

“Small Wireless Facilities,” as used herein and consistent with Rule 1.1312(e)(2), encompasses facilities that meet the following conditions:

- (1) The structure on which antenna facilities are mounted—
 - (i) is 50 feet or less in height, or
 - (ii) is no more than 10 percent taller than other adjacent structures, or
 - (iii) is not extended to a height of more than 50 feet or by more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and
- (2) Each antenna associated with the deployment (excluding the associated equipment) is no more than three cubic feet in volume; and
- (3) All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and
- (4) The facility does not require antenna structure registration under part 17 of this chapter; and
- (5) The facility is not located on Tribal lands, as defined under 36 CFR 800.16(x); and
- (6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Rule 1.1307(b).

Lots Handled
Handed Out on
12/21/18

Susan Nune
Handout
12/21/18 Mtg @ 9:15am

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 services 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.

Susan Nune
Handed out
on 12/21/18

RANCHO VIDEOS VERDES

Temporary wireless facilities.

A. Temporary wireless facilities may be placed and operated within the city without an administrative temporary use permit only when a duly authorized federal, state, county or city official declares an emergency within the city, or a region that includes the city in whole or in part at the location of the temporary wireless facility.

B. By placing a temporary wireless facility pursuant to this section the entity or person placing the temporary wireless facility agrees to and shall defend, indemnify and hold harmless the city, its agents, officers, officials, employees and volunteers from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, lawsuits, writs and other actions or proceedings ("claims") brought against the city or its agents, officers, officials, employees or volunteers for any and all claims of any nature related to the installation, use, nonuse, occupancy, removal, and disposal of the temporary wireless facility.

C. The temporary wireless facility shall prominently display upon it a legible notice identifying the entity responsible for the placement and operation of the temporary wireless facility.

D. Any temporary wireless facilities placed pursuant to this section must be removed within the earlier of (1) five days after the date the emergency is lifted or (2) upon three days' written notice from the director or city manager, or (3) within one hour if required for public safety reasons by city police or fire officials. In the event that the temporary wireless facility is not removed as required in this section, the city may at its sole election remove and store or remove and dispose of the temporary wireless facility at the sole cost and risk of the person or entity placing the temporary wireless facility.

E. Any person or entity that places temporary wireless facilities pursuant to this section must send the director or city manager an email notice or deliver a written notice by hand within thirty minutes of the placement followed by a written notice dispatched within twelve hours to the director or city manager via prepaid U.S. mail first overnight delivery, such as U.S. Postal Express Mail or its equivalent, that identifies the site location of the temporary wireless facility and person responsible for its operation. (Ord. 722 § 1, 2017)

Van Eaton Language

e. A wireless facility that will (a) be in place for less than 60 days; (b) involves little or no excavation; (c) will be no higher than 200 feet in height; (d) located in an ^{areas} area zoned commercial or industrial, or located in a planned community area at least 500 feet from a residential dwelling unit; and (e) satisfying all FCC requirements for placement of temporary wireless facilities.

The foregoing does not exempt any facility from other permitting requirements, including without limitation, requirements for building permits, electrical permits, or permit violation of any safety requirements or applicable codes.

was Hansen
Handed Out on
12/21/18

Definitions we don't show in our Wireless Communications Facilities Ordinance

"Small wireless facility" _____

"Effective Prohibition In Service" _____

- ✓ "Antenna" any system of wires, poles, rods, reflecting discs, dishes, whips or other similar devices used for transmission or reception of electromagnetic waves.
- ✓ "antenna height" means the distance from the grade of the property at the base of the antenna or, in the case of a roof mounted antenna, from the grade at the exterior base of the building to the highest point of the antenna and its associated support structure when fully extended..
- ✓ "Array" means one or more antennas mounted at approximately the same level above ground on tower or base station.
- ✓ "Temporary wireless facility" means portable wireless communications facilities intended or used to provide personal wireless services on a temporary or emergency basis, such as a large scale special event in which more users than usual gather in a confined location or when a disaster disables permanent wireless facilities. Temporary wireless facilities include, without limitation, cells-on-wheels ("COWs"), sites-on-wheels ("SOWs"), cells-on-light-trucks ("COLTs") or other similarly portable wireless communication facilities not permanently affixed to the land.
- ✓ "Existing" means the same as defined by the FCC in [47 C.F.R. Section 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."
- ✓ "Facility" means an installation used to transmit signals over the air from facility to facility or from facility to user equipment for any wireless service and includes, but is not limited to, personal wireless services facilities.
- ✓ "Section 6409(a)" means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as [47 U.S.C. Section 1455\(a\)](#), as may be amended.
- ✓ "Section 6409(a) modification" means a collocation or modification of transmission equipment at an existing wireless tower or base station that does not result in a substantial change in the physical dimensions of the existing wireless tower or base station. For the purposes of a Section 6409(a) modification, the term "substantial change" means the same as defined by the FCC in [47 C.F.R. Section 1.40001\(b\)\(7\)](#), as may be amended, which defines that term differently based on the particular facility type and location. Note: The thresholds for a substantial change in [47 C.F.R. Section 1.40001\(b\)\(7\)](#) above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For

sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012, the date that Congress passed Section 6409(a).

- ✓ **"Wireless"** means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.
- ✓ **"Wireless communications facility"** or **"WCF"** means a facility used to provide personal wireless services as defined in 47 U.S.C. Section 332(c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services; or any other FCC licensed or authorized service. A WCF does not include a facility entirely enclosed within a permitted building outside of the rights-of-way where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of this code. A WCF consists of an antenna or antennas, including, but not limited to, directional, omni-directional and parabolic antennas, base station, support equipment, and (if applicable) a wireless tower. It does not include the support structure to which the WCF or its components is attached. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand held radios/telephones and their associated transmitting antennas, nor does it include other facilities specifically excluded from the coverage of this chapter.
- ✓ **"Wireless facilities provider"** means an entity utilized by a wireless service provider to construct and/or operate the wireless service provider's wireless facility.
- ✓ **"Wireless service provider"** means the FCC licensed or authorized entity actually offering wireless services to the public.
- ✓ **"Accessory equipment"** means any equipment associated with the installation of a wireless telecommunications facility, including but not limited to cabling, generators, fans, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers.
- ✓ **"Modification"** means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes 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, alteration, enlargement, intensification, reduction, or augmentation.
- ✓ **"Mounted"** means attached or supported.