

# WIRELESS FACILITIES ORDINANCE

City of Santa Barbara, California

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## **28.74.010 – LEGISLATIVE INTENT**

- (A) The purpose of this chapter is to reasonably regulate, to the extent permitted by California and federal law, the installation, operation, collocation, modification and removal of wireless facilities in the City of Santa Barbara in a manner that protects and promotes public health, safety and welfare, and balances the benefits that flow from robust wireless services with the unique and historic character, aesthetics and local values of the City.
- (B) This chapter does not intend to, and shall not be interpreted or applied to:

- (1) prohibit or effectively prohibit personal wireless services; or
- (2) unreasonably discriminate among providers of functionally equivalent personal wireless services; or
- (3) regulate the installation, operation, collocation, modification or removal of wireless facilities on the basis of the environmental effects of RF emissions to the extent that such emissions comply with all applicable FCC regulations; or
- (4) prohibit or effectively prohibit any collocation or modification that the City may not deny under California or federal law;
- (5) preempt any applicable California or federal law.

**28.74.020 – DEFINITIONS**

- (A) **“Antenna”** means a device used to transmit and/or receive radio or electromagnetic waves. Examples include, but are not limited to, panel antennas, directional antennas, microwave dishes and whip (omni-directional) antennas.
- (B) **“Approval authority”** means the commission, board or official responsible for review of permit applications and vested with the authority to approve or deny such applications. The approval authority for a project which requires a conditional use permit refers to the Planning Commission. The approval authority for a project which requires a land use permit refers to the Architectural Board of Review. The approval authority for a project which qualifies as a Section 6409(a) Modification refers to the Community Development Director.
- (C) **“Architectural Board of Review”** means the body established in the City of Santa Barbara Municipal Code section 2.08.020.B.
- (D) **“Array”** means one or more antennas mounted at approximately the same level above ground on tower or base station.
- (E) **“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 follows:

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.

(i) 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.

(ii) 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).

(iii) 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 paragraphs (b)(1)(i) through (ii) of this section 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.

(iv) 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 paragraphs (b)(1)(i)–(ii) of this section.

**Note:** As an illustration and not a limitation, the FCC’s definition refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles and transmission towers, light standards or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

- (F) **“City”** means the City of Santa Barbara, California.
- (G) **“City Council”** the City Council of the City of Santa Barbara, California.
- (H) **“Code”** the City of Santa Barbara Municipal Code, as may be amended.
- (I) **“Collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as “[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.” As an illustration and not a limitation, the FCC’s definition effectively means “to add” new equipment to an existing facility and does not necessarily refer to more than one wireless facility installed at a single site.
- (J) **“Community Development Director”** means the Community Development Director of the City of Santa Barbara or his or her designee.
- (K) **“CPUC”** means the California Public Utilities Commission or its successor agency.
- (L) **“Distributed antenna system”** or **“DAS”** means a network of one or more Antennas and related fiber optic nodes typically mounted to or located at streetlight poles, utility poles, sporting venues, arenas or convention centers which provide access and signal transfer for wireless service providers. A distributed antenna system also includes the equipment location, sometimes called a “hub” or “hotel” where the DAS network is interconnected with one or more wireless service provider’s facilities to provide the signal transfer services.

- (M) **“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 “[a]ny 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) [c]ollocation of new transmission equipment; (ii) [r]emoval of transmission equipment; or (iii) [r]eplacement of transmission equipment.”
- (N) **“Eligible support structure”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which defines that term as “[a]ny tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.”
- (O) **“Existing”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which provides that “[a] constructed tower or base station is existing for purposes of [the FCC’s Section 6409(a) regulations] if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.”
- (P) **“Facility”** means an installation used to transmit signals over the air from facility to facility or from facility to user equipment for any wireless service and includes, but is not limited to, personal wireless services facilities.
- (Q) **“FAA”** means the Federal Aviation Administration or its successor agency.
- (R) **“FCC”** means the Federal Communications Commission or its successor agency.
- (S) **“Historic Landmarks Commission”** means the body established pursuant to Section 817 of the Santa Barbara City Charter.
- (T) **“Monopole”** means a single freestanding non-lattice, tubular tower that that is not camouflaged and that is used to act as or support an antenna or antenna arrays.
- (U) **“OTARD antenna”** means antennas covered by the “Over-the-Air Reception Devices” rule in 47 C.F.R. §§ 1.4000 *et seq.*, as may be amended.
- (V) **“Personal wireless services”** has the same meaning as provided in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.”
- (W) **“Personal wireless service facilities”** has the same meaning as provided in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended, which defines the term as “facilities for the provision of personal wireless services.”
- (X) **“Public rights-of-way”** means the area across, along, beneath, in, on, over, under, upon and within the dedicated public streets, roads, sidewalks, alleys, and waterways within the City, as they now exist or hereafter will exist, including unimproved areas that have been dedicated for public street purposes. Public right of way does not include public

utility easements dedicated to the City outside dedicated public streets, roads, sidewalks, alleys, and waterways within the City.

- (Y) **“Public Works Director”** means the Public Works Director of the City of Santa Barbara or his or her designee.
- (Z) **“RF”** means radio frequency.
- (AA) **“Section 6409(a)”** means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.
- (BB) **“Section 6409(a) Modification”** means any eligible facilities request that does not cause a substantial change and submitted for approval pursuant to Section 6409(a) and the FCC’s regulations at 47 C.F.R. § 1.40001 *et seq.*
- (CC) **“Single Family Design Board”** means the body established in the City of Santa Barbara Municipal Code chapter 22.69.
- (DD) **“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 “[f]or 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.”
- (EE) **“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 facility type and location. For clarity, the definition in this chapter organizes the FCC’s criteria and thresholds for a substantial change according to the facility type and location.
  - (1) For towers outside the public rights-of-way, a substantial change occurs when:
    - (a) 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
    - (b) 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
    - (c) 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
    - (d) 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.
  - (2) For towers in the public rights-of-way and for all base stations, a substantial change occurs when:

- (a) the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
  - (b) the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or
  - (c) 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
  - (d) 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
  - (e) the proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- (3) In addition, for all towers and base stations wherever located, a substantial change occurs when:
- (a) the proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the Community Development Director; or
  - (b) 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.

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

- (FF) **“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 “[a]ny 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.
- (GG) **“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 “[e]quipment 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.”

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

**28.74.030 – APPLICABILITY**

- (A) **Applicable Facilities.** This chapter applies to all new facilities and all modifications to existing facilities proposed after the effective date of this chapter, unless the facility qualifies for an exemption.
- (B) **Exempted Facilities.** This chapter does not apply to the following:
- (1) Amateur radio facilities;
  - (2) OTARD antennas;
  - (3) Facilities owned and operated by the City for its use.;
  - (4) Facilities owned and operated by CPUC-regulated electric companies, including without limitation Southern California Edison, for use in connection with electrical power generation, transmission and distribution facilities subject to CPUC General Order 131-D.
  - (5) Facilities owned and operated by CPUC-regulated natural gas utility companies for use in connection with natural gas distribution facilities and appurtenances related to natural gas distribution systems; provided, however, that the exemption in this chapter shall not be deemed to exempt or relieve any such natural gas utilities from any obligations in any franchise agreement with the City.

**28.74.040 – PERMITS REQUIRED; APPROVAL AUTHORITY**

- (A) **Conditional Use Permit by the Planning Commission.** All new facilities and modifications or collocations to existing facilities are subject to the Planning Commission’s approval of a conditional use permit pursuant to chapter 28.94 of this Code, unless the project may be approved pursuant to either a land use permit under section 28.74.040(B) or a Section 6409(a) Permit under section 28.74.040(C).
- (1) **Design Review.** Before the Planning Commission may act on an application for a conditional use permit for a wireless facility, the applicant must submit the application to the appropriate design review body for comments and recommendations to the Planning Commission.

- (a) The appropriate design review body shall be determined as follows:
    - (i) The Historic Landmarks Commission shall review all projects proposed on (I) a lot on which a City Landmark or City Structure of Merit is located; (II) a property on the City’s Potential Historic Resources List; or (III) any property or street right of way located within El Pueblo Viejo Landmark District or another landmark district.
    - (ii) The Single Family Design Board shall review all projects proposed on (I) a lot within the Mission Area Special Design District; (II) a lot within the Lower Riviera Survey Area – Bungalow District; (III) a lot within the Hillside District; or (IV) any lot located within any single family zone listed in Code chapter 28.15, unless the lot is subject to review by the Historic Landmarks Commission pursuant to section 28.74.040(A)(1)(a)(i).
    - (iii) The Architectural Board of Review shall review all other projects not subject to either review by the Historic Landmarks Commission or the Single Family Design Board.
  - (b) The design review body shall review the proposal at a noticed public hearing for compliance with the provisions in this chapter, including without limitation the applicable findings for approval in section 28.74.080(A), recommended or desirable changes and any proposed conditions of approval.
  - (c) Any action by a design review body shall not be an approval or denial and shall be subject to Planning Commission approval.
- (B) **Land Use Permit.** New facilities and collocations or modifications to existing facilities are subject to the Architectural Board of Review’s or Historic Landmarks Commission’s approval of a land use permit, and are not subject to a conditional use permit, when all the following criteria are met:
- (1) the proposed project qualifies as a design listed in section 28.74.060(A)(1) through 28.74.060(A)(4) of this chapter; and
  - (2) the proposed project is in a location listed in section 28.74.060(B)(1) through 28.74.060(B)(1)(c) of this chapter; and
  - (3) the proposed project will not require any limited exemption pursuant to section 28.74.150 of this chapter.
- (C) **Section 6409(a) Permit.** All Section 6409(a) Modifications are subject to review and approval or denial of a Section 6409(a) Permit by the Community Development Director in accordance with this chapter. Section 6409(a) Modifications do not require a land use permit and are exempt from Architectural Review Board and Historic Landmarks Commission review; provided, however that Section 6409(a) Modifications must comply with all prior conditions of approval related to concealment or reasonably related to public health and safety.



**28.74.050 – PERMIT APPLICATIONS; APPLICATION SUBMITTAL PROCEDURES****(A) Applications.**

- (1) **Application Required.** All permits granted under this chapter shall require an application.
- (2) **Application Content.** Unless an exemption or waiver applies, all applications submitted for approval under this chapter must contain the following:
  - (a) **Application Fee.** The applicable wireless facility application fee established by City Council resolution.
  - (b) **Master Application.** A fully completed and executed master application form as required under section 28.92.030 of this Code, as may be amended or updated from time-to-time. If the proposed facility is to be located on a City-owned building or structure, the master application must be signed by an authorized representative of the City. The master application must state what approval is being sought (*i.e.*, conditional use permit, land use permit, or Section 6409(a) permit).
  - (c) **Required Licenses or Approvals.** Evidence that the applicant has all current licenses and registrations from the FCC, the CPUC, and any other applicable regulatory bodies where such license(s) or registration(s) are necessary to provide wireless communication services utilizing the proposed wireless communication facility.
  - (d) **Site Development Plans.** A fully dimensioned site plan and elevation drawings prepared and sealed by a California-licensed engineer or architect showing any existing wireless facilities with all existing transmission equipment and other improvements, the proposed facility with all proposed transmission equipment and other improvements and the legal boundaries of the leased or owned area surrounding the proposed facility and any associated access or utility easements.
  - (e) **Photo Simulations.** Photo simulations that show the proposed facility in context of the site from reasonable line-of-sight locations from public streets or other adjacent public viewpoints, together with a map that shows the photo location of each view angle.
  - (f) **RF Exposure Compliance Report.** A radio frequency (RF) report acceptable to the City prepared and certified by an RF engineer that certifies that the proposed facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also 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.

- (g) **Statement of Purpose.** A written statement that includes: (a) a description of the technical objectives to be achieved; (b) an annotated topographical map that identifies the targeted service area to be benefitted; (c) the estimated number of potentially affected users in the targeted service area; and (d) full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites.
  - (h) **Alternative Sites Analysis.** The applicant must provide a list of all existing structures considered as alternatives to the proposed location, together with a general description of the site design considered at each location. The applicant must also provide a written explanation for why the alternatives considered were unacceptable or infeasible, unavailable or not as consistent with the development standards in this chapter as the proposed location. This explanation must include a meaningful comparative analysis and such technical information and other factual justification as are necessary to document the reasons why each alternative is unacceptable, infeasible, unavailable or not as consistent with the development standards in this chapter as the proposed location. If an existing facility is listed among the alternatives, the applicant must specifically address why the modification of such wireless communication facility is not a viable option. When an applicant proposes a site in the public right-of-way, the initial alternative sites analysis required for a complete application may evaluate other potential locations within the right-of-way.
  - (i) **Noise Study.** A noise study prepared and certified by an engineer for the proposed facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators demonstrating compliance with the City's noise regulations. The noise study must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.
  - (j) **Deposit.** A cash or other sufficient deposit tendered by the applicant to the City for any third party peer review determined by the Director to be necessary to ensure compliance with the requirements of this chapter.
- (3) **Future Application Developments and Modifications.** The City Council authorizes and directs the Community Development Director to develop and make publicly available permit applications and other materials specific for wireless facilities, and to from time-to-time update and amend such publicly available permit applications and materials as the Community Development Director deems appropriate.

- (4) **Content Exemptions for Section 6409(a) Approval Applications.** Notwithstanding subsection (A)(2), above, applications for a Section 6409(a) Permit are exempt from the requirements in subsections (A)(2)(g) and (A)(2)(h).
  - (5) **Administrative Waivers for Specific Application Materials.** The planner assigned to an application may waive a specific application requirement for a specific project only when (i) the applicant attends a pre-submittal consultation meeting for the project, (ii) the planner finds that compliance with the specific application requirement would create an unnecessary or unreasonable burden on the applicant, and (iii) the planner memorializes the waiver and grounds therefor in a writing.
- (B) **Submittal and Resubmittal Procedures.**
- (1) **Pre-submittal Consultation Meeting Appointment.** Before application submittal, applicants must schedule and attend a pre-submittal consultation meeting with City staff for all facilities on poles in the public rights-of-way, vacant properties, residential zones or the coastal zone. For all other projects, pre-submittal consultation meetings are strongly encouraged but not required. City staff will endeavor to provide applicants with an appointment between approximately five and 15 working days after a written request for an appointment is received. The Community Development Director, in its sole discretion, may waive in writing the required appointments in sections 28.74.050(B)(2) and (3) for an applicant that participates in a pre-submittal consultation meeting.
  - (2) **Application Submittal Appointment.** All applications must be submitted to the City at a pre-scheduled appointment. Applicants may submit one application per appointment but may schedule successive appointments for multiple applications whenever feasible for the City. City staff will endeavor to provide applicants with an appointment within approximately five working days after a request.
  - (3) **Application Resubmittal Appointment.** All resubmittals of applications must be submitted to the City at a pre-scheduled appointment. Applicants may resubmit one application per appointment but may schedule successive appointments for multiple applications whenever feasible for the City. City staff will endeavor to provide applicants with an appointment within approximately five working days after a request.

**28.74.060 – DEVELOPMENT STANDARDS AND GUIDELINES**

- (A) **Preferred Siting.** All applicants should, to the extent feasible, propose new facilities and substantial changes to existing facilities with designs according to the following preferences, ordered from most preferred to least preferred:
  - (1) collocations on existing base stations outside the rights-of-way; then
  - (2) collocations on eligible support structures in the rights-of-way; then
  - (3) collocations on towers outside the rights-of-way; then

- (4) new building-mounted facilities outside the rights-of-way; then
  - (5) new eligible support structures in the rights-of-way; then
  - (6) new towers outside the rights-of-way.
- (B) **Preferred Locations.** All applicants should, to the extent feasible, propose new facilities and substantial changes to existing facilities in non-residential zones.
- (1) **Non-residential Preferences.** All applicants should, to the extent feasible, propose new facilities and substantial changes to existing facilities in non-residential zones according to the following preferences, ordered from most preferred to least preferred:
    - (a) City owned or controlled parcels; then
    - (b) parcels in manufacturing zones; then
    - (c) parcels in commercial zones.
  - (2) **Residential Preferences.** In the event that an applicant seeks to site wireless facilities in a residential zone, the applicant should, to the extent feasible, propose new facilities and substantial changes to existing facilities in residential zones according to the following preferences, ordered from most preferred to least preferred:
    - (a) in the public right-of-way abutting a residential zone; then
    - (b) City owned or controlled parcels; then
    - (c) parcels that contain approved non-residential conditional uses and do not contain approved residential uses; then
    - (d) parcels that contain approved non-residential conditional uses and do contain approved residential uses; then
    - (e) parcels that do not contain single-family residences; then
    - (f) all other parcels.
  - (3) **Additional Alternative Sites Analysis.** If an applicant proposes to locate a new facility or substantial change to an existing facility on a parcel that contains a single-family residence, the applicant shall provide an additional alternative sites analysis that at a minimum shall include a meaningful comparative analysis of all the alternative sites in the more preferred locations that the applicant considered and states the underlying factual basis for concluding why each alternative in a more preferred location was (i) technically infeasible, (ii) not potentially available and/or (iii) more intrusive.
- (C) **General Design and Aesthetic Standards.** All facilities must conform to the standards as follows:
- (1) **Concealment.** All new facilities and substantial changes to existing facilities must incorporate concealment measures and/or techniques appropriate for the proposed location and design. All ground-mounted equipment on private property must be

completely concealed to the extent feasible according to the following preferences, ordered from most preferred to least preferred:

- (a) within an existing structure including, but not limited to, an interior equipment room, mechanical penthouse or dumpster corral; then
  - (b) within a new structure designed to integrate with or mimic the adjacent existing structure; then
  - (c) within an underground equipment vault if no other feasible above-ground design that complies with subsections (a) or (b) exists.
- (2) **Height.** All new facilities and substantial changes to existing facilities must not exceed the applicable zone height limit; provided, however, that the approval authority may approve height extension not-to-exceed eight feet above the applicable zone height limit when the proposed site is (1) mounted on the rooftop of an existing building; (2) completely concealed; and (3) architecturally integrated into the underlying building. This exception does not apply to any towers or utility poles.
  - (3) **Setbacks.** All facilities must comply with all applicable setback requirements.
  - (4) **Collocation.** Applicants shall design their facilities to accommodate future collocated facilities to the extent feasible.
  - (5) **Fences.** Except in extraordinary circumstances, the City may not approve any barbed wire, razor wire or electrified fences associated with a proposed facility.
  - (6) **Landscaping.** In addition to any landscaping required by the City for concealment or screening purposes, the applicant shall propose, install and maintain additional landscaping to replace any existing landscaping displaced during the construction or installation of the applicant's facility on private property or in the public right-of-way. The applicant's landscaping plan shall be subject to the City's approval.
  - (7) **Backup or Standby Power Sources and Generators.** The City may not approve any fossil fuel-powered backup power sources or generators unless the applicant demonstrates that the facility cannot feasibly achieve its power needs with batteries, fuel cells or other similarly non-polluting, low noise-level means.
  - (8) **Lights.** Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The City may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need. All aircraft warning lighting must use lighting enclosures that avoid illumination impacts to properties in the City to the maximum extent feasible.
  - (9) **Noise.** All transmission equipment and other equipment (including without limitation air conditioners and sump pumps) associated with the facility must not emit sound that exceeds the applicable limit established in chapter 9.16 of this Code.

- (10) **Signage; Advertising.** No facility may display any signage or advertisements unless expressly allowed by the City in a written approval, recommended under FCC regulations or required by law or permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provides a local or toll-free telephone number to contact the facility owner's operations center.
- (11) **Code Compliance.** Applicant shall design and maintain all facilities in compliance with all applicable federal, state and local laws, codes, regulations, ordinances or other rules.
- (D) **Tower-mounted Facilities.**
- (1) **General Design Preferences.** All applicants should, to the extent feasible and appropriate for the proposed location, design new towers according to the following preferences, ordered from most preferred to least preferred:
- (a) faux architectural features (examples include, but are not limited to, bell towers, clock towers, lighthouses, obelisks and water tanks); then
  - (b) monoecalyptus trees; then
  - (c) monopine or monocypus trees.
- (2) **Most Disfavored Designs.** The City may not approve any monopalms (faux-palm trees) or monopoles that do not conceal the antennas within a radome or other concealment device without a limited exemption pursuant to section 28.74.150 of this chapter.
- (3) **Tower-mounted Equipment.** All tower-mounted equipment must be mounted as close to the vertical support structure as possible to reduce its visual profile. Applicants should mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors, and utility demarcation boxes) directly behind the antennas to the maximum extent feasible.
- (4) **Ground-mounted Equipment.** Applicants must conceal ground-mounted equipment with opaque fences or other opaque enclosures. The Planning Commission may require, as a condition of approval, design and/or landscape features in addition to other concealment when necessary to blend the equipment or enclosure into the surrounding environment.
- (5) **Concealment Standards for Faux Trees.** All permits for faux tree facilities approved under this chapter are subject to the following required conditions of approval:
- (a) the canopy must completely envelop all tower-mounted equipment and extend beyond the tower-mounted equipment at least 18 inches;
  - (b) the canopy must be naturally tapered to mimic the particular tree species;

- (c) all tower-mounted equipment, including all antennas, equipment cabinets, cables, mounts and brackets, must be painted flat natural colors to mimic the particular tree species;
- (d) all antennas and other tower-mounted equipment cabinets must be covered with broadleaf or pine needle “socks” to blend in with the faux foliage; and
- (e) the entire vertical structure must be covered with permanently-affixed three-dimensional faux bark cladding to mimic the particular tree species.

(E) **Building- or Facade-mounted Facilities.**

- (1) **General Design Preferences.** All applicants should, to the extent feasible, propose new non-tower facilities according to the following preferences, ordered from most preferred to least preferred:
  - (a) completely concealed and architecturally integrated facade or rooftop mounted base stations with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials); then
  - (b) completely concealed new structures or appurtenances designed to mimic the support structure’s original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks).
- (2) **Facade-mounted Equipment.** Applicants must conceal all façade-mounted transmission equipment behind screen walls as flush to the facade as practicable. The Planning Commission may not approve any “pop-out” screen boxes unless such design is architecturally consistent with the original support structure. The City may not approve any exposed façade-mounted antennas, which includes exposed antennas painted to match the façade.
- (3) **Rooftop-mounted Equipment.** The City may approve unscreened rooftop transmission equipment only when it expressly includes a condition of approval that such equipment is effectively concealed due to its low height and setback from the roofline.
- (4) **Ground-mounted Equipment.** Outdoor ground-mounted equipment associated with base stations must be avoided whenever feasible. In locations visible or accessible to the public, applicants must conceal outdoor ground-mounted equipment with opaque fences or landscape features that mimic the adjacent structure(s) (including, but not limited to, dumpster corrals and other accessory structures).

(F) **Rights-of-Way Facilities.**

- (1) **Concealment.** All facilities in the rights-of-way must be concealed to the extent feasible with design elements and techniques that blend with the underlying support structure, surrounding environment and adjacent uses.

- (2) **Undergrounded Equipment.** To conceal the non-antenna equipment, applicants shall install all non-antenna equipment underground to the extent feasible. Additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement, except where the applicant demonstrates by clear and convincing evidence that this requirement will effectively prohibit the provision of personal wireless services.
- (3) **Ground-mounted Equipment.** Applicants must install ground-mounted equipment in the location so that it does not obstruct pedestrian or vehicular traffic. The Planning Commission may require landscaping as a condition of approval to conceal ground-mounted equipment.
- (4) **Pole-mounted Equipment.** All pole-mounted equipment must be installed as close to the pole as technically and legally feasible to minimize impacts to the visual profile, painted flat and non-reflective colors to match the underlying pole, placed behind existing signs, and oriented away from prominent views. All required or permitted signage in the rights-of-way must face toward the street or otherwise placed to minimize visibility from adjacent sidewalks and structures. All conduits, conduit attachments, cables, wires and other connectors must be concealed from public view to the extent feasible.
- (5) **Non-reflective Finishes.** All above-ground or pole-mounted equipment in the rights-of-way must not be finished with reflective materials as approved by the Approval Authority.

**28.74.070 – PUBLIC NOTICE AND HEARING REQUIREMENTS**

- (A) **Conditional Use Permits and Land Use Permits.** Before any conditional use permit or land use permit may be granted under this chapter, the approval authority shall conduct a noticed public hearing.
  - (1) **Required Notice Methods.** Notice of the hearing shall be given in each of the following methods:
    - (a) Notice of the hearing shall be sent by first class United States mail at least 10 calendar days before the hearing to the owner of the subject real property or his or her duly authorized agent and to the applicant to the addresses listed on the master application; and
    - (b) Notice of the hearing shall be sent by first class United States mail at least 10 calendar days before the hearing to the owners of real property as shown on the most recent equalized assessment roll within 300 feet of the real property that is the subject of the hearing. If the number of owners to whom notice would be mailed pursuant to this subsection exceeds 1,000, the City, in lieu of mailed notice, may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the City at least 10 calendar days before to the hearing; and



- (c) Notice of the hearing shall be published once in a newspaper of general circulation within the City at least 10 calendar days before the hearing.
- (2) **Additional Notice Methods.** In addition to the required methods of notice specified in subsection (a) above, the City may also require notice of the hearing in any other manner it deems necessary or desirable, including, but not limited to, posted notice on the project site. However, the failure of any person or entity to receive notice given pursuant to these additional noticing methods shall not constitute grounds for any court to invalidate the actions of the City for which the notice was given.
- (3) **Notice Content.** The notice of the hearing shall include all of the following information:
  - (a) the date, time, and place of the public hearing;
  - (b) the identity of the hearing body or officer;
  - (c) a general explanation of the matter to be considered; and
  - (d) a general description, in text or by diagram, of the location of the real property that is the subject of the hearing.
- (4) **Requests for Notice.** The notice of the hearing shall also be mailed at least 10 calendar days before the hearing to any person who has filed a written request for notice with either the City Clerk or with any other person designated to receive such requests. The City may charge a fee for providing this service as set by resolution of the City Council. Any request to receive such notice will automatically lapse one year from the date the request is properly received. The Planning Commission members shall receive notice of all public hearings scheduled before the Staff Hearing Officer.
- (5) **Continuances.** Any public hearing noticed pursuant to this Section may be continued to a time certain without further notice.
- (6) **Deemed-Approval Notice.** No more than 30 days before the applicable timeframe for review expires, the applicant must provide written notice to all persons entitled to notice in accordance with 28.74.070(A)(1)(b) and (c), as modified in this section.
  - (a) The notice must contain the following statement: “Pursuant to California Government Code section 65964.1, state law may deem the application approved in 30 days unless the City approves or denies the application, or the City and applicant reach a mutual tolling agreement.”
  - (b) In addition to all persons entitled to notice in accordance with 28.74.070(A)(1)(b) and (c), the applicant must deliver written notice to the approval authority, which contains the same statement required in subsection (A)(6)(a), above. The applicant may tender such notice in person or certified United States mail.
  - (c) The notice required under this subsection (A)(6) shall be automatically deemed “provided” on the 30th day after the approval authority receives the notice required in this subsection.

- (B) **Section 6409(a) Modification Permits.** Before the Community Development Director may approve any application for a Section 6409(a) Modification, notice of the application shall be provided in accordance with this subsection (B).
- (1) **Required Notice Method.** Notice shall be posted on the project site.
  - (2) **Notice Content.** The notice shall include all of the following information:
    - (a) a general explanation of the proposed modification or collocation;
    - (b) the following statement: “Federal law may require approval for this application. Further, Federal Communications Commission regulations may deem this application granted by the operation of law unless the City approves or denies the application, or the City and applicant reach a mutual tolling agreement.”; and
    - (c) a general description, in text or by diagram, of the location of the real property that is the subject of the application.

**28.74.080 – REQUIRED FINDINGS FOR APPROVAL**

- (A) **Conditional Use Permit.** The Planning Commission may grant a conditional use permit for a new wireless facility or a substantial change to an existing wireless facility when the Planning Commission finds that:
- (1) the applicant obtained written comments and/or recommendations from the appropriate design review body as required in section 28.74.040(A)(1);
  - (2) the proposed use is deemed essential or desirable to the public convenience or welfare and is in harmony with the various elements or objectives of the Comprehensive General Plan;
  - (3) the proposed use will not be materially detrimental to the public peace, health, safety, comfort and general welfare and will not materially affect property values in the particular neighborhood involved;
  - (4) the total area of the site and the setbacks of all facilities from property and street lines are of sufficient magnitude in view of the character of the land and of the proposed development that significant detrimental impact on surrounding properties is avoided;
  - (5) the appearance of the developed site in terms of the arrangement, height, scale and architectural style of the buildings, location of parking areas, landscaping and other features is compatible with the character of the area; and
  - (6) the applicant demonstrated that it proposed the least intrusive means to achieve its technical objectives.
- (B) **Land Use Permit.** The Architectural Board of Review or Historic Landmarks Commission, as applicable, may grant a land use permit for a new wireless facility or a substantial

change to an existing wireless facility when the Architectural Board of Review or Historic Landmarks Commission finds that:

- (1) the proposal qualifies as a design listed in section 28.74.060(A)(1) though (A)(4) of this chapter; and
- (2) the proposal qualifies as a location listed in section 28.74.060(B)(1)(a) though (B)(1)(b) of this chapter; and
- (3) the proposal conforms to all applicable design standards under section 28.74.060 of this chapter; and
- (4) the proposed project will not require any special exemption or variance pursuant to section 28.74.150 of this chapter.

(C) **Section 6409(a) Permit.**

- (1) **Findings for Approval.** The Community Development Director may approve a Section 6409(a) Modification when the Community Development Director finds that the proposed collocation or modification qualifies as an eligible facilities request and does not cause a substantial change.
- (2) **Grounds for Denial.** In addition to any other alternative recourse permitted under federal law, the Community Development Director may deny a Section 6409(a) Permit when the Community Development Director finds that the proposed collocation or modification:
  - (a) violates any legally enforceable standard or permit condition reasonably related to public health and safety; or
  - (b) involves a structure constructed or modified without all regulatory approvals required at the time of the construction or modification; or
  - (c) involves the replacement of the entire support structure; or
  - (d) does not qualify for mandatory approval under Section 6409(a) for any lawful reason.
- (3) **All Section 6409(a) Permit Denials Are Without Prejudice.** Any denial of a Section 6409(a) Permit application shall be without prejudice to the applicant, the real property owner or the project. Subject to the application and submittal requirements in this chapter, the applicant may immediately resubmit a permit application for either a conditional use permit, land use permit or Section 6409(a) Permit as appropriate.

**28.74.090 – STANDARD CONDITIONS OF APPROVAL**

- (A) **Permit Term.** Any validly issued conditional use permit or land use permit for a wireless facility will automatically expire at 12:01 a.m. local time exactly ten (10) years and one (1)

day from the issuance date, except when California Government Code section 65964(b), as may be amended, authorizes the City to issue a permit with a shorter term.

- (B) **Code Compliance.** The permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules.
- (C) **Inspections; Emergencies.** The City or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to enter or direct its designee the facility and support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
- (D) **Contact Information for Responsible Parties.** The permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Community Development Director upon permittee's receipt of the Community Development Director's written request, except in an emergency determined by the City when all such contact information for responsibility parties shall be immediately provided to the Community Development Director upon that person's verbal request.
- (E) **Indemnities.** The permittee and, if applicable, the non-government owner of the private property upon which the tower/and or base station is installed shall defend, indemnify and hold harmless the City of Santa Barbara, its agents, officers, officials and employees (i) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs of mandamus and other actions or proceedings brought against the City or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, law suits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors or independent contractors. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.
- (F) **Interference with Public Safety Radio Services.** In the event that the City finds reason to believe that permittee's radio communications operations are causing interference with the City's radio communications operations, then the permittee shall, at its cost, immediately cooperate with the City to either rule-out permittee as the interference source or eliminate the interference. Cooperation with the City may include, but shall not

be limited to, temporarily switching the transmission equipment on and off for intermittent testing.

- (G) **Adverse Impacts on Adjacent Properties.** Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility.
- (H) **General Maintenance.** The site and the facility, including but not limited to all landscaping, fencing and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
- (I) **Graffiti Removal.** All graffiti on facilities must be removed at the sole expense of the permittee within 48 hours after notification from the City.
- (J) **RF Exposure Compliance.** All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards.
- (K) **Optional Build-out Period.** As a condition of approval, the approval authority may establish a reasonable build-out period for the approved facility.
- (L) **Section 6409(a) Modifications.** In addition to all applicable standard conditions of approval required under section 28.74.090(A), any Section 6409(a) permit granted by the Community Development Director or deemed-granted by the operation of law must include the conditions of approval as follows:
  - (1) **No Permit Term Extension.** The City's grant or grant by operation of law of a Section 6409(a) permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. The City's grant or grant by operation of law of a Section 6409(a) permit will not extend the permit term for any conditional use permit, land use permit or other underlying regulatory approval and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.
  - (2) **Accelerated Permit Terms Due to Invalidation.** In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Section 6409(a) Modification, the permit or permits issued in connection with such 6409(a) Modification(s) shall automatically expire one year from the effective date of the judicial order. A permittee shall not be required to remove its improvements approved under the invalidated Section 6409(a) permit when it has submitted an application for either a conditional use permit or land use permit for those improvements before the one-year period ends. The Community Development Director may extend the expiration date on the accelerated permit upon a written request from the permittee that shows good cause for an extension.
  - (3) **No Waiver of Standing.** The City's grant or grant by operation of law of a Section 6409(a) Modification does not waive, and shall not be construed to waive, any

standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any Section 6409(a) Modification.

#### **28.74.100 – NOTICE OF DECISION; APPEALS**

- (A) **Notice of the Decision.** Within five working days after final decision by the approval authority on an application submitted for approval pursuant to this chapter, notice of the decision shall be mailed to the applicant at the address shown on the master application and to all other persons who have filed a written request for notice of the decision with the Community Development Department. The City shall provide the reasons for any denial either in the written decision or in some other written record available at the same time as the denial.
- (B) **Conditional Use Permits.** Any person or entity may appeal a final decision by the Planning Commission in accordance with section 28.94.080(B)–(D) of this Code. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The appellant must pay a fee established by a resolution of the City Council at the time the appeal is filed. The City Council shall review the decision of the Planning Commission solely on the specific issues raised by the appellant(s). The City Council shall review the decision of the Planning Commission de novo for compliance with the criteria set out in section 28.74.080(A).
- (C) **Land Use Permits.** Any person or entity may appeal a final decision by the Architectural Board of Review in accordance with section 22.68.100 of this Code. Any person or entity may appeal a final decision by the Historic Landmarks Commission in accordance with section 22.22.170 of this Code. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The appellant must pay a fee established by a resolution of the City Council at the time the appeal is filed. The City Council shall review the decision of the Architectural Board of Review or Historic Landmarks Commission solely on the specific issues raised by the appellant(s). The City Council shall review the decision of the Architectural Board of Review or Historic Landmarks Commission de novo for compliance with the criteria set out in section 28.74.080(B).
- (D) **Section 6409(a) Permits.** Subject to applicable federal timeframes for local review, any person or entity may file a written appeal to the City Council to reverse the Community Development Director’s final decision to approve or deny without prejudice a Section 6409(a) Permit application. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The appellant must pay a fee established by a resolution of the City Council at the time the appeal is filed. The City Council shall review the decision of the Community Development Director de novo for compliance with the criteria set out in section 28.74.080(C).

**28.74.110 – PERMIT RENEWAL**

Any application to renew any conditional use permit or land use permit granted under this chapter must be tendered to the City between 365 days and 180 days prior to the expiration of the current permit, and shall be accompanied by all required application materials, fees and deposits for a new application as then in effect. The City shall review an application for permit renewal in accordance with the standards for new facilities as then in effect. The Community Development Director may, but is not obligated to, grant a written temporary extension on the permit term to allow sufficient time to review a timely submitted permit renewal application.

**28.74.120 – PERMIT REVOCATION**

- (A) **Grounds for Revocation.** A permit granted under this chapter may be revoked for noncompliance with any enforceable permit, permit condition or law provision applicable to the facility.
- (B) **Revocation Procedures.**
- (1) When the Community Development Director finds reason to believe that grounds for permit revocation exist, the Community Development Director shall send written notice by Certified U.S. Mail, Return Receipt Requested, to the permittee at the permittee's last known address that states the nature of the noncompliance as grounds for permit revocation. The permittee shall have a reasonable time from the date of the notice to cure the noncompliance or show that no noncompliance ever occurred.
  - (2) If after notice and opportunity to show that no noncompliance ever occurred or to cure the noncompliance, the permittee fails to cure the noncompliance, the City Council shall conduct a noticed public hearing to determine whether to revoke the permit for the uncured noncompliance. The permittee shall be afforded an opportunity to be heard and may speak and submit written materials to the City Council. After the noticed public hearing, the City Council may deny the revocation or revoke the permit when it finds that the permittee had notice of the noncompliance and a reasonable opportunity to cure the noncompliance, but failed to comply with any enforceable permit, permit condition or law applicable to the facility. Written notice of the City Council's determination and the reasons therefore shall be dispatched by Certified U.S. Mail, Return Receipt Requested, to the permittee's last known address.
  - (3) Upon revocation, the City Council may take any legally permissible action or combination of actions necessary to protect public health, safety and welfare.

**28.74.130 – FACILITY ABANDONMENT OR DISCONTINUATION; RELOCATION; REMOVAL**

- (A) **Procedures for Abandoned or Discontinued Facilities.**

- (1) To promote the public health, safety and welfare, the Community Development Director may declare a facility abandoned or discontinued when:
  - (a) The permittee notifies the Community Development Director that it abandoned or discontinued the use of a facility for a continuous period of 90 days; or
  - (b) The permittee fails to respond within 30 days to a written notice sent by Certified U.S. Mail, Return Receipt Requested, from the Community Development Director that states the basis for the Community Development Director's belief that the facility has been abandoned or discontinued for a continuous period of 90 days; or
  - (c) The permit expires in the case where the permittee has failed to file a timely application for renewal.
- (2) After the Community Development Director declares a facility abandoned or discontinued, the permittee shall have 90 days from the date of the declaration (or longer time as the Community Development Director may approve in writing as reasonably necessary) to:
  - (a) reactivate the use of the abandoned or discontinued facility subject to the provisions of this chapter and all conditions of approval;
  - (b) transfer its rights to use the facility, subject to the provisions of this chapter and all conditions of approval, to another person or entity that immediately commences use of the abandoned or discontinued facility; or
  - (c) remove the facility and all improvements installed solely in connection with the facility, and restore the site to a condition compliant with all applicable codes consistent with the then-existing surrounding area.
- (3) If the permittee fails to act as required in section 28.74.130(A)(2) within the prescribed time period, the City Council may deem the facility abandoned at a noticed public meeting. The Community Development Director shall send written notice by Certified U.S. Mail, Return Receipt Requested, to the last-known permittee or real property owner that provides 30 days (or longer time as the Community Development Director may approve in writing as reasonably necessary) from the notice date to:
  - (a) reactivate the use of the abandoned or discontinued facility subject to the provisions of this chapter and all conditions of approval;
  - (b) transfer its rights to use the facility, subject to the provisions of this chapter and all conditions of approval, to another person or entity that immediately commences use of the abandoned or discontinued facility; or
  - (c) remove the facility and all improvements installed solely in connection with the facility, and restore the site to a condition compliant with all applicable codes and consistent with the then-existing surrounding area.
- (4) If the permittee fails to act as required in section 28.74.130(A)(3) within the prescribed time period, the City may remove the abandoned facility, restore the site to a



condition compliant with all applicable codes and consistent with the then-existing surrounding area, and repair any and all damages that occurred in connection with such removal and restoration work. The City may, but shall not be obligated to, store the removed facility or any part thereof, and may use, sell or otherwise dispose of it in any manner the City deems appropriate. The last-known permittee or its successor-in-interest and, if on private property, the real property owner shall be jointly liable for all costs incurred by the City in connection with its removal, restoration, repair and storage, and shall promptly reimburse the City upon receipt of a written demand, include any interest on the balance owing at the maximum lawful rate. The City may, but shall not be obligated to, use any financial security required in connection with the granting of the facility permit to recover its costs and interest. Until the costs are paid in full, a lien shall be placed on the facility, all related personal property in connection with the facility and, if applicable, the real private property on which the facility was located for the full amount of all costs for removal, restoration, repair and storage. The City Clerk shall cause the lien to be recorded with the County of Santa Barbara Recorder's Office. Within 60 days after the lien amount is fully satisfied including costs and interest, the City Clerk shall cause the lien to be released with the County of Santa Barbara Recorder's Office.

- (B) **Relocation Procedures for Facilities in the Rights-of-Way.** After adequate written notice to the permittee, the Public Works Director may require a permittee, at the permittee's sole expense and in accordance with the standards in this chapter applicable to such facility, to relocate a facility in the rights-of-way as the City deems necessary to maintain or reconfigure the rights-of-way for other public projects or take any actions necessary to protect public health, safety and welfare.
- (C) **Failures to Comply.** After a permittee fails to comply with any provision in this section 28.74.130, the City Council may elect to treat the facility as a nuisance to be abated as provided in section 1.28.030 of this Code.

#### **28.74.140 – TRANSFERS INVOLVING A WIRELESS FACILITY OR PERMIT**

Within 30 days after a permittee transfers any interest in the facility or permit(s) in connection with the facility, the permittee shall deliver written notice to the City. The written notice required in this section must include: (1) the transferee's legal name; (2) the transferee's full contact information, including a primary contact person, mailing address, telephone number and email address; and (3) a statement signed by the transferee that the transferee shall accept of all permit terms and conditions. Failure to submit the notice required herein shall be a cause for the City to revoke the applicable permits pursuant to and following the procedure set out in section 28.74.120.

**28.74.150 – LIMITED EXEMPTION FROM STANDARDS**

All exemptions granted under this section are subject to review and reconsideration by the City Council. The applicant always bears the burden to demonstrate why an exemption should be granted. An applicant seeking an exemption under this section for personal wireless services facilities on the basis that a permit denial would effectively prohibit personal wireless services must demonstrate with clear and convincing evidence all the following:

- (A) a significant gap in the applicants service coverage exists; and
- (B) all alternative sites identified in the application review process are either technically infeasible or not potentially available.

**28.74.160 – INDEPENDENT CONSULTANT REVIEW**

- (A) **Authorization.** The City Council authorizes the Community Development Director to, in his or her discretion, select and retain an independent consultant with expertise in telecommunications satisfactory to the Community Development Director in connection with any permit application.
- (B) **Scope.** The Community Development Director may request independent consultant review on any issue that involves specialized or expert knowledge in connection with the permit application. Such issues may include, but are not limited to:
  - (1) permit application completeness or accuracy;
  - (2) planned compliance with applicable RF exposure standards;
  - (3) whether and where a significant gap exists or may exist, and whether such a gap relates to service coverage or service capacity;
  - (4) whether technically feasible and potentially available alternative locations and designs exist;
  - (5) the applicability, reliability and/or sufficiency of analyses or methodologies used by the applicant to reach conclusions about any issue within this scope; and
  - (6) any other issue that requires expert or specialized knowledge identified by the Community Development Director.
- (C) **Deposit.** The applicant must pay for the cost of such review and for the technical consultant's testimony in any hearing as requested by the Community Development Director and must provide a reasonable advance deposit of the estimated cost of such review with the City prior to the commencement of any work by the technical consultant. The applicant must provide an additional advance deposit to cover the consultant's testimony and expenses at any meeting where that testimony is requested by the Community Development Director. Where the advance deposit(s) are insufficient to pay for the cost of such review and/or testimony, the Community Development Director shall invoice the applicant who shall pay the invoice in full within 10 calendar days after receipt of the invoice. No permit shall issue to an applicant where that applicant has not timely

paid a required fee, provided any required deposit or paid any invoice as required in the Code.

**28.74.170 – OBLIGATION TO COMPLY WITH THIS CHAPTER**

An applicant or permittee shall not be relieved of its obligation to comply with every provision of the Code, this chapter, any permit issued hereunder or any applicable law or regulation by reason of any failure of the City to notice, enforce or prompt compliance by the applicant or permittee.

**28.74.180 – CONFLICTS WITH PRIOR ORDINANCES**

In the event that any City ordinance or regulation, in whole or in part, adopted prior to the effective date of this chapter, conflicts with any provisions in this chapter, the provisions of this section will control.

**28.74.190 – SEVERABILITY**

In the event that a court of competent jurisdiction holds any section, subsection, paragraph, sentence, clause or phrase in this section unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this section and shall not affect the validity of the remaining portions of this section. The City hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause or phrase in this section irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses or phrases in this section might be declared unconstitutional, preempted or otherwise invalid.