

RESOLUTION NO. 2019-087

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAMON
REPEALING AND REPLACING THE CITY COUNCIL POLICY ON
SMALL WIRELESS FACILITIES AND OTHER INFRASTRUCTURE DEPLOYMENTS
WITHIN THE PUBLIC RIGHTS-OF-WAY**

WHEREAS, on September 26, 2018, the Federal Communications Commission (“FCC”) adopted new rules that further limit local authority to regulate “small wireless facilities” as that term is defined in 47 C.F.R. § 1.6002(l); and

WHEREAS, the FCC rules, which became partially effective on January 14, 2019, and fully effective on April 15, 2019, would require the City of San Ramon (“City”) to review small cell applications consistent with the FCC’s national standard for permissible local regulations; and

WHEREAS, the FCC provides that a local small cell regulation causes an effective prohibition in violation of federal law unless the regulation is 1) reasonable; 2) no more burdensome than regulations imposed on similar infrastructure deployments; and 3) objective and published in advance; and

WHEREAS, the FCC regulations mean that the City may not prohibit placement of small cells within the public right-of-way or on publicly-owned and operated utility poles but can prescribe reasonable standards for their placement and design; and

WHEREAS, on December 10, 2018, the FCC clarified the effective dates for the rule, stating that the shot clock and fee regulations would go into effect on January 14, 2019, and the aesthetic regulations go into effect on April 15, 2019; and

WHEREAS, on April 23, 2019, the City Council adopted Ordinance 488, an amendment to the City’s Zoning Code, in order for the City to comply with the recent changes in federal and state law that affect local authority over small wireless facilities; and

WHEREAS, Ordinance 488 requires the City Council to establish a policy to regulate the permitting, design, and location of small wireless facilities on City-owned light poles and similar infrastructure; and

WHEREAS, on April 29, 2019, the Infrastructure Committee considered a draft policy and directed staff and counsel to make revisions to the draft, taking into consideration testimony received at the meeting and subsequent communications from the public; and

WHEREAS, on June 18, 2019, the Planning Commission reviewed the Policy, and asked staff and counsel to bring the Policy to the Council for approval, taking into consideration the comments and further suggested edits to the Policy submitted that evening.

WHEREAS, on June 25, 2019, the City Council adopted Resolution 2019-070 adopting the City Council Policy on Small Wireless Facilities and Other Infrastructure Deployments within the Public Rights-of-Way; and

WHEREAS, on August 8, 2019, the Policy Committee directed staff and counsel to make revisions to the Policy, adding a section describing the relationship between the Policy and Master License Agreements, and providing for public participation in the approval of site licenses under such Master License Agreements.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Ramon does hereby repeal the current City Council Policy on Small Wireless Facilities and Other Infrastructure Deployments within the Public Rights-of-Way and replace it with the attached Exhibit 1 and authorizes the City Attorney to include a template for all future Master License Agreements to the Policy that is substantively identical to those MLAs currently in effect.

PASSED, APPROVED AND ADOPTED at the meeting of August 27, 2019 by the following votes:

AYES: *Cm. Hudson, O'Loane, Zafar, and Mayor Clarkson*

NOES: *Cm. Perkins*

ABSENT:

ABSTAIN:



Bill Clarkson, Mayor

ATTEST:

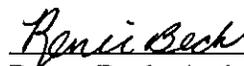

Renee Beck, Acting City Clerk

Exhibit 1: Policy

CITY OF SAN RAMON	POLICY NO.
	Adopted: [<i>insert effective date</i>]
City Council Policy on Small Wireless Facilities and Other Infrastructure Deployments within the Public Rights-of-Way	

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SECTION 1. BACKGROUND AND INTRODUCTION

In 1996, Congress adopted the Telecommunications Act to balance the national interest in advanced communications services and infrastructure with legitimate local government authority to enforce zoning and other regulations to manage infrastructure deployments on private property and in the public rights-of-way. Under section 704, which applies to personal wireless service facilities (i.e., cell sites), local governments retain all their traditional zoning authority subject to specifically enumerated limitations.¹ Section 253 preempts local regulations that prohibit or effectively prohibit telecommunication services (i.e., common carrier services) except competitively neutral and nondiscriminatory regulations to manage the public rights-of-way and require fair and reasonable compensation.

Communication technologies have significantly changed since 1996. Whereas cell sites were traditionally deployed on tall towers and rooftops over low frequency bands that travel long distances, cell sites are increasingly installed on streetlights and utility infrastructure on new frequency bands that travel shorter distances. According to the Federal Communications Commission ("FCC") and the wireless industry, these so called "small wireless facilities" or "small cells" are essential to the next technological evolution. The industry currently estimates that each national carrier will need to deploy between 30 and 60 small cells, connected by approximately 8 miles of fiber optic cable, per square mile.

On September 27, 2018, the FCC adopted a Declaratory Ruling and Third Report and

¹ Local zoning regulations cannot prohibit or effectively prohibit personal wireless services, unreasonably discriminate among functionally equivalent services or regulate based on environmental impacts from radiofrequency ("RF") emissions. In addition, local decisions must be made within a reasonable time and any denial requires a written decision based on substantial evidence in the written record.

Order, FCC 18-133 (the "Small Cell Order"), in connection with two informal rulemaking proceedings entitled Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79, and Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84. In general, the Small Cell Order. (1) restricts the fees and other compensation state and local governments may receive from applicants; (2) requires all aesthetic regulations to be reasonable, no more burdensome than those applied to other infrastructure deployments, objective and published in advance; (3) mandates that local officials negotiate access agreements, review permit applications and conduct any appeals within significantly shorter timeframes; and (4) creates new evidentiary presumptions that make it more difficult for local governments to defend themselves if an action or failure to act is challenged in court. The regulations adopted in the Small Cell Order significantly curtail the local authority over wireless and wireline communication facilities reserved to State and local governments under sections 253 and 704 in the Telecommunications Act.

SECTION 2. PURPOSE AND INTENT

- (a) The City of San Ramon 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.
- (b) This policy is intended to establish clear procedures for application intake and completeness review. The 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.

- (c) 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 Master License Agreements (“MLAs”). (See paragraph (d) below.) Although such deployments may be exempt from some of the procedural requirements 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 MLA. No application submitted under an MLA or other private agreement shall be exempt from Section 10 (Location Standards), Section 11 (Design Standards), or Section 12 (Pre-Approved Designs), or any portions thereof. 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. A template for future MLAs is included in this Policy as Attachment 1. No future MLA shall substantively deviate from this template without an amendment to this Policy.
- (d) While private agreements, including MLAs, do not exempt applicants from any of the objective provisions of this Policy (as outlined in Sections 10, 11, and 12) certain procedural accommodations may be made by agreement to expedite the application process. All MLAs shall adhere to the following:
- Only applications for small-cell deployments on City-owned infrastructure will be processed under an MLA;
 - An MLA does not excuse any small-cell application from the substantive requirements of this Policy (as outlined in Sections 10, 11 and 12);
 - All non-MLA applications for small-cell deployments will be processed under the procedures outlined in this Policy; and
 - Any differences between the application process for applications submitted under an MLA (for City-owned infrastructure) and under the Policy (for all other small-cell applications) will be procedural and not substantive.
 - Applications submitted under an MLA shall be subject to the provisions of Sections 7 (Public Notice) and Section 8 (Decisions).
- (e) 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.

SECTION 3. DEFINITIONS

The definitions in this section 3 be applicable to the terms, phrases and words this policy. Undefined terms, phrases or words will have the meanings assigned to them in 47 U.S.C. § 153 or, if not defined therein, will have the meaning assigned to them in San Ramon Municipal Code or, if not defined in either therein, will have their ordinary meanings. If any definition assigned to any term, phrase or word in this section 3 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), 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.

"arterial road" means a road designed to feed through-traffic to freeways, multi-lane highways and interstates, provide access to adjacent land uses - mostly at intersections- and feature traffic control measures. The term "arterial road" as used in this policy is defined in the San Ramon General Plan, Chapter 5.

"batched application" means more than one application submitted at the same time.

"collector road" means a road designed to provide access to adjacent land uses and feed local traffic to arterials. The term "collector road" as used in this policy includes collectors as defined in the San Ramon General Plan, Chapter 5.

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

"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 Community Development Director or the Director's designee.

"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 road" means a road with low speeds and high accessibility to adjacent land uses that generally feed into collector roads and are not intended for through traffic. The term "local road" as used in this policy includes local roadways other than arterials or collectors as defined in the San Ramon General Plan, Chapter 5.

"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.

"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.

"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 persons and entities identified as entitled to notice under San Ramon Zoning Ordinance D7-24.B.1.a; provided, however that no published or posted notice shall be required in addition to the mailed notice. Notice to the legal occupants shall be deemed given when sent to the property's physical address.

"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. As an illustration and not a limitation, if an applicant applies on February 1, receives a valid incomplete notice on February 5 and then resubmits on February 20, only four "shot clock days" have elapsed because the time between the incomplete notice and resubmittal are not counted.

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

"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.

"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, which includes, without limitation, San Ramon Municipal Code section C6-123; (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.

SECTION 4. APPLICABILITY

- (a) **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.
- (b) **Other Infrastructure Deployments.** To the extent that other infrastructure deployments, including without limitation any deployments that require approval under San Ramon Municipal Code section C6-4, involve the same or substantially similar structures, apparatus, antennas, equipment, fixtures, cabinets, cables or improvements, the department or official 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.

SECTION 5. REQUIRED PERMITS AND APPROVALS

- (a) **ROW Use Permit.** A "ROW use permit," subject to the Director'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.
- (b) **Exemptions.** Notwithstanding anything in this policy to the contrary, a ROW use permit shall not be required for:
 - (1) wireless facilities or other infrastructure deployments owned and operated by the City for its use;
 - (2) OTARD facilities;
 - (3) requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted under Section 6409 will be

subject to the current FCC rules and regulations "eligible facilities requests" as defined by FCC and as may be amended or superseded; or

(4) Wireless facilities or other infrastructure deployments covered by a valid franchise, pole license or other encroachment agreement between the applicant and the City.

(c) **Other Permits and Approvals.** In addition to a 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 5(b) 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.

SECTION 6. APPLICATION AND REVIEW PROCEDURES

(a) **Application Requirements for Small Wireless Facilities.** In addition to any other publicly-stated requirements, all ROW use permit applications for small wireless facilities must include the following information and materials:

(1) **Application Form.** The applicant shall submit a complete, duly executed ROW use permit application on the then-current form prepared by the Director.

(2) **Application Fee.** The applicant shall submit the applicable ROW use permit application fee established by City Council resolution. Batched applications must include the applicable ROW use permit application fee for each small wireless facility in the batch. If no 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.

(3) **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.

- (4) **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.
- (5) **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.
- (6) **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(1). 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 ROW use permit as provided in section 8(b).
- (7) **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 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.

- (8) **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.
- (9) **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.
- (10) **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.
- (11) **Title Report and Property Owner's Authorization.** For any small wireless facility proposed to be installed on a support structure not owned or controlled by the City, the applicant must submit a written authorization from the support structure owner(s) that authorizes the applicant to submit and accept a ROW use permit in connection with the subject property.
- (12) **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.

- (13) **Structural Analysis.** The applicant shall submit a report prepared and certified by an engineer (or other qualified personnel acceptable to the City) that evaluates whether the underlying pole or support structure has the structural integrity to support all the proposed equipment and attachments. At a minimum, the analysis must be consistent with all applicable requirements in CPUC General Order 95 (including, but not limited to, load and pole overturning calculations), the National Electric Safety Code, and any safety and construction standards required by the utility.
- (b) **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.
- (c) **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.
- (d) **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

(d) a "substantive response" must include, at a minimum, the complete materials identified as incomplete in the written incomplete notice.

- (e) **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 Director 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.
- (f) **Peer and Independent Consultant Review.** The City Council authorizes the Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection any permit application. The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation: (a) permit application completeness and/or accuracy; (b) pre-construction planned compliance with applicable regulations for human exposure to RF emissions; (c) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (d) whether and to what extent a proposed project will comply with applicable laws; (e) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the City's discretion to review; and (f) any other issue identified by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with City staff and/or the applicant. Subject to applicable law, in the event that the Director elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings. Before the independent consultant may perform any services, the applicant shall tender to the City a deposit in an amount equal to the estimated cost for the services to be provided, as determined by the Director until the City adopts the initial required deposit by fee schedule. The Director may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant's services. In the event that the deposit exceeds the total costs for consultant's services, the Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection by the Director or his or her designee. In the event that the reasonable costs for the independent consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The City shall not issue any construction or encroachment permit to any applicant with any

unpaid deposit requests or invoices.

SECTION 7. PUBLIC NOTICES

- (a) **Small Cell Notice Registry.** The City shall create and maintain a registry of members of the public that elect to receive notice by email of all small-cell applications received by the city ("Small Cell Notice Registry"). Upon receipt of any small-cell application or bundle of small-cell applications, the City shall post a notice of receipt of such applications ("Application Submittal Notice") on its website. The required contents for the Application Submittal Notice are listed in subsections b(1) and c(1), below. The same notice shall be sent by email to all members of the public listed in the Small Cell Notice Registry.
- (b) **Requirements for Applications Subject to FCC Shot-Clock.**
 - (1) **Application Submittal Notice.** In addition to the noticing requirements listed in subsection (a), within 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, which must include the nature of the project, the project location and an accurate diagram or photo simulation; (2) the City's file number for the application; (3) the applicant's identification and contact information as provided on the application submitted to the City; (4) contact information for the Director and a deadline for interested parties to submit written comments; (5) 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 Manager; and (6) 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 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.
- (c) **Requirements for Applications Subject to Shortened Shot-Clock.** Under this Policy or under an agreement authorized by this Policy, it is anticipated that the City will receive applications for small-cell deployments on City-owned poles. Such applications may be subject to a shot-clock that is shorter than the FCC Shot-Clock. For any such application subject to a shot-clock that is shorter than 60 days ("Shortened Shot-Clock"), the following shall apply:
 - (1) **Application Submittal Notice.** For applications submitted under shortened shot-clocks, the Application Submittal Notice must contain the following: (1) a general project description, which must include the nature of the project and the project location; (2) either an accurate diagram or photo simulation, or a notification that the

application includes a pre-approved design under Section 12; (3) the City's file number for the application; (4) the applicant's identification and contact information as provided on the application submitted to the City; (5) contact information for the Director and a deadline for interested parties to submit written comments; (6) a statement that the Director will act on the application without a public hearing within five (5) days; (7) a statement that any person living within 300 feet of the proposed license site may lodge an objection to the Director's decision; a statement that, if objections are received, the City Manager will review the entire record pertaining to the application and issue a final decision on behalf of the City; (8) the deadline date for receipt of any objections to the application; and (9) the subsequent deadline date for the City Manager's decision to be published.

(2) **Application Decision Notice.** Within 5 calendar days after the application is received, the Director shall post a notice of the Director's decision ("Application Decision Notice") on its website. The same notice shall be sent by email to all members of the public listed in the Small Cell Notice Registry. In addition to the information required for the Application Submittal Notice, the Application Decision Notice shall include the Director's determination as to whether the application will be approved, denied, or deemed incomplete. The Director also shall provide written notice to the applicant. Finally, for all applications for sites located within 300 feet of a residence but not within a median island, the Director shall cause an abridged notice to be placed on the pole on which the applicant proposes to support the small-cell facility. The abridged notice shall notify the reader that a small-cell facility is proposed to be placed on the subject pole, and direct the reader to the City's website for more information, and provide contact information for the City staff person responsible for processing the application. If the Director denies an application (with or without prejudice) for a small wireless facility, the Application Decision Notice must also contain the reasons for the denial.

(d) **License Agreement Notice.** Before the City Council approves any resolution adopting a master license agreement or other form license agreement related to the deployment of wireless facilities on City-owned support structures, the City Council shall hold at least one noticed public hearing in accordance with San Ramon Zoning Ordinance Division D7, Chapter IV. The City Clerk shall publish a copy of the resolution and license agreement in the agenda materials as required by law.

SECTION 8. DECISIONS

(a) **Initial Administrative Decision.**

(1) **Requirements for Applications Subject to FCC Shot-Clock.** Not less than 10 calendar days after the public notices required in section 7(a) and 7(b)1 are sent or posted, and not more than 26 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) **Requirements for Applications Subject to a Shortened Shot-Clock.** Not less than 5 calendar days after the public notices required in section 7(a) are posted, the Director shall approve, conditionally approve or deny a complete and duly filed license application without a public hearing.
- (b) **Required Findings for Approval.** The Director may approve or conditionally approve a complete and duly filed application for a ROW use permit or site license permit when the Director finds:

 - (1) the proposed project complies with all applicable design standards in this policy;
 - (2) except as provided in Section 10.a, 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;
 - (3) the proposed project would not be located on a prohibited support structure identified in this policy;
 - (4) 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;
 - (5) 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;
 - (6) if the proposed project involves a wireless facility, the applicant has demonstrated that the proposed project will be in planned compliance with all FCC regulations and guidelines for human exposure to RF emissions; and
 - (7) all public notices required for the application have been given.
- (c) **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 or site license application as may be necessary or appropriate to ensure compliance with this policy.
- (d) **Appeals.**

 - (1) Applications Subject to FCC Shot-Clocks. Any interested person or entity may appeal the decision by the Director to the City Manager or the City Manager’s designee (collectively, the “City Manager”); 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 ten 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 Manager shall hear appeals de novo and issue the applicant a written decision within five calendar days after the appeal hearing. If the City Manager denies the application on appeal (whether by affirmation or reversal), the written notice shall contain the reasons for the decision.

- (2) Applications Subject to Shortened Shot-Clocks. Upon posting of the Application Decision Notice by the Director, interested persons residing within 300 feet of the proposed site location may object to the decision to the City Manager; provided, however, that the City Manager may not consider any objection that is based solely on the environmental effects from radio frequency emissions that are compliant with applicable FCC regulations and guidelines. The City Manager shall reconsider all applications for which an objection has been received by the City de novo. Within ten calendar days after the issuance of the Application Decision Notice, the City Manager shall issue a written decision to the applicant and to all who objected to the Director's decision. Such written decision shall constitute the City's final decision. If the City Manager denies the application on reconsideration (whether by affirmation or reversal), the written notice shall contain the reasons for the decision.

SECTION 9. CONDITIONS OF APPROVAL

- (a) **Standard Conditions.** Except as may be authorized in Subsection (b) all ROW use permits issued under this Policy shall be automatically subject to the conditions in this Subsection (a).
 - (1) **Permit Term.** This permit 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.
 - (2) **Permit Renewal.** Not more than one year before this ROW use permit expires, the permittee may apply for permit renewal. The permittee must demonstrate that the subject small wireless facility or other infrastructure deployment complies with all the conditions of approval associated with this ROW use permit and all applicable provisions in the Municipal Code and this policy 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 Municipal Code and this policy or other applicable law. Upon renewal, this ROW use permit will automatically expire 10 years and one day from its issuance.

- (3) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small 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 small 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.
- (4) **Build-Out Period.** This ROW use permit 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 small 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. If the permittee cannot obtain all other permits and approvals before build-out period expires, the City will not extend the build-out period but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.
- (5) **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 ROW use permit. 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.
- (6) **Compliance with Laws.** The permittee shall maintain, and demonstrate to the satisfaction of the City, 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 small wireless facility or other infrastructure deployment or any use or activities in connection with the use authorized in this ROW use permit, 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 Charter, General Plan, Municipal Code, Zoning Ordinance, 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 Charter, General Plan, Municipal Code, Zoning Ordinance, this policy, any permit, any permit condition or

any applicable law or regulation.

- (7) **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 San Ramon 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; provided, however, that such work shall be subject to the provisions in San Ramon Municipal Code section C6. The Director may issue a stop-work order for any activities that violates this condition in whole or in part.
- (8) **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.
- (9) **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 small 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.
- (10) **Indemnification.** The permittee and, if applicable, the support structure owner upon which the small 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 ROW use permit, 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 ROW use permit or the small 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 support structure 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 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 ROW use permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this ROW use permit.

- (11) **Performance Bond.** Before the City issues any permits required to commence construction in connection with this permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or other infrastructure removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the small wireless facility or other infrastructure deployment to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility or other infrastructure deployment in accordance with this condition.
- (12) **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.

- (13) **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 ROW use permit application, ROW use permit, 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 ROW use permit (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.
- (14) **Abandoned Facilities.** The small wireless facility or other infrastructure deployment authorized under this ROW use permit shall be deemed abandoned if not operated for any continuous six-month period within 90 days after a small 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 General Plan, Municipal Code and Zoning Ordinance. 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.

- (15) **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. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (16) **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 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.
- (17) **Future Undergrounding Programs.** Notwithstanding any term remaining on any ROW use permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility or other infrastructure deployment is located, the permittee must also underground its equipment, except the antennas and any approved electric meter, at approximately the same time. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. Small wireless facilities and other infrastructure deployments installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
- (18) **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

(19) **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (A) change any street grade, width or location; (B) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (C) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this ROW use permit. If the Director determines that any City work will require the permittee's small wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility or other infrastructure deployment within a reasonable time after the Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's small wireless facility or other infrastructure deployment without prior notice to permittee when the Director determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.

(20) **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 ROW use permit or the small wireless facility or other infrastructure approved under the ROW use permit, 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.

(b) **Modified Conditions.** The City Council authorizes the Director to modify, add or remove conditions to any ROW use permit 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 section 9(a) 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 Charter, General Plan, Municipal Code, Zoning Ordinance, 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 small wireless facilities are no more burdensome than those applied to other infrastructure deployments.

SECTION 10. LOCATION STANDARDS

(a) **Location Preferences.** To better assist applicants and decisionmakers understand and respond to the community's aesthetic preferences and values, this section 10 sets out listed preferences for locations to be used in connection with small wireless facilities in an ordered hierarchy. Small cell locations are listed below in order of preference and are grouped in three separate categories: Most Preferred Locations (listed in subsection (1)); Lesser-Preferred Locations (listed in subsection (2)); and Prohibited Locations (listed in subsection (3)).

(1) **Most Preferred Locations.** Applications that involve the most preferred locations in this subsection may be approved without further analysis to determine whether a more preferred location is available. Most-preferred locations are, in order of preference, as follows:

- (i) locations within commercial or industrial districts on or along arterial streets, with a strong preference for placement within the median islands wherever possible;
- (ii) locations within commercial or industrial districts on or along collector streets, with a strong preference for placement within the median islands wherever possible;
- (iii) locations within commercial or industrial districts on or along local streets, with a strong preference for placement within the median islands wherever possible.

(2) **Lesser-Preferred Locations.** Applications that involve lesser-preferred locations in this subsection b 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. Lesser-preferred locations are, in order of preference, as follows:

- (i) locations within special purpose or mixed use districts on or along arterial streets, with a strong preference for placement within the median islands wherever possible;
- (ii) locations within special purpose or mixed use districts on or along collector streets, with a strong preference for placement within the median islands wherever possible;
- (iii) locations within special purpose or mixed use districts on or along local streets, with a strong preference for placement within the median islands wherever possible;

- (iv) locations within 500 feet of other small cells.
- (3) **Prohibited Locations.** No small cells may be placed in the public right-of-way in residential districts or within 500 feet from any structure approved for a residential use; or within an exclusively residential zoning designation (RC, HR, RE, RS, RM, RMH, or RVH); or on any ridgeline, as defined in the Division D5 Chapter 1 (Hillside, Creek, and Ridgeline Areas); or within the drip line of any protected tree, as defined in Zoning Code Chapter II, Section D5-8.A, except as necessary to avoid an effective prohibition of services in accordance with federal law. Applications for facilities within a prohibited location shall be placed within an identified utility easement wherever possible. Applications that involve prohibited locations may only be approved if the applicant demonstrates by clear and convincing evidence in the written record that denying the application at the proposed location would cause an effective prohibition.
- (b) **Prohibited Support Structures.** Except when authorized as pre-approved design pursuant to this policy, small cells shall not be permitted on the following support structures:
 - (1) decorative poles;
 - (2) traffic signal poles, cabinets or related structures;
 - (3) new, nonreplacement wood poles;
 - (4) any utility pole scheduled for removal or relocation within 18 months from the time the Director acts on the small cell application;
- (c) **Encroachments Over Private Property.** No small cell 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.
- (d) **No Interference with Other Users.** Small cells 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. In addition, all small cells shall be subject to the provisions of Zoning Code Section D4-45.B regarding signal interference with other telecommunications facilities.
- (e) **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.

- (f) **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:
- (1) be placed as close as possible to the property line between two parcels that abut the public rights-of-way;
 - (2) be placed within a median island wherever possible;
 - (3) not be placed directly in front of any door or window;
 - (4) not be placed within any sight distance triangles at any intersections;
 - (5) be placed at least feet 10 away from any driveway or established pedestrian pathway between a residential structure and public rights-of-way;
 - (6) be placed at least 50 feet away from any driveways for police stations, fire stations or other emergency responder facilities.

SECTION 11. DESIGN STANDARDS

- (a) **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 Director's prior approval.
- (b) **Noise.** Small cells and all associated antennas, accessory equipment and other improvements must comply with all applicable noise control standards and regulations in San Ramon Municipal Code section B6-81 *et seq.*, as either may be amended or superseded, and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable district.
- (c) **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. 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.
- (d) **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 Director 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 Director. The permittee shall, at all times, be responsible to maintain any replacement landscape features.

- (e) **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.
- (f) **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.
- (g) **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.*). Applicants shall demonstrate such compliance to the satisfaction of the City, and the City may, at its option, utilize an independent consultant with specialized training, experience and/or expertise to peer review any submittals pertaining to RF emissions, in accordance with Section 6(f).
- (h) **Antennas.** The provisions in this Subsection (h) are generally applicable to all antennas.
 - (1) **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 two 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.
 - (2) **Antenna Volume.** Each individual antenna associated with a single small cell shall not exceed three cubic feet. The cumulative volume for all antennas on a single small cell shall not exceed: (A) three cubic feet in residential areas; or (B) six cubic feet in nonresidential areas.

- (3) **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.
- (4) **Horizontal Projection.** Side-mounted antennas, where permitted, shall not project:
 - (A) more than 24 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 24 inches from the support structure, the projection shall be no greater than required for compliance with such laws.
- (i) **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) seventeen cubic feet in nonresidential areas. The volume limits in this Subsection do not apply to any undergrounded accessory equipment.
- (j) **Undergrounded Accessory Equipment.**
 - (1) **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, as defined in Section 3, or (B) any location where the Director 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 may grant an exception when the applicant demonstrates by clear and convincing evidence that compliance with this section would be technically infeasible.
 - (2) **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.
- (k) **Pole-Mounted Accessory Equipment.** The provisions in this Subsection (k) are applicable to all pole-mounted accessory equipment in connection with small wireless facilities and other infrastructure deployments.
 - (1) **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.
 - (2) **Minimum Vertical Clearance.** The lowest point on any pole-mounted accessory equipment shall be at least eight feet above ground level adjacent to the pole. If applicable laws require any pole-mounted accessory equipment component to be

placed less than eight feet above ground level, the clearance from ground level shall be no less than required for compliance with such laws.

- (3) **Horizontal Projection.** Pole-mounted accessory equipment shall not project: (i) more than 24 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").
 - (4) **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.
- (l) **Ground-Mounted or Base-Mounted Accessory Equipment.** The provisions in this subsection (I) are applicable to all ground-mounted and base-mounted accessory equipment in connection with small wireless facilities and other infrastructure deployments.
- (1) **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.
 - (2) **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 4.5 feet in height or 4.5 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.
- (m) **Utilities.** The provisions in this subsection (m) are applicable to all utilities and other related improvements that serve small wireless facilities and other infrastructure deployments.

- (1) **Overhead Lines.** The Director 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.
- (2) **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.
- (3) **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.
- (4) **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 Director shall not approve a separate ground-mounted electric meter pedestal.
- (5) **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 Director's prior written approval, which the Director may withhold or condition as the Director deems necessary or appropriate to protect the City's infrastructure, prevent interference with the City's municipal functions and public health and safety.

SECTION 12. PREAPPROVED DESIGNS

- (a) **Purpose.** To expedite the review process and encourage collaborative designs among applicants and the City, the City Council authorizes the Director to designate one or more preapproved designs for small wireless facilities and other infrastructure deployments. This section 12 sets out the process to establish or repeal a preapproved design and the expedited review procedures and findings applicable to these applications.
- (b) **Adoption.** The Director may, in the Director's discretion, establish a preapproved design when the Director finds that a proposed preapproved design substantially complies with the design standards in this policy. The Director shall post a public notice posted at the Public Works Department office, with the City Clerk, on the NextDoor website, and on the City's own website. 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 under section 8(d), the preapproved design shall become effective 15 days from the notice required in this subsection. A decision by the Director not to adopt a proposed preapproved design or the Director's failure to act on a request for a proposed preapproved design is not appealable.

- (c) **Repeal.** The Director may repeal any preapproved design by written notice posted at Public Works Department office. The repeal shall be immediately effective. The Director's repeal, refusal to repeal or failure to act on a request to repeal a preapproved design is not appealable.
- (d) **Modified Review Process.** In nonresidential districts, applications for a preapproved design shall not be subject to the notice requirements in section 7(a) or any potential appeals under section 8(d). In residential districts, applications for a preapproved design shall remain subject to the notice requirements in section 7 and any potential appeals under section 8(d).
- (e) **Modified Findings.** When an applicant submits a complete application for a reapproved design, the Director shall presume that the findings for approval in sections 8(b)(1) and 8(b)(5) are satisfied and shall evaluate the application for compliance with the findings for approval in sections 8(b)(2), 8(b)(3), 8(b)(4), 8(b)(6), and 8(b)(7).
- (f) **Nondiscrimination.** Any applicant may propose to use any preapproved design whether the applicant initially requested that the Director adopt such preapproved design or not. The Director'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.

CITY OF SAN RAMON	POLICY NO.
	Adopted: August 27, 2019
City Council Policy on Small Wireless Facilities and Other Infrastructure Deployments within the Public Rights-of-Way	

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SECTION 1. BACKGROUND AND INTRODUCTION

In 1996, Congress adopted the Telecommunications Act to balance the national interest in advanced communications services and infrastructure with legitimate local government authority to enforce zoning and other regulations to manage infrastructure deployments on private property and in the public rights-of-way. Under section 704, which applies to personal wireless service facilities (i.e., cell sites), local governments retain all their traditional zoning authority subject to specifically enumerated limitations.¹ Section 253 preempts local regulations that prohibit or effectively prohibit telecommunication services (i.e., common carrier services) except competitively neutral and nondiscriminatory regulations to manage the public rights-of-way and require fair and reasonable compensation.

Communication technologies have significantly changed since 1996. Whereas cell sites were traditionally deployed on tall towers and rooftops over low frequency bands that travel long distances, cell sites are increasingly installed on streetlights and utility infrastructure on new frequency bands that travel shorter distances. According to the Federal Communications Commission ("FCC") and the wireless industry, these so called "small wireless facilities" or

¹ Local zoning regulations cannot prohibit or effectively prohibit personal wireless services, unreasonably discriminate among functionally equivalent services or regulate based on environmental impacts from radiofrequency ("RF") emissions. In addition, local decisions must be made within a reasonable time and any denial requires a written decision based on substantial evidence in the written record.

"small cells" are essential to the next technological evolution. The industry currently estimates that each national carrier will need to deploy between 30 and 60 small cells, connected by approximately 8 miles of fiber optic cable, per square mile.

On September 27, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order, FCC 18-133 (the "Small Cell Order"), in connection with two informal rulemaking proceedings entitled Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79, and Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84. In general, the Small Cell Order. (1) restricts the fees and other compensation state and local governments may receive from applicants; (2) requires all aesthetic regulations to be reasonable, no more burdensome than those applied to other infrastructure deployments, objective and published in advance; (3) mandates that local officials negotiate access agreements, review permit applications and conduct any appeals within significantly shorter timeframes; and (4) creates new evidentiary presumptions that make it more difficult for local governments to defend themselves if an action or failure to act is challenged in court. The regulations adopted in the Small Cell Order significantly curtail the local authority over wireless and wireline communication facilities reserved to State and local governments under sections 253 and 704 in the Telecommunications Act.

SECTION 2. PURPOSE AND INTENT

- (a) The City of San Ramon 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.
- (b) This policy is intended to establish clear procedures for application intake and completeness review. The 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.

- (c) 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 Master License Agreements (“MLAs”). (See paragraph (d) below.) Although such deployments may be exempt from some of the procedural requirements 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 MLA. No application submitted under an MLA or other private agreement shall be exempt from Section 10 (Location Standards), Section 11 (Design Standards), or Section 12 (Pre-Approved Designs), or any portions thereof. 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. A template for future MLAs is included in this Policy as Attachment 1. No future MLA shall substantively deviate from this template without an amendment to this Policy.
- (d) While private agreements, including MLAs, do not exempt applicants from any of the objective provisions of this Policy (as outlined in Sections 10, 11, and 12) certain procedural accommodations may be made by agreement to expedite the application process. All MLAs shall adhere to the following:
- Only applications for small-cell deployments on City-owned infrastructure will be processed under an MLA;
 - An MLA does not excuse any small-cell application from the substantive requirements of this Policy (as outlined in Sections 10, 11 and 12);
 - All non-MLA applications for small-cell deployments will be processed under the procedures outlined in this Policy; and
 - Any differences between the application process for applications submitted under an MLA (for City-owned infrastructure) and under the Policy (for all other small-cell applications) will be procedural and not substantive.
 - Applications submitted under an MLA shall be subject to the provisions of Sections 7 (Public Notice) and Section 8 (Decisions).
- (e) 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.

SECTION 3. DEFINITIONS

The definitions in this section 3 be applicable to the terms, phrases and words this policy. Undefined terms, phrases or words will have the meanings assigned to them in 47 U.S.C. § 153 or, if not defined therein, will have the meaning assigned to them in San Ramon Municipal Code or, if not defined in either therein, will have their ordinary meanings. If any definition assigned to any term, phrase or word in this section 3 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), 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.

"arterial road" means a road designed to feed through-traffic to freeways, multi-lane highways and interstates, provide access to adjacent land uses - mostly at intersections- and feature traffic control measures. The term "arterial road" as used in this policy is defined in the San Ramon General Plan, Chapter 5.

"batched application" means more than one application submitted at the same time.

"collector road" means a road designed to provide access to adjacent land uses and feed local traffic to arterials. The term "collector road" as used in this policy includes collectors as defined in the San Ramon General Plan, Chapter 5.

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

"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 Community Development Director or the Director's designee.

"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 road" means a road with low speeds and high accessibility to adjacent land uses that generally feed into collector roads and are not intended for through traffic. The term "local road" as used in this policy includes local roadways other than arterials or collectors as defined in the San Ramon General Plan, Chapter 5.

"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.

"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.

"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 persons and entities identified as entitled to notice under San Ramon Zoning Ordinance D7-24.B.1.a; provided, however that no published or posted notice shall be required in addition to the mailed notice. Notice to the legal occupants shall be deemed given when sent to the property's physical address.

"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. As an illustration and not a limitation, if an

applicant applies on February 1, receives a valid incomplete notice on February 5 and then resubmits on February 20, only four "shot clock days" have elapsed because the time between the incomplete notice and resubmittal are not counted.

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

"**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.

"**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, which includes, without limitation, San Ramon Municipal Code section C6-123; (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.

SECTION 4. APPLICABILITY

- (a) **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.
- (b) **Other Infrastructure Deployments.** To the extent that other infrastructure deployments, including without limitation any deployments that require approval under San Ramon Municipal Code section C6-4, involve the same or substantially similar structures, apparatus, antennas, equipment, fixtures, cabinets, cables or improvements, the department or official 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.

SECTION 5. REQUIRED PERMITS AND APPROVALS

- (a) **ROW Use Permit.** A "ROW use permit," subject to the Director'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.
- (b) **Exemptions.** Notwithstanding anything in this policy to the contrary, a ROW use permit shall not be required for:

- (1) wireless facilities or other infrastructure deployments owned and operated by the City for its use;
 - (2) OTARD facilities;
 - (3) requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted under Section 6409 will be subject to the current FCC rules and regulations "eligible facilities requests" as defined by FCC and as may be amended or superseded; or
 - (4) Wireless facilities or other infrastructure deployments covered by a valid franchise, pole license or other encroachment agreement between the applicant and the City.
- (c) **Other Permits and Approvals.** In addition to a 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 5(b) 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.

SECTION 6. APPLICATION AND REVIEW PROCEDURES

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

- (3) **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.
- (4) **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.
- (5) **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.
- (6) **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(1). 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 ROW use permit as provided in section 8(b).

- (7) **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 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.
- (8) **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.
- (9) **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.
- (10) **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.
- (11) **Title Report and Property Owner's Authorization.** For any small wireless facility proposed to be installed on a support structure not owned or controlled by the City, the applicant must submit a written authorization from the support structure owner(s) that authorizes the applicant to submit and accept a ROW use permit in connection with the subject property.
- (12) **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.

- (13) **Structural Analysis.** The applicant shall submit a report prepared and certified by an engineer (or other qualified personnel acceptable to the City) that evaluates whether the underlying pole or support structure has the structural integrity to support all the proposed equipment and attachments. At a minimum, the analysis must be consistent with all applicable requirements in CPUC General Order 95 (including, but not limited to, load and pole overturning calculations), the National Electric Safety Code, and any safety and construction standards required by the utility.
- (b) **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.
- (c) **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.

- (d) **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 (d) a "substantive response" must include, at a minimum, the complete materials identified as incomplete in the written incomplete notice.
- (e) **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 Director 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.
- (f) **Peer and Independent Consultant Review.** The City Council authorizes the Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection any permit application. The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation: (a) permit application completeness and/or accuracy; (b) pre-construction planned compliance with applicable regulations for human exposure to RF emissions; (c) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (d) whether and to what extent a proposed project will comply with applicable laws; (e) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the City's discretion to review; and (f) any other issue identified by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with City staff and/or the applicant. Subject to applicable law, in the event that the Director elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may

include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings. Before the independent consultant may perform any services, the applicant shall tender to the City a deposit in an amount equal to the estimated cost for the services to be provided, as determined by the Director until the City adopts the initial required deposit by fee schedule. The Director may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant's services. In the event that the deposit exceeds the total costs for consultant's services, the Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection by the Director or his or her designee. In the event that the reasonable costs for the independent consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The City shall not issue any construction or encroachment permit to any applicant with any unpaid deposit requests or invoices.

SECTION 7. PUBLIC NOTICES

- (a) **Small Cell Notice Registry.** The City shall create and maintain a registry of members of the public that elect to receive notice by email of all small-cell applications received by the city ("Small Cell Notice Registry"). Upon receipt of any small-cell application or bundle of small-cell applications, the City shall post a notice of receipt of such applications ("Application Submittal Notice") on its website. The required contents for the Application Submittal Notice are listed in subsections b(1) and c(1), below. The same notice shall be sent by email to all members of the public listed in the Small Cell Notice Registry.
- (b) **Requirements for Applications Subject to FCC Shot-Clock.**
 - (1) **Application Submittal Notice.** In addition to the noticing requirements listed in subsection (a), within 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, which must include the nature of the project, the project location and an accurate diagram or photo simulation; (2) the City's file number for the application; (3) the applicant's identification and contact information as provided on the application submitted to the City; (4) contact information for the Director and a deadline for interested parties to submit written comments; (5) 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 Manager; and (6) 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 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.

- (c) **Requirements for Applications Subject to Shortened Shot-Clock.** Under this Policy or under an agreement authorized by this Policy, it is anticipated that the City will receive applications for small-cell deployments on City-owned poles. Such applications may be subject to a shot-clock that is shorter than the FCC Shot-Clock. For any such application subject to a shot-clock that is shorter than 60 days (“Shortened Shot-Clock”), the following shall apply:
- (1) **Application Submittal Notice.** For applications submitted under shortened shot-clocks, the Application Submittal Notice must contain the following: (1) a general project description, which must include the nature of the project and the project location; (2) either an accurate diagram or photo simulation, or a notification that the application includes a pre-approved design under Section 12; (3) the City's file number for the application; (4) the applicant's identification and contact information as provided on the application submitted to the City; (5) contact information for the Director and a deadline for interested parties to submit written comments; (6) a statement that the Director will act on the application without a public hearing within five (5) days; (7) a statement that any person living within 300 feet of the proposed license site may lodge an objection to the Director's decision; a statement that, if objections are received, the City Manager will review the entire record pertaining to the application and issue a final decision on behalf of the City; (8) the deadline date for receipt of any objections to the application; and (9) the subsequent deadline date for the City Manager’s decision to be published.
 - (2) **Application Decision Notice.** Within 5 calendar days after the application is received, the Director shall post a notice of the Director’s decision (“Application Decision Notice”) on its website. The same notice shall be sent by email to all members of the public listed in the Small Cell Notice Registry. In addition to the information required for the Application Submittal Notice, the Application Decision Notice shall include the Director’s determination as to whether the application will be approved, denied, or deemed incomplete. The Director also shall provide written notice to the applicant. Finally, for all applications for sites located within 300 feet of a residence but not within a median island, the Director shall cause an abridged notice to be placed on the pole on which the applicant proposes to support the small-cell facility. The abridged notice shall notify the reader that a small-cell facility is proposed to be placed on the subject pole, and direct the reader to the City’s website for more information, and provide contact information for the City staff person responsible for processing the application. If the Director denies an application (with or without prejudice) for a small wireless facility, the Application Decision Notice must also contain the reasons for the denial.
- (d) **License Agreement Notice.** Before the City Council approves any resolution adopting a master license agreement or other form license agreement related to the deployment of wireless facilities on City-owned support structures, the City Council shall hold at

least one noticed public hearing in accordance with San Ramon Zoning Ordinance Division D7, Chapter IV. The City Clerk shall publish a copy of the resolution and license agreement in the agenda materials as required by law.

SECTION 8. DECISIONS

(a) Initial Administrative Decision.

- (1) Requirements for Applications Subject to FCC Shot-Clock.** Not less than 10 calendar days after the public notices required in section 7(a) and 7(b)1 are sent or posted, and not more than 26 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) Requirements for Applications Subject to a Shortened Shot-Clock.** Not less than 5 calendar days after the public notices required in section 7(a) are posted, the Director shall approve, conditionally approve or deny a complete and duly filed license application without a public hearing.

(b) Required Findings for Approval. The Director may approve or conditionally approve a complete and duly filed application for a ROW use permit or site license permit when the Director finds:

- (1) the proposed project complies with all applicable design standards in this policy;
- (2) except as provided in Section 10.a, 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;
- (3) the proposed project would not be located on a prohibited support structure identified in this policy;
- (4) 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;
- (5) 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;
- (6) if the proposed project involves a wireless facility, the applicant has demonstrated that the proposed project will be in planned compliance with all FCC regulations and guidelines for human exposure to RF emissions; and
- (7) all public notices required for the application have been given.

- (c) **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 or site license application as may be necessary or appropriate to ensure compliance with this policy.
- (d) **Appeals.**
 - (1) **Applications Subject to FCC Shot-Clocks.** Any interested person or entity may appeal the decision by the Director to the City Manager or the City Manager's designee (collectively, the "City Manager"); 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 ten 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 Manager shall hear appeals de novo and issue the applicant a written decision within five calendar days after the appeal hearing. If the City Manager denies the application on appeal (whether by affirmation or reversal), the written notice shall contain the reasons for the decision.
 - (2) **Applications Subject to Shortened Shot-Clocks.** Upon posting of the Application Decision Notice by the Director, interested persons residing within 300 feet of the proposed site location may object to the decision to the City Manager; provided, however, that the City Manager may not consider any objection that is based solely on the environmental effects from radio frequency emissions that are compliant with applicable FCC regulations and guidelines. The City Manager shall reconsider all applications for which an objection has been received by the City de novo. Within ten calendar days after the issuance of the Application Decision Notice, the City Manager shall issue a written decision to the applicant and to all who objected to the Director's decision. Such written decision shall constitute the City's final decision. If the City Manager denies the application on reconsideration (whether by affirmation or reversal), the written notice shall contain the reasons for the decision.

SECTION 9. CONDITIONS OF APPROVAL

- (a) **Standard Conditions.** Except as may be authorized in Subsection (b) all ROW use permits issued under this Policy shall be automatically subject to the conditions in this Subsection (a).
 - (1) **Permit Term.** This permit 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.

- (2) **Permit Renewal.** Not more than one year before this ROW use permit expires, the permittee may apply for permit renewal. The permittee must demonstrate that the subject small wireless facility or other infrastructure deployment complies with all the conditions of approval associated with this ROW use permit and all applicable provisions in the Municipal Code and this policy 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 Municipal Code and this policy or other applicable law. Upon renewal, this ROW use permit will automatically expire 10 years and one day from its issuance.
- (3) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small 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 small 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.
- (4) **Build-Out Period.** This ROW use permit 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 small 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. If the permittee cannot obtain all other permits and approvals before build-out period expires, the City will not extend the build-out period but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.
- (5) **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 ROW use permit. 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.

- (6) **Compliance with Laws.** The permittee shall maintain, and demonstrate to the satisfaction of the City, 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 small wireless facility or other infrastructure deployment or any use or activities in connection with the use authorized in this ROW use permit, 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 Charter, General Plan, Municipal Code, Zoning Ordinance, 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 Charter, General Plan, Municipal Code, Zoning Ordinance, this policy, any permit, any permit condition or any applicable law or regulation.
- (7) **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 San Ramon 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; provided, however, that such work shall be subject to the provisions in San Ramon Municipal Code section C6. The Director may issue a stop-work order for any activities that violates this condition in whole or in part.
- (8) **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.
- (9) **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 small 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.

- (10) **Indemnification.** The permittee and, if applicable, the support structure owner upon which the small 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 ROW use permit, 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 ROW use permit or the small 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 support structure 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 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 ROW use permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this ROW use permit.
- (11) **Performance Bond.** Before the City issues any permits required to commence construction in connection with this permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or other infrastructure removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant

with applicable laws. In establishing or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the small wireless facility or other infrastructure deployment to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility or other infrastructure deployment in accordance with this condition.

- (12) **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.
- (13) **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 ROW use permit application, ROW use permit, 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 ROW use permit (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.

- (14) **Abandoned Facilities.** The small wireless facility or other infrastructure deployment authorized under this ROW use permit shall be deemed abandoned if not operated for any continuous six-month period within 90 days after a small 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 General Plan, Municipal Code and Zoning Ordinance. 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.
- (15) **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. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (16) **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 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.
- (17) **Future Undergrounding Programs.** Notwithstanding any term remaining on any

ROW use permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility or other infrastructure deployment is located, the permittee must also underground its equipment, except the antennas and any approved electric meter, at approximately the same time. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. Small wireless facilities and other infrastructure deployments installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.

- (18) **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.
- (19) **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (A) change any street grade, width or location; (B) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (C) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this ROW use permit. If the Director determines that any City work will require the permittee's small wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility or other infrastructure deployment within a reasonable time after the Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's small wireless facility or other infrastructure deployment without prior notice to permittee when the Director determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written

demand for reimbursement and reasonable documentation to support such costs.

- (20) **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 ROW use permit or the small wireless facility or other infrastructure approved under the ROW use permit, 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.
- (a) **Modified Conditions.** The City Council authorizes the Director to modify, add or remove conditions to any ROW use permit 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 section 9(a) 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 Charter, General Plan, Municipal Code, Zoning Ordinance, 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 small wireless facilities are no more burdensome than those applied to other infrastructure deployments.

SECTION 10. LOCATION STANDARDS

- (a) **Location Preferences.** To better assist applicants and decisionmakers understand and respond to the community's aesthetic preferences and values, this section 10 sets out listed preferences for locations to be used in connection with small wireless facilities in an ordered hierarchy. Small cell locations are listed below in order of preference and are grouped in three separate categories: Most Preferred Locations (listed in subsection (1)); Lesser-Preferred Locations (listed in subsection (2)); and Prohibited Locations (listed in subsection (3)).
- (1) **Most Preferred Locations.** Applications that involve the most preferred locations in this subsection may be approved without further analysis to determine whether a more preferred location is available. Most-preferred locations are, in order of preference, as follows:
- (i) locations within commercial or industrial districts on or along arterial streets, with a strong preference for placement within the median islands wherever possible;
 - (ii) locations within commercial or industrial districts on or along collector streets, with a strong preference for placement within the median islands wherever possible;

- (iii) locations within commercial or industrial districts on or along local streets, with a strong preference for placement within the median islands wherever possible.
- (2) **Lesser-Preferred Locations.** Applications that involve lesser-preferred locations in this subsection b 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. Lesser-preferred locations are, in order of preference, as follows:
- (i) locations within special purpose or mixed use districts on or along arterial streets, with a strong preference for placement within the median islands wherever possible;
 - (ii) locations within special purpose or mixed use districts on or along collector streets, with a strong preference for placement within the median islands wherever possible;
 - (iii) locations within special purpose or mixed use districts on or along local streets, with a strong preference for placement within the median islands wherever possible;
 - (iv) locations within 500 feet of other small cells.
- (3) **Prohibited Locations.** No small cells may be placed in the public right-of-way in residential districts or within 500 feet from any structure approved for a residential use; or within an exclusively residential zoning designation (RC, HR, RE, RS, RM, RMH, or RVH); or on any ridgeline, as defined in the Division D5 Chapter 1 (Hillside, Creek, and Ridgeline Areas); or within the drip line of any protected tree, as defined in Zoning Code Chapter II, Section D5-8.A, except as necessary to avoid an effective prohibition of services in accordance with federal law. Applications for facilities within a prohibited location shall be placed within an identified utility easement wherever possible. Applications that involve prohibited locations may only be approved if the applicant demonstrates by clear and convincing evidence in the written record that denying the application at the proposed location would cause an effective prohibition.
- (b) **Prohibited Support Structures.** Except when authorized as pre-approved design pursuant to this policy, small cells shall not be permitted on the following support structures:
- (1) decorative poles;
 - (2) traffic signal poles, cabinets or related structures;

- (3) new, nonreplacement wood poles;
 - (4) any utility pole scheduled for removal or relocation within 18 months from the time the Director acts on the small cell application;
- (c) **Encroachments Over Private Property.** No small cell 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.
- (d) **No Interference with Other Users.** Small cells 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. In addition, all small cells shall be subject to the provisions of Zoning Code Section D4-45.B regarding signal interference with other telecommunications facilities.
- (e) **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.
- (f) **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:
- (1) be placed as close as possible to the property line between two parcels that abut the public rights-of-way;
 - (2) be placed within a median island wherever possible;
 - (3) not be placed directly in front of any door or window;
 - (4) not be placed within any sight distance triangles at any intersections;
 - (5) be placed at least feet 10 away from any driveway or established pedestrian pathway between a residential structure and public rights-of-way;
 - (6) be placed at least 50 feet away from any driveways for police stations, fire stations

or other emergency responder facilities.

SECTION 11. DESIGN STANDARDS

- (a) **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 Director's prior approval.
- (b) **Noise.** Small cells and all associated antennas, accessory equipment and other improvements must comply with all applicable noise control standards and regulations in San Ramon Municipal Code section B6-81 *et seq.*, as either may be amended or superseded, and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable district.
- (c) **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. 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.
- (d) **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 Director 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 Director. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (e) **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.
- (f) **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.

- (g) **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.*). Applicants shall demonstrate such compliance to the satisfaction of the City, and the City may, at its option, utilize an independent consultant with specialized training, experience and/or expertise to peer review any submittals pertaining to RF emissions, in accordance with Section 6(f).
- (h) **Antennas.** The provisions in this Subsection (h) are generally applicable to all antennas.
 - (1) **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 two 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.
 - (2) **Antenna Volume.** Each individual antenna associated with a single small cell shall not exceed three cubic feet. The cumulative volume for all antennas on a single small cell shall not exceed: (A) three cubic feet in residential areas; or (B) six cubic feet in nonresidential areas.
 - (3) **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.
 - (4) **Horizontal Projection.** Side-mounted antennas, where permitted, shall not project: (A) more than 24 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 24 inches from the support structure, the projection shall be no greater than required for compliance with such laws.
- (i) **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) seventeen cubic feet in nonresidential areas. The volume limits in this Subsection do not apply to any undergrounded accessory equipment.
- (j) **Undergrounded Accessory Equipment.**
 - (1) **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, as defined in Section 3, or (B) any location where the Director 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 may grant an exception when the applicant demonstrates by clear and convincing evidence that compliance with this section would be technically infeasible.

- (2) **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.
- (k) **Pole-Mounted Accessory Equipment.** The provisions in this Subsection (k) are applicable to all pole-mounted accessory equipment in connection with small wireless facilities and other infrastructure deployments.
- (1) **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.
 - (2) **Minimum Vertical Clearance.** The lowest point on any pole-mounted accessory equipment shall be at least eight feet above ground level adjacent to the pole. If applicable laws require any pole-mounted accessory equipment component to be placed less than eight feet above ground level, the clearance from ground level shall be no less than required for compliance with such laws.
 - (3) **Horizontal Projection.** Pole-mounted accessory equipment shall not project: (i) more than 24 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").
 - (4) **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.

- (l) **Ground-Mounted or Base-Mounted Accessory Equipment.** The provisions in this subsection (l) are applicable to all ground-mounted and base-mounted accessory equipment in connection with small wireless facilities and other infrastructure deployments.
 - (1) **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.
 - (2) **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 4.5 feet in height or 4.5 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.
- (m) **Utilities.** The provisions in this subsection (m) are applicable to all utilities and other related improvements that serve small wireless facilities and other infrastructure deployments.
 - (1) **Overhead Lines.** The Director 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.
 - (2) **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.
 - (3) **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.

- (4) **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 Director shall not approve a separate ground-mounted electric meter pedestal.
- (5) **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 Director's prior written approval, which the Director may withhold or condition as the Director deems necessary or appropriate to protect the City's infrastructure, prevent interference with the City's municipal functions and public health and safety.

SECTION 12. PREAPPROVED DESIGNS

- (a) **Purpose.** To expedite the review process and encourage collaborative designs among applicants and the City, the City Council authorizes the Director to designate one or more preapproved designs for small wireless facilities and other infrastructure deployments. This section 12 sets out the process to establish or repeal a preapproved design and the expedited review procedures and findings applicable to these applications.
- (b) **Adoption.** The Director may, in the Director's discretion, establish a preapproved design when the Director finds that a proposed preapproved design substantially complies with the design standards in this policy. The Director shall post a public notice posted at the Public Works Department office, with the City Clerk, on the NextDoor website, and on the City's own website. 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 under section 8(d), the preapproved design shall become effective 15 days from the notice required in this subsection. A decision by the Director not to adopt a proposed preapproved design or the Director's failure to act on a request for a proposed preapproved design is not appealable.
- (c) **Repeal.** The Director may repeal any preapproved design by written notice posted at Public Works Department office. The repeal shall be immediately effective. The Director's repeal, refusal to repeal or failure to act on a request to repeal a preapproved design is not appealable.
- (d) **Modified Review Process.** In nonresidential districts, applications for a preapproved design shall not be subject to the notice requirements in section 7(a) or any potential appeals under section 8(d). In residential districts, applications for a preapproved design shall remain subject to the notice requirements in section 7 and any potential appeals under section 8(d).

- (e) **Modified Findings.** When an applicant submits a complete application for a reapproved design, the Director shall presume that the findings for approval in sections 8(b)(1) and 8(b)(5) are satisfied and shall evaluate the application for compliance with the findings for approval in sections 8(b)(2), 8(b)(3), 8(b)(4), 8(b)(6), and 8(b)(7).

- (f) **Nondiscrimination.** Any applicant may propose to use any preapproved design whether the applicant initially requested that the Director adopt such preapproved design or not. The Director'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.