER 15.34 - WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS OF WAY

15.34.010 - Purpose and objectives.

The purpose of this Chapter is to regulate the establishment and operation of wireless telecommunications facilities within the Public right-of-way in the City of Long Beach, consistent with the General Plan, and with the intent to:

- A. Allow for the provision of wireless communications services adequate to serve the public's interest within the City;
- B. Minimize the negative impacts of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities in the context of other uses and users in the Public right-of-way, and protect the health, safety and welfare of the City of Long Beach;
- C. Strongly encourage the location of wireless telecommunications facilities in those areas of the City where the adverse aesthetic impact on the community is minimal;
- D. To promote the public health, safety, convenience, and general welfare of the City's residents, and to protect historical resources, property values and the aesthetic appearance of the City of Long Beach.
- E. Strongly encourage wireless telecommunications providers to configure all facilities in such a way that minimizes displeasing aesthetics through careful design, siting, landscaping, screening, and innovative camouflaging techniques;
- F. Provide a uniform and comprehensive set of standards for the development, siting, installation, and operation of wireless telecommunications facilities in the limited physical resources and capacity of the available Public right-of-way of the City of Long Beach in such a manner to not unreasonably discriminate, and to be competitively neutral, and non-exclusive as to the extent required under Applicable Law;
- G. Encourage open competition and the provision of advanced and high quality telecommunications services on the widest possible basis to the businesses, institutions, and residents of the City;
- H. Encourage economic development while preserving aesthetic and other community values and preventing proliferation of above ground wireless telecommunication equipment;
- I. Conform to all applicable federal and State laws.

15.34.020 - Definitions.

In addition to all those terms defined in Chapter 21.15 of the Zoning Regulations, the following terms shall have the meanings set forth below, for the purposes of this Chapter:

- A. **"Abandoned."** Notwithstanding the definition of "Abandoned" in Section 21.15.030, a Wireless Telecommunications Facility use shall be considered Abandoned if it is not in use for two (2) consecutive months.
- B. **"Adjacent"** means on the same side of the street and in front of the building or the next building on either side, when used in connection with a national historic landmark, California landmark, City landmark as defined in Chapter 2.63, or cultural resource as defined in Chapter 2.63; and in front of and on the same side of the street, when used in connection with a City park or open space.
- C. **"Applicable Law"** means all applicable federal, state, and City laws, ordinances, codes, rules, regulations and orders, as the same may be amended or adopted from time to time.
- D. **"Base Station"** shall have the meaning determined by the Director of Public Works in an order or regulation, provided that the Director of Public Works' definition shall be consistent with the definition of that term: (a) as it is used in Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. § 1455(a)¹ as may be amended from time to time; and (b)

¹ 47 U.S.C. § 1455(a) provides in full as follows:

(a) Facility modifications

(1) In general. Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government 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.

(2) Eligible facilities request. For purposes of this subsection, the term "eligible facilities request" means any request for modification of an existing wireless tower or base station that involves—

- (A)** collocation of new transmission equipment;
- (B)** removal of transmission equipment; or
- (C)** replacement of transmission equipment.

(3) Applicability of environmental laws

Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

The contours, interpretations, and requirements for the implementation of Section 1455(a) are set forth in the FCC Report and Order entitled "*In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies; Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting; 2012 Biennial Review of Telecommunications Regulations,*" (FCC Report and Order No. 14-153).

as it is defined by the **FCC** in any decision addressing that section or any regulation implementing that section.

- E. "**Coastal Zone Protected Location**" means a proposed location for a Wireless Telecommunications Facility in the Public right-of-way that is within or Adjacent to a designated Coastal zone (as that term is defined in Section 21.15.530).
- F. "**Coastal Zone Protected Location Compatibility Standard**" means whether a Wireless Telecommunications Facility that is proposed to be located in a Coastal Zone Protected Location would comply with all applicable requirements and standards applicable to the installation of public infrastructure within the Coastal zone.
- G. "**Co-location**" means the placement or installation of wireless telecommunications facilities, including antennas and related equipment onto an existing Wireless Telecommunications Facility in the case of monopoles, or onto the same building in the case of roof/building-mounted sites or placement onto an existing pole or structure with existing wireless telecommunication facility in the Public right-of-way.
- H. "**Co-location Facility**" means a Wireless Telecommunications Facility that has been co-located consistent with the meaning of "Co-location" as defined above. It does not include the initial installation of a new Wireless Telecommunications Facility where previously there was none, nor the construction of an additional monopole on a site with an existing monopole.
- I. "**Eligible Facilities Request**" shall have the meaning determined by the Director of Public Works in an order or regulation, provided that the Director of Public Works' definition shall be consistent with the definition of that term: (a) as it is used in Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. § 1455(a) as may be amended from time to time; and (b) as it is defined by the FCC in any decision addressing that section or any regulation implementing that section.
- J. "**FCC**" means the Federal Communications Commission.
- K. "**Modification Permit**" means a Wireless Right-of-Way Facility Permit issued by the Department of Public Works pursuant to Section 15.34.130(V) below, authorizing a Permittee to modify equipment installed on a utility or Street Light Pole by the Permittee pursuant to a Wireless Right-of-Way Facility Permit.
- L. "**Park Protected Location**" means a proposed location for a Wireless Telecommunications Facility in the Public right-of-way that is Adjacent to a City park or open space.
- M. "**Park Protected Location Compatibility Standard**" means whether a Wireless Telecommunications Facility that is proposed to be located in a Park Protected Location would significantly impair the views of a City park or open space or significantly degrade the aesthetic or natural attributes that define the City park or open space.
- N. "**Permittee**" means a Person issued a permit pursuant to this Chapter 15.34.

- O. "**Person**" means any individual, group, company, partnership, association, joint stock company, trust, corporation, society, syndicate, club, business, or governmental entity. "Person" shall not include the City.
- P. "**Planning Protected Location**" means any of the following proposed locations for a Wireless Telecommunications Facility:
1. On an historic, historically or architecturally significant, decorative, or specially designed Street Light Pole located in the public rights-of-way;
 2. On a utility or Street Light Pole that is on a Public right-of-way that is within a national historic landmark district, listed or eligible national register historic district, listed or eligible California register historic district, listed or eligible City landmark, or listed or eligible City landmark district, as more specifically described and cataloged in materials prepared and maintained pursuant to Chapter 2.63;
 3. On a utility or Street Light Pole that is on a Public right-of-way that is Adjacent to a national historic landmark, California landmark, or City landmark, as more specifically described and cataloged in materials prepared and maintained pursuant to Chapter 2.63;
 4. On a utility or Street Light Pole that is on a Public right-of-way that the General Plan has designated as being most significant to City pattern, defining City form, or having an important street view for orientation; or
 5. On a utility or Street Light Pole that is on a Public right-of-way that the General Plan has designated as having views that are rated "excellent" or "good."
- Q. "**Planning Protected Location Compatibility Standard**" means whether an Applicant for a Personal Wireless Service Facility Site Permit demonstrates that a proposed Personal Wireless Service Facility would be compatible with any of the Planning Protected Locations as follows:
1. For a historic, historically or architecturally significant, decorative, or specially designed Street Light Pole, the applicable standard is whether a proposed Wireless Telecommunications Facility would significantly degrade the aesthetic attributes that distinguish the Street Light Pole as historic, historically significant, architecturally significant, decorative, or specially designed.
 2. For a Public Right-of-Way that is within a national historic landmark district, listed or eligible national register historic district, listed or eligible California register historic district, listed or eligible City landmark, or listed or eligible City landmark district, the applicable standard is whether a proposed Wireless Telecommunications Facility would significantly degrade the aesthetic attributes that were the basis for the special designation of the district.
 3. For a utility, or Street Light Pole that is Adjacent to a national historic landmark, California landmark, or City landmark, the applicable standard

is whether a proposed Wireless Telecommunications Facility would significantly degrade the aesthetic attributes that were the basis for the special designation of the building.

4. For a Public right-of-way that the General Plan has designated as being most significant to City pattern, defining City form, or having an important street view for orientation, the applicable standard is whether a proposed Wireless Telecommunications Facility would significantly degrade the aesthetic attributes that were the basis for the designation of the street for special protection under the General Plan.
 5. For a Public right-of-way that the General Plan has designated as having views that are rated "excellent" or "good," the applicable standard is whether a proposed Wireless Telecommunications Facility would significantly impair the views of any of the important buildings, landmarks, open spaces, or parks that were the basis for the designation of the street as a view street.
- R. "**Public Health Compliance Standard**" means whether: (a) any potential human exposure to radio frequency emissions from a proposed Wireless Telecommunications Facility described in an application is within the FCC guidelines; and (b) noise at any time of the day or night from the proposed Wireless Telecommunications Facility described in an application is not greater than forty five (45) dBA as measured at a distance three (3) feet from any residential building facade.
- S. "**Public right-of-way**" means any public highway, street, alley, sidewalk, parkway, and all extensions or additions thereto which is either owned, operated, or controlled by the City, or is subject to an easement or dedication to the City, or is a privately owned area within City's jurisdiction which is not yet dedicated, but is designated as a proposed Public right-of-way on a tentative subdivision map approved by the City.
- T. "**Replace**" means to remove previously permitted equipment and install new equipment at a permitted Wireless Telecommunications Facility that is identical or smaller in size, and weight, fewer in quantity, and identical in color when compared to the previously permitted equipment.
- U. "**Residential/Institutional Planned Development (PD) District**" means the following Planned Development Districts within the City of Long Beach: PD-5 (Ocean Boulevard), PD-10 (Willmore City), PD-11 (Rancho Estates), PD-17 (Alamitos Land), PD-20 (All Souls), PD-25 (Atlantic Avenue), all RP residential planned unit development districts, as well as any future PDs and/or RPs designated as such by the City.
- V. "**School Protected Location**" means a proposed location for a Wireless Telecommunications Facility in the Public right-of-way that is Adjacent to an elementary, intermediate, or secondary school.
- W. "**School Protected Location Compatibility Standard**" means whether a Wireless Telecommunications Facility that is proposed to be located in a School

Protected Location would significantly impair pedestrian, bicycle, or vehicular traffic circulation and/or safety to and from the subject schools, or would significantly degrade the views of the school.

- X. "**Street Light Pole**" means a pole used principally or solely for street lighting and which is located in the Public Rights-of-Way.
- Y. "**Substantially Change the Physical Dimensions**" shall have the meaning determined by the Director of Public Works in an order or regulation, provided that the Director of Public Works' definition shall be consistent with the definition of that term: (a) as it is used in Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. § 1455(a) as may be amended from time to time; and (b) as it is defined by the FCC in any decision addressing that section or any regulation implementing that section.
- Z. "**Tier A Compatibility Standard**" means that an applicant for a Wireless Telecommunications Facility on a Public right-of-way that is within an Unprotected Location has demonstrated that the proposed Wireless Telecommunications Facility would not significantly detract from any of the defining characteristics of the neighborhood.
- AA. "**Tier A Wireless Telecommunications Facility**" means a Wireless Telecommunications Facility where the proposed location for the facility is in an Unprotected Location.
- BB. "**Tier B Compatibility Standard**" means (i) in the case of applications for Wireless Telecommunications Facility within or Adjacent to the Public right-of-way in a Planning Protected Location, a Wireless Telecommunications Facility that complies with the Planning Protected Location Compatibility Standard, (ii) in the case of applications for Wireless Telecommunications Facility within or Adjacent to the Public right-of-way in a Park Protected Location, a Wireless Telecommunications Facility that complies with the Park Protected Location Compatibility Standard, (iii) in the case of applications for Wireless Telecommunications Facility within or Adjacent to the Public right-of-way in a School Protected Location, a Wireless Telecommunications Facility that complies with the School Protected Location Compatibility Standard, (iv) in the case of applications for Wireless Telecommunications Facility within or Adjacent to the Public right-of-way in a Coastal Zone Protected Location, a Wireless Telecommunications Facility that complies with the Coastal Zone Protected Location Compatibility Standard, and (v) in the case of applications for Wireless Telecommunications Facility within or Adjacent to the Public right-of-way in a Zoning Protected Location, a Wireless Telecommunications Facility that complies with the Zoning Protected Location Compatibility Standard. In addition to the foregoing, for all applications for Wireless Telecommunications Facilities within or Adjacent to Planning Protected Locations, a Park Protected Locations, School Protected Location, Coastal Zone Protected Locations, and/or Zoning Protected Locations, satisfaction of the Tier B Compatibility Standard requires an affirmative demonstration that the proposed Wireless Telecommunications Facility would not significantly detract from any of the defining characteristics of the Planning

Protected Location, Park Protected Location, School Protected Location, Coastal Zone Protected Location, or Zoning Protected Location.

- CC. "**Tier B Wireless Telecommunications Facility**" means a Wireless Telecommunications Facility where the proposed location for the facility is in a Planning Protected Location, Park Protected Location, School Protected Location, Coastal Zone Protected Location, or Zoning Protected Location.
- DD. "**Transmission Equipment**" shall have the meaning determined by the Director of Public Works in an order or regulation, provided that the Director of Public Works' definition shall be consistent with the definition of that term: (a) as it is used in Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. § 1455(a) as may be amended from time to time; and (b) as it is defined by the FCC in any decision addressing that section or any regulation implementing that section.
- EE. "**Unprotected Location**" means a proposed location for a Wireless Telecommunications Facility that is not located within or Adjacent to a Planning Protected Location, a Park Protected Location, School Protected Location, and/or a Coastal Zone Protected Location.
- FF. "**Utility Pole**" means any pole or tower owned by any utility company that is located in the Public right-of-way necessary for the distribution of electrical or other utility services regulated by the California Public Utilities Commission. This does not include towers for high-voltage electrical power transmission between generating plants and electrical substations.
- GG. "**Wireless Telecommunications Facility**" means equipment installed for the purpose of providing wireless transmission of voice, data, images, or other information including but not limited to, cellular telephone service, Personal communications services, and paging services, consisting of equipment, antennas, and network components such as towers, Utility Poles, transmitters, Base Stations, conduits, pull boxes, electrical meters, and emergency power systems. "Wireless telecommunications facility" does not include radio or television broadcast facilities, nor radio communications systems for government or emergency services agencies.
- HH. "**Zoning Protected Location**" means on a utility or Street Light Pole that is on a Public right-of-way that is within a residential or a residential/institutional planned development (PD) district.
- II. "**Zoning Protected Location Compatibility Standard**" means that an applicant for a Wireless Telecommunications Facility on a Public right-of-way that is within a Zoning Protected Location has demonstrated that the proposed Wireless Telecommunications Facility would not significantly detract from any of the defining characteristics of the residential or a residential/institutional planned development (PD) district.

15.34.130 - Requirements and standards for wireless telecommunications facilities in the Public right-of-way.

A. **Permit Required:** Any Person seeking to construct, install, or maintain a Wireless Telecommunications Facility in, on, under, or above the Public right-of-way shall obtain a Wireless Right-of-Way Facility Permit pursuant to the requirements of this Chapter prior to installing such Wireless Telecommunications Facility.

B. **Permit requirements for wireless telecommunications facilities in the Public right-of-way.**

1. **Minimum Permit Requirements.**

a. The Department of Public Works shall not issue a Wireless Right-of-Way Facility Permit if the application for the Wireless Right-of-Way Facility Permit does not comply with all of the requirements of this Section 15.34.130.

b. The Department of Public Works shall require an applicant for a Wireless Right-of-Way Facility Permit to demonstrate to the satisfaction of the Department of Public Works that:

(1) **Other Permits.** The applicant has obtained all appropriate permits (e.g., encroachment and traffic control permits) from the Department of Public Works, together with all other applicable permits and approvals from the City and other governmental agencies (e.g. approvals and permits required under the City's local coastal program (Chapter 21.25), and approvals and permits required under the City's cultural heritage procedures (Chapter 2.63)).

(2) **Authorization to Install.** If the facility is to be installed on an existing **Utility Pole** or street light the applicant shall provide proof that the pole is either a) owned and controlled by the Joint Pole Commission and that the applicant is a member of the Joint Pole Commission with attachment rights or b) that the owner of the pole has authorized the installation.

(3) **California Environmental Quality Act Compliance.** The Applicant has obtained any approvals that may be required under the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) to construct, install, and maintain the proposed Wireless Telecommunications Facility.

(4) **California Public Utilities Commission Authorizations.** The applicant has obtained any necessary certificate of public convenience and necessity issued by the California Public Utilities Commission.

(5) **Operational Interference with Public Rights of Way.** No part of a wireless telecommunication facility shall alter vehicular circulation or parking within the Public right-of-way, nor shall it impede vehicular and/or pedestrian access or visibility along any Public right-of-way. No Permittee shall locate or maintain wireless telecommunication facilities to unreasonably interfere with the use of City property or the Public right-of-way by the City, by the general public or by other Persons authorized to use or be present in or upon the Public right-of-way. Unreasonable interference includes disruption to vehicular or pedestrian traffic on City property or the Public right-of-way, interference with public utilities, and

any such other activities that will present a hazard to public health, safety or welfare when alternative methods of construction would result in less disruption. All such wireless telecommunications facilities shall be moved by the Permittee, at the Permittee's cost, temporarily or permanently, as determined by the Director of Public Works.

- (6) **Aesthetic Impacts.** All wireless telecommunication facilities shall be designed and located to eliminate or substantially reduce their visual and aesthetic impacts upon the surrounding public rights-of-way and public vantage points. To accomplish this goal, all wireless telecommunication equipment shall be developed with the intent of locating and designing such facilities in the following manner and order of preference (from top to bottom). In instances where a facility is proposed for installation at a location or in a manner that is not the highest preference for each of the following categories, the applicant shall make a factual showing that all higher preferences are infeasible:

(A) Antenna preferences:

- (i) On an existing Street Light Pole;
- (ii) On a Replacement streetlight pole;
- (iii) On an existing structure other than a streetlight pole or Utility Pole in the public-right-of-way;
- (iv) On a new structure other than a Street Light Pole or Utility Pole in the Public right-of-way (e.g. wireless telecommunication kiosk);
- (v) On an existing non-wood Utility Pole
- (vi) On a new Utility Pole;

(B) Equipment preferences (for all appurtenant equipment, including, but not limited to, radio units, power supplies, voltage converters, and electrical service connections and meters):

- (i). Within a below-grade equipment vault;
- (ii). Attach to existing power source in an existing utility box;
- (iii) Enclosed at the base or skirt of the pole on which the antenna(s) is/are proposed for installation;
- (iv) In an existing ground-mounted (grade-level) equipment cabinet, with no expansion or additional cabinets to be added;
- (v) Within a new equipment enclosure mounted at grade.

(C) Site location preferences:

- (i) Within the Public right-of-way, not in a center median, and not requiring the removal of existing parkway trees, reduction of the size of any parkway landscape planters, and not requiring any modifications to the existing location of any infrastructure within the Public right-of-way;

- (ii) Within the parkway landscaping within the Public right-of-way, and requiring only minor alterations to the existing parkway landscaping (including planter size) and/or infrastructure;
 - (iii) Within the Public right-of-way in a manner that requires significant alteration to the existing public improvements and/or infrastructure
- (D) Site location restrictions. In addition to the orders of preference specified in the preceding subsections, the following location prohibitions shall be applicable to all applications for installations of wireless telecommunications facilities in the public rights-of-way.
- (i) All wireless telecommunication facility antennas, equipment and related infrastructure shall be prohibited in all center street medians;
 - (ii) In Residential Zoning Districts or Residential Planned Development Districts, only one (1) Wireless Telecommunications Facility and associated equipment shall be permitted within the Public right-of-way within a five hundred foot (500') radius.
 - (iii) Pole mounted equipment limited to antenna(s) only.
 - (iv) Wireless on strand or overhead lines prohibited
 - (v) No new wood poles
- (E) Height:
- (i) Antenna installations on existing City infrastructure shall not exceed the height of the existing infrastructure piece by more than four feet (4') unless approved by the City Engineer and Director of Public Works after a finding is made that a greater height would promote the aesthetic or safety concerns of the City;
 - (ii) For antenna(s) proposed for placement on a new pole in the Public right-of-way, the height to the top of the highest element shall not exceed the average height of Utility Poles on the same block as the subject site by more than four feet (4'). In cases of uncertainty, the Director of Public Works shall have the authority to determine the applicable height limit;
 - (iii) Pole-mounted equipment shall be a minimum of ten feet (10') above level of sidewalk for public safety reasons.
- (F) Design:
- (i) Any pole to be installed in the Public right-of-way shall be disguised to resemble a Utility Pole to the maximum extent possible. All antennas shall be limited to a diameter no more than the widest part of the main pole, excluding the skirt or decorative base, or shall be no more than three separate panel antennas

screened behind a cylindrical screening device of a diameter no more than the widest part of the main pole, excluding the skirt or decorative base of the pole. All antennas and screening devices shall be painted or finished to match the pole. All pole or equipment shall be painted or otherwise coated, per City Standard, to be visually compatible with existing poles and equipment. The installation of new wood poles, and the attachment of new wireless telecommunications facilities to existing wood poles, is prohibited; .

- (ii) Omnidirectional antenna units and groups of panel antennas shall be placed on the same vertical axis as the center of the pole where feasible. If not feasible, the installation shall utilize brackets and/or cross-arms that allow no more than a six-inch (6") extension (stand-off) from the pole except when additional stand-off is required to comply with health and safety regulations such as GO-95 and OSHA;
- (iii) Antenna installations on existing City infrastructure shall be placed in a manner so that the size, appearance and function of the final installation is essentially identical to the installation prior to the antenna installation taking place;
- (iv) No faux or otherwise nonfunctioning street lights, decorative elements, signs, clock towers, or artificial trees or shrubs or other such nonfunctioning screening elements made to resemble other objects shall be permitted;
- (v) Wireless telecommunications facility equipment located above the surface grade in the Public right-of-way including, but not limited to those on certain street lights, shall consist of small equipment components that are compatible in structure, scale, function and proportion to the poles they are mounted on. Equipment shall be painted or otherwise coated, per City Standard, to be visually compatible with the subject pole. Underground vaults shall employ flush-to-grade access portals and vents. Installations on City owned or controlled public facilities shall be subject to applicable administrative and lease fees as adopted by resolution of the City Council;
- (vi) Facilities shall be designed to be as visually unobtrusive as possible. Applicant shall size antennas, cabinet equipment and other facilities to minimize visual clutter. Facilities shall be sited to avoid or minimize obstruction of views from public vantage points and otherwise minimize the negative aesthetic impacts of the Public right-of-way;
- (vii) All cables and conduits shall be routed through the interior of the subject pole.

- (viii) All cables shall be screened from public view.
- (7) **Compliance With Applicable Laws:** Permittee shall install and maintain permitted wireless telecommunications facilities in compliance with the requirements of the Uniform Building, National Electrical Code, City noise standards, and all other applicable codes, laws, and regulations (including without limitation, those specified in Chapter 14), as well as the restrictions specified in this Chapter.
- (8) **Americans With Disabilities Act.** The proposed Wireless Telecommunications Facility and its location shall comply with the Americans with Disabilities Act.
- (9) **Signs.**
- (A) There shall be no advertising or signage on any portion of a wireless telecommunication facility, except that required by law and/or as may be required by the City of Long Beach.
- (B) Each wireless telecommunication facility shall be identified by a permanently installed plaque or marker, no larger than four inches (4") by six inches (6"), clearly identifying the addresses, email contact information, and twenty-four (24) hour local or toll-free contact telephone numbers for a live contact Person for both the Permittee and the agent responsible for the maintenance of the Wireless Telecommunications Facility. Emergency contact information shall be included for immediate response. Such information shall be updated in the event of a change in the Permittee, the agency responsible for maintenance of the wireless telecommunication facility, or both.
- (C) Signs shall be hidden from public view when feasible. Background shall match color of equipment.
- (10) **Performance standards.** All wireless telecommunications facilities in the Public right-of-way shall be subject to the performance standards enumerated in Section 15.34.110, in addition to the following:
- (A) **Interference.** No wireless telecommunication facility shall interfere with any emergency communication system at any time.
- (B) **Graffiti.** All graffiti on any components of the Wireless Telecommunications Facility shall be removed promptly in accordance with City regulations. Graffiti on any facility in the Public right-of-way must be removed within twenty-four (24) hours notification to the applicant of its appearance.
- (C) **Landscaping.** All landscaping required in connection with the permitting of the Wireless Telecommunications Facility, including landscaping of the Public right-of-way, shall be maintained in good, healthy condition at all times. Any dead or dying landscaping and shall be promptly Replaced or rehabilitated.

- (D) **Repair of *Public right-of-way*.** The Permittee/operator shall repair, at its sole cost and expense, any damage (including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support) to City streets, sidewalks, walks, curbs, gutters, trees, parkways, or utility lines and systems, underground utility line and systems, or sewer systems or sewer lines that results from any activities performed in connection with the installation and/or maintenance of a Wireless Telecommunications Facility by Permittee. In the event Permittee fails to complete said repair within the number of days stated on a written notice by the Director of Public Works, the Director of Public Works shall cause said repair to be completed and shall invoice the Permittee for all costs incurred by City as a result of such repair.
- (i) Structural foundation must be removed when removing structures from the right-of-way;
 - (ii) Replace entire sidewalk panels affected by any work done associated with the installation of wireless facility. Sidewalk must be restored to original.
- (E) **Replacement of Equipment.** During the term of a Public right-of-way wireless telecommunications site permit, a Permittee may Replace equipment that is part of a permitted wireless facility provided that the Replacement equipment would be of the same (or smaller) size, quantity, weight, and appearance as the previously permitted equipment. The Permittee shall notify the Department of Public Works prior to replacing any equipment, and shall not install the proposed equipment unless and until the Department of Public Works notifies Permittee in writing that the Department has determined that the proposed Replacement equipment complies with the requirements of this Section, and until all required permits have been obtained.
- (F) **Abandonment.** The owner or operator of the wireless telecommunications site shall notify the Department of Public Works in writing upon abandonment of the facility. The Wireless Telecommunications Facility and all equipment associated therewith shall be removed in its entirety by the operator within thirty (30) days of a FCC or CPUC license or registration revocation or of facility abandonment (per Subsection 15.34.020.A) or other discontinuation of use. The site shall be restored to its pre-installation condition to the satisfaction of the Directors of Public Works at the expense of the facility owner or operator. Restoration shall be completed within 10 days of removal of the facility. If such removal is not completed within these time limits, the Director of Public Works shall be authorized to cause such removal to be completed and shall invoice the **Permittee** for all costs incurred by City as a result of such removal.
- (G) **Liability, Indemnification, and Defense.**

- (i) As a condition of a Wireless Right-of-Way Facility Permit, each Permittee agrees on its behalf and on behalf of any agents, successors, or assigns to be wholly responsible for the construction, installation, and maintenance of any permitted Wireless Telecommunications Facility. Each Permittee and its agents are jointly and severally liable for all consequences of such construction, installation, and maintenance of a Wireless Telecommunications Facility. The issuance of any Wireless Right-of-Way Facility Permit, inspection, repair suggestion, approval, or acquiescence of any Person affiliated with the City shall not excuse any Permittee or its agents from such responsibility or liability.
- (ii) As a condition of a Wireless Right-of-Way Facility Permit, each Permittee agrees on its behalf and on behalf of its agents, successors, or assigns, to indemnify, defend, protect, and hold harmless the City from and against any and all claims of any kind arising against the City as a result of the issuance of a Wireless Right-of-Way Facility Permit including, but not limited to, a claim allegedly arising directly or indirectly from the following:
- (a) Any act, omission, or negligence of a Permittee or its any agents, successors, or assigns while engaged in the permitting, construction, installation, or maintenance of any Wireless Telecommunications Facility authorized by a Wireless Right-of-Way Facility Permit, or while in or about the public rights-of-way that are subject to the permit for any reason connected in any way whatsoever with the performance of the work authorized by the permit, or allegedly resulting directly or indirectly from the permitting, construction, installation, or maintenance of any Wireless Telecommunications Facility authorized under the permit;
- (b) Any accident, damage, death, or injury to any of a Permittee's contractors or subcontractors, or any officers, agents, or employees of either of them, while engaged in the performance of the construction, installation, or maintenance of any Wireless Telecommunications Facility authorized by a Wireless Right-of-Way Facility Permit, or while in or about the Public right-of-way that are subject to the permit, for any reason connected with the performance of the work authorized by the permit, including from exposure to radio frequency emissions;
- (c) Any accident, damage, death, or injury to any Person or accident, damage, or injury to any real or Personal property in, upon, or in any way allegedly connected with the construction, installation, or maintenance of any Wireless Telecommunications Facility authorized by a Wireless Right-

of-Way Facility Permit, or while in or about the Public right-of-way that are subject to the permit, from any causes or claims arising at any time, including any causes or claims arising from exposure to radio frequency emissions; and

- (d) Any release or discharge, or threatened release or discharge, of any hazardous material caused or allowed by a Permittee or its agents about, in, on, or under the Public right-of-way.
- (iii) Permittee, at no cost or expense to the City, shall indemnify, defend, and hold harmless the City against any claims as set forth in Sections 15.34.130(C)(2)(b)(10)(G)(1) above, regardless of the alleged negligence of City or any other party, except only for claims resulting directly from the sole negligence or willful misconduct of the City. Each Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claims that actually or potentially fall within the indemnity provision, even if the allegations are or may be groundless, false, or fraudulent, which obligation arises at the time such claim is tendered to the Permittee or its agent by the City and continues at all times thereafter. Each Permittee further agrees that the City shall have a cause of action for indemnity against the Permittee for any costs the City may be required to pay as a result of defending or satisfying any claims that arise from or in connection with a Wireless Right-of-Way Facility Permit, except only for claims resulting directly from the sole negligence or willful misconduct of the City. Each Permittee further agrees that the indemnification obligations assumed under a Wireless Right-of-Way Facility Permit shall survive expiration of the permit or completion of installation of any Wireless Telecommunications Facility authorized by the permit.
- (iv) The Department may specify in a Wireless Right-of-Way Facility Permit such additional indemnification requirements as are necessary to protect the City from risks of liability associated with the Permittee's construction, installation, and maintenance of a Wireless Telecommunications Facility.

(H) **Insurance.**

- (i) **Minimum Coverages.** The Department of Public Works shall require that each Permittee maintain in full force and effect, throughout the term of a Wireless Right-of-Way Facility Permit, an insurance policy or policies issued by an insurance company or companies satisfactory to the City's Risk Manager. Such policy or policies shall, at a minimum, afford insurance covering all of the Permittee's operations, vehicles, and employees, as follows:

- (a) Workers' compensation, in statutory amounts, with employers' liability limits not less than one million dollars (\$1,000,000) each accident, injury, or illness.
- (b) Commercial general liability insurance with limits not less than five million dollars (\$5,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, Personal injury, products and completed operations. This insurance shall include coverage for electric and magnetic fields (EMF) liability, products and completed operations liability.
- (c) Commercial automobile liability insurance with limits not less than one million dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned, non-owned and hired auto coverage, as applicable.
- (d) Contractors' pollution liability insurance, on an occurrence form, with limits not less than one million dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage and any deductible not to exceed twenty five thousand dollars (\$25,000) each occurrence.
- (e) "All Risk" Property insurance, including debris removal, covering the full replacement value of Licensee's improvements constructed on or upon any City-owned property.

(ii) Other Insurance Requirements.

- (a) Said policy or policies shall include the City and its officers and employees jointly and severally as additional insureds, shall apply as primary insurance, shall stipulate that no other insurance effected by the City will be called on to contribute to a loss covered thereunder, and shall provide for severability of interests.
- (b) Said policy or policies shall provide that an act or omission of one insured, which would void or otherwise reduce coverage, shall not reduce or void the coverage as to any other insured. Said policy or policies shall afford full coverage for any claims based on acts, omissions, injury, or damage which occurred or arose, or the onset of which occurred or arose, in whole or in part, during the policy period.
- (c) Said policy or policies shall be endorsed to provide thirty (30) days advance written notice of cancellation or any material change to the Department of Public Works.
- (d) Should any of the required insurance be provided under a claims-made form, a Permittee shall maintain such coverage

continuously throughout the term of a Wireless Right-of-Way Facility Permit, and, without lapse, for a period of three (3) years beyond the expiration or termination of the permit, to the effect that, should occurrences during the term of the permit give rise to claims made after expiration or termination of the permit, such claims shall be covered by such claims-made policies.

- (e) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or claims limits specified in Section 15.34.130(B)(2)(b)(10)(H) above.
- (iii) **Indemnity Obligation.** Such insurance shall in no way relieve or decrease a Permittee's or its agent's obligation to indemnify the City under Section 15.34.130(B)(2)(b)(10)(G) above.
- (iv) **Proof of Insurance.** Before the Department of Public Works will issue a Wireless Right-of-Way Facility Permit, a Permittee shall furnish to the Department of Public Works certificates of insurance and additional insured policy endorsements with insurers that are authorized to do business in the State of California and that are satisfactory to the City evidencing all coverages set forth in Section 15.34.130(B)(2)(b)(10)(H) above.
- (v) **Self-Insurance.** Where a Permittee is self-insured, and such insurance is no less broad and affords no less protection to the City than the requirements specified in Section 15.34.130(B)(2)(b)(10)(H) above, the Department of Public Works, in consultation with the City's Risk Manager, may accept such insurance as satisfying the requirements of Section 15.34.130(B)(2)(b)(10)(H) above. Evidence of such self-insurance shall be provided in the manner required by the City's Risk Manager.
- (I) **Bond.** Each Permittee, as a condition of the Wireless Right-of-Way Facility Permit, shall obtain, keep, and maintain a performance bond in an amount as determined by the City Engineer adequate to guarantee to the City the prompt, faithful and competent performance of the proposed work necessary to install the proposed telecommunication facility and restoration of the **Public right-of-way**.
- (J) **City Changes to Public Right-of-Way.** The Permittee shall modify, remove, or relocate its Wireless Telecommunications Facility, or portion thereof, without cost or expense to the City, if and when made necessary by any street or alley reconstruction, widening, relocation or vacation, the undergrounding of utilities, or any other construction in the Public right-of-way negatively impacted by the wireless

telecommunications facilities as installed, to the maximum degree consistent with the regulations at the California Public Utilities Commission. Said modification, removal, or relocation of a Wireless Telecommunications Facility shall be completed within ninety (90) days of notification by City unless exigencies dictate a shorter period for removal or relocation. In the event a Wireless Telecommunications Facility is not modified, removed, or relocated within said period of time, City may cause the same to be done at the sole expense of applicant. Further, in the event of an emergency, the City may modify, remove, or relocate wireless telecommunications facilities without prior notice to applicant provided applicant is notified within a reasonable period thereafter.

2. **Exclusions.** The Department of Public Works shall not issue a Wireless Right-of-Way Facility Permit if the applicant seeks to:
 - a. Install a new overhead utility line on a Public right-of-way where there are presently no overhead utility facilities; or
 - b. Add a Wireless Telecommunications Facility on a utility or Street Light Pole for which a Wireless Right-of-Way Facility Permit has already been approved.
 3. **Permit Conditions.** The Department of Public Works may include in Wireless Right-of-Way Facility Permit such conditions, in addition to those already set forth in this Chapter 15.34 and other Applicable Law, as may be required to govern the construction, installation, or maintenance of Wireless Telecommunications Facilities in the public rights-of-way, and to protect and benefit the public health, safety, welfare, and convenience, provided that no such conditions may concern the particular technology used for a Wireless Telecommunications Facility.
- C. **Department of Public Works Orders and Regulations.** The Department of Public Works may adopt such orders and regulations as it deems necessary to implement the requirements of this Chapter 15.34, or to otherwise preserve and maintain the public health, safety, welfare, and convenience, as are consistent with the requirements of this Chapter 15.34 and Applicable Law.
- D. **Application Requirements.** All applicants for a Wireless Right-of-Way Facility Permit must provide at least the following information in the application (in addition to such further information as is required by an order or regulation of the Director of Public Works adopted in accordance with Section 15.34.130(C)).
1. Pole number and address;
 2. A site plan illustrating the exact location and size of all proposed wireless telecommunication facility antennas, equipment and related infrastructure necessary for its operation within the Public right-of-way;
 3. A fully dimensioned and scaled site plan that illustrates the following information within one hundred fifty feet (150') of the proposed wireless telecommunication facility:

- a. The distances between all new and existing wireless telecommunication equipment and all other infrastructure within the Public right-of-way such as, but not limited to, other existing telecommunication equipment, Utility **Poles**, light poles, fire hydrants, bus stops, traffic signals and above and below ground utility equipment vault(s);
 - b. The distance and location of adjoining property lines and easement boundaries abutting the Public right-of-way, curbs, driveway approaches, easements, walls, existing utility substructures, and parkway trees from the wireless telecommunication facility;
 - c. The immediate Adjacent land uses and building locations;
 - d. The dedicated width of the Public right-of-way;
 - e. The location of all existing sidewalks and parkway landscape planters.
4. Provide a GIS map (electronic and hardcopy) of all conduit locations between the wireless telecommunication antennas and the infrastructure necessary to operate the antennas;
 5. A detailed photograph of the exact location of all proposed wireless telecommunication facility antennas, equipment and related infrastructure within the Public right-of-way. Additional photographs shall also be provided to document the existing setting of the wireless telecommunication facility within one hundred fifty feet (150') to the north, south, east and west of the proposed facility with a corresponding location map key documenting where each photograph was taken;
 6. Propagation/coverage maps as required by Subsection 15.34.050(D);
 7. A study prepared by a qualified, independent, radio frequency engineer, deemed acceptable to the City, documenting that the new or modified telecommunication facility will not exceed Public Health Compliance Standard. The study shall include all proposed and existing telecommunication antennas at maximum operational capacity;
 8. A narrative discussion, accompanied by evidence, explaining (if necessary) why a superior location or configuration (as established by the order of preferences in Section 15.34.130(B)(2)(b)(6)) cannot be feasibly implemented;
 9. Any additional information deemed necessary by the Director of Public Works to evaluate the proposed Wireless Telecommunication Facility and its construction impact to the existing infrastructure and design of the Public right-of-way;
 10. Wet-stamped plans and calculations approving additional load of new wireless facility equipment on the pole;
 11. Plans showing how existing conduits inside the pole will be separated and protected from new wireless conduits.
 12. Photo simulation of proposed project.
 13. Feasibility study supporting order of preference.

14. A noise study/analysis demonstrating that noise from a proposed Wireless Telecommunications Facility at any time of the day or night will not exceed forty-five (45) dBA as measured at a distance three (3) feet from any residential building facade.

E. Initial Review of Completeness of Wireless Right-of-Way Facility Permit Applications

Following receipt of an application for a Wireless Right-of-Way Facility Permit, the Department of Public Works shall make an initial determination whether the application is complete, and shall promptly notify an applicant for a Wireless Right-of-Way Facility Permit of that determination.

F. Conditions of Approval

1. **Conditions of Approval.** During its review of an application for a Wireless Right-of-Way Facility Permit under this Chapter 15.34, the City may add conditions to its approval, tentative approval, or determination.

The Department of Public Works shall promptly notify the applicant in writing of any such conditions and shall give the applicant a reasonable time to accept or reject the conditions.

2. **Acceptance of Conditions Required.** The Department of Public Works shall not approve an application for a Wireless Right-of-Way Facility Permit unless the applicant accepts all of the conditions added to an approval, tentative approval, or determination.

- G. Street Trees.** When reviewing an application for a Wireless Right-of-Way Facility Permit, the City may require as a condition of approval that the Permittee plant and maintain an appropriate street tree Adjacent to the utility or Street Light Pole so as to provide a screen for a permitted Wireless Telecommunications Facility. If such a condition is imposed, the Permittee shall be required

to install a street tree that is a minimum of twenty-four (24)-inch box size. The Department of Public Works shall work with the Permittee to select the appropriate species and location for the required tree. In any instance in which the Department of Public Works cannot require the Permittee to install a street tree, on the basis of inadequate sidewalk width, interference with utilities, or other reasons regarding the public health, safety, or welfare, the Department of Public Works shall instead require the Permittee to make an "in-lieu" payment into the Department's "Adopt-A-Tree" fund. This payment shall be in the amount specified in _____, and shall be payable prior to the Department of Public Works' issuance of the Wireless Right-of-Way Facility Permit. The Permittee shall be responsible for the ongoing care and maintenance of any street tree required to be installed in the public rights-of-way under this Section, which requirement may, in the discretion of the Director of Public Works be satisfied through the payment of an in lieu fee.

- H. Review of Tier A Wireless Right-of-Way Facility Permit Applications.** Within twenty (20) business days following receipt of a completed application for a Wireless Right-of-Way Facility Permit for a Tier A Wireless Telecommunications Facility, the

Department of Public Works shall review and determine whether the proposed Tier A Wireless Telecommunications Facility satisfies the Tier A Compatibility Standards, satisfies the Public Health Compliance Standard, and otherwise meets the conditions, standards, and requirements of this Chapter 15.34. The Department of Public Works may extend the time period for this review period beyond twenty (20) business days when additional information is required to make a determination. The Department of Public Works shall not approve an application for a Wireless Right-of-Way Facility Permit unless the Department of Public Works makes a determination that the application satisfies the Tier A Compatibility Standards, satisfies the Public **Health** Compliance Standard, and otherwise meets the conditions, standards, and requirements of this Chapter 15.34.

- I. **Review of Tier B Wireless Right-of-Way Facility Permit Applications.** Within forty (40) business days following receipt of a completed application for a Wireless Right-of-Way Facility Permit for a Tier B Wireless Telecommunications Facility, the Department of Public Works, in consultation with other City departments as necessary, shall review and determine whether the proposed Tier B Wireless Telecommunications Facility satisfies the Tier B Compatibility Standards, satisfies the Public Health Compliance Standard, and otherwise meets the conditions, standards, and requirements of this Chapter 15.34. With the concurrence of the applicant, the Department of Public Works may extend the time period for this review period beyond forty (40) business days when additional information is required to make a determination. The Department of Public Works shall not approve an application for a Wireless Right-of-Way Facility Permit unless the Department of Public Works makes a determination that the application satisfies the Tier B Compatibility Standards, satisfies the Public Health Compliance Standard, and otherwise meets the conditions, standards, and requirements of this Chapter 15.34.
- J. **Department of Public Works Determination.**
 1. **Approval** . A Department of Public Works approval of an application for a Wireless Right-of-Way Facility Permit shall be in writing and shall set forth the reasons therefor. If a Department of Public Works approval contains any conditions, the conditions shall also be in writing.
 2. **Denial.** The Department of Public Works shall issue a final determination denying an application for a Wireless Right-of-Way Facility Permit within three (3) business days of any of the following events:
 - a. The Department of Public Works' determination that the application does not comply with the Public Health Compliance Standard;
 - b. The Department of Public Works' determination that the application does not meet the applicable compatibility standard; or
 - c. If the Department of Public Works' receives notice from the applicant that it rejects any of
condition imposed upon the application for a Wireless Right-of-Way Facility Permit.

K. Notice Following Approval of Tier B Wireless Right-of-Way Facility Permit Applications

1. **Notice Required.** The Department of Public Works shall require an applicant for a Tier B Wireless Right-of-Way Facility Permit to notify the public of the approval of the application under Sections 15.34.130(L) above, and to provide the Department of Public Works with evidence, as the Department of Public Works may require, of compliance with this requirement.
2. **Types of Notice Required.**
 - a. **Notice by Mail.** The applicant shall mail a copy of the notice to:
 - (1) Any Person owning property or residing adjacent or across the street from the proposed location of the Wireless Telecommunications Facility; and
 - b. **Notice by Posting.** The applicant shall post a copy of the notice on the proposed Wireless Telecommunications Facility is to be located.
3. **Contents and Form of Notice.** The notice shall contain such information, and be in such form, as the Department of Public Works reasonably requires in order to inform the general public as to the nature of the application for a Wireless Right-of-Way Facility Permit . At a minimum, the notice shall:
 - a. Provide a description and a photo-simulation of the proposed Wireless Telecommunications Facility;
 - b. Summarize the determinations of any City departments that were necessary for the tentative approval of the application;
 - c. Identify any conditions added by any City departments that have been accepted by the applicant and are now part of the application;
 - d. State that any Person seeking to appeal the grant of the application must submit an appeal notice to the Department of Public Works within ten (10) days of the date the notice was mailed and posted;
 - e. Describe the procedure for submitting a timely appeal;
 - f. Specify the applicable grounds for appealing the application under this Chapter 15.34;
 - g. Explain how any interested *Person* may obtain additional information and documents related to the application; and

L. Appeal of Tier B Wireless Right-of-Way Facility Permit

1. **Appeal Allowed.** The applicant for a Tier B Wireless Right of Way Facility Permit, and/or any Person owning or residing at property that is adjacent to or across the street to the location of a proposed Tier B Wireless Telecommunications Facility may appeal an approval of an application for a Tier B Wireless Right-of-Way Facility Permit. An appeal must be in writing and must be submitted to the City Clerk within ten (10) days of the date the notice was mailed and posted as required under Section 15.34.130(M)(2) above.

2. **Public Hearing Required.** If an appeal is timely submitted, the City Council shall hold a public hearing. The City Clerk shall set a date for the hearing that is at least fifteen (15) days, but no more than thirty (30) days, after the City Clerk's receipt of the appeal, unless the applicant and any Person submitting an appeal agree to a later hearing date.
3. **Notice of Public Hearing Date.** At least ten (10) days before the public hearing, the City Clerk shall notify in writing any Person submitting an appeal, the applicant, and any City department that reviewed the application of the date set for the public hearing. The City Clerk shall follow its regular procedures for notifying the general public of the hearing.
4. **Public Hearing Record.** The public hearing record shall include:
 - a. The application and the Department of Public Works' approval of the application;
 - b. Any written determination from the Department of Public;
 - c. Any further written evidence from any City departments submitted either prior to or during the hearing;
 - d. Any written submissions from the applicant, any Person submitting an appeal, or any other interested Person submitted either prior to or during the hearing; and
 - e. Any oral testimony from any City departments, the applicant, any Person submitting a protest, or any interested Person taken during the hearing.
5. **City Council Determination.** The City Council shall issue a written resolution containing its determination at the next regularly scheduled City Council meeting following the close of evidence at the conclusion of the public hearing on the appeal. The resolution shall include a summary of the evidence and the ultimate determination whether to grant, grant with modifications, or deny the appeal.
6. **Notice of Determination on Appeal.**
 - a. The City Clerk shall promptly mail a notice of a determination on an appeal to both the applicant, to any neighborhood association identified by the Department of Development Services for any neighborhood within three hundred (300) feet of the approved Wireless Communications Facility, and to any **Person** who either filed a protest, submitted evidence, or appeared at the hearing, and whose name and address are known to the Department of Public Works.

M. Notice of Completion and Inspection.

1. **Notice of Completion.** A Permittee shall notify the Department of Public Works immediately upon completion of the installation of a Wireless Telecommunications Facility. The notice of completion must include a written statement from a certified engineer confirming that the permitted Wireless Telecommunications Facility complies with the Public Health Compliance Standard.

2. Inspection.

- a. **Required After Installation.** The Department of Public Works shall inspect a Wireless Telecommunications Facility installed in the Public right-of-way within a reasonable time after a Permittee provides the Department of Public Works with a notice of completion required under 15.34.130(P)(1) above. The Department of Public Works shall determine during the inspection whether:
 - (1) The installation is in accordance with the requirements of the Wireless Right-of-Way Facility Permit; and
 - (2) The permitted Wireless Telecommunications Facility complies with the Public Health Compliance Standard.
- b. **Subsequent Inspection.** If at any time the Department of Public Works has a valid reason to believe that a permitted Wireless Telecommunications Facility does not comply with any local or state regulation, ordinance or law, condition of approval, and/or the Public Health Compliance Standard, the Department of Public Works shall require the Permittee to provide additional proof of compliance with such local or state regulation, ordinance or law, condition of approval, and/or the Public Health Compliance Standard, which proof shall be provided within 48 hours of such request (or such additional time as the Department of Public Works may grant in its reasonable discretion). If such proof of compliance is not timely provided, or is determined by the Director of Public Works (or his or her designee) to be insufficient, the City may initiate such additional code enforcement remedies and/or permit revocation procedures as are otherwise permissible. The procedures set forth herein are intended to augment, not limit, the City's permit and code enforcement remedies. The Department of Public Works may also inspect the facility.

N. Compliance.

1. **Compliance Required.** Any Wireless Telecommunications Facility installed in the public rights-of-way pursuant to a Wireless Right-of-Way Facility Permit must comply with the terms and conditions of the permit and this Chapter 15.34.
2. **Notice of Deficiency.**
 - a. **Non-Compliance with Permit.** If the Department of Public Works determines, either after an inspection required under Section 15.34.130(P) above or at any other time, that a Wireless Telecommunications Facility is not in compliance with the Wireless Right-of-Way Facility Permit or this Chapter 15.34, the Department of Public Works shall issue a notice of deficiency and require the Permittee to take corrective action to bring the Wireless Telecommunications Facility into compliance.
 - b. **Radio Frequency Emissions.** If the Department of Public Works determines, either after an inspection required under 15.34.130(P) above or at any other time, that potential human exposure to radio frequency emissions from a permitted Wireless Telecommunications Facility exceeds FCC guidelines, the Department of Public Works shall issue a notice of deficiency and require the

Permittee to take corrective action to bring the Wireless Telecommunications Facility into compliance with FCC guidelines.

- c. **Noise.** If the Department of Public Works determines, either after an inspection required under 15.34.130(P) above or at any other time, that noise from a permitted Wireless Telecommunications Facility at any time of the day or night exceeds forty-five (45) dBA as measured at a distance three (3) feet from any residential building facade, the Department of Public Works shall issue a notice of deficiency and require the Permittee to take corrective action to bring the Wireless Telecommunications Facility into compliance with the noise limit.

3. **Department Remedies.**

- a. **Required Action.** If a Permittee fails to take corrective action with respect to a Wireless Telecommunications Facility within a reasonable time after receiving a notice of deficiency the Department of Public Works shall:

- (1) Take all reasonable, necessary, and appropriate action to remedy a Permittee's noncompliance; or
- (2) Require a Permittee to remove the non-compliant Wireless Telecommunications Facility from the public rights-of-way; and
- (3) Charge to a Permittee the reasonable costs that the City has actually incurred including, but not limited to, administrative costs.

- b. **Discretionary Action.** In addition to the foregoing, if a Permittee fails to take corrective action with respect to a Wireless Telecommunications Facility within a reasonable time after receiving a notice of deficiency the Department of Public Works may deny any pending application for a Wireless Right-of-Way Facility Permit.

O. **Abandonment.**

1. **Permittee Must Maintain Facilities.** Any Wireless Telecommunications Facility installed in the public rights-of-way pursuant to a Wireless Right-of-Way Facility Permit issued under this Chapter 15.34 must be properly maintained and used to provide wireless telecommunications services.
2. **Notice of Abandonment.** A **Permittee** shall notify the Department of Public Works, or the Department of Public Works may determine and notify a Permittee, that a Wireless Telecommunications Facility installed in the Public right-of-way has been Abandoned either because it has not been properly maintained or because it is no longer being used to provide wireless telecommunications services. In such event, a Permittee shall promptly remove the Abandoned Wireless Telecommunications Facility as required by the Department of Public Works and at Permittee's expense.
3. **Remedy for Non-Compliance.** If a Permittee fails to remove an Abandoned Wireless Telecommunications Facility within a reasonable period of time after receiving a notice of abandonment, the Department of Public Works shall take all reasonable, necessary, and appropriate action to remedy the Permittee's failure

to comply with the notice (including removing the Wireless Telecommunications Facility) and may charge to the Permittee the reasonable costs the City has actually incurred including, but not limited to, administrative costs.

P. Term of Permit. A Personal Wireless Service Facility Site Permit shall have a term of ten (10) years. The term shall commence upon the date of issuance of the permit.

Q. Renewal and New Applications

1. When Permitted.

a. Renewal Permitted. At the end of the term set forth in Section 15.34.130(S) above, the Department of Public Works may renew a Wireless Right-of-Way Facility Permit for an additional ten (10) year term, provided that the Department of Public Works did not issue a Modification Permit for the permitted Wireless Telecommunications Facility during the term of the permit.

b. Renewal Not Permitted.

(1) A Wireless Telecommunications Facility that has been issued a Modification Permit may not be renewed. Instead, the Permittee may file a new application for a Wireless Right-of-Way Facility Permit for the permitted and modified Wireless Telecommunications Facility at the same location.

(2) A Wireless Right-of-Way Facility Permit that has been renewed once under Section 15.34.130(T)(1)(a) above may not be renewed for a second time. Instead, the Permittee may file a new application for a Wireless Right-of-Way Facility Permit for the permitted Wireless Telecommunications Facility at the same location.

2. Renewal Application Required. A Permittee seeking to renew a Wireless Right-of-Way Facility Permit that may be renewed under Section 15.34.130(S)(1) above must file a renewal application with the Department of Public Works no later than six (6) months prior to the expiration date of the existing permit. The renewal application shall include a written report from a certified engineer confirming that the permitted Wireless Telecommunications Facility complies with the Public Health Compliance Standard.

3. Approval of Renewal Application.

a. Satisfaction of Public Health Compliance Standard Required. The Department of Public Works shall review every application under the Public Health Compliance Standard. The Department of Public Works shall approve a timely-filed renewal application unless the Department of Public Health determines that the permitted Wireless Telecommunications Facility does not comply with the Public Health Compliance Standard.

b. Applicability of Other Provisions of this Article. The other provisions of this Chapter 15.34 related to approval of an application for a Wireless Right-of-Way Facility Permit shall not apply to the Department's review of a renewal application.

4. **New Application.**

- a. **Required When Renewal Not Permitted.** If, in accordance with Section 1520(a)(2) above, a Wireless Telecommunications Facility cannot be renewed, the Permittee must submit a new application for a Wireless Right-of-Way Facility Permit in order to continue to maintain the permitted Wireless Telecommunications Facility in the public rights-of-way.
- b. **Removal Not Required.** Notwithstanding any other Applicable Law, if the Permittee submits an application for a Wireless Right-of-Way Facility Permit no later than six (6) months prior to the expiration date of a previously issued Wireless Right-of-Way Facility Permit, the Department of Public Works shall not require the applicant to remove the permitted Wireless Telecommunications Facility unless and until there is a final determination denying the application.

R. **Replacement or Removal of Equipment.**

1. **Replacement.** During the term of a Wireless Right-of-Way Facility Permit, a Permittee may Replace equipment that is part of a permitted Wireless Telecommunications Facility without obtaining a Modification Permit.
2. **Removal.** During the term of a Wireless Right-of-Way Facility Permit, a Permittee may remove equipment that is part of a permitted Wireless Telecommunications Facility without obtaining a Modification Permit.
3. **Department Procedures.**
 - a. **Permittee's Notification.** A Permittee shall notify the Department of Public Works in writing that it intends to Replace or remove equipment at a permitted Wireless Telecommunications Facility as permitted by this 15.34.130(U). In the notice, the Permittee shall at a minimum:
 - (1) Identify the use and size of each piece of equipment that the Permittee is seeking to remove from the utility or Street Light Pole;
 - (2) Identify the use and size of the equipment that the Permittee is seeking to install on the utility or Street Light Pole to Replace existing equipment; and
 - (3) If any new equipment will Replace existing equipment, provide drawings and photosimulations of the existing and new equipment the Permittee is seeking to install on the utility or Street Light Pole.
 - b. **Department of Public Works Notification.** Within five (5) business days of receipt of the Permittee's request to Replace or remove equipment as described above, the Department of Public Works shall notify the Permittee in writing whether the Department of Public Works has determined that the request complies with the requirements of this Section 15.34.130(U).
 - c. **Permittee Replacement or Removal.** Upon receipt of a Department of Public Works notice that the request complies with this Section 15.34.130(U), the **Permittee** may **Replace** or remove the equipment identified in the request.

d. **Compliance with Other Requirements.** Nothing in this Section 15.34.130(U) shall be construed to relieve the Permittee of its duty to comply with any City regulations or permitting requirements when removing equipment from or Replacing Equipment on a utility or Street Light Pole.

S. **Modification Permit.**

1. **Modification Permit Required.** A Permittee seeking to add equipment to a permitted Wireless Telecommunications Facility that does not comply with the requirements of Section 15.34.130(U) above, because the Replacement equipment is not identical in size or smaller than the previously permitted equipment, must obtain a Modification Permit.

2. **Department Procedures.**

a. **Application.** In an application for a Modification Permit, the applicant shall at a minimum:

- (1) State whether the permitted Wireless Telecommunications Facility is a Base Station;
- (2) Identify the use and size of any piece of equipment that the applicant is seeking to remove from the utility or Street Light Pole;
- (3) Identify the use and size of any equipment that the applicant is seeking to add to the utility or Street Light Pole;
- (4) State whether any piece of equipment the applicant is seeking to add to the utility or Street Light Pole is Transmission Equipment and, if so, explain why it meets the definition of Transmission Equipment;
- (5) Provide drawings and photo-simulations of the existing and new equipment the Permittee is seeking to install on the utility or Street Light Pole; and
- (6) State whether the proposed modification will result in a substantial change to the physical dimensions of the utility or Street Light Pole.

b. **Time for Department Determination.** The Department of Public Works shall by order or regulation establish the appropriate time frame for the Department of Public Works to review an application for a Modification Permit that is consistent with the requirements of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. § 1455(a), as may be amended from time to time, and with any FCC decision addressing that section or any FCC regulation implementing that section.

3. **Approval of Modification Permits at Base Stations.**

a. **No Substantial Change to the Physical Dimension.** The Department of Public Works shall approve an Eligible Facilities Request for a Modification Permit if the installation of the modified Transmission Equipment would not Substantially Change the Physical Dimensions of the utility or Street Light Pole where the permitted Base Station equipment has been installed.

City to recover its costs related to reviewing an application for a Wireless Right-of-Way Facility Permit. The fee amounts shall be established and/or adjusted pursuant to an adopted fee resolution of the City Council, or as otherwise established and/or adjusted pursuant to Applicable Law.

2. **Hearing Fees.** If one or more appeal hearings is required, each appellant shall pay the Department of Public Works a non-refundable hearing fee for each appeal.
3. **Renewal Fees.** A Permittee seeking to renew a Wireless Right-of-Way Facility Permit shall pay the Department of Public Works a non-refundable permit renewal fee.
4. **Modification Permit Fees.** Each applicant for a Modification Permit shall pay the Department of Public Works a non-refundable permit modification fee, and shall further pay any other permit review fees as required by Section 15.34.130(W)(1) above.
5. **Inspection Fees.** The Department of Public Works shall impose fees for the inspection of a permitted Wireless Telecommunications Facility. The purpose of these fees is to enable the City to recover their costs related to inspecting a permitted Wireless Telecommunications Facility.
6. **Discretion to Require Additional Fees.** In instances where the review of an Application for a Wireless Right-of-Way Facility Permit is or will be unusually costly to the Department of Public Works or to other City departments, the Director of Public Works, in his or her discretion, may, after consulting with other applicable City departments, agencies, boards, or commissions, require an Applicant for a Wireless Right-of-Way Facility Permit to pay a sum in excess of the amounts charged pursuant to this Section 15.34.130(W). This additional sum shall be sufficient to recover actual costs incurred by the Department of Public Works and/or other City departments, agencies, boards, or commissions, in connection with an application for a Wireless Right-of-Way Facility Permit and shall be charged on a time and materials basis. Whenever additional fees are charged, the Director of Public Works, upon request, shall provide in writing the basis for the additional fees and an estimate of the additional fees.
7. **Deposit of Fees.** All fees paid to the Department of Public Works for Wireless Right-of-Way Facility Permit shall be deposited in the _____ Fund established by _____. All other fees shall go directly to the appropriate City department.
8. **Reimbursement of City Costs.** The Department of Public Works may determine that it requires the services of an expert in order to evaluate an application for a Wireless Right-of-Way Facility Permit. In such case, the Department of Public Works shall not approve the application unless the applicant agrees to reimburse the applicable City department for the reasonable costs incurred by that department for the services of a technical expert.

X. **Base Station Determination.**

1. **Request for Determination.**

- a. **New Facilities.** An applicant for a Wireless Right-of-Way Facility Permit may seek a determination from the Department of Public Works that a proposed Wireless Telecommunications Facility is a Base Station.
- b. **Permitted Facilities.** A Permittee may seek a determination from the Department of Public Works that a permitted Wireless Telecommunications Facility is a Base Station.
2. **Single Determination Permitted.** Once the Department has determined that an applicant's new Wireless Telecommunications Facility or a Permittee's permitted Wireless Telecommunications Facility is a Base Station, the Department of Public Works may apply that determination to the applicant's or Permittee's other Wireless Telecommunications Facilities that use the identical equipment.
3. **Department Order.** In lieu of a case-by-case determination, the Department may determine by order or regulation those types of Wireless Telecommunications Facilities that meet the definition of the term Base Station.

15.34.150 - Other provisions.

- A. **Temporary Wireless Telecommunication Facilities.** Installation, maintenance, or operation of any temporary wireless telecommunication site is prohibited except as allowed under a special events permit necessary during a special event authorized by Chapter 5.60, or during a government-declared emergency.
- B. **Illegal facilities.** Illegal wireless telecommunication facilities or Co-location facilities have no vested rights and shall either be brought into legal conforming status in accordance with this Chapter and Title 21 of the Long Beach Municipal Code, or shall be removed.
- C. **Transfer or Change of Ownership/Operator.** Upon assignment or transfer of an already approved Wireless Telecommunications Facility or any rights under that permit, the owner and/or current operator of the Facility shall within thirty (30) days of such assignment or transfer provide written notification to the Director of Public Works of the date of the transfer and the identity of the transferee. The Director may require submission of any supporting materials or documentation necessary to determine that the proposed use is in compliance with the existing permit and all of its conditions including, but not limited to, statements, photographs, plans, drawings, models, and analysis by a State-licensed radio frequency engineer demonstrating compliance with all applicable regulations and standards of the Federal Telecommunications Commission and the California Public Utilities Commission. If the Director determines that the proposed operation is not consistent with the existing permit, the Director shall notify the applicant who may revise the application or apply for modification of the permit pursuant to the requirements of this Chapter.

15.34.160 - Severability Clause.

If any provision or clause of this ordinance or the application thereof to any Person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other article provisions or clauses

or applications, and to this end the provisions and clauses of this ordinance are declared to be severable.

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