

<b>CITY OF SOLANA BEACH</b>	<b>Policy No. 21</b>
<b>COUNCIL POLICY</b>	Adopted: 10/22/2008 Revised: 10/11/2017 Revised: 4/10/2019
<b>GENERAL SUBJECT:</b> WIRELESS COMMUNICATION FACILITIES	
<b>SPECIFIC SUBJECT:</b> Review and operation guidelines for wireless communication facilities including small wireless facility deployments	

**PURPOSE:**

Wireless communication facilities, or WCFs, refer to the many facilities with antennas and supporting equipment that receive and transmit signals and together enable mobile or other “wire-free” communication and information services. Unlike ground-wired telecommunications, such as the land-based telephone system, wireless communication technologies, by their operational nature, require a network of antennas mounted at various heights and attached typically to buildings, structures and poles. A common name for WCF is “cell site.”

As the popularity and variety of wireless services grow, providers may need to install more facilities to improve coverage and gain user capacity. To address such needs as 5G, providers are looking to install small wireless facilities to compliment the existing infrastructure which allow for greater speeds and connectivity, but require more frequently placed antennas.

This policy’s purpose is to guide the public, applicants, and staff in reviewing the placement, construction, and modification of WCFs. The intentions behind this policy are as follows:

- The City of Solana Beach (“**City**”) intends this policy to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City’s territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the City’s local values, which include without limitation the aesthetic character of the City, its neighborhoods and community. This Policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the City’s visual character from potential adverse impacts and/or visual blight created or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the City’s

environmental resources; (4) protecting and preserving the City's public rights-of-way and municipal infrastructure located within the City's public rights-of-way; and (5) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors.

- This policy is intended to establish clear procedures for application intake and completeness review. The City of Solana Beach City Council ("**City Council**") finds that chronically incomplete applications significantly contribute to unreasonable delay and create barriers to infrastructure deployment. Chronically incomplete applications unfairly prejudice other applicants who may be prepared to submit complete applications for infrastructure in the same or substantially the same location. Chronically incomplete applications also unfairly prejudice the City's ability to act on such applications within the "presumptively reasonable" timeframes established by the FCC. The provisions in this policy afford applicants and City staff opportunities for direct, real-time communication about completeness issues to mitigate incomplete applications prior to submittal. The provisions in this policy also encourage applicants to timely respond to incomplete notices.
- This policy is intended to establish regulations, standards and guidelines for all infrastructure deployments unless specifically prohibited by applicable law. The City Council recognizes that different infrastructure deployments may be managed through other mechanisms, such as franchise or license agreements. Although such deployments may be exempt from the "ROW use permit" established in this policy, the City Council intends that the City official or department that administers such deployment shall apply the same regulations, standards and guidelines to the permit or other approval issued in connection with a request for authorization under such franchise, license or other agreement. The City Council also recognizes that different infrastructure deployments may have different impacts on the public rights-of-way that require different regulations, standards or guidelines to protect public health, safety and welfare. However, to the extent that different regulations, standards or guidelines are applied to small wireless facilities or other infrastructure deployments, the City Council intends that one set be no more burdensome than the other when viewed under the totality of the circumstances.
- This policy 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 telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent personal wireless 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 California state law; (6) impose any unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California law.

This policy applies to all commercial providers of wireless communication services including small wireless facilities. It does not apply to amateur (HAM) radio antennas and dish and other antennas installed on a residence for an individual's private use.

Pursuant to Resolution 2019-043, adopted by the City Council on April 10, 2019, the City Manager is authorized to adapt this policy to conform to changes in applicable law.

## **POLICY STATEMENT**

### **Background:**

To secure the right to provide wireless services to a region, companies obtain airwave licenses that are auctioned by the Federal Communications Commission (FCC), the federal agency that regulates the telecommunications industry. The FCC mandates the licensees establish their service networks as quickly as possible.

### **Review Restrictions:**

The Federal Telecommunications Act of 1996 (TCA) (codified at 47 U.S.C. §§ 609 *et seq.*) preserves the City's ability to regulate the placement, construction, and modification of wireless communication facilities subject to the following restrictions, as contained in TCA Section 704:

- ***The City may not favor any carrier.***  
Regulations may not unreasonably discriminate among competitive networks.
- ***The City may not prevent completion of a network.***  
Regulations may not prohibit or have the effect of prohibiting the provision of wireless communication services.
- ***Applications are to be processed in a reasonable time.***  
A city must act on an application for WCFs within a "reasonable" amount of time, roughly the same time as for any similar application.
- ***The City cannot deny an application because of perceived radio frequency health hazards.***  
If federal standards are met, cities may not deny permits or leases on the grounds that radio frequency emissions are harmful to the environment or to the health of residents. However, local governments may require

wireless carriers to prove compliance with the standards. The FCC has established procedures to enforce compliance with its rules.

- ***A decision to deny an application must be supported by substantial evidence.***

A decision to deny a WCF application must be in writing and supported by substantial evidence contained in a written record.

- ***Federal law mandates local approval for certain collocations and modifications to existing WCFs.***

Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified as 47 U.S.C. § 1455(a) (“Section 6409”), 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.

In *Airtouch Cellular v. City of El Cajon* (9th Cir. 2000) 83 F.Supp.2d 1158, 1166, the court ruled that a city may consider factors such as community aesthetics and noise in regulating the placement, construction, or modification of WCFs.

### **Health Concerns & Safeguards:**

Possible health risks from exposure to the radio frequency (RF) electromagnetic fields generated by WCFs are a significant community concern. Accordingly, the FCC requires facilities to comply with RF exposure guidelines published in the Code of Federal Regulations (see 47 CFR §1.1307 and 47 CFR §1.1310). The limits of exposure established by the guidelines are designed to protect the public health with a very large margin of safety as they are many times below the levels that generally are accepted as having the potential to cause adverse health effects. Both the Environmental Protection Agency and Food and Drug Administration have endorsed the FCC’s exposure limits, and courts have upheld the FCC rules requiring compliance with limits.

Most WCFs create maximum exposures that are only a small fraction of the limits. Furthermore, because the antennas in a PCS, cellular, or other wireless network must be in a line of sight arrangement to effectively transmit, their power is focused on the horizon instead of toward the sky or ground. Generally, unless a person is physically next to and the same height as the antenna, it is not possible to be exposed to the established limits for RF exposure.

The FCC requires providers, upon license application, renewal, or modification, to demonstrate compliance with RF exposure guidelines. Where two or more wireless operators have located their antennas at a common location (called “collocation”), the total exposure from all antennas taken together must be within FCC guidelines. Many facilities are exempt from having to demonstrate compliance with FCC guidelines, however, because their low power generation or height above ground level is highly unlikely to cause exposures that exceed the guidelines.

## **POLICY PROCEDURES**

### **Review and Approval Guidelines:**

Solana Beach Municipal Code Section 17.60.120(G) allows WCFs in all zones with the approval of a permit as specified in this policy. These guidelines shall be followed in the review of permits for new wireless facilities as well as collocations, modifications and other extensions and amendments to CUPs for existing installations.

A conditional use permit (CUP), subject to review and approval by the city council, shall be required for (1) all new WCFs and (2) all collocations, modifications or other changes or expansions to existing WCFs that do not qualify for mandatory approval under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. § 1455(a)). In addition to a CUP, an ROW permit, subject to review and approval by the City Engineer, shall be required for all WCFs located on public property. The guidelines in Part I of this policy shall be followed in the review of permits for WCFs subject to a CUP.

A director's use permit (DUP), subject to review and approval by the director of community development or the director's designee, shall be required for all collocations, modifications or other changes or expansions subject to mandatory approval under Section 6409(a). In addition to a DUP, an ROW permit and encroachment maintenance and removal agreement, subject to review and approval by the City Engineer, shall be required for all WCFs located on public property. The guidelines in Part II of this policy shall be followed in the review of permits for WCFs subject to a DUP.

In addition to the guidelines in Part I (CUP) or Part II (DUP) of this policy, as applicable, the guidelines in Part III of this policy shall be followed in the review of permits for small wireless facilities (SWFs) in the ROW.

### **Definitions**

The definitions below are applicable to the terms, phrases and words in this policy. Undefined terms, phrases or words will have the meanings assigned to them in 47 U.S.C. § 151 or, if not defined therein, will have the meaning assigned to them in Solana Beach Municipal Code or, if not defined in either therein, will have their ordinary meanings. If any definition assigned to any term, phrase or word conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

**“accessory equipment”** means equipment other than antennas used in connection with a small wireless facility or other infrastructure deployment. The term includes “transmission equipment” as defined by the FCC in 47 C.F.R. §§ 1.6100(b)(8) and 1.40001(b)(8), as may be amended or superseded.

**“antenna”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded.

**“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).

**“batched application”** means more than one application submitted at the same time.

**“bicycle boulevard”** means a two-lane roadway that provides pedestrian, bicycle, and automobile access, although non-motorized modes are distinctly prioritized through traffic calming, traffic diversion, and various bicycle treatments, such as vertical and horizontal signage, priority phasing for cyclists at signalized intersections, and wayfinding. The term “bicycle boulevard” as used in this policy is defined in the Solana Beach General Plan, Section IV, Circulation Element.

**“collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded.

**“community connector”** means a two-lane divided or undivided roadway that provides for a balanced mix of pedestrian, bicycle, and automobile access between residential neighborhoods, the City’s multi-modal boulevards, and points outside the City. The term “community connector” as used in this policy is defined in the Solana Beach General Plan, Section IV, Circulation Element.

**“CPUC”** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.

**“decorative pole”** means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.

**“Director”** means the Director of Community Development or the Director’s designee.

**“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.

**“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 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.

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

**“FCC Shot Clock”** means the presumptively reasonable time frame, accounting for any tolling or extension, within which the City generally must act on a request for authorization in connection with a personal wireless service facility, as such time frame is defined by the FCC and as may be amended or superseded.

**“local street”** means a two-lane undivided roadway that provides access to adjacent residential land uses. These roadways should include traffic calming techniques to control vehicular speed and discourage cut-through traffic. The term “local street” as used in this policy is defined in the Solana Beach General Plan, Section IV, Circulation Element.

**“ministerial permit”** means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City’s jurisdiction. Ministerial permits may include, without limitation, any building permit, construction permit, electrical permit, encroachment permit, excavation permit, traffic control permit and/or any similar over-the-counter approval issued by the City’s departments.

**“multi-modal boulevard”** means a four-lane or two-lane divided roadway that provides access to major community amenities, commercial uses, and services within the City and serve as regional connections to cities to the north, south, and east of the City. The term “multi-modal boulevard” as used in this Policy is defined in the Solana Beach General Plan, Section IV, Circulation Element.

**“OTARD”** means an “over-the-air reception device” and includes all antennas and antenna supports covered by 47 C.F.R. § 1.4000(a)(1), as may be amended or superseded. This definition includes antennas less than one meter in diameter “used to receive direct broadcast satellite service, ... receive or transmit fixed wireless signals via satellite, ... receive video programming services via multipoint distribution services,

...receive fixed wireless signals other than via satellite, ... [and] receive television broadcast signals.”

“**pedestrian corridor**” means a two-lane roadway that provides pedestrian, bicycle, and automobile access, although pedestrian travel is distinctly prioritized through traffic calming and pedestrian treatments, such as raised crosswalks, high visibility crosswalks, bulb-outs, and pedestrian priority phasing at signalized crossings. The term “pedestrian corridor” as used in this policy is defined in the Solana Beach General Plan, Section IV, Circulation Element.

“**personal wireless services**” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

“**personal wireless service facilities**” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

“**persons entitled to notice**” means the record owners and legal occupants of all properties within 300 feet from the proposed project site. Notice to the legal occupants shall be deemed given when sent to the property’s physical address.

“**public right-of-way**” or “**public rights-of-way**” means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes. The term does not include private or public utility easements unless such easement is reserved for or dedicated to or open to the use by the general public for road or highway purposes.

“**RF**” means radio frequency or electromagnetic waves.

“**Section 6409**” 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. § 1455(a), as may be amended or superseded.

“**shot clock days**” means calendar days counted toward the presumptively reasonable time under the applicable FCC Shot Clock. The term “shot clock days” does not include any calendar days on which the FCC Shot Clock is tolled (i.e., “paused”). As an illustration and not a limitation, if an applicant applies on April 1, receives a valid incomplete notice on April 5 and then resubmits on April 20, only four “shot clock days” have elapsed because the time between the incomplete notice and resubmittal are not counted.

“**Site**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be amended, which provides that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.



**“small wireless facility”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(I), as may be amended or superseded.

**“Substantial Change”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC’s criteria and thresholds for a substantial change according to the wireless facility type and location.

- a. For towers outside the public rights-of-way, a substantial change occurs when:
  - i. The proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or
  - ii. The proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
  - iii. The proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
  - iv. The proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
  
- b. For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
  - i. The proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
  - ii. The proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or
  - iii. The proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
  - iv. The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or
  - v. The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
  
- c. In addition to the applicable criteria in (a) and (b) above, for all towers and base stations wherever located, a substantial change occurs when:

- i. The proposed collocation or modification would defeat the existing concealment elements of the support structure as reasonably determined by the Director; or
- ii. The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.

**“support structure”** means a “structure” as defined by the FCC in 47 C.F.R. § 1.6002(m), as may be amended or superseded.

**“technically infeasible”** means a circumstance in which compliance with a specific requirement within this policy is physically impossible and not merely more difficult or expensive than a noncompliant alternative.

**“Tower”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(9), as may be amended, which defines that term as any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for 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, and the associated site. Examples include, but are not limited to, monopoles, mono-trees and lattice towers.

**“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.

**“underground district”** means any area in the City within which overhead wires, cables, cabinets and associated overhead equipment, appurtenances and other improvements are either (1) prohibited by ordinance, resolution or other applicable law; (2) scheduled to be relocated underground within 18 months from the time an application is submitted; or (3) primarily located underground at the time an application is submitted.

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

## **PART I. Guidelines for WCFs Subject to a CUP**

### **A. Location Guidelines for Placement of WCFs**

1. *Preferred Locations* - WCFs are encouraged to locate on existing buildings and structures. In addition, WCFs should locate in the following zones and areas, which are listed in order of descending preference:
  - a. Collocation to existing facilities located in non-residential zones.
  - b. Industrial zones.
  - c. Commercial Zones.
  - d. Other non-residential zones, except open space.
  - e. Public right-of-way of roads adjacent to industrial and commercial zones and identified on the Circulation Plan contained in the Circulation Element of the city's General Plan.
  - f. Public property (e.g., city facilities) not in residential areas.
  - g. Major power transmission towers in non-residential zones or areas.
  - h. Public and private utility installations (not publicly accessible) open space zones (e.g., water tanks, reservoirs, or the existing communications towers).
  - i. Parks and community facilities (e.g., places of worship, community centers) in residential zones or areas.
  - j. Public right-of-way roads adjacent to residential zones and identified on the Circulation Plan contained in the Circulation Element of the city's General Plan.
  
2. *Discouraged Locations* - WCFs should not locate in any of the following zones or areas unless the applicant demonstrates no feasible alternative exists as required by Application and Review Guideline D.2.
  - a. Open space zones and lots (except as noted in Location Guideline A.2.).
  - b. Residential zones or areas (except as noted in Location Guideline A.1.)
  - c. Major power transmission towers in corridors located in/or next to a residential zone or area.
  - d. Environmentally sensitive habitat.
  - e. Public right-of-way of roads not identified on the Circulation Plan contained in the Circulation Element of the city's General Plan.
  - f. On vacant land.
  - g. Scenic highways as identified on the Circulation Element of the city's General Plan.
  
3. *Visibility to the Public* - In all areas, WCFs should locate where least visible to the public and where least disruptive to the appearance of the host property. Furthermore, no WCF should be installed on an exposed ridgeline or in a location readily visible from a public place, recreation area, scenic area or residential area unless it is satisfactorily located and/or screened so it is hidden or disguised to fit with the surrounding site design, architecture, and landscaping.
  
4. *Collocation* - Collocating with existing or other planned wireless communication facilities is recommended whenever feasible. Service providers are also encouraged to collocate with major power transmission

and distribution towers, and other utility structures when in compliance with these guidelines.

5. *Monopoles* - No new ground-mounted monopoles shall be permitted unless the applicant demonstrates no existing monopole, building, or structure can accommodate the applicant's proposed antenna as required by Application and Review Guideline D.3. The term "monopole" is defined as a cylinder self-supporting structure which supports the antennas and cables associated with a WCF. The cables and antennas may be contained within the monopole or may be external to the monopole. A camouflaged monopole may include design configuration such as mono-pine, mono-palm, mono-elm, or other similar structures that are constructed utilizing a monopole for the base. Monopoles may be permitted if it is satisfactorily located and/or screened so it is hidden or disguised to fit with the surrounding site design, architecture, and landscaping.

## **B. Design Guidelines**

1. *Stealth Design* - All aspects of a WCF, including the supports, antennas, screening methods, and equipment shall exhibit "stealth" design techniques so they visually blend into the background or the surface on which they are mounted. Subject to City approval, developers should use false architectural elements (e.g., cupolas, bell towers, dormers, and chimneys), architectural treatments (e.g., colors and materials), elements replicating natural features (e.g., trees and rocks), landscaping, and other creative means to hide or disguise WCFs. Stealth can also refer to facilities completely hidden by existing improvements, such as parapet walls.
2. *Equipment* - Equipment shall be located within existing buildings to the extent feasible. If equipment must be located outside, it shall be screened with walls, plants, or some other screening device. If small outbuildings are constructed specifically to house equipment, they should be designed and treated to match nearby architecture or the surrounding landscape.
3. *Collocation* - Whenever feasible and appropriate, WCF design and placement should promote and enable collocation.
4. *Height* - WCFs should adhere to the existing height limitations for structures and buildings of the zone in which they are located.
5. *Setbacks* - WCFs, including all equipment, should adhere to the building setback requirements of the zone in which they are located, with the following clarifications:
  - a. If on a site next to a residential zone, the WCF should be set back from the residential boundary a minimum distance equal to the above-ground height of the antenna.

- b. If in a residential zone and in a public utility installation, park, or community facility, the WCF should be set back from the property boundaries of the utility installation, park, or community facility a minimum distance equal to the above-ground height of the antenna.
  - c. The City Council may decrease or increase these setbacks if it finds such changes would improve the overall compatibility of the WCF based on the factors contained in Application and Review Guideline D.4.
6. *Building or Structure-Mounted WCFs:*
- a. Antennas and their associated mountings should not project outward more than 18 inches from the face of the building.
  - b. Roof mounted antennas should not be placed on roof peaks.
  - c. If permitted, WCFs on residential buildings shall only be allowed if disguised as a typical residential feature (e.g., a chimney, a dormer) and if all equipment is located inside, not outside, the building.
7. *Ground-mounted Monopoles:*
- a. All antennas should be mounted as close as possible to the monopole to improve facility appearance.
  - b. The placement, screening, and disguise of the monopole should fit with the surrounding site design, architecture, and landscaping. Tree disguises may be acceptable depending on their quality and compatibility with the landscaping nearby.
  - c. Landscaping should be provided as necessary to screen, complement, or add realism to a monopole. Landscaping should include mature shrubs and trees. Some of the trees should be tall enough to screen at least three-quarters of the height of the monopole at the time of planting. Sometimes, landscaping may not be needed because of the monopole's location or vegetation already nearby.
  - d. When possible and in compliance with these guidelines, monopoles should be placed next to tall buildings, structures, or tall trees.
8. *Lattice Towers*
- a. New lattice towers shall not be permitted in the City. Lattice tower is defined as a free-standing framework tower, typically 3 or 4 sided.
  - b. On the existing lattice towers, all antennas shall be mounted as close as possible to the tower so they are less noticeable.
9. *Undergrounding* - All utilities shall be placed underground.
10. *Regulatory Compliance* - WCFs shall comply with all FCC, FAA (Federal Aviation Administration), and local zoning and building code requirements.

## **C. Performance Guidelines**

1. *Noise* - All equipment, such as emergency generators and air conditioners shall be designed and operated consistent with the City noise standards.
2. *Maintenance* - All facilities, related equipment, and landscaping shall be maintained in good condition and free from trash, debris, graffiti, and any form of vandalism. Damaged equipment and damaged, dead or decaying landscaping shall be replaced promptly. Replacement of landscaping that provides facility screening should be, as much as possible, of similar size (including height), type, and screening capability at the time of planting as the plant(s) being replaced.
3. *Maintenance Hours* - Routine maintenance of equipment located in residential zones or within 100 feet of a residential district shall be conducted only during the hours of 8 am and 5 pm weekdays, not including holidays. In other areas, routine maintenance may be conducted at any time. Emergency repairs and maintenance shall be conducted within a reasonable length of time to be determined by the City Manager or his designee in the cases of power outages and equipment failure or malfunction. Equipment “change out” and overhaul can occur any time with 30 days notice to the Director of Community Development to allow notice to property owners and residents within 300 feet of the facility. Maintenance should not take place on Sundays or holidays.
4. *Lighting* - Security lighting should be kept to a minimum and should only be triggered by a motion detector where practical.
5. *Compliance with FCC RF Exposure Guidelines* - Within six (6) months after the issuance of occupancy, and with each time extension or amendment request, the developer/operator shall submit to the Planning Director either verification that the WCF is categorically excluded from having to determine compliance with the guidelines per 47 CFR §1.1307(b)(1) or a project implementation report that provides cumulative field measurements of radio frequency (RF) electromagnetic fields of all antennas installed at the subject site. The report shall quantify the RF emissions and compare the results with currently accepted ANSI/IEEE standards as specified by the FCC. The Planning Director shall review the report for consistency with the project’s preliminary proposal report submitted with the initial project application and the accepted ANSI/IEEE standards. If, on review, the Planning Director finds the project does not meet ANSI/IEEE standards, the City may take any action necessary, as provided by law, to require compliance, including but not limited to revoking the conditional use permit.
6. *Abandonment* - Any WCF that is not operated for a continuous period of 90 days will be considered abandoned. Within 90 days of receipt of notice from the City notifying the owner of such abandonment, the WCF owner must remove the facility and restore the site, as much as is reasonable and practical, to its prior condition. If such WCF is not removed within 90

days, the WCF will be considered a nuisance and in addition to any other available remedy, will be subject to abatement under Chapter 6.04 of the Solana Beach Municipal Code. If there are two or more users of a single WCF, then this provision will not become effective until all users stop using the WCF. The provider or owner must give notice to the City of the intent to discontinue use of any facility before discontinuing the use.

#### **D. Application and Review Guidelines**

1. Besides the typical submittal requirements for a conditional use permit (including plans, landscape details, and color and material samples, as appropriate), all WCF applications shall include the following items:
  - a. A description of the site selection process undertaken for the WCF proposed. Coverage objectives and the reasons for selecting the proposed site and rejecting other sites should be provided.
  - b. A description or map of the applicant's existing and other proposed sites.
  - c. A description of the wireless system proposed (e.g., cellular, PCS, etc.) and its consumer features (e.g., voice, video, and data transmissions).
  - d. Verification that the proposed WCF will either comply with the FCC's guidelines for human exposure to radio frequency (RF) electromagnetic fields or will be categorically excluded from having to determine compliance with the guidelines per 47 CFR §1.1307(b)(1). If WCFs are proposed for collocation, the verification must show the total exposure from all facilities taken together meets the FCC guidelines.
  - e. Color photo-simulation exhibits, prepared to scale, of the proposed WCF to show what the project would look like at its proposed location and from surrounding viewpoints. The Planning Director may waive the requirement to provide the exhibits if s/he determines they are unnecessary.
2. For WCFs proposed in a zone or area that is a discouraged WCF location as listed in Location Guideline A.2, the applicant shall provide evidence that no location in a preferred zone or area as listed in Location Guideline A.1 can accommodate the applicant's proposed facility. Evidence shall document that preferred zone or area locations do not meet engineering, coverage, location, or height requirements, or have other unsuitable limitations.
3. For proposed new ground-mounted monopoles, the applicant shall also provide evidence to the City's satisfaction that no existing monopole, building, structure, or WCF site ("existing facility") could accommodate the proposal. Evidence should demonstrate any of the following.
  - a. No existing facility is located within the geographic area or provides the height or structural length needed to meet the applicant's engineering requirements.

- b. The applicant's proposed WCF would cause electromagnetic interference with the existing antennae array or vice versa.
  - c. The fees, costs, or contractual provisions required by the owner to locate on an existing facility or to modify the same to enable location are unreasonable. Costs exceeding new monopole development are presumed to be unreasonable.
  - d. The applicant demonstrates to the City Council's satisfaction that there are other limiting factors that render an existing facility unsuitable.
4. In considering a Conditional Use Permit for a WCF, the City Council shall consider the following factors:
- a. Compliance with these guidelines.
  - b. Height and setbacks.
  - c. Proximity to residential uses.
  - d. The nature of uses on adjacent and nearby properties.
  - e. Surrounding topography and landscaping.
  - f. Quality and compatibility of design and screening.
  - g. Impacts on public views and the visual quality of the surrounding area.
  - h. Availability of other facilities and buildings for collocation.
5. A minimum deposit of \$3,000.00 is required at the time of application for a WCF for the services of an independent third party expert consultant, as selected by the City, for technical plan review, staff report preparation and attendance at City Council hearings as required as part of the application process. The actual costs of the services rendered by the independent third party consultant, as retained by the City, shall be borne by the applicant. These costs are independent of, and in addition to the conditional use permit fee.

## E. Conditions of Approval

- 1) **Standard Conditions.** Except as may be authorized in subsection (2), all permits issued under Part I shall be automatically subject to the conditions in this subsection (1).
- a. **Permit Term.** This CUP will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the City to establish a shorter term for public safety reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation, any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.
  - b. **Permit Renewal.** Not more than one year before this CUP expires, the permittee may apply for permit renewal. The permittee must



demonstrate that the subject wireless facility or other infrastructure deployment complies with all the conditions of approval associated with this CUP and all applicable provisions in the Solana Beach Municipal Code, this Policy and other applicable law that exist at the time the decision to renew or not renew is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with the Solana Beach Municipal Code, this Policy or other applicable law. Upon renewal, this CUP will automatically expire 10 years and one day from its issuance.

- c. **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a wireless facility or other infrastructure deployment approved or deemed-approved, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the wireless facility or other infrastructure deployment has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- d. **Build-Out Period.** This CUP will automatically expire 12 months from the approval date (the “build-out period”) unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility or other infrastructure deployment, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, support structure or the wireless facility or other infrastructure deployment and its use. The permittee may request in writing, and the City may grant in writing, one six-month extension if the permittee submits substantial and reliable written evidence demonstrating justifiable cause for a six-month extension. If the build-out period and any extension finally expires, the permit shall be automatically void but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.
- e. **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this CUP. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- f. **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“laws”) applicable to the permittee, the subject property, the wireless facility or other infrastructure deployment or any use or activities in connection with the use authorized in this CUP, which includes without limitation any laws

applicable to human exposure to RF emissions. 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. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Solana Beach Municipal Code, this Policy any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with all applicable provisions in the Solana Beach Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation.

- g. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Solana Beach Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare an emergency within the City. The Director may issue a stop work order for any activities that violates this condition in whole or in part.
- h. **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.
- i. **Permittee's Contact Information.** Within 10 days from the final approval, the permittee shall furnish the City with accurate and up-to-date contact information for a person responsible for the wireless facility or other infrastructure deployment, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and

promptly provide the City with updated contact information if either the responsible person or such person's contact information changes.

- j. **Indemnification.** The permittee and, if applicable, the property owner upon which the wireless facility or other infrastructure deployment is installed shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (i) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this CUP, and (ii) other claims of 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 CUP or the wireless facility or other infrastructure deployment. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner (if applicable) 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 and/or permittee (as applicable) shall promptly reimburse the 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 CUP, and that such indemnification obligations will survive the expiration, revocation or other termination of this CUP.
- k. **Permit Revocation.** Any permit granted under this Policy may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before any public hearing to revoke a permit granted under this policy, the Director must issue a written notice to the permittee that specifies (i) the facility; (ii) the violation(s) to be corrected; (iii) the timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s). A permit granted under this policy may be revoked only by the City Council after a duly notice public hearing. The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such

permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

- l. **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the CUP application, CUP, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the CUP (collectively, "records"). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.
- m. **Abandoned Facilities.** The wireless facility or other infrastructure deployment authorized under this CUP shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a wireless facility or other infrastructure deployment is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the wireless facility or other infrastructure deployment and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Solana Beach Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
- n. **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or

displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the City. The permittee shall, at all times, be responsible to maintain any replacement landscape features.

- o. **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all costs incurred in connection with the permit, which includes without limitation, costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility or other infrastructure deployment; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse the City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.
  - p. **Electric Meter Upgrades.** If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
  - q. **Truthful and Accurate Statements.** The permittee acknowledges that the City's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the City in connection with the CUP or the wireless facility or other infrastructure approved under the CUP, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
- 2) **Modified Conditions.** The City Council may modify, add or remove conditions to any CUP as the City Council deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in subsection (1) to the particular

facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment need for compliance with the Solana Beach Municipal Code, this policy, generally applicable health and safety requirements and/or any other applicable laws. To the extent required by applicable FCC regulations, the City Council shall take care to ensure that any different conditions applied to wireless facilities are no more burdensome than those applied to other infrastructure deployments.

## **PART II. Guidelines for WCFs Subject to a DUP**

### **A. General Overview for Section 6409(a) Applications**

Section 6409(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. FCC regulations interpret this statute and establish 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 60 days after submittal (accounting for any tolling periods). Moreover, whereas Section 704 of the Telecommunications Act of 1996, Pub. L. 104-104, codified as 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 guidelines in this Part II shall be applied to DUP applications submitted for approval pursuant to Section 6409(a). If the Director finds that Section 6409(a) does not apply, any denials shall be without prejudice to allow the applicant the opportunity to resubmit an application for a CUP for the same modification to be reviewed under the City’s guidelines in Part I of this policy.

### **B. Decisions**

1. Administrative Review. The Director shall administratively review a complete and duly filed application for a DUP and may act on such application without prior notice or a public hearing.
2. Decision Notices. Within five working days after the Director acts on an application for a DUP or before the FCC shot clock expires (whichever occurs first), the Director shall send a written notice to the applicant. In the event that the Director denies the application, the written notice to the applicant must contain (1) the reasons for the decision; (2) a statement that the denial will be without prejudice; and (3) instructions for how and when to file an appeal.

4. Required Findings for Approval. The Director may approve or conditionally approve any application for a DUP when the Director finds that the proposed project:
  - a. Involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
  - b. Does not substantially change the physical dimensions of the existing wireless tower or base station.
5. Criteria for Denial Without Prejudice. Notwithstanding any other provision in this policy, and consistent with all applicable federal laws and regulations, the Director may deny without prejudice any application for a DUP when the Director finds that the proposed project:
  - a. Does not meet the findings for approval;
  - b. Involves the replacement of the entire support structure; or
  - c. Violates any legally enforceable law, regulation, rule, standard or permit condition reasonably related to public health and safety.
6. Conditional Approvals. Subject to any applicable limitations in federal or state law, nothing in this policy is intended to limit the director's authority to conditionally approve an application for a DUP to protect and promote the public health and safety.

### **C. Application Requirements**

1. Application Required. The director shall not approve any request for a collocation or modification submitted for approval pursuant to Section 6409 except upon a duly filed application consistent with this Section C and any other written rules the City or the director may establish from time to time in any publicly-stated format.
2. Application Content. All applications for a DUP must include the following information and materials:
  - a. Application Form and Fee. The applicant must submit the appropriate and completed application submittal package as described in the General Project Application and fee required for a DUP.
  - b. Title Report and Owner's Authorization. For facilities proposed on private property, the applicant must provide a title report prepared within the six months prior to the application filing date. No title report will be required for facilities proposed to be located within the public rights-of-way. For all facilities, if the applicant does not own the subject property or support structure, 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.
  - c. Regulatory Authorizations and Approvals. All applications for a DUP or CUP must include the following information and materials:

- i. Documented evidence that the applicant holds all current licenses and registrations from the FCC, the CPUC and any other applicable regulatory bodies where such license(s) and/or registration(s) are necessary to provide wireless services utilizing the proposed wireless facility.
  - ii. To the extent that the applicant claims any regulatory authorization, franchise or other legal right, which includes without limitation a CPCN, to access and use the public right-of-way to provide telecommunications services, the applicant must provide a true, correct and complete copies of such certificates, licenses, franchises, notices to proceed or other regulatory authorizations.
  - iii. True, correct and complete copies of all permits and/or other regulatory approvals issued by the City (or other local public agency with jurisdiction over the subject wireless tower or base station) in connection with the initial construction or installation and any subsequent collocations, modifications or renewals of the subject wireless tower or base station. Alternatively, the applicant may submit a written justification that sets forth reasons why prior permits or other regulatory approvals were not required for the subject wireless tower or base station at the time it was constructed or modified.
- d. Project Plans. A fully dimensioned site plan and elevation drawings prepared and sealed by a California-licensed engineer showing any existing wireless facilities with all existing transmission equipment and other improvements, the proposed wireless facility with all proposed transmission equipment and other improvements and the legal boundaries of the leased or owned area surrounding the proposed wireless facility and any associated access or utility easements. The plans must specifically depict and call out the original overall height of the structure and, if the structure was constructed prior to February 22, 2012, the overall height that existed on February 22, 2012. The plans must also contain cut sheets that contain detailed equipment specifications for all existing and proposed equipment in connection with the site. In addition, the plans must contain all other elements and details required for site plans submitted with a CUP application.
- e. Site Photos and Photo Simulations. Photographs and photo simulations that show the existing wireless facility and proposed changes in context of the site from reasonable line-of-sight locations from public streets or other adjacent viewpoints, together with a map that identifies the photo location of each view angle.
- f. Acoustic Analysis. A written report that analyzes acoustic levels for the proposed wireless 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



applicable provisions in the Solana Beach Municipal Code. The acoustic analysis must be prepared and certified by a qualified 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. As an alternative to the report, the applicant may submit written 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.

- g. Verification that the proposed WCF will either comply with the FCC's guidelines for human exposure to radio frequency (RF) electromagnetic fields or will be categorically excluded from having to determine compliance with the guidelines per 47 CFR §1.1307(b)(1). If WCFs are proposed for collocation, the verification must show the total exposure from all facilities taken together meets the FCC guidelines.
- h. Section 6409 Justification Analysis. A written statement that explains in plain factual detail whether and why Section 6409 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. The written justification analysis described in this subsection (B)(7) may be substituted by a form or worksheet developed or otherwise approved by the Director.
- i. A minimum deposit of \$3,000.00 is required at the time of application for a WCF for the services of an independent third party expert consultant, as selected by the City, for technical plan review, Director's Decision preparation and attendance at Directors Use Permit hearings as required as part of the application process. The actual costs of the services rendered by the independent third party consultant, as retained by the City, shall be borne by the applicant. These costs are independent of, and in addition to the DUP fee.

#### **D. Conditions of Approval**

- 1) **Standard Conditions.** Except as may be authorized in subsection (2), all permits issued under Part II shall be automatically subject to the conditions in this subsection (1).
  - a. **Permit Term.** This DUP will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b)

authorizes the City to establish a shorter term for public safety reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.

- b. **Permit Renewal.** Not more than one year before this DUP expires, the permittee may apply for permit renewal. The permittee must demonstrate that the subject wireless facility or other infrastructure deployment complies with all the conditions of approval associated with this DUP and all applicable provisions in the Solana Beach Municipal Code, this Policy and other law that exist at the time the decision to renew or not renew is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with the Solana Beach Municipal Code, this Policy or other applicable law. Upon renewal, this DUP will automatically expire 10 years and one day from its issuance.
- c. **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a wireless facility or other infrastructure deployment approved or deemed-approved, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the wireless facility or other infrastructure deployment has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- d. **Build-Out Period.** This DUP will automatically expire 12 months from the approval date (the "build-out period") unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility or other infrastructure deployment, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, support structure or the small wireless facility or other infrastructure deployment and its use. The permittee may request in writing, and the City may grant in writing, one six-month extension if the permittee submits substantial and reliable written evidence demonstrating justifiable cause for a six-month extension. If the build-out period and any extension finally expires, the permit shall be automatically void but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.
- e. **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this DUP. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to

the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

- f. **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“laws”) applicable to the permittee, the subject property, the wireless facility or other infrastructure deployment or any use or activities in connection with the use authorized in this DUP, which includes without limitation any laws applicable to human exposure to RF emissions. 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. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Solana Beach Municipal Code, this Policy any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee’s obligation to comply in all respects with all applicable provisions in the Solana Beach Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation.
- g. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee’s or its authorized personnel’s construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Solana Beach Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare an emergency within the City. The Director may issue a stop work order for any activities that violates this condition in whole or in part.
- h. **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City’s officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City’s officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe

the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.

- i. **Permittee's Contact Information.** Within 10 days from the final approval, the permittee shall furnish the City with accurate and up-to-date contact information for a person responsible for the wireless facility or other infrastructure deployment, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and promptly provide the City with updated contact information if either the responsible person or such person's contact information changes.
- j. **Indemnification.** The permittee and, if applicable, the property owner upon which the wireless facility or other infrastructure deployment is installed, shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (i) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this DUP, and (ii) other claims of 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 DUP or the wireless facility or other infrastructure deployment. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner (if applicable) 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 and/or permittee (as applicable) shall promptly reimburse the 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 DUP, and that such indemnification obligations will survive the expiration, revocation or other termination of this DUP.
- k. **Permit Revocation.** Any permit granted under this Policy may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before any public hearing to revoke a permit granted under this Policy, the Director must issue a written notice to the permittee that specifies (i) the facility; (ii) the violation(s) to be corrected; (iii) the

timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s). A permit granted under this Policy may be revoked only by the City Council after a duly notice public hearing. The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

- l. **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the DUP application, DUP, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the DUP (collectively, "records"). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.
- m. **Abandoned Facilities.** The wireless facility or other infrastructure deployment authorized under this DUP shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a wireless facility or other infrastructure deployment is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility or other infrastructure deployment and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Solana Beach Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day

period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.

- n. **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the City. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- o. **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility or other infrastructure deployment; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse the City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.
- p. **Electric Meter Upgrades.** If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
- q. **Truthful and Accurate Statements.** The permittee acknowledges that the City's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the City in connection with the DUP or the wireless facility or other infrastructure approved under the DUP, neither the permittee nor any person authorized to act on permittee's behalf shall,

in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.

- 2) **Modified Conditions.** The Director may modify, add or remove conditions to any DUP as the Director deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in subsection (1) to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment need for compliance with the Solana Beach Municipal Code, this policy, generally applicable health and safety requirements and/or any other applicable laws. To the extent required by applicable FCC regulations, the Director shall take care to ensure that any different conditions applied to wireless facilities are no more burdensome than those applied to other infrastructure deployments.

### **PART III. Guidelines for Small Wireless Facilities in Right-of-Way**

#### **A. Applicability**

- 1) **Small Wireless Facilities.** Except as expressly provided otherwise, the provisions in this policy shall be applicable to all existing small wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy small wireless facilities within the public rights-of-way within the City's jurisdictional and territorial boundaries.
- 2) **Other Infrastructure Deployments.** To the extent that other infrastructure deployments, including without limitation any deployments that require approval pursuant to Solana Beach Municipal Code Sections 11.20.200 and 11.20.210, involve the same or substantially similar structures, apparatus, antennas, equipment, fixtures, cabinets, cables or improvements, the City Engineer is responsible to review and approve or deny requests for authorization in connection with such other infrastructure deployment shall apply the provisions in this policy unless specifically prohibited by applicable law.

#### **B. Required Permits and Approvals**

- 1) **DUP.** A "Director's Use Permit", subject to the Director of Community Development's review and approval in accordance with this policy, shall be required for all small wireless facilities and other infrastructure deployments located in whole or in part within the public rights-of-way ("**ROW**").
- 2) **ROW use permit.** A "ROW use permit", subject to the City Engineer's review and approval in accordance with this policy, shall be required for all

small wireless facilities and other infrastructure deployments located in whole or in part within the public rights-of-way.

- 3) **Exemptions.** Notwithstanding anything in this policy to the contrary, a DUP and ROW use permit shall not be required for:
  - a. wireless facilities or other infrastructure deployments owned and operated by the City for its use;
  - b. OTARD facilities;
  - c. requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409; or
  - d. wireless facilities or other infrastructure deployments covered by a valid franchise, pole license or other encroachment agreement between the applicant and the City.
  
- 4) **Other Permits and Approvals.** In addition to a DUP and ROW use permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or other approvals issued by other City departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility or other infrastructure deployment must contain a valid ROW use permit issued by the City for the proposed facility. Any application for any ministerial permit(s) submitted without such ROW use permit may be denied without prejudice. Any ROW use permit granted under this Policy shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals. Furthermore, and to avoid potential confusion, an exemption from the ROW use permit requirement under Section B(3) does not exempt the same wireless facilities or other infrastructure deployments from any other permits or approvals, which includes without limitation any ministerial permits from the City.

### C. Application and Review Procedures

- 1) **Application Requirements for Small Wireless Facilities.** In addition to any other publicly-stated requirements, all DUP and ROW use permit applications for small wireless facilities must include the following information and materials:
  - a. **Application Form.** The applicant shall submit a complete, duly executed DUP and ROW use permit application on the then-current form prepared by the City.
  - b. **Application Fee.** The applicant shall submit the applicable DUP and ROW use permit application fees established by City Council resolution. Batched applications must include the applicable DUP and ROW use permit application fees for each small wireless facility in the batch. If no DUP or ROW use permit application fee has been established, then the applicant must submit a signed written statement that acknowledges



that the applicant will be required to reimburse the City for its reasonable costs incurred in connection with the application within 10 days after the City issues a written demand for reimbursement.

- c. **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all potential support structures within 500 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's preliminary plan for electric and data backhaul utilities, which shall include the anticipated locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.
- d. **Site Survey.** For any small wireless facility, the applicant shall submit a survey prepared, signed and stamped by a licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 75 feet from the proposed project site and any new improvements, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.
- e. **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. At least one simulation must depict the small wireless facility from a vantage point approximately 50 feet from the proposed support structure or location. The photo simulations and vicinity map shall be incorporated into the construction plans submitted with the application.

- f. **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed facility qualifies as a “small wireless facility” as defined by the FCC in 47 C.F.R. § 1.6002(l). 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 the written statement the applicant must also include (i) whether and why the proposed support is a “structure” as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a DUP and ROW use permit as provided in Section F(2).
- g. **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed small wireless facility, both individually and cumulatively with all other emitters that contribute more than 5% to the cumulative emissions in the vicinity (if any), will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the Director. The RF report must include the actual frequency and power levels (in watts effective radiated power) 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 the boundaries of areas with RF exposures in excess of the controlled/occupational 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. If the applicant submits a batched application, a separate RF report shall be prepared for each facility associated with the batch.
- h. **Public Notices.** The applicant shall include with the application a list that identifies all persons entitled to notice (as defined in this Policy) together with three preaddressed envelopes with correct postage for each person entitled to notice.
- i. **Regulatory Authorization.** The applicant shall submit evidence of the applicant’s regulatory status under federal and California law to provide the services and construct the small wireless facility proposed in the application.
- j. **Pole License Agreement.** For any small wireless facility proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant shall submit an executed Pole License Agreement on a form prepared by the City that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the City’s Pole License Agreement except as may be indicated on the form itself. Any unpermitted changes to the City’s Pole License Agreement shall be deemed a basis to deem the application incomplete. Refusal to accept the terms and conditions in the City’s Pole License Agreement shall be

an independently sufficient basis to deny the application without prejudice.

- k. **Title Report and Property Owner's Authorization.** For any small wireless facility proposed to be installed on any private property not owned or controlled by the City, whether in whole or in part, the applicant must submit: (i) a title report issued within 30 days from the date the applicant filed the application; and (ii) if the applicant is not the property owner, a written authorization signed by the property owner identified in the title report that authorizes the applicant to submit and accept a small cell permit in connection with the subject property. For any small wireless facility proposed to be installed on a support structure in the public right-of-way, the applicant must submit a written authorization from the support structure owner(s).
- l. **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by a licensed engineer for the proposed small wireless 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 acoustic analysis 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. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer(s) that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable noise limits.

- 2) **Voluntary Presubmittal Conference.** The City strongly encourages, but does not require, applicants to schedule and attend a presubmittal conference with the Director and other City staff. This voluntary, presubmittal conference does not cause the FCC Shot Clock to begin and is intended to streamline the review process through collaborative, informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project and/or project site, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments implicated by the proposed project; and application completeness issues. Presubmittal conferences are especially encouraged when an applicant seeks to submit one or more batched applications so that the Director may advise the applicant about any staffing or scheduling issues that may hinder the City's ability to meet the presumptively reasonable timeframes under the FCC Shot Clock. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications, plans, maps or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable in their then-current form. The Director will use reasonable efforts to provide the applicant with an appointment within approximately five working days after

receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the staff time and services rendered in the presubmittal conference.

- 3) **Submittal Appointments.** All applications must be submitted in person to the City at a pre-scheduled appointment with the Director. Prospective applicants may generally submit one application per appointment, or up to five individual applications per appointment as a batch. Potential applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants for any other development project as determined by the Director. The Director shall use reasonable efforts to offer an appointment within five working days after the Director receives a written request from a potential applicant. Any purported application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed, whether the City retains, returns or destroys the materials received.
- 4) **Incomplete Applications Deemed Withdrawn.** Any application governed under this policy shall be automatically deemed withdrawn by the applicant when the applicant fails to submit a substantive response to the Director within 60 calendar days after the Director deems the application incomplete by written notice. As used in this subsection (4), a “substantive response” must include, at a minimum, the complete materials identified as incomplete in the written incomplete notice.
- 5) **Additional Administrative Requirements and Regulations.** The City Council authorizes the Director to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this policy. The City Council further authorizes the Director to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments and/or submittals without appointments, as the Director deems necessary or appropriate to organize, document and manage the application intake process. All such requirements, materials, rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice.

#### **D. Public Notices**

- 1) **Application Submittal Notice.** Within approximately 10 calendar days after an application is received and prior to any approval, conditional approval or denial, the City shall mail public notice to all persons entitled to notice. The notice must contain: (1) a general project description; (2) the applicant’s identification and contact information as provided on the application submitted to the City; (3) contact information for the Director

for interested parties to submit comments; (4) a statement that the Director will act on the application without a public hearing but that any interested person or entity may appeal the Director's decision directly to the City Council; and (5) if the application is for a small wireless facility, a general statement that the FCC requires the City to take final action on such applications within 60 days for collocations and 90 days for facilities on new support structures.

- 2) **Application Decision Notice.** Within five calendar days after the Director acts on a DUP and ROW use permit application, the Director shall provide written notice to the applicant and all persons entitled to notice. If the Director denies an application (with or without prejudice) for a small wireless facility, the written notice must also contain the reasons for the denial.

## E. Decisions

- 1) **Initial Administrative Decision.** Not less than 10 calendar days after the public notice required in Section D(1) is sent, and not more than 29 shot clock days after the application has been deemed complete, the Director shall approve, conditionally approve or deny a complete and duly filed ROW use permit application without a public hearing.
- 2) **Required Findings for Approval.** The Director may approve or conditionally approve a complete and duly filed application for a ROW use permit when the Director finds:
  - a. the proposed project complies with all applicable design standards in this policy;
  - b. the proposed project would be in the most preferred location within 500 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 500 feet would be technically infeasible;
  - c. the proposed project would not be located on a prohibited support structure identified in this Policy;
  - d. the proposed project would be on the most preferred support structure within 500 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) within 500 feet would be technically infeasible;
  - e. if the proposed project involves a wireless facility, the proposed project fits within the definition for a "small wireless facility" as defined by the FCC;
  - f. if the proposed project involves a wireless facility, the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and
  - g. all public notices required for the application have been given.

- 3) **Conditional Approvals; Denials Without Prejudice.** Subject to any applicable federal or California laws, nothing in this policy is intended to limit the Director's ability to conditionally approve or deny without prejudice any ROW use permit application as may be necessary or appropriate to ensure compliance with this policy.
- 4) **Appeals.** Any interested person or entity may appeal the decision by the Director to the City Council; provided, however, that appeals from an approval shall not be permitted when based solely on the environmental effects from radio frequency emissions that are compliant with applicable FCC regulations and guidelines. An appeal notice must be filed within seven calendar days after the date on the Director's decision notice. The notice must contain a short and plain statement about the basis for the appeal, which may be supplemented after the notice period has expired but before the appeal hearing. The City Council shall hear appeals *de novo* and issue the applicant and any person entitled to notice a written decision within five calendar days after the appeal hearing. If the City Council denies the application on appeal (whether by affirmation or reversal), the written notice shall contain the reasons for the decision.

**F. Conditions of Approval.** Small wireless facilities and other infrastructure deployments shall be subject to the conditions of approval as stated in Parts I and II, as applicable above.

**G. Location Standards**

- 1) **Location Preferences.** To better assist applicants and decision makers understand and respond to the community's aesthetic preferences and values, this subsection sets out listed preferences for locations to be used in connection with small wireless facilities in an ordered hierarchy. Applications that involve lesser-preferred locations may be approved so long as the applicant demonstrates by clear and convincing evidence in the written record that either (1) no more preferred locations or structures exist within 500 feet from the proposed site; or (2) any more preferred locations or structures within 500 feet from the proposed site would be technically infeasible as supported. The City prefers small cells in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:
  - a. locations within light industrial districts and office professional districts on or along multi-modal boulevards;
  - b. locations within light industrial districts, office professional districts, commercial districts on or along community connectors;
  - c. locations within light industrial districts, office professional districts, commercial districts on or along bicycle boulevards;
  - d. locations within light industrial districts, office professional districts, commercial districts on or along pedestrian corridors;

- e. locations within light industrial districts, office professional districts, commercial districts on or along local streets;
  - f. locations within residential districts and open space districts on or along multi-modal boulevards;
  - g. locations within residential districts and open space districts on or along community connectors;
  - h. locations within residential districts and open space districts on or along bicycle boulevards;
  - i. locations within residential districts and open space districts on or along pedestrian corridors;
  - j. locations within residential districts and open space districts on or along local streets;
  - k. any location within 500 feet from an existing small wireless facility;
  - l. any location within 500 feet from any structure approved for a residential use.
- 2) **Prohibited Support Structures.** Except when authorized as a pre-approved design pursuant to this policy, small wireless facilities shall not be permitted on the following support structures:
- a. decorative poles;
  - b. traffic signal poles, cabinets or related structures;
  - c. new, nonreplacement wood poles;
  - d. any utility pole scheduled for removal or relocation within 18 months from the time the Director acts on the small wireless facility application;
- 3) **Encroachments Over Private Property.** No small wireless antennas, accessory equipment or other improvements may encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.
- 4) **No Interference with Other Uses.** Small wireless facilities and any associated antennas, accessory equipment or improvements shall not be located in any place or manner that would physically interfere with or impede access to any: (1) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (2) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (3) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (4) fire hydrant or water valve; (5) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or (6) access to any fire escape.
- 5) **Replacement Pole Location.** All replacement poles must: (1) be located as close to the removed pole as possible; (2) be aligned with the other existing poles along the public rights-of-way; and (3) be compliant with all

applicable standards and specifications by the City Engineer or his or her designee.

- 6) **Additional Placement Requirements.** In addition to all other requirements in this Policy, small wireless facilities, other infrastructure deployments and all related equipment and improvements shall:
  - a. be placed as close as possible to the property line between two parcels that abut the public rights-of-way;
  - b. not be placed directly in front of any door or window;
  - c. not be placed within any sight distance triangles at any intersections;
  - d. be placed at least 10 feet away from any driveway or established pedestrian pathway between a residential structure and the public rights-of-way;
  - e. be placed at least 50 feet away from any driveways for police stations, fire stations or other emergency responder facilities.

## H. Design Standards

- 1) **Finishes.** All exterior surfaces shall be painted, colored and/or wrapped in flat, nonreflective hues that match the underlying support structure or blend with the surrounding environment. All surfaces shall be treated with graffiti-resistant sealant. All finishes shall be subject to the City Engineer's prior approval.
- 2) **Noise.** Small wireless facilities and all associated antennas, accessory equipment and other improvements must comply with all applicable noise control standards and regulations in the Solana Beach Municipal Code, Chapter 7.34 as either may be amended or superseded, the Noise Element in the Solana Beach General Plan and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable district.
- 3) **Lights.** All lights and light fixtures must be aimed and shielded so that their illumination effects are directed downwards and confined within the public rights-of-way in a manner consistent with any other standards and specifications by the City Engineer or his or her designee. All antennas, accessory equipment and other improvements with indicator or status lights must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas.
- 4) **Trees and Landscaping.** Small wireless facilities and other infrastructure deployments shall not be installed (in whole or in part) within any tree drip line. Small wireless facilities and other infrastructure deployments may not displace any existing tree or landscape features unless: (A) such displaced tree or landscaping is replaced with native and/or drought-resistant trees, plants or other landscape features approved by the City Engineer and (B) the applicant submits and adheres to a landscape maintenance plan. Only International Society of Arboriculture certified workers under a licensed arborist's supervision shall be used to install the



replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree unless approved by the City Engineer. The permittee shall, at all times, be responsible to maintain any replacement landscape features.

- 5) **Signs and Advertisements.** All small wireless facilities and other infrastructure deployments that involve RF transmitters must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities and other infrastructure deployments may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.
- 6) **Site Security Measures.** Small wireless facilities and other infrastructure deployments may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The Director shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials.
- 7) **Compliance with Health and Safety Regulations.** All small wireless facilities and other infrastructure deployments shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions and compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*).
- 8) **Antennas.** The provisions in this subsection (8) are generally applicable to all antennas.
  - a. **Shrouding.** All antennas and associated cables, jumpers, wires, mounts, masts, brackets and other connectors and hardware must be installed within a single shroud or radome. For pole-top antennas, the shroud shall not exceed one and one-half times the median pole diameter and must taper down to pole. For side-arm antennas, the shroud must cover the cross arm and any cables, jumpers, wires or other connectors between the vertical riser and the antenna.
  - b. **Antenna Volume.** Each individual antenna associated with a single small wireless facility shall not exceed three cubic feet. The cumulative volume for all antennas on a single small wireless facility shall not exceed: (A) three cubic feet in residential areas; or (B) six cubic feet in nonresidential areas.
  - c. **Overall Height.** No antenna may extend more than five feet above the support structure, plus any minimum separation between the antenna

and other pole attachments required by applicable health and safety regulations.

- d. **Horizontal Projection.** Side-mounted antennas, where permitted, shall not project: (A) more than 18 inches from the support structure; (B) over any roadway for vehicular travel; or (C) over any abutting private property. If applicable laws require a side-mounted antenna to project more than 18 inches from the support structure, the projection shall be no greater than required for compliance with such laws.
- 9) **Accessory Equipment Volume.** The cumulative volume for all accessory equipment for a single small wireless facility or other infrastructure deployment shall not exceed: (A) nine cubic feet in residential areas or (B) 17 cubic feet in nonresidential areas. The volume limits in this subsection do not apply to any undergrounded accessory equipment.
  - 10) **Undergrounded Accessory Equipment.**
    - a. **Where Required.** Accessory equipment (other than any electric meter (where permitted) emergency disconnect switch) shall be placed underground when proposed in any (A) underground district or (B) any location where the Director or City Engineer finds substantial evidence that the additional above-ground accessory equipment would incommode the public's uses in the public rights-of-way. Notwithstanding the preceding sentence, the Director or City Engineer may grant an exception when the applicant demonstrates by clear and convincing evidence that compliance with this section would be technically infeasible.
    - b. **Vaults.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk.
  - 11) **Pole-Mounted Accessory Equipment.** The provisions in this subsection (11) are applicable to all pole-mounted accessory equipment in connection with small wireless facilities and other infrastructure deployments.
    - a. **Preferred Concealment Techniques.** Applicants should propose to place any pole-mounted accessory equipment in the least conspicuous position under the circumstances presented by the proposed pole and location. Pole-mounted accessory equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations.
    - b. **Minimum Vertical Clearance.** The lowest point on any pole-mounted accessory equipment shall be at least 10 feet above ground level adjacent to the pole. If applicable laws require any pole-mounted accessory equipment component to be placed less than 10 feet above ground level, the clearance from ground level shall be no less than required for compliance with such laws.

- c. **Horizontal Projection.** Pole-mounted accessory equipment shall not project: (i) more than 18 inches from the pole surface; (ii) over any roadway for vehicular travel; or (iii) over any abutting private property. All pole-mounted accessory equipment shall be mounted flush to the pole surface. If applicable laws preclude flush-mounted equipment, the separation gap between the pole and the accessory equipment shall be no greater than required for compliance with such laws and concealed by opaque material (such as cabinet “flaps” or “wings”).\*\*\*
  - d. **Orientation.** Unless placed behind a street sign or some other concealment that dictates the equipment orientation on the pole, all pole-mounted accessory equipment should be oriented away from prominent views. In general, the proper orientation will likely be toward the street to reduce the overall profile when viewed from the nearest abutting properties. If orientation toward the street is not feasible, then the proper orientation will most likely be away from oncoming traffic. If more than one orientation would be technically feasible, the Director may select the most appropriate orientation.
  
- 12) **Ground-Mounted or Base-Mounted Accessory Equipment.** The provisions in this subsection (12) are applicable to all ground-mounted and base-mounted accessory equipment in connection with small wireless facilities and other infrastructure deployments.
  - a. **Ground-Mounted Concealment.** On collector roads and local roads, the City prefers ground-mounted accessory equipment to be concealed as follows: (A) within a landscaped parkway, median or similar location, behind or among new/existing landscape features and painted or wrapped in flat natural colors to blend with the landscape features; and (B) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks. On arterial roads outside underground districts, proposed ground-mounted accessory equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing ground-mounted accessory equipment cabinets.
  - b. **Public Safety Visibility.** To promote and protect public health and safety and prevent potential hazards hidden behind large equipment cabinets, no individual ground-mounted accessory equipment cabinet may exceed four feet in height or four feet in width. Ground-mounted and base-mounted equipment cabinets shall not have any horizontal flat surfaces greater than 1.5 square inches to prevent litter or other objects left on such surfaces.
  
- 13) **Utilities.** The provisions in this subsection (13) are applicable to all utilities and other related improvements that serve small wireless facilities and other infrastructure deployments.
  - a. **Overhead Lines.** The City Engineer shall not approve any new overhead utility lines in underground districts. In areas with existing overhead lines, new communication lines shall be “overlashed” with

existing communication lines. No new overhead utility lines shall be permitted to traverse any roadway used for vehicular transit.

- b. **Vertical Cable Risers.** All cables, wires and other connectors must be routed through conduits within the pole or other support structure, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, such as with wood utility poles, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying pole.
- c. **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
- d. **Electric Meters.** Small cells and other infrastructure deployments shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. If the proposed project involves a ground-mounted equipment cabinet, an electric meter may be integrated with and recessed into the cabinet, but the City Engineer shall not approve a separate ground-mounted electric meter pedestal.
- e. **Existing Conduit or Circuits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants are encouraged to use existing conduits and/or electric circuits whenever available and technically feasible. Access to any conduit and/or circuits owned by the City shall be subject to the City Engineer's prior written approval, which the City Engineer may withhold or condition as the City Engineer deems necessary or appropriate to protect the City's infrastructure, prevent interference with the City's municipal functions and public health and safety.

## I. Pre-Approved Designs

- 1) **Purpose.** To expedite the review process and encourage collaborative designs among applicants and the City, the City Council authorizes the Director or City Engineer to designate one or more preapproved designs for small wireless facilities and other infrastructure deployments. This Section I sets out the process to establish or repeal a preapproved design and the expedited review procedures and findings applicable to these applications.
- 2) **Adoption.** The City Engineer may, in the Director's discretion, establish a preapproved design when the City Engineer finds that a proposed preapproved design exceeds the design standards in this policy. The City Engineer shall post a public notice posted at Solana Beach City Hall, with the City Clerk and in a newspaper of general circulation within the City. The notice must generally describe the preapproved design, include a photograph or photo simulation, specify whether the preapproved design would be limited or restricted in any districts and contain a reference to the

appeal procedure. Unless appealed pursuant to the Solana Beach Municipal Code, the preapproved design shall become effective 15 days from the notice required in this subsection. A decision by the City Engineer not to adopt a proposed preapproved design or the City Engineer's failure to act on a request for a proposed preapproved design is not appealable.

- 3) **Repeal.** The City Engineer may repeal any preapproved design by written notice posted at Solana Beach City Hall. The repeal shall be immediately effective. The City Engineer's repeal, refusal to repeal or failure to act on a request to repeal a preapproved design is not appealable.
- 4) **Modified Review Process.** In nonresidential districts, applications for a preapproved design shall not be subject to the notice requirements in Section D(1) or any potential appeals under Section E(4). In residential districts, applications for a preapproved design shall remain subject to the notice requirements in Section D and any potential appeals under Section E(4).
- 5) **Modified Findings.** When an applicant submits a complete application for a preapproved design, the Director shall presume that the findings for approval in Sections E(2)(a) and E(2)(e) are satisfied and shall evaluate the application for compliance with the findings for approval in Sections E(2)(b), E(2)(c), E(2)(d), and E(2)(f).
- 6) **Nondiscrimination.** Any applicant may propose to use any preapproved design whether the applicant initially requested that the City Engineer adopt such preapproved design or not. The City Engineer's decision to adopt a preapproved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the preapproved plans. Any other vendor or manufacturer that fabricates a facility to the standards and specifications in the preapproved design with like materials, finishes and overall quality shall be acceptable as a preapproved design.