

ORDINANCE NO. 1304

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILL VALLEY AMENDING TITLE 20 ("ZONING") OF THE MILL VALLEY MUNICIPAL CODE TO ADD CHAPTER 20.73 AND AMEND SECTIONS 11.16.100; 20.24.020; 20.26.020; 20.36.030; 20.40.030; 20.52.020; and 20.56.030 ESTABLISHING REGULATIONS FOR WIRELESS TELECOMMUNICATION FACILITIES

WHEREAS, This Ordinance is adopted as an urgency ordinance pursuant to Government Code Section 36937(b). The facts constituting the urgency are as follows:

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

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

(3) Installation of small cell and other wireless telecommunications facilities within the public right-of-way can pose a threat to the public health, safety and welfare, including disturbance to the right-of-way through the installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines; land use conflicts and incompatibilities including excessive height or poles and towers; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise or lack of camouflaging of wireless facilities including the associated pedestals, meters, equipment and power generators; and the creation of unnecessary visual and aesthetic blight by failing to utilize alternative technologies or capitalizing on collocation opportunities which may negatively impact the unique quality and character of the City.

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

(5) The Federal Telecommunications Act of 1996 preempts and declares invalid all state rules that restrict entry or limit competition in both local and long-distance telephone service.

(6) The California Public Utilities Commission (CPUC) is primarily responsible for the implementation of local telephone competition and the CPUC issues certificates of public convenience and necessity to new entrants that are qualified to provide competitive local telephone exchange services and related telecommunications service, whether using their own facilities or the facilities or services provided by other authorized telephone corporations.

(7) Section 234(a) of the California Public Utilities Code defines a "telephone corporation" as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

(8) Section 616 of the California Public Utilities Code provides that a telephone corporation “may condemn any property necessary for the construction and maintenance of its telephone line.”

(9) Section 2902 of the California Public Utilities Code authorizes municipal corporations to retain their powers of control to supervise and regulate the relationships between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets by any public utility and the location of the poles, wires, mains, or conduits of any public utility on, under, or above any public streets.

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

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

(12) Section 50030 of the California Government Code provides that any permit fee imposed by a city for the placement, installation, repair, or upgrading of telecommunications facilities, such as lines, poles, or antennas, by a telephone corporation that has obtained all required authorizations from the CPUC and the FCC to provide telecommunications services, must not exceed the reasonable costs of providing the service for which the fee is charged, and must not be levied for general revenue purposes.

(13) State and federal law have changed substantially since the City last adopted regulations for wireless telecommunications facilities in the City. Such changes include modifications to “shot clocks” whereby the City must approve or deny installations within a certain period of time. State and federal laws require local governments to act on permit applications for wireless facilities within a prescribed time period and may automatically deem an application approved when a failure to act occurs. See 47 U.S.C. § 332(c)(7)(B)(iii); 47 C.F.R. §§ 1.40001 et seq.; Cal. Gov’t Code § 65964.1. The Federal Communications Commission (FCC) may require a decision on certain applications in as few as 60 days. See 47 C.F.R. § 1.40001(c)(2); see also In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Report and Order, 29 FCC Rcd. 12865 (Oct. 17, 2014) [hereinafter “2014 Report and Order”]; In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review, Declaratory Ruling, 24 FCC Rcd. 13994 (Nov. 18, 2009) [hereinafter “2009 Declaratory Ruling”]. Pursuant to FCC regulations, the City cannot adopt a moratorium ordinance to toll the time period for review for certain type of facilities, even when needed to allow the City to maintain the status quo while it reviews and revises its policies for compliance with changes in state or federal law. See 47 C.F.R. § 1.40001(c)(3); 2014 Report and Order, 29 FCC Rcd. at 219, 265. The City is in immediate need of clear regulations for wireless installations in the public right-of-way given the number of anticipated applications and legal timelines upon which the City must act.

(14) The public right-of-way in the City is a uniquely valuable public resource, closely linked with the City’s natural beauty including the beach and coastline, and significant number residential communities. The reasonably regulated and orderly deployment of wireless telecommunications facilities

in the public right-of-way is desirable, and unregulated or disorderly deployment represents an ever-increasing and true threat to the health, welfare and safety of the community.

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

(16) The City finds that in light of more recent developments in federal and state law with respect to the regulation of small cell and other wireless telecommunications facilities, there is a need for the City to update its current ordinances based on current telecommunications trends, updates in laws, as well as aesthetic and location options for wireless facilities. The City Council also finds that the lack of specifically-designed standards and regulations in the Municipal Code for wireless facilities located in the public right-of-way, the increasing requests for information about the City's regulation of wireless telecommunications facilities, the inability to adopt a temporary moratorium, and the potential liabilities and negative consequences for noncompliance with state and federal regulations (including, without limitation, automatic approvals) present current and immediate threat to the public health, safety and welfare. The City Council further finds and declares that the immediate implementation of the Ordinance is necessary to preserve and protect public health, safety and welfare.

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

Based on the foregoing, the City Council finds and determines that the immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 36937(b), and take effect immediately upon adoption. Therefore, this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared.

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

NOW, THEREFORE, the City of Mill Valley City Council does ordain as follows:

Section 1. **The Mill Valley Municipal Code is hereby amended as follows:**

A. A new Section 20.73, entitled “Wireless Telecommunications Facilities” is hereby added to Title 18 of the Mill Valley Municipal Code to read as set forth in Exhibit A to this Ordinance, which is hereby incorporated as though set forth in full herein.

B. Section 11.16.100 (Blanket Permits for Certain Applicants) is hereby amended to include the following subsection:

“D. Notwithstanding Subsection A of this Section, no Wireless Telecommunications Facility governed by Chapter 20.73 shall be installed or maintained pursuant to a blanket permit.”

C. Section 20.36.030 of Chapter 20.36 (Limited Commercial (C-L) District) is hereby amended to include the following conditional use:

“E. Wireless Telecommunications Facilities as further outlined in 20.73.”

D. Section 20.40.030 of Chapter 20.40 (General Commercial (C-G) District) is hereby amended to include the following conditional use:

“AA. Wireless Telecommunications Facilities as further outlined in 20.73.”

E. Section 20.52.020 of Chapter 20.52 (Commercial Recreational (C-R) District) is hereby amended to include the following conditional use:

“I. Wireless Telecommunications Facilities as further outlined in 20.73.”

F. Section 20.56.030 of Chapter 20.56 (Open Area (O-A) District) is hereby amended to include the following conditional use:

“H. Wireless Telecommunications Facilities as further outlined in 20.73.”

Section 2. The City Council hereby finds that Adoption of this Ordinance will enact only minor changes in land use regulations, and it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for the development of any new or expanded wireless telecommunication facilities anywhere other than where they were previously allowed under existing federal, state and local regulations. The wireless facilities themselves are exempt from CEQA pursuant to CEQA Guidelines Section 15305, which exempts minor encroachment permits, and Section 15303, which exempts the installation of small equipment and facilities in a small structure. The proposed Ordinance also falls within the “common sense” CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.”

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

Section 4. **Notice.** The City clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be posted within 15 days after its passage, in accordance with Section 36933 of the Government Code.

Section 5. Effective Date. This ordinance is adopted as an urgency ordinance for the immediate preservation of the public peace, health and safety within the meaning of Government Code Section 36937(b) and therefore shall be passed immediately upon its introduction and shall become effective immediately, and shall be posted in three public places in the City.

INTRODUCED at a regular meeting of the City Council of the City of Mill Valley on the 6th day of September, 2018, and

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Mill Valley on this 6th day of September, 2018, by the following vote:

AYES: Councilmember: McCauley, McEntee, Sloan, Wickham, Moulton-Peters
NOES: None
ABSENT: None
ABSTAIN: None


Stephanie Moulton-Peters, Mayor

ATTEST:

Kelsey Rogers, City Clerk/Administrative Analyst

Exhibit A
URGENCY ORDINANCE

Chapter 20.73
WIRELESS TELECOMMUNICATIONS FACILITIES

20.73.010 Purpose

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

B. This chapter is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulation for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or state law; or (6) otherwise authorize the City to preempt any applicable federal or state law.

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

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

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

C. **"Base Station"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended, which defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.40001(b)(9) or any equipment associated with a tower. The

term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii).

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

E. **“Cellular”** means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.

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

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

H. **“Eligible Support Structure”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which defines that term as any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.

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

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

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

- 81 L. **“Monopole”** means a structure consisting of a single pole used to support antennas or related
82 equipment and includes a monopine, monoredwood, and similar monopoles camouflaged to resemble trees or
83 other objects.
- 84 M. **“Personal Wireless Services”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be
85 amended, which defines the term as commercial mobile services, unlicensed wireless services and common
86 carrier wireless exchange access services.
- 87 N. **“Personal Wireless Service Facilities”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as
88 may be amended, which defines the term as facilities that provide personal wireless services.
- 89 O. **“Zoning administrator”** means the City zoning administrator or the City zoning administrator’s
90 designee.
- 91 P. **“Pole”** means a single shaft of wood, steel, concrete, or other material capable of supporting the
92 equipment mounted thereon in a safe and adequate manner and as required by provisions of the Mill Valley
93 Municipal Code.
- 94 Q. **“Public Right-of-Way or “Right-of-Way”** means any public street, public way, public alley or public
95 place, laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions
96 thereto, under the jurisdiction of the City.
- 97 R. **“Reviewing Authority”** means the person or body who has the authority to review and either grant or
98 deny a wireless telecommunications facility permit pursuant to this chapter.
- 99 S. **“RF”** means radio frequency or electromagnetic waves between 30 kHz and 300 GHz in the
100 electromagnetic spectrum range.
- 101 T. **“Roof-mounted”** means mounted directly on the roof of any building or structure, above the eave line
102 of such building or structure.
- 103 U. **“Section 6409(a)”** means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of
104 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as such law may be amended from
105 time to time.
- 106 V. **“Section 6409(a) Approval”** means the approval required by Section 6409(a).
- 107 W. **“Site”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be amended,
108 which provides that for towers other than towers in the public rights-of-way, the current boundaries of the
109 leased or owned property surrounding the tower and any access or utility easements currently related to the
110 site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to
111 other transmission equipment already deployed on the ground.
- 112 X. **“Substantial Change”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may
113 be amended, which defines that term differently based on the particular wireless facility type (tower or base
114 station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC's
115 criteria and thresholds for a substantial change according to the wireless facility type and location.
- 116 1. For towers outside the public rights-of-way, a substantial change occurs when:
- 117 a) the proposed collocation or modification increases the overall height more than 10% or the

- 118 height of one additional antenna array not to exceed 20 feet (whichever is greater); or
- 119 b) the proposed collocation or modification increases the width more than 20 feet from the edge
120 of the wireless tower or the width of the wireless tower at the level of the appurtenance
121 (whichever is greater); or
- 122 c) the proposed collocation or modification involves the installation of more than the standard
123 number of equipment cabinets for the technology involved, not to exceed four; or
- 124 d) the proposed collocation or modification involves excavation outside the current boundaries of
125 the leased or owned property surrounding the wireless tower, including any access or utility
126 easements currently related to the site.
- 127 2. For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
- 128 a) the proposed collocation or modification increases the overall height more than 10% or 10 feet
129 (whichever is greater); or
- 130 b) the proposed collocation or modification increases the width more than 6 feet from the edge of
131 the wireless tower or base station; or
- 132 c) the proposed collocation or modification involves the installation of any new equipment
133 cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
- 134 d) the proposed collocation or modification involves the installation of any new ground-mounted
135 equipment cabinets that are ten percent (10%) larger in height or volume than any existing
136 ground-mounted equipment cabinets; or
- 137 e) the proposed collocation or modification involves excavation outside the area in proximity to
138 the structure and other transmission equipment already deployed on the ground.
- 139 3. In addition, for all towers and base stations wherever located, a substantial change occurs when:
- 140 a) the proposed collocation or modification would defeat the existing concealment elements of
141 the support structure as determined by the zoning administrator; or
- 142 b) the proposed collocation or modification violates a prior condition of approval, provided
143 however that the collocation need not comply with any prior condition of approval related to
144 height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a
145 substantial change described in this section.

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

Y. **“Telecommunications Tower”** or **“Tower”** means a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and primarily used to support wireless telecommunications facility antennas.

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

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

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

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

1. A facility that qualifies as an amateur station as defined by the FCC, 47 C.F.R. Part 97, of the Commission’s Rules, or its successor regulation.
2. An antenna facility that is subject to the FCC Over-The-Air-Receiving Devices rule, 47 C.F.R. Section 1.4000, or any successor regulation, including, but not limited to, direct-to-home satellite dishes that are less than one meter in diameter, TV antennas used to receive television broadcast signals and wireless cable antennas.
3. Portable radios and devices including, but not limited to, hand-held, vehicular, or other portable receivers, transmitters or transceivers, cellular phones, CB radios, emergency services radio, and other similar portable devices as determined by the zoning administrator.
4. Telecommunications facilities owned and operated by any government agency.
5. Telecommunications facilities owned and operated by any emergency medical care provider.
6. Mobile services providing public information coverage of news events of a temporary nature.
7. Any wireless telecommunications facilities exempted from the Mill Valley Municipal Code by federal law or state law.

20.73.030 Applicability

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

1. All facilities for which applications were not approved prior to the effective date of this chapter shall be subject to and comply with all provisions of this chapter;

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

B. Title 20, including but not limited to this chapter 20.73 shall not apply to a wireless telecommunications facility on property owned by the City.

C. Notwithstanding any provision of the Mill Valley Municipal Code to the contrary, provisions governing the installation of a public utility facility or accessory equipment shall not apply to wireless telecommunications facilities. This chapter 20.73 shall govern all applications for wireless telecommunications facilities.

20.73.040 Wireless Telecommunications Facility Permit Required

A. **Permit required.** No wireless telecommunications facility shall be located or modified within the City on any property, including the public right-of-way, without the issuance of a permit as required by this chapter as set forth in the table below. Such permit shall be in addition to any other permit required pursuant to the Mill Valley Municipal Code.

<i>Description Wireless Facility</i>	<i>Private Property</i>		<i>Public Right-of Way³</i>
	<i>RS, RSP, DR, MFR Zoning Districts</i>	<i>All Other Zoning Districts</i>	<i>Non-Residential Zoning Districts</i>
Roof-mounted facility, building-mounted facility, or facility mounted on an existing pole	Not Permitted	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
Facility mounted on a replacement pole or new telecommunications tower	Not Permitted	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
New wireless telecommunications collocation facility	Not Permitted	Conditional Use Permit/ Design Review	Conditional Use Permit/ Design Review
Eligible facilities request ¹ or application pursuant to California Government Code Section 65850.6 ²	Permitted	Permitted	Permitted
¹ See requirements of section 20.73.140. ² See requirements of section 20.73.150. ³ For any public right of way not within a zoning district, the location of a wireless telecommunication facility shall be determined based upon the closest district adjacent to the facility's location.			

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

20.73.050 Application for Permit

A. **Application content.** All applications for a permit required by this chapter must be made in writing on such form as the zoning administrator prescribes, which shall include the following information, in addition to all other information determined necessary by the zoning administrator as well as all other information required by the City as part of an application for a conditional use permit:

1. Full name and contact information for the facility owner, facility operator, agent (if any), and property owner, and related letter(s) of authorization.
2. The type of facility, including a full written description of the proposed facility, its purpose and specifications.
3. A detailed site and engineering plan of the proposed facility containing the exact proposed location of the facility, created by a qualified licensed engineer and in accordance with requirements set by the zoning administrator.
4. Photographs of facility equipment and an accurate visual impact analysis with photo simulations.
5. Completion of an RF exposure guidelines checklist, and proof of all applicable licenses or other approvals required by the FCC.
6. If the application is for a facility that will be located within the public right-of-way, the applicant shall certify that it is a telephone corporation or state the basis for its claimed right to enter the right-of-way, and provide a copy of its certificate of public convenience and necessity (CPCN), if a CPCN has been issued by the California Public Utilities Commission.
7. A written description identifying the geographic service area for the subject installation, accompanied by a plan and maps showing anticipated future installations and modifications for the following two years.
8. A written report that analyzes acoustic levels for the proposed wireless telecommunications facility and all associated equipment including without limitation all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators in order to demonstrate compliance with chapter 7.16 (Noise Control). The acoustic analysis must be prepared and certified by an engineer and include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of a written report, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.
9. If the applicant claims it requires an exception to the requirements of this chapter, all information and studies necessary for the City to evaluate that claim.
10. An application and processing fee and a deposit for a consultant review as set forth in paragraph (B) of this section.

11. Any other studies or information determined necessary by the zoning administrator may be required.

B. Independent expert.

1. The zoning administrator is authorized to retain on behalf of the City an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility to review the technical aspects of the application, including but not limited to the following matters:

- (a) The accuracy, adequacy, and completeness of submissions,
- (b) Compliance with applicable radio frequency emission standards,
- (c) Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so,
- (d) Technical demonstration of the unavailability of alternative sites, facility designs or configurations, and coverage analysis, and
- (e) The validity of conclusions reached or claims made by applicant.

2. The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution.

20.73.060 Location and Configuration Preferences

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

B. Review of Location and Configuration. The reviewing authority shall consider the extent to which a proposed wireless telecommunication facility complies with these preferences and whether there are feasible alternative locations or configurations to the proposed facility that are more preferred under this section. If the location or configuration of a proposed facility qualifies for two or more categories of preferred locations or configurations, it shall be deemed to belong to the least preferred category.

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

- 1. Collocation with existing facilities,
- 2. Roof-mounted,
- 3. Building-mounted,
- 4. Mounted on an existing pole or utility pole
- 5. Mounted on a new pole or utility pole that will replace an existing pole or utility pole,
- 6. Mounted on a new telecommunication tower.

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

1. In the C-G zoning district,
2. In the C-N zoning district,
3. In the C-L zoning district,
4. In the C-D zoning district,
5. In the public right-of-way with the closest adjacent district being the C-G district,
6. In the public right-of-way with the closest adjacent district being the C-N district,
7. In the public right-of-way with the closest adjacent district being the C-L district,
8. In the public right-of-way with the closest adjacent district being the C-D district,
9. Any public right-of-way location that abuts the property line of a structure recognized as a local, state or national historic landmark, historic district or on the register of historic places,

E. **Accessory equipment.** In order of preference from most preferred to least preferred, accessory equipment for wireless telecommunication facilities and wireless telecommunications collocation facilities shall be located underground, within a building or structure, on a screened roof top area or structure, or in a rear yard if not readily visible from surrounding properties and the roadway, unless the reviewing authority finds that another location is preferable under the circumstances of the application.

20.73.070 Design and Development Standards for All Facilities

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

B. **No speculative facilities.** A wireless telecommunications facility, wireless telecommunications collocation facility, or a telecommunications tower, which is built on speculation and for which there is no wireless tenant is prohibited within the City.

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

D. **Traffic safety.** All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.

E. **Antennas.** The applicant shall use the least visible antennas possible to accomplish the coverage objectives. Antenna elements shall be flush mounted, to the extent reasonably feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or

carriers. Antennas shall be situated as to reduce visual impact without compromising their function. Whip antennas need not be screened.

F. **Landscaping.** Where appropriate, facilities shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening. Additional landscaping shall be planted, irrigated, and maintained where such vegetation is deemed necessary by the City to provide screening or to block the line of sight between facilities and adjacent uses.

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

H. **Lighting.** No wireless telecommunications facility may be illuminated unless either specifically required by the Federal Aviation Administration or other government agency or in association with the illumination of an athletic field on City or school property. Lightning arresters and beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as telecommunications towers, lattice towers, and monopoles.

I. **Noise.**

1. Each wireless telecommunications facility and wireless telecommunications collocation facility shall be operated in such a manner so as to minimize any possible disruption caused by noise.
2. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 5:00 p.m. and 7:00 a.m.
3. At no time shall equipment noise from any facility exceed an exterior noise level of 50 dBA at the facility's property line if the facility is located in a business or commercial zone that permits those uses, provided, however, that for any such facility located within 500 feet of any property zoned residential or improved with a residential use, such equipment noise shall at no time be audible at the property line of any such residential property. For any facility located within a residential zone, such equipment noise shall at no time be audible at the property line of any residentially improved or residential zoned property.
4. Any equipment, including but not limited to air conditioning units, that may emit noise that would be audible from beyond three feet from the facility in the case of a facility located in the right-of-way, or in the case of other facilities the facility's property line, shall be enclosed or equipped with noise attenuation devices to the extent necessary to ensure compliance with applicable noise limitations under the Mill Valley Municipal Code.

J. **Security.** Each wireless telecommunications facility and wireless telecommunications collocation facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight, or attractive nuisances. The reviewing authority may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location or accessibility, a facility has the potential to become an attractive nuisance.

K. **Modification.** At the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise, and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually

358 intrusive facilities with smaller, less visually intrusive facilities.

359 **20.73.080 Additional Design and Development Standards for Facilities Outside the Public Right-of-**
360 **Way**

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

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

367 C. **Roof-mounted facilities.** Roof-mounted facilities shall be designed and constructed to be fully
368 concealed or screened in a manner compatible with the existing architecture of the building the facility is
369 mounted to in color, texture, and type of material. Screening shall not increase the bulk of the structure nor
370 alter the character of the structure.

371 D. **Facilities mounted to a telecommunications tower.** Facilities mounted to a telecommunications
372 tower shall be located in close proximity to existing above-ground utilities, such as electrical towers or utility
373 poles (which are not scheduled for removal or under grounding for at least 18 months after the date of
374 application), light poles, trees of comparable heights, and in areas where they will not detract from the
375 appearance of the City.

376 1. Facilities mounted to a telecommunications tower, including, but not limited to, the attached
377 antennas, shall be designed to be the minimum functional height and width required to adequately
378 support the proposed facility and meet FCC requirements. The applicant shall provide
379 documentation satisfactory to the zoning administrator establishing compliance with this
380 paragraph. In any event, facilities mounted to a telecommunications tower shall not exceed the
381 applicable height limit for structures in the applicable zoning district.

382 2. Aside from the antenna itself, no additional equipment may be visible. All cables, including, but
383 not limited to, electrical and utility cables, shall be run within the interior of the
384 telecommunications tower and shall be camouflaged or hidden to the fullest extent feasible
385 without jeopardizing the physical integrity of the tower.

386 3. Monopole installations shall be situated so as to utilize existing natural or man-made features
387 including topography, vegetation, buildings, or other structures to provide the greatest amount of
388 visual screening.

389 4. All antenna components and accessory wireless equipment shall be treated with exterior coatings
390 of a color and texture to match the predominant visual background or existing architectural
391 elements so as to visually blend in with the surrounding development. Subdued colors and non-
392 reflective materials that blend with surrounding materials and colors shall be used.

393 5. Monopoles shall be no greater in diameter or other cross-sectional dimensions than is necessary
394 for the proper functioning of the facility.

395 6. If a faux tree is proposed for the monopole installation, it shall be of a type of tree compatible with
396 those existing in the immediate areas of the installation. If no trees exist within the immediate
397 areas, the applicant shall create a landscape setting that integrates the faux tree with added species

of a similar height and type. Additional camouflage of the faux tree may be required depending on the type and design of faux tree proposed.

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

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

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

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

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

C. Antennas.

1. *Utility poles.* The maximum height of any antenna mounted to an existing utility pole shall not exceed 24 inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than 18 feet above any drivable road surface. All installations on utility poles shall fully comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as revised.
2. *Street light poles.* The maximum height of any antenna mounted to a street light pole shall not exceed seven feet above the existing height of a street light pole in a location with its closest adjacent district being a commercial zoning district and shall not exceed three feet above the existing height of a street light pole in any other zoning district. Any portion of the antenna or equipment mounted on such a pole shall be no less than 18 feet above any drivable road surface.

D. Poles.

- 437 1. Only pole-mounted antennas shall be permitted in the right-of-way. All other telecommunications
438 towers are prohibited, and no new poles are permitted that are not replacing an existing pole.
- 439 2. Pole height and width limitations:
- 440 (a) All poles shall be designed to be the minimum functional height and width required to
441 support the proposed antenna installation and meet FCC requirements. Poles and
442 antennas and similar structures shall be no greater in diameter or other cross-sectional
443 dimensions than is necessary for the proper functioning of the facility.
- 444 (b) Notwithstanding the above, no facility shall be located on a pole that is less than 26
445 feet in height and no facility shall exceed 35 feet in height, including, but not limited
446 to the pole and any antenna that protrudes above the pole.
- 447 (c) Pole mounted equipment shall not exceed six cubic feet in dimension.
- 448 3. If an applicant proposes to replace a pole in order to accommodate the facility, the pole shall
449 match the appearance of the original pole to the extent feasible, unless another design better
450 accomplishes the objectives of this section. Such replacement pole shall not exceed the height of
451 the pole it is replacing by more than seven feet.
- 452 4. If an exception is granted for placement of new poles in the right-of-way, new poles shall be
453 designed to resemble existing poles in the right-of-way, including size, height, color, materials and
454 style, with the exception of any existing pole designs that are scheduled to be removed and not
455 replaced, unless another design better accomplishes the objectives of this section. Such new poles
456 that are not replacement poles shall be located no closer than 90 feet to an existing pole.
- 457 E. **Space occupied.** Facilities shall be designed to occupy the least amount of space in the right-of-way
458 that is technically feasible.
- 459 F. **Location.**
- 460 1. Each component part of a facility shall be located so as not to cause any physical or visual
461 obstruction to pedestrian or vehicular traffic, inconvenience to the public's use of the right-of-way,
462 or safety hazards to pedestrians and motorists.
- 463 2. A facility shall not be located within any portion of the public right-of-way interfering with access
464 to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing
465 structures, or any other vital public health and safety facility.
- 466 3. Facilities mounted to a telecommunications tower, above-ground accessory equipment, or walls,
467 fences, landscaping or other screening methods shall be setback a minimum of 18 inches from the
468 front of a curb.
- 469 4. Each pole mounted wireless telecommunications facility must be separated by at least 1,500 feet.
- 470 5. All cables, including, but not limited to, electrical and utility cables, between the pole and any
471 accessory equipment shall be placed underground, if feasible.

6. All new wires needed to service the wireless telecommunications facility must be installed within the width of the existing utility pole so as to not exceed the diameter and height of the existing utility pole.

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

H. Accessory equipment. With the exception of the electric meter, which shall be pole-mounted to the extent feasible, all accessory equipment shall be located underground to the extent feasible. When above-ground is the only feasible location for a particular type of accessory equipment and when such accessory equipment cannot be pole-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five feet and a total footprint of 15 square feet, and shall be screened and camouflaged to the fullest extent possible, including the use of landscaping or alternate screening. Required electrical meter cabinets shall be adequately screened and camouflaged.

I. Documentation. The applicant shall provide documentation satisfactory to the zoning administrator establishing compliance with this section 20.73.090.

20.73.100 Conditions of Approval for All Facilities

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

1. Before the permittee submits any application for a building permit or other permits required by the Mill Valley Municipal Code, the permittee must incorporate the wireless telecommunication facility permit granted under this chapter, all conditions associated with the wireless telecommunications facility permit and the approved plans and any photo simulations (the "Approved Plans") into the project plans. The permittee must construct, install and operate the wireless telecommunications facility in strict compliance with the Approved Plans. The permittee shall submit an as built drawing within 90 days after installation of the facility.
2. Where feasible, as new technology becomes available, the permittee shall:
 - (a) place above-ground wireless telecommunications facilities below ground, including, but not limited to, accessory equipment that has been mounted to a telecommunications tower or mounted on the ground; and
 - (b) replace larger, more visually intrusive facilities with smaller, less visually intrusive facilities, after receiving all necessary permits and approvals required pursuant to the Mill Valley Municipal Code.
3. The permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the City. The permittee shall notify the City of any changes to the information submitted within seven days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:
 - (a) Identity, including the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator, and the agent or person responsible for the maintenance of the facility.

- 511 (b) The legal status of the owner of the wireless telecommunications facility, including
512 official identification numbers and FCC certification.
- 513 (c) Name, address, and telephone number of the property owner if different than the
514 permittee.
- 515 4. The permittee shall not place any facilities that will deny access to, or otherwise interfere with, any
516 public utility, easement, or right-of-way located on the site. The permittee shall allow the City
517 reasonable access to, and maintenance of, all utilities and existing public improvements within or
518 adjacent to the site, including, but not limited to, pavement, trees, public utilities, lighting and
519 public signage.
- 520 5. At all times, all required notices and signs shall be posted on the site as required by the FCC and
521 California Public Utilities Commission, and as approved by the City. The location and dimensions
522 of a sign bearing the emergency contact name and telephone number shall be posted pursuant to
523 the approved plans.
- 524 6. At all times, the permittee shall ensure that the facility complies with the most current regulatory
525 and operational standards including, but not limited to, radio frequency emissions standards
526 adopted by the FCC and antenna height standards adopted by the Federal Aviation Administration.
527 The City shall retain a consultant, at the sole expense of the permittee, to perform testing
528 demonstrating compliance with current regulatory and operational standards. Tests shall occur
529 upon commencement of operations and annually thereafter.
- 530 7. If the zoning administrator determines there is good cause to believe that the facility may emit
531 radio frequency emissions that are likely to exceed FCC standards, the zoning administrator may
532 require the permittee to submit a technically sufficient written report certified by a qualified radio
533 frequency emissions engineer, certifying that the facility is in compliance with such FCC
534 standards.
- 535 8. Permittee shall pay for and provide a performance bond, which shall be in effect until the facilities
536 are fully and completely removed and the site reasonably returned to its original condition, to
537 cover permittee's obligations under these conditions of approval and the Mill Valley Municipal
538 Code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance
539 obligations and landscaping obligations. The amount of the performance bond shall be set by the
540 zoning administrator in an amount rationally related to the obligations covered by the bond and
541 shall be specified in the conditions of approval.
- 542 9. Permittee shall defend, indemnify, protect and hold harmless the City, its elected and appointed
543 council members, boards, commissions, officers, officials, agents, consultants, employees, and
544 volunteers from and against any and all claims, actions, or proceeding against the City and its
545 elected and appointed council members, boards, commissions, officers, officials, agents,
546 consultants, employees and volunteers to attack, set aside, void or annul, an approval of the City,
547 Planning Commission or City council concerning this permit and the project. Such
548 indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or
549 expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability
550 of any kind related to or arising from such claim, action, or proceeding. The City shall promptly
551 notify the permittee of any claim, action, or proceeding. Nothing contained herein shall prohibit
552 City from participating in a defense of any claim, action or proceeding. The City shall have the
553 option of coordinating the defense, including, but not limited to, choosing counsel for the defense
554 at permittee's expense.

10. All conditions of approval shall be binding as to the applicant and all successors in interest to permittee.
11. A condition setting forth the permit expiration date in accordance with section 20.73.200 shall be included in the conditions of approval.

20.73.110 Additional Conditions of Approval for Facilities in the Public Right-of-Way

A. In addition to compliance with the requirements of this chapter, upon approval all facilities in the public right-of-way shall be subject to each of the conditions of approval set forth in section 20.73.100, each of the following conditions of approval, and any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:

1. The wireless telecommunications facility shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the City engineer for the purpose of: (a) protecting the public health, safety, and welfare, (b) preventing interference with pedestrian and vehicular traffic, and (c) preventing damage to the public right-of-way or any property adjacent to it. The City may modify the permit to reflect such conditions, changes or limitations by following the same notice and public hearing procedures as are applicable to the grant of a wireless telecommunications facility permit for similarly located facilities, except the permittee shall be given notice by personal service or by registered or certified mail at the last address provided to the City by the permittee.
2. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement or property without the prior consent of the owner of that structure, improvement or property. No structure, improvement or property owned by the City shall be moved to accommodate a wireless telecommunications facility unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the City's structure, improvement or property. Prior to commencement of any work pursuant to an encroachment permit issued for any facility within the public right-of-way, the permittee shall provide the City with documentation establishing to the City's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement or property within the public right-of-way to be affected by applicant's facilities.
3. The permittee shall assume full liability for damage or injury caused to any property or person by the facility.
4. The permittee 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, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation or maintenance of a wireless telecommunications facility in the public right-of-way. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the zoning administrator, the zoning administrator shall cause such repair to be completed at permittee's sole cost and expense.

5. Prior to issuance of a building permit, the applicant shall obtain the zoning administrator's approval of a tree protection plan prepared by a certified arborist if the installation of the wireless telecommunication facility will be located within the canopy of a street tree, or a protected tree on private property, or within a ten-foot radius of the base of such a tree. Depending on site specific criteria (e.g., location of tree, size, and type of tree, etc.), a radius greater than ten feet may be required by the zoning administrator.
6. Should any utility company offer electrical service that does not require the use of a meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet and any related foundation within 30 days of such service being offered and reasonably restore the area to its prior condition.
7. The permittee shall modify, remove, or relocate its facility, or portion thereof, without cost or expense to City, if and when made necessary by:
- a) Any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or aboveground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by City or any other public agency;
 - b) Any abandonment of any street, sidewalk, or other public facility;
 - c) Any change of grade, alignment or width of any street, sidewalk or other public facility; or
 - d) A determination by the zoning administrator that the wireless telecommunications facility has become incompatible with public health, safety or welfare or the public's use of the public right-of-way.
8. Any modification, removal, or relocation of the facility shall be completed within 90 days of written notification by City unless exigencies dictate a shorter period for removal or relocation. Modification or relocation of the facility shall require submittal, review and approval of a permit amendment pursuant to the Mill Valley Municipal Code. The permittee shall be entitled, on permittee's election, to either a pro-rata refund of fees paid for the original permit or to a new permit, without additional fee, at a location as close to the original location as the standards set forth in the Mill Valley Municipal Code allow. In the event the facility is not modified, removed, or relocated within said period of time, the City may cause the same to be done at the sole cost and expense of permittee. Further, due to exigent circumstances as provided in the Mill Valley Municipal Code, the City may modify, remove, or relocate wireless telecommunications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.

20.73.120 Findings

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

1. The proposed facility complies with all applicable provisions of this chapter.
2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.

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

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

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

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

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

20.73.130 Exceptions

A. Exceptions pertaining to any provision of this chapter, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the reviewing authority if the reviewing authority makes the finding that:

1. Denial of the facility as proposed would violate federal law, state law, or both; or

2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.

B. An applicant may only request an exception at the time of applying for a wireless telecommunications facility permit. The request must include both the specific provision(s) of this chapter from which the exception is sought and the basis of the request. Any request for an exception after the City has deemed an application complete shall be treated as a new application.

C. Notwithstanding any other provision of this chapter, a conditional use permit shall be required for a facility when an exception is requested.

D. The applicant shall have the burden of proving that denial of the facility as proposed would violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both, using the evidentiary standards required by that law at issue. The City shall have the right to hire an independent consultant, at the applicant's expense, to evaluate the issues raised by the exception request and shall have the right to submit rebuttal evidence to refute the applicant's claim.

20.73.140 Wireless Telecommunications Facilities Covered under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012

A. **Purpose.** Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified in 47 U.S.C. § 1455(a), generally requires that State and local governments "may not deny, and

shall approve" requests to collocate, remove or replace transmission equipment at an existing tower or base station. Federal Communication Commission regulations interpret this statute and create procedural rules for local review, which generally preempt certain subjective land-use regulations, limit permit application content requirements and provide the applicant with a potential "deemed granted" remedy when the State or local government fails to approve or deny the request within sixty (60) days after submittal (accounting for any tolling periods). Moreover, whereas Section 704 of the Telecommunications Act of 1996, Pub. L. 104-104, codified in 47 U.S.C. § 332, applies to only "personal wireless service facilities" (e.g., cellular telephone towers and equipment), Section 6409(a) applies to all "wireless" facilities licensed or authorized by the FCC (e.g., cellular, Wi-Fi, satellite, microwave backhaul, etc.).

The overlap between wireless deployments covered under Section 6409(a) and other wireless deployments, combined with the different substantive and procedural rules applicable to such deployments, creates a potential for confusion that harms the public interest in both efficient wireless facilities deployment and carefully planned community development in accordance with local values. A separate permit application and review process specifically designed for compliance with Section 6409(a) contained in a section devoted to Section 6409(a) will mitigate such potential confusion, streamline local review and preserve the City's land-use authority to maximum extent possible.

B. Applicability. This Section applies to all collocations or modifications to an existing wireless tower or base station submitted with a written request for approval pursuant to Section 6409(a).

C. Approval Required. Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted with a written request for a 6409(a) approval shall be subject to the zoning administrator's approval, conditional approval or denial without prejudice pursuant to the standards and procedures contained in this chapter.

D. Other Regulatory Approvals. No collocation or modification approved under any section 6409(a) approval may occur unless the applicant also obtains all other applicable permits or regulatory approvals from the City and state or federal agencies. Furthermore, any section 6409(a) approval granted under this chapter shall remain subject to any and all lawful conditions or requirements associated with such other permits or regulatory approvals from the City and state or federal agencies.

E. Application Requirement. The City shall not approve any wireless facility subject to this chapter except upon a duly filed application consistent with this Section and any other written rules the City or the zoning administrator may establish from time to time. An application must include the information required by Section 20.73.050 and the following additional information:

1. A title report prepared within the six months prior to the application filing date in order for the City verify the property owner's identity. If the applicant does not own the subject property, the application must include a written authorization signed by the property owner that empowers the applicant to file the application and perform all wireless facility construction, installation, operation and maintenance to the extent described in the application.
2. A written statement that explains in plain factual detail whether and why Section 6409(a) and the related FCC regulations at 47 C.F.R. § 1.40001 et seq. require approval for the specific project. A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met. Bare conclusions not factually supported do not constitute a complete written analysis. As part of this written statement the applicant must also include (i) whether and why the support structure qualifies as an existing tower or existing base station; and (ii) whether and why the proposed collocation or modification does not cause a

substantial change in height, width, excavation, equipment cabinets, concealment or permit compliance.

F. **Procedures for a Duly Filed Application.** The City shall not review any application unless duly filed in accordance with this Section, as follows:

1. *Pre-Submittal Conference.* Before application submittal, applicants must schedule and attend a pre-application meeting with the zoning administrator for all proposed modifications submitted for approval pursuant to Section 6409(a). The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification, including whether the project qualifies for Section 6409(a); any latent issues in connection with the existing tower or base station; potential concealment issues (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback about whether such applications or other materials may be incomplete or unacceptable. The zoning administrator may, in the zoning administrator's discretion, grant a written exemption to the submittal appointment under Section 20.73.140(F)(2) or for a specific requirement for a complete application to any applicant who (i) schedules, attends and fully participates in any pre-submittal conference and (ii) shows to the zoning administrator's satisfaction that such specific requirement duplicates information already provided in other materials to be submitted or is otherwise unnecessary to the City's review under facts and circumstances in that particular case. Any written exemption will be limited to the project discussed at the pre-submittal conference and will not be extended to any other project.
2. *Submittal Appointment.* All applications must be filed with the City at a pre-scheduled appointment. Applicants may generally submit one application per appointment, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. Any application received without an appointment, whether delivered in-person or through any other means, will not be considered duly filed unless the applicant received a written exemption from the zoning administrator at a pre-submittal conference.
3. *Appointment Scheduling Procedures.* For any event in the submittal process that requires an appointment, applicants must submit a written request to the zoning administrator. The zoning administrator shall endeavor to provide applicants with an appointment as soon as reasonably feasible and within five business days after a written request is received.
4. *Applications Deemed Withdrawn.* To promote efficient review and timely decisions, an application will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the City within 90 calendar days after the City deems the application incomplete in a written notice to the applicant. The zoning administrator may, in the zoning administrator's discretion, grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.
5. *Departmental Forms, Rules and Other Regulations.* The City council authorizes the zoning administrator to develop and publish permit application forms, checklists, informational handouts and other related materials that the zoning administrator finds necessary, appropriate or useful for processing requests for section 6409(a) approvals. Without further authorization from the City council, the zoning administrator may from time-to-time update and alter any such permit

763 application forms, checklists, informational handouts and other related materials as the zoning
764 administrator deems necessary, appropriate or useful to respond to regulatory, technological or
765 other changes related to this chapter. The City council authorizes the zoning administrator to
766 establish other reasonable rules and regulations, which may include without limitation regular
767 hours for appointments with applicants, as the zoning administrator deems necessary or
768 appropriate to organize, document and manage the application intake process.

769 **G. Administrative Review; Decision Notices.** The zoning administrator shall administratively review an
770 application for a section 6409(a) approval and act on such an application without prior notice or a public
771 hearing. Within five working days after the zoning administrator conditionally approves or denies an
772 application submitted for Section 6409(a) approval or before the FCC timeframe for review expires
773 (whichever occurs first), the zoning administrator shall send a written notice to the applicant. In the event that
774 the zoning administrator determines that an application submitted for approval pursuant to Section 6409(a)
775 does not qualify for approval, the zoning administrator will send written notice to the applicant that includes
776 the reasons to support the review authority's decision and states that the application will be automatically
777 denied without prejudice on the 60th day after the date the application was filed unless the applicant withdraws
778 the application.

779 **H. Required Findings for 6409(a) Approval.** The zoning administrator may approve or conditionally
780 approve an application submitted for Section 6409(a) approval when the zoning administrator finds that the
781 proposed project:

- 782 1. Involves collocation, removal or replacement of transmission equipment on an existing wireless
783 tower or base station; and
- 784 2. Does not substantially change the physical dimensions of the existing wireless tower or base
785 station.

786 **I. Criteria for Denial Without Prejudice.** Notwithstanding any other provisions in this chapter, and
787 consistent with all applicable federal laws and regulations, the zoning administrator may deny without
788 prejudice an application submitted for approval pursuant to Section 6409(a) when it finds that the proposed
789 project:

- 790 1. Does not satisfy the criteria for approval;
- 791 2. Violates any legally enforceable standard or permit condition reasonably related to public health
792 and safety then in effect; or
- 793 3. Involves the replacement of the entire support structure.

794 **J. Conditional 6409(a) Approvals.** Subject to any applicable limitations in federal or state law, nothing
795 in this chapter is intended to limit the City's authority to conditionally approve an application for a section
796 6409(a) approval to protect and promote the public health, safety and welfare.

797 **K. Appeals.** Notwithstanding any provision of the Mill Valley Municipal Code to the contrary, including
798 but not limited to section , an applicant may appeal a decision by the zoning administrator to deny without
799 prejudice a Section 6409(a) application. The appeal must be filed within 10 days from the zoning
800 administrator's decision. The appeal must state in plain terms the grounds for reversal and the facts that support
801 those grounds. The City manager shall serve as the appellate authority for all appeals of all actions of the
802 zoning administrator taken pursuant to this section. The City shall provide notice for an administrative hearing
803 by the City manager. The City manager shall limit its review to whether the project should be approved or

denied in accordance with the provisions in paragraphs (H) and (I) of this section. The decision of the City manager shall be final and not subject to any further administrative appeals.

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

1. *Approved Plans.* Before the permittee submits any application for a building permit or other permits required by the Mill Valley Municipal Code, the permittee must incorporate the wireless telecommunications facility permit granted under this section, all conditions associated with the wireless telecommunications facility permit and the approved plans and any photo simulations (the "Approved Plans") into the project plans. The permittee must construct, install and operate the wireless telecommunications facility in strict compliance with the Approved Plans. The permittee shall submit an as built drawing within 90 days after installation of the facility.
2. *Permit Term.* The City's grant or grant by operation of law of a Section 6409(a) approval constitutes a federally-mandated modification to the underlying permit or other prior regulatory authorization for the subject tower or base station. The City's grant or grant by operation of law of a section 6409(a) approval will not extend the permit term, if any, for any conditional use permit, or other underlying prior regulatory authorization. Accordingly, the term for a section 6409(a) approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station.
3. *Accelerated Permit Terms Due to Invalidation.* In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Section 6409(a) approval, such 6409(a) approvals shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved section 6409(a) approvals or the zoning administrator grants an extension upon written request from the permittee that shows good cause for the extension, which includes without limitation extreme financial hardship. Notwithstanding anything in the previous sentence to the contrary, the zoning administrator may not grant a permanent exemption or indefinite extension. A permittee shall not be required to remove its improvements approved under the invalidated section 6409(a) approval when it has submitted an application for a conditional use permit for those improvements before the one-year period ends.
4. *No Waiver of Standing.* The City's grant or grant by operation of law of a Section 6409(a) approval does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any section 6409(a) approval.
5. *Build-out Period.* The section 6409(a) approval will automatically expire one year from the issuance date unless the permittee obtains all other permits and approvals required to install, construct and operate the approved wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use. The zoning administrator may grant one written extension to a date certain when the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition. Any further extensions may be granted by the planning commission.

- 848 6. *Maintenance Obligations; Vandalism.* The permittee shall keep the site, which includes without
849 limitation any and all improvements, equipment, structures, access routes, fences and landscape
850 features, in a neat, clean and safe condition in accordance with the Approved Plans and all
851 conditions in this section 6409(a) approval. The permittee shall keep the site area free from all
852 litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any
853 graffiti or other vandalism at the site within 48 hours after the permittee receives notice or
854 otherwise becomes aware that such graffiti or other vandalism occurred.
- 855 7. *Compliance with Laws.* The permittee shall maintain compliance at all times with all federal, state
856 and local statutes, regulations, orders or other rules that carry the force of law ("Laws") applicable
857 to the permittee, the subject property, the wireless facility or any use or activities in connection
858 with the use authorized in this section 6409(a) approval. The permittee expressly acknowledges
859 and agrees that this obligation is intended to be broadly construed and that no other specific
860 requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's
861 obligations to maintain compliance with all Laws.
- 862 8. *Adverse Impacts on Other Properties.* The permittee shall use all reasonable efforts to avoid any
863 and all undue or unnecessary adverse impacts on nearby properties that may arise from the
864 permittee's construction, installation, operation, modification, maintenance, repair, removal or
865 other activities at the site. The permittee shall not perform or cause others to perform any
866 construction, installation, operation, modification, maintenance, repair, removal or other work that
867 involves heavy equipment or machines on any day and at any time prohibited under the Mill
868 Valley Municipal Code. The restricted work hours in this condition will not prohibit any work
869 required to prevent an actual, immediate harm to property or persons, or any work during an
870 emergency declared by the City. The zoning administrator may issue a stop work order for any
871 work that violates this condition.
- 872 9. *Noise Complaints.* The permittee shall conduct all activities on the site in compliance with the
873 noise standards in the Mill Valley Municipal Code. In the event that any person files a noise
874 complaint and the City verifies that such complaint is valid, the permittee must remedy the
875 violation within 10 days after notice from the City, which may include a demonstration that the
876 permittee has amended its operational guidelines in situations where the violation arises from the
877 permittee's personnel rather than the permittee's equipment.
- 878 10. *Inspections; Emergencies.* The permittee expressly acknowledges and agrees that the City or its
879 designee may enter onto the site and inspect the improvements and equipment upon reasonable
880 prior notice to the permittee; provided, however, that the City or its designee may, but will not be
881 obligated to, enter onto the site area without prior notice to support, repair, disable or remove any
882 improvements or equipment in emergencies or when such improvements or equipment threatens
883 actual, imminent harm to property or persons. The permittee will be permitted to supervise the
884 City or its designee while such inspection or emergency access occurs.
- 885 11. *Contact Information.* The permittee shall furnish the City with accurate and up-to-date contact
886 information for a person responsible for the wireless facility, which includes without limitation
887 such person's full name, title, direct telephone number, facsimile number, mailing address and
888 email address. The permittee shall keep such contact information up-to-date at all times.
- 889 12. *Indemnification.* The permittee and, if applicable, the property owner upon which the wireless
890 facility is installed shall defend, indemnify and hold harmless the City, its agents, officers,
891 officials, employees and volunteers from any and all (1) damages, liabilities, injuries, losses, costs
892 and expenses and from any and all claims, demands, law suits, writs and other actions or

proceedings ("Claims") brought against the City or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the City's approval of this section 6409(a) approval, and (2) other Claims any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this section 6409(a) approval or the wireless facility. In the event the City becomes aware any Claims, the City will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this section 6409(a) approval, and that such indemnification obligations will survive the expiration or revocation of this section 6409(a) approval.

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

14. *Record Retention.* The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.

15. *Compliance Obligations.* An applicant or permittee will not be relieved of its obligation to comply with every applicable provision in the Mill Valley Municipal Code, any permit, any permit condition or any applicable law or regulation by reason of any failure by the City to timely notice, prompt or enforce compliance by the applicant or permittee.

20.73.150 Wireless Telecommunications Collocation Facilities Covered under California Government Code Section 65850.6

A. **Purpose.** The purpose of this section is to comply with an application for a Wireless Telecommunications Collocation Facility under California Government Code Section 65850.6, for which a 6509(a) approval is not being requested. This section provides the requirements, standards and regulations for a wireless telecommunications collocation facility for which subsequent collocation is a permitted use pursuant to California law. Only those facilities that fully comply with the eligibility requirements set forth in California Government Code Section 65850.6, or its successor provision, and which strictly adhere to the

939 requirements and regulations set forth in this section shall qualify as a wireless telecommunications collocation
940 facility.

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

942 1. **“Collocation Facility”** means the placement or installation of wireless facilities, including
943 antennas, and related equipment, on, or immediately adjacent to, a wireless telecommunications
944 collocation facility.

945 2. **“Wireless Telecommunications Facility”** means equipment and network components such as
946 towers, utility poles, transmitters, base stations, and emergency power systems that are integral to
947 providing wireless telecommunications services.

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

950 C. **Procedures.** An application for a Wireless Telecommunications Collocation Facility under California
951 Government Code Section 65850.6 shall be processed in the same manner as an application for 6409(a)
952 approval is processed, except that where the process requires justification for the 6409(a) approval, the
953 applicant shall instead provide the justification for a Wireless Telecommunications Collocation Facility under
954 California Government Code Section 65850.6.

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

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

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

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

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

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

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

972 1. The wireless telecommunications collocation facility:

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

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

976 (c) Otherwise complies with the requirements of California Government Code Section
977 65850.6(b), or its successor provision, for addition of a collocation facility to a
978 wireless telecommunications collocation facility, including, but not limited to,
979 compliance with all performance and maintenance requirements, regulations and
980 standards in this chapter and the conditions of approval in the wireless
981 telecommunications collocation facility permit; and

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

984 3. Before collocation, the applicant seeking collocation shall obtain all other applicable non-
985 discretionary permits, as required pursuant to the Mill Valley Municipal Code.

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

989 1. Increases the height of the existing permitted telecommunications tower or otherwise changes the
990 bulk, size, location, or any other physical attributes of the existing permitted wireless
991 telecommunications collocation facility unless specifically permitted under the conditions of
992 approval applicable to such wireless telecommunications collocation facility; or

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

995 G. **Appeals.** Notwithstanding any provision of the Mill Valley Municipal Code to the contrary, including
996 but not limited to Section 20.62.060, any applicant may appeal a decision by the zoning administrator. The
997 appeal must be filed within 10 days from the zoning administrator's decision. The appeal must state in plain
998 terms the grounds for reversal and the facts that support those grounds. The City manager shall serve as the
999 appellate authority for all appeals of all actions of the zoning administrator taken pursuant to this section. The
1000 City shall provide notice for an administrative hearing by the City manager. The City manager shall limit its
1001 review to whether the project should be approved or denied in accordance with the provisions in this section.
1002 The decision of the City manager shall be final and not subject to any further administrative appeals.

1003 **20.73.160 Business License**

1004 A permit issued pursuant to this chapter shall not be a substitute for any business license otherwise required
1005 under the Mill Valley Municipal Code.

1006 **20.73.170 Emergency Deployment**

1007 In the event of a declared federal, state, or local emergency, or when otherwise warranted by conditions that
1008 the zoning administrator deems to constitute an emergency, the zoning administrator may approve the
1009 installation and operation of a temporary wireless telecommunications facility (e.g., a cell on wheels or
1010 "COW"), which is subject to such reasonable conditions that the zoning administrator deems necessary.

1011 **20.73.180 Operation and Maintenance Standards**

1012 A. All wireless telecommunications facilities must comply at all times with the following operation and
1013 maintenance standards. All necessary repairs and restoration shall be completed by the permittee, owner, or
1014 operator within 48 hours:

- 1015 1. After discovery of the need by the permittee, owner, operator or any designated maintenance
1016 agent; or
- 1017 2. After permittee, owner, operator, or any designated maintenance agent receives notification from a
1018 resident or the zoning administrator.
- 1019 B. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment,
1020 lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be
1021 maintained in good condition, including ensuring the facilities are reasonably free of:
- 1022 1. General dirt and grease;
- 1023 2. Chipped, faded, peeling, and cracked paint;
- 1024 3. Rust and corrosion;
- 1025 4. Cracks, dents, and discoloration;
- 1026 5. Missing, discolored, or damaged artificial foliage or other camouflage;
- 1027 6. Graffiti, bills, stickers, advertisements, litter and debris;
- 1028 7. Broken and misshapen structural parts; and
- 1029 8. Any damage from any cause.
- 1030 C. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in
1031 good condition at all times, and the permittee, owner and operator of the facility shall be responsible for
1032 replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may
1033 be made until it is submitted to and approved by the zoning administrator.
- 1034 D. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is
1035 not sufficient to return the facility to the condition it was in at the time of installation.
- 1036 E. Each facility shall be operated and maintained at all times in compliance with applicable federal
1037 regulations, including FCC radio frequency emissions standards.
- 1038 F. Each facility shall be operated and maintained to comply at all times with the noise regulations of this
1039 chapter and shall be operated and maintained in a manner that will minimize noise impacts to surrounding
1040 residents. Except for emergency repairs, any testing and maintenance activities that will be audible beyond the
1041 property line shall only occur between the hours of 7:00 a.m. and 5:00 p.m. on Monday through Friday,
1042 excluding holidays, unless alternative hours are approved by the zoning administrator. Backup generators, if
1043 permitted, shall only be operated during periods of power outages or for testing.
- 1044 G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall be flown and
1045 shall be properly maintained at all times.
- 1046 H. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the
1047 standards set forth in this section and the conditions of approval.

1048 **20.73.190 No Dangerous Conditions or Obstructions Allowed**

1049 No person shall install, use or maintain any wireless telecommunications facility which in whole or in part
1050 rests upon, in or over any public sidewalk or parkway, when such installation, use or maintenance endangers or
1051 is reasonably likely to endanger the safety of persons or property, or when such site or location is used for
1052 public utility purposes, public transportation purposes or other governmental use, or when such facility
1053 unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic including any legally parked
1054 or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts,
1055 traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other
1056 objects permitted at or near said location.

1057 **20.73.200 Permit Expiration**

1058 A. A permit for any wireless telecommunications facility shall be valid for a period of 10 years, unless the
1059 Planning commission authorizes a longer period or pursuant to another provision of the Mill Valley Municipal
1060 Code the permit lapses sooner or is revoked. At the end of such period, the permit shall expire.

1061 B. A permittee may apply for extensions of its permit in increments of no more than ten years and no
1062 sooner than twelve months prior to expiration of the permit.

1063 C. If a permit has not expired at the time an application is made for an extension, the zoning administrator
1064 may administratively extend the term of the permit for subsequent ten-year terms upon verification of
1065 continued compliance with the findings and conditions of approval under which the application was originally
1066 approved, as well as any other applicable provisions of the Mill Valley Municipal Code that are in effect at the
1067 time the permit extension is granted.

1068 1. At the zoning administrator's discretion, additional studies and information may be required of the
1069 applicant.

1070 2. If the zoning administrator determines that the facility is nonconforming or that additional
1071 conditions of approval are necessary to bring the facility into compliance with the provisions of
1072 the Mill Valley Municipal Code that are then in effect at the time of permit expiration, the zoning
1073 administrator shall refer the extension request to the Planning commission.

1074 D. The request for an extension shall be decided by the Planning commission if the permit expired before
1075 the application is made for an extension or if the zoning administrator refers the matter to the Planning
1076 commission. After notice and a public hearing, the Planning commission may approve, conditionally approve,
1077 or deny the extension.

1078 **20.73.210 Cessation of Use or Abandonment**

1079 A. A wireless telecommunications facility is considered abandoned and shall be promptly removed as
1080 provided herein if it ceases to provide wireless telecommunications services for 90 or more consecutive days.
1081 If there are two or more users of a single facility, then this provision shall not become effective until all users
1082 cease using the facility.

1083 B. The operator of a facility shall notify the City in writing of its intent to abandon or cease use of a
1084 permitted site or a nonconforming site (including unpermitted sites) within ten days of ceasing or abandoning
1085 use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the
1086 zoning administrator of any discontinuation of operations of 30 days or more.

1087 C. Failure to inform the zoning administrator of cessation or discontinuation of operations of any existing
1088 facility as required by this section shall constitute a violation of any approvals and be grounds for:

1089 1. Prosecution;

1090 2. Revocation or modification of the permit;

1091 3. Calling of any bond or other assurance required by this chapter or conditions of approval of the
1092 permit;

1093 4. Removal of the facilities by the City in accordance with the procedures established under the Mill
1094 Valley Municipal Code for abatement of a public nuisance at the owner's expense; and

1095 5. Any other remedies permitted under the Mill Valley Municipal Code.

1096 **20.73.220 Removal and Restoration, Permit Expiration, Revocation or Abandonment**

1097 A. **Permittee's removal obligation.** Upon the expiration date of the permit, including any extensions,
1098 earlier termination or revocation of the permit or abandonment of the facility, the permittee, owner or operator
1099 shall remove its wireless telecommunications facility and restore the site to its natural condition except for
1100 retaining the landscaping improvements and any other improvements at the discretion of the City. Removal
1101 shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of
1102 the City. The facility shall be removed from the property within 30 days, at no cost or expense to the City. If
1103 the facility is located on private property, the private property owner shall also be independently responsible
1104 for the expense of timely removal and restoration.

1105 B. **Failure to remove.** Failure of the permittee, owner, or operator to promptly remove its facility and
1106 restore the property within 30 days after expiration, earlier termination, or revocation of the permit, or
1107 abandonment of the facility, shall be a violation of the Mill Valley Municipal Code, and be grounds for:

1108 1. Prosecution;

1109 2. Calling of any bond or other assurance required by this chapter or conditions of approval of
1110 permit;

1111 3. Removal of the facilities by the City in accordance with the procedures established under the Mill
1112 Valley Municipal Code for abatement of a public nuisance at the owner's expense; or

1113 4. Any other remedies permitted under the Mill Valley Municipal Code.

1114 C. **Summary removal.** In the event the zoning administrator determines that the condition or placement
1115 of a wireless telecommunications facility located in the public right-of-way constitutes a dangerous condition,
1116 obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent
1117 circumstances require immediate corrective action (collectively, "exigent circumstances"), the zoning
1118 administrator may cause the facility to be removed summarily and immediately without advance notice or a
1119 hearing. Written notice of the removal shall be served upon the person who owns the facility within five
1120 business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If
1121 the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within
1122 60 days, the facility shall be treated as abandoned property.

1123

1124 D. **Removal of facilities by City.** In the event the City removes a facility in accordance with nuisance
1125 abatement procedures or summary removal, any such removal shall be without any liability to the City for any
1126 damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for
1127 recovering costs of nuisance abatement, the City may collect such costs from the performance bond posted and
1128 to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance
1129 with the Mill Valley Municipal Code. Unless otherwise provided herein, the City has no obligation to store
1130 such facility. Neither the permittee nor the owner nor operator shall have any claim if the City destroys any
1131 such facility not timely removed by the permittee, owner, or operator after notice, or removed by the City due
1132 to exigent circumstances.

1133 **20.73.230 Effect on Other Ordinances**

1134 Compliance with the provisions of this chapter shall not relieve a person from complying with any other
1135 applicable provision of the Mill Valley Municipal Code, including but not limited to obtaining any necessary
1136 encroachment or building permits. In the event of a conflict between any provision of this chapter and other
1137 provisions of the Mill Valley Municipal Code, this chapter shall control.

1138 **20.73.240 Effect of State or Federal Law**

1139 In the event that state or federal law prohibits discretionary permitting requirements for certain wireless
1140 telecommunications facilities, the permits required by this chapter for those facilities shall be deemed to be
1141 ministerial permits. For those facilities, in lieu of a conditional use permit, a ministerial permit shall be
1142 required prior to installation or modification of a wireless telecommunications facility and all provisions of this
1143 chapter shall be applicable to any such facility with the exception that the required permit shall be reviewed
1144 and administered as a ministerial permit by the zoning administrator rather than as a discretionary permit. Any
1145 conditions of approval set forth in this chapter or deemed necessary by the zoning administrator shall be
1146 imposed and administered as reasonable time, place and manner rules.