

*Lois Hansen
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Wireless Communications Facilities Ordinance 38-112.4

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*Lois Hansen
Edits to Application
& Submittals
12/21/18*

E. Applications and Submittals

1. This section governs minimum application requirements for and procedures for new wireless communication facilities and substantial changes to existing facilities.
2. **Application Content.** The Planning Department shall develop and maintain detailed application submittal requirements which shall be made available to the public and shall be subject to review and oversight by the Planning Commission on an annual basis. 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.
3. Applicant must submit a complete application as a condition of review. All fees for application review shall be nonrefundable unless specifically provided otherwise in a resolution by the City Council.
4. Applicants for a permit for a wireless facility shall, whether or not required by the Planning Department submittal requirements and in addition to other requirements of this ordinance, comply with the following:
 - a. **Written Authorizations.** Every applicant seeking authorization to construct, modify or remove a wireless facility located on private or public property must include a written authorization signed by the owner of the property. If the applicant is an agent, the owner of the facility shall provide written authorization from the owner of the facility. If the owner of the facility will not directly provide wireless communications services, the applicant shall provide a duly executed letter of authorization from the person(s) or entity(ies) that will provide those services.
 - b. 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 communications facility.
 - c. **Provide Notice and Evidence of Notice.** Applicant shall provide notice to all persons entitled to notice under Section 38-112.4.H.1a which notice must state that the applicant is filing an application for a wireless facility; provide a brief description of the wireless facility and its location; identify what entities will own or operate any part of the wireless facility and state that after filing the application may be reviewed online as posted by the City Planning Department; and explain that comments may be filed with the City Planning Department. The notice must be mailed no later than the day the application is filed and proof of mailing to all persons entitled to notice must be provided with the application in accordance with standards specified in the application form. Proof of notice shall be provided as part of the application.

d. To the extent that filing of the wireless application establishes a deadline for action on any other permit that may be required in connection with the wireless facility, the application shall include complete copies of applications for every required permit, including without limitation electrical permits, building permits, traffic control permits, excavation permits with all engineering completed and with all fees associated with each permit.

e. Project Description Letter. A full written description of the proposed facility and its claimed effect. A justification study which includes the rationale for selecting the proposed use; if applicable a detailed explanation of the coverage gap that the proposed use would service and how the proposed use is the least intrusive means for the applicant. The claimed benefits must be proven by substantial evidence.

f. Equipment Specifications. Specifications that show the height, width, depth and weight for all proposed equipment.

g. Legal Description. A legal description of the property where the wireless communications facility is to be located.

h. Radius Map and List of Property Owners and Occupants. A radius map and a list of the names and addresses of all property owners and addresses of occupants within 1,000 feet of the exterior boundaries of the property involved, as shown on the latest assessment roll of the county assessor. For wireless communications facilities in the public right of way, the 1,000 feet shall be measured from any portion of the base station, including antennas, cables, and equipment. The content of the notice will be specific to what is being noticed (Comment: If the City of Monterey is going to continue to only notice property owners within 300' of wireless facility project, other general notices should be provided. I such as in Next Door, in the Monterey Herald, Pine Code, Cedar Street, etc. for broader local noticing)

i. Plot Plan. A plot plan of the lot, premises, or parcel of land showing the exact location of the proposed wireless communications facility (including all related equipment and cables), exact location and dimensions of all buildings, parking lots, walkways, trash enclosures and property lines. Fully dimensionalized site development plans to scale.

j. Elevations and Roof Plan. Building elevations and roof plan (for building – and/or – rooftop- mounted facilities) including exact location and dimensions of equipment proposed. For freestanding facilities, indicate surrounding grades, structures and landscaping from all sides.

k. Screening. Proposed landscaping and maintenance plan for the life of the facility and/or non-vegetative screening (including required safety fencing) plan for all aspects of the facility.

I. Manufacturer's Updated Specification. Manufacturer's specifications, including installation and maintenance specifications, exact location of cables, wiring, materials, color, and any support devices that may be required.

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

n. Master Plan. A master plan which identifies the location of the proposed facility in relation to all existing and potential facilities maintained by the operator intended to serve the city. The master plan shall reflect all potential locations that are reasonably anticipated for construction within two years of submittal of the application. Applicants may not file and the City shall not accept applications that are not consistent with the master plan for a period of two years from approval of a use permit unless:

(i) the applicant demonstrates materially changed conditions which could not have been reasonably anticipated to justify the need for a wireless communications facility site not shown on a master plan submitted to the city within the prior two years or

(ii) the applicant establishes before the Planning Commission that a new wireless communications facility is necessary to close an effective prohibition of service in the applicant's service area and the proposed new installation is the least intrusive means to do so.

o. Hazard Compliance Certification.

(i) If the applicant proposes to deploy a wireless facility in a "High Hazard Zone" ("HHZ") (as demarcated on the current version of the California Public Utility Commission Fire-Threat Map) on a structure that applicant contends is or will be under the jurisdiction of General Order ("GO") 95 ("GO 95"), or GO 165, or GO 166, the applicant shall submit a sworn statements by qualified experts who shall attest in which specific HHZ the wireless facility will be located; whether the structure has been inspected; whether the structure and any existing facilities comply and whether any planned structures and facilities would comply with standards for placement on structures in an HHZ; and whether all required Fire Prevention Plans are in place. If existing or proposed structures or facilities are or will be non-compliant in any respect, the application shall identify steps proposed to ensure the structure and existing and proposed facilities are compliant.

(ii) For any application to deploy a wireless facility in an HHZ on a structure that applicant contends is not under the jurisdiction of GO 95, GO 165, and GO 166, the applicant shall submit documentation showing:

(1) the specific HHZ in which the wireless facilities will be located, as demarcated on the current version of the California Public Utility Commission Fire-Threat Map;

(2) a description of the steps the applicant has taken to reduce hazards to public safety, including fire safety hazards, that may be caused by the proposed wireless facility, and

(3) the steps applicant proposes to take to maintain the safety of the wireless facility, which steps shall be at least as rigorous as if GO 95, 165, and GO 166 applied.

p. **Safety Certification.** Applicant shall submit a certification by a registered and qualified engineer that the structure on which the wireless facility will be placed can safely support the wireless facility; and that all elements of the wireless facility comply with applicable safety standards.

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

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

s. **Underground vault and venting plans.** The underground vault and venting plans including manufacturer's specifications for cover, color, materials, dimensions, and reveal at the sidewalk, evidence that all enclosures will comply with NEMA 6 standards, and evidence that vaulted enclosures are fire-rated a period of 60-120 minutes to contain a fire.

t. **Construct Mock-Up of Proposed Facility.** Except for an eligible facilities request or where it is unnecessary to provide the community a fair opportunity to assess the impact of the facility, as part of the application the applicant shall construct a mock-up of each wireless facility proposed at a location accessible to the public in accordance with standards specified in the application form. Installation of a mockup can occur prior to submittal of a formal application provided that the public works director has reviewed the plans for the mock-up and grants approval of an encroachment permit or other valid permit. Prior to installation of a mock-up, the applicant provide notice to all residents and homeowners within 300 feet of the proposed mock-up at least 48 hours in advance, and shall provide proof of notice to the public works director.

u. **Inventory of existing facilities owned or controlled by applicant and service provider, if different, that are within the jurisdiction of the city, including specific information about the location, design, and height of each facility.**

v. **Current signal coverage maps showing existing coverage in area to be serviced by the proposed facilities. Maps must be based on data collected within the prior six months or less**

and must be dated. If any new facilities inside or outside the city have been installed after the maps were generated, that may affect coverage, new maps must be provided to reflect impacts on existing coverage.

w. Service area identification by service provider that describes the exact geographic area that would be served by the proposed facility, using coverage maps that describe the distances between the proposed and existing sites and describes how the proposed service area fits into and is necessary for the PWS provider's network and which identifies any potential consolidation opportunities.

x. Five year facilities plan. PWS provider shall provide a map with information about the PWS provider's plans for future wireless communication facilities.

y. Claim of required approval. If the applicant requests an exception to the requirements of this chapter (in accordance with section.), the applicant shall provide all information and studies necessary to evaluate that request.

z. RF Compliance Report. A RF exposure compliance report prepared and certified by a RF engineer acceptable to the city that certified that the proposed facility, will comply with all applicable federal RF exposure standards and limits. Taking into account accumulative RF effects, the RF report must include the actual frequencies & power levels (in watts effective radio power (ERP)) for all existing and proposed antennas at the site. Additionally, the RF report shall contain exhibits that show the location & orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as the term is defined by the FCC). Each boundary shall be clearly marked and identified for every transmitting antennas at the project site.

z1. Visual impact demonstration-existing and proposed. Accurate scale drawings and photo simulations, photo montages and/or other visual or graphic illustrations necessary to determine potential visual impact of the proposed project, showing the proposed site prior to addition of the proposed facility and simulations that show the proposed facility in context of the site from public streets and other adjacent viewpoints, together with a map that shows the photo location of each view angle. At least one photo simulation must clearly show the impact on the concealment elements of the support structure, if any, from the proposed modification.

z2. Photographs and scale drawings showing the proposed site prior to performance of the work proposed, and photo simulations and scale drawings showing the dimensions and locations of the wireless communication facility after the work is performed (multiple photographs should be submitted as required to show all facilities that will be visible at the site).

z3. Wind Loads. Each facility shall be properly engineered to withstand wind loads as required by this Code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.

z4. Electronic Copy of Application. The applicant shall provide an electronic copy of all materials in a searchable format that can be posted online.

z5. Fees. The application shall be accompanied by the appropriate fee.

Z6. Other Information. Any other information as deemed necessary by the City in order to consider an application for a wireless communications facility.

2. Presubmittal Conference. Before application submittal, applicants are strongly encouraged to schedule and attend a voluntary presubmittal conference with City staff for all wireless facilities applications. The presubmittal conference is intended to foster cooperative discussion between applicants and staff, identify potential avoidable issues, and generally streamline the application review process to occur after the applicant formally submits its application. 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.

3. Application Submittal Appointment. All Applications for wireless permits shall be submitted to the City at a prescheduled appointment with the Community Development Director. 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 denial, unless the omissions are corrected at the prescheduled appointment, or the Community Development Director determines that permitting submission of additional materials will not prevent the City from conducting or the public from participating in a timely review of the application. If the wireless application is incomplete, all permits that must be acted upon by the same date as that application will also be deemed denied. Complete applications and fees associated with any permit that must be acted upon by the same date as the wireless application shall be filed on the same date for a...(end of document

Susan Nire
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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 of 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-if, 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, this section is adopted 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. Eligible Facility Permit. Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted for approval under Section 6409(a) shall require an eligible facility permit subject to Planning Commission approval, conditional approval or denial under the standards and procedures contained in this section.
3. Other Regulatory Approvals Required. No collocation or modification approved under any eligible facility permit may occur unless the applicant also obtains all other permits or regulatory approvals from other city departments and state or federal agencies. An applicant may obtain an eligible facility permit concurrently with permits or other regulatory approvals from other city departments after first consulting with the director. Furthermore, any eligible facility permit granted under this section shall remain subject to the lawful conditions and/or requirements

associated with such other permits or regulatory approvals from other city departments and state or federal agencies.

4. 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.

a. Application fee deposit

b. 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 service s using the proposed wireless communications facility. For any prior regulatory approval(s) associated with 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.

c. Site development plans. A fully dimensioned site plan 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 own area surrounding the proposed facility and any associated access or utility easement.

d. Equipment Specifications. Specifications that show the height, width, depth and weight for all proposed equipment.

e. Structural Integrity Report. A report signed by a California licensed engineer specializing in structural engineering documenting the ability of support structured 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 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.

- f. 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 one photo simulation must clearly show the impact of the concealment elements of the support structure, if any, from the proposed modification.
- g. 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 collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels in watts effective radio power (ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- h. 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.
- i. 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.
- j. Electronic Copy of Application. The applicant shall provide electronic copy

of all materials in a searchable format that can be posted online.

5. **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.

6. **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.

7. **Notice.** (To be filled in...same as small cells on existing structure?)
 - a. **Manner of Notice.**
 - a. Within fifteen days after an applicant submits an application for an eligible facility permit, written notice of the application shall be sent by first-class United States mail to:
 - i. Applicant or its duly authorized agent;
 - ii. Property owner or its duly authorized agent;

iii. All real property owners within three hundred feet from the subject site as shown on the latest equalized assessment rolls;

b. Notice Content. The notice required under this section shall include all the following information:

- i. A general explanation of the proposed collocation or modification;
- ii. A general description, in text or by diagram, of the location of the real property that is the subject of the application.

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

a. Findings for Approval. The director may approve or conditionally approve an application for an eligible facility permit only when the director finds all of the following:

- i. The application involves the collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
- ii. The proposed changes would not cause a substantial change.

b. Criteria for a Denial without Prejudice. The director shall not approve an application for an eligible facility permit when the director finds that the proposed collocation or modification:

- i. Violates any legally enforceable standard or permit condition reasonably related to public health and safety; or
- ii. Involves a structure constructed or modified without all approvals required at the time of the construction or modification; or
- iii. Involves the replacement of the entire support structure; or
- iiii. Does not qualify for mandatory approval under Section 6409(a) for any lawful reason.

c. 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. Subject to the application and submittal requirements in this section, the applicant may immediately submit a new revised permit application for 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.

d. **Conditional Approvals.** Subject to any applicable limitations in federal or state law, nothing in this section is intended to limit the city's authority to conditionally approve an application for an eligible facility permit to protect and promote the public health, safety and welfare.

9. **Standard Conditions of Approval.** Any eligible facility permit approved or deemed granted by the operation of federal law shall be automatically subject to the conditions of approval described in this section.

a. **Permit Duration Unchanged.** The city's grant or grant by operation of law of an eligible facility permit constitutes a federally mandated modification to the underlying permit or approval for the subject tower or base station. The city's grant or grant by operation of law of an eligible facility permit shall not extend the term of the underlying wireless facility permit or any city-authorized extension thereto.

b. **Accelerated Permit Terms Due to Invalidation.** In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any eligible facility permit(s), such permit(s) shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved eligible facility permits. A permittee shall not be required to remove its improvements approved under the invalidated eligible facility permit when it has submitted an application for either a conditional wireless facility permit or an administrative wireless facility permit for those improvements before the one-year period ends. The director may extend the expiration date on the accelerated permit upon a written request from the permittee that shows good cause for an extension.

c. **No Waiver of Standing.** The city's grant or grant by operation of law of an eligible facility permit does not waive, and shall not be construed to waive, any standing by the city to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any eligible facility permit.

d. **Compliance with All Applicable Laws.** The permittee shall maintain compliance at all times with all federal, state and local laws, statutes, regulations, orders or other rules that carry the force of law ("laws") applicable to the permittee, the subject site, the facility or any use or activities in connection with the use authorized in this permit. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws.

e.. **Inspections – Emergencies.** The city or its designee may enter onto the facility area to

inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The city reserves the right to enter or direct its designee to enter the facility and support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.

f. **Contact Information for Responsible Parties.** Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person who is responsible for the facility. All such contact information for responsible parties shall be provided to the director upon permit grant, annually thereafter, and permittee's receipt of the director's written request.

g. **Indemnities.** The permittee and, if applicable, the nongovernment owner of the private property upon which the tower and/or base station is installed shall defend, indemnify and hold harmless the city, its agents, officers, officials and employees (a) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, lawsuits, writs of mandamus and other actions or proceedings brought against the city or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the city's approval of the permit, and (b) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, lawsuits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors or independent contractors. The permittee shall be responsible for costs of determining the source of the interference, all costs associated with eliminating the interference, and all costs arising from third party claims against the city attributable to the interference. In the event the city becomes aware of any such actions or claims the city shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed that the city shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the city's defense, and the property owner and/or permittee (as applicable) shall reimburse the city for any costs and expenses directly and necessarily incurred by the city in the course of the defense.

h. **Adverse Impacts on Adjacent Properties.** Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility. Radio frequency emissions, to the extent that they comply with all applicable FCC regulations, are not considered to be adverse impacts to adjacent properties.

i. **General Maintenance.** The site and the facility, including but not limited to all landscaping, fencing and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved

plans and conditions of approval.

j. Graffiti Abatement. Permittee shall remove any graffiti on the wireless communications facility at permittee's sole expense subject to the provisions of Chapter 8.49 PVEMC.

10. Appeals. An interested party may appeal a decision of the Planning Commission under this section to the City Council by filing a written appeal with the director within fifteen days after such decision and paying the established appeal fee. The City Council shall approve, approve with conditions, or disapprove the application in accordance with applicable criteria and requirements specified by law. The City Council decision is final.