



Fwd: 6409

1 message

Please make copies for Wireless Subcommittee and post to website. Kim

Mon, Dec 17, 2018 at 2:04 PM

----- Forwarded message -----

From: **susan nine**

Date: Mon, Dec 17, 2018 at 10:59 AM

Subject: 6409

To: cole@monterey.org <cole@monterey.org>

Hi Kim,

This is what I have available in electronic form for 6409...the last section...standard conditions of approval is already in the ordinance so I didn't retype but did add them to my cut and paste paper copy passed out a few meetings ago.

Susan

Sent from my iPad

F. Rule 6409, Eligible Wireless Communications Facilities.

1. Purpose. The purpose of this section is to adopt reasonable regulations and procedures, consistent with and subject to federal and California state law, for compliance with Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified in 47 U.S.C. Section 1455(a), and related Federal Communication Commission regulations codified in 47 C.F.R. Section 1.4000 et seq.

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

b. The partial overlap between wireless deployments covered under Section 6409(a) and other wireless deployments, combined with different substantive and procedural rules applicable to such deployments, creates a potential for confusion. A separate permit and review process specifically designed for compliance with Section 6409(a), contained in a section devoted to Section 6409(a), will best prevent such confusion.

c. Accordingly, the City of Monterey adopts this section to reasonably regulate requests submitted for approval under Section 6409(a) to collocate, remove or replace transmission equipment at an existing wireless tower or base station, in a manner that complies with federal law and protects and promotes the public health, safety and welfare of the citizens of Monterey.

2. Applications - Submittal and Review Procedures. Any request to collocate, replace or remove transmission equipment at an existing cell tower or base station submitted for approval under Section 6409(a) shall require a written application subject to Planning Commission review under the standards and procedures contained below:

- a. Applicant must submit a complete application as a condition of approval.
- b. Application content. This section governs minimum requirements for and procedures for additions and/or modifications to eligible facility applications. The director may will develop, and publish application forms and checklists subject to Planning Commission approval. The director may, from time to time update and alter the application forms and checklists as the director deems necessary or appropriate to respond to regulatory,

technological, or other changes, subject to Planning Commission approval. The materials required under this section are minimum requirements for any eligible facility.

- I. Application fee deposit
- II. Evidence that the applicant holds all current licenses and registrations from the FCC and any other regulatory bodies. where such license(s) or registration(s) are necessary to provide wireless services using the proposed wireless communications facility. For any prior regulatory approval(s) associated with the wireless communications facility, the applicant must submit copies of all such approvals with any corresponding conditions of approval. Alternately, a written justification that sets forth reasons why prior regulatory approvals were not required for the wireless communications facility at the time it was constructed or modified.
- III. Site development plans. A fully dimensioned site plan and elevation drawings prepared by a California-licensed engineer showing any existing wireless communications facilities with all transmission equipment and other improvements, the proposed facility with all proposed transmission equipment and other improvements and the legal boundaries of the leased or owned area surrounding the proposed facility and any associated access or utility easements.
- IV. Equipment Specifications. Specifications that show the height, width, depth and weight for all proposed equipment.
- V. Structural Integrity Report. A report signed by a California licensed engineer specializing in structural engineering documenting the ability of support structure to safely accept any different or additional equipment to be added to an existing wireless tower or base station such as the structure's capacity for additional or different antennas as well as the proposed method for affixing antennas, and the precise point at which the antennas or other equipment shall be mounted, as well as documentation that the structure will comply with all applicable laws and codes.
- VI. Photographs and photo simulations. Photographs and photo simulations that show the proposed facility in context of the site from public streets or other adjacent viewpoints, together with a map that shows the photo location of each view angle. At least

photo simulation must clearly show the impact on the concealment elements of the support structure, if any, from the proposed modification.

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

- VIII. Justification analysis. A written statement that explains in plain. factual detail whether and why Section 6409(a) and the related FCC regulations at 47 C.F.R. Section 1.40001 et seq. require approval of the specific project. A complete written narrative. analysis will state the applicable 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 (i) include whether and why the support structure qualifies as an existing tower or 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.

- IX. Noise study. A noise study prepared and certified by an acoustical engineer licensed by the state of California for the proposed facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators, batteries and permanent backup power generators, demonstrating compliance with the city's noise regulations. The noise study must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.

- X. Electronic Copy of Application. The applicant shall provide an electronic copy of all materials in a searchable format that can be posted online..

3. Pre-Application Meeting Appointment. Prior to application submittal, applicants are encouraged to schedule and attend an optional pre-application meeting with City staff for all eligible facility permit applications. Such pre-application meeting is Intended to streamline the application review through discussions including, but not limited to, the appropriate project classification, including whether the project qualifies as an eligible facility request; any latent issues in connection with existing tower or base station; potential concealment issues; coordination with other city departments responsible for application review; and application completeness issues. City staff shall endeavor to provide applicants with an appointment between five and fifteen (15) working days after a written request for an appointment is received.

4. Application Submittal Appointment. All applications for a 6409(a) eligible collocation and/or modification to an existing cell tower or existing base station shall be submitted to the city at a pre-scheduled appointment with the Community Development Director. City staff will endeavor to provide applicants with an appointment between approximately five and fifteen (15) working days after a written request for an appointment is received. During the Application Submittal Appointment, or thereafter, the Community Development Director shall review the application materials and determine whether the application is complete. If the application is found to be complete, the Community Development Director will refer the application to the Planning Commission. If the application is not complete, the Community Development Director shall issue in writing a denial of the application without prejudice to refiling, specifying the reasons for the denial, unless the omissions are corrected at the pre-scheduled appointment, or the Community Development Director determines that permitting submission of additional material will not prevent the City from conducting or the public participating in a timely review of the application. A denial may be appealed to the Planning Commission, but the appeal is limited to consideration of whether the application denial was properly denied.

5. Notice. (To be filled in)

6. Review Procedures for Section 6409(a) Applications.

a. The use permit for existing facilities shall be reopened for review by the Planning Commission. The Planning Commission may grant a Section 6409(a) approval only when it finds all of the following:

I. The public notice required by law has occurred.

II. The project involved the collocation, replacement, or removal of transmission equipment on an existing wireless tower or base station.

III. All prior regulatory approvals and conditions required for the initial construction and any later modifications to the tower or base station, if any, were properly obtained and conditions are in compliance with use permit of existing wireless tower or base station.

IV. The project would not substantially change the physical dimensions of the existing wireless tower or base station.

b. Denied Applications for Section 6409(a) Projects. Any denial of an application for Section 6409(a) projects shall be in writing, contain the reasons for the denial, and be without prejudice to the applicant or the project. The applicant may immediately submit an application for a use permit or a Section 6409(a) approval for substantially the same project; provided, however, that the applicant has paid all fees and costs payable to the City in connection with the previously denied application.

7. Standard Conditions for Section 6409(a) Approvals.
(Here add language from existing ordinance)