

1 [Personal Wireless Service Facility Site Permits and Associated Fees]

2

3 **Ordinance amending the San Francisco Public Works Code by adding Article 25,**
 4 **Sections 1500 through 1528, to establish new requirements for Personal Wireless**
 5 **Service Facility Site Permits and to increase certain fees for obtaining such permits,**
 6 **amending the San Francisco Administrative Code by amending Chapter 11, Article 1,**
 7 **Section 11.9, to eliminate obsolete provisions related to such permits, making the**
 8 **provisions of the ordinance retroactive, and making environmental findings.**

9 NOTE: Additions are *single-underline italics Times New Roman*;
 10 deletions are ~~*strike-through italics Times New Roman*~~.
 11 Board amendment additions are double-underlined;
 Board amendment deletions are ~~strike through normal~~.

12 Be it ordained by the People of the City and County of San Francisco:

13 Section 1. Findings.

14 (a) Background

15 (1) Growing demand for wireless telecommunications services has resulted in
 16 increasing requests from the wireless industry to place wireless antennas and other
 17 equipment on utility and street light poles in the public-rights of way.

18 (2) Federal law limits the authority of local governments to enact laws that prohibit
 19 or have the effect of prohibiting the provision of telecommunications service. At the same
 20 time, federal law allows local governments to regulate the use of the public rights-of-way to
 21 provide telecommunications service.

22 (3) The permissible boundaries of local government regulation under federal law
 23 have been the subject of considerable litigation. In 2008, the United States Court of Appeals
 24 for the Ninth Circuit interpreted a key provision of federal law to allow local governments to
 25 regulate the placement of wireless facilities in the public rights-of-way based on, among other

1 factors, aesthetic impacts, provided that such regulation does not have the effect of
2 prohibiting the provision of telecommunications service.

3 (4) Federal law also limits the authority of local governments to regulate wireless
4 facilities based on the environmental effects of radio frequency emissions. Local
5 governments may only ensure that such wireless facilities comply with the regulations of the
6 Federal Communications Commission regarding radio frequency emissions.

7 (5) Under state law, “telephone corporations” have a right to use the public
8 rights-of-way to install and maintain “telephone lines” and related facilities required to provide
9 telephone service. Local governments, however, may enact laws that limit the intrusive
10 effect of these lines and facilities.

11 (6) As of the date of this Ordinance, state law is unresolved as to: (a) whether the
12 rights of “telephone corporations” to install and maintain “telephone lines” in the public
13 rights-of-way apply to companies that install and maintain wireless facilities; and (b) whether
14 and to what extent local governments may regulate the installation and maintenance of
15 “telephone lines” in the public rights-of-way based on aesthetic impacts. While a state court
16 has yet to decide these issues, in 2009 the United States Court of Appeals for the Ninth
17 Circuit interpreted state law to authorize local governments to consider aesthetics in deciding
18 whether to permit the installation of wireless facilities in the public rights-of-way.

19 (7) The City has been regulating the installation of wireless facilities in the public
20 rights-of-way since 2007. At that time, the Board of Supervisors adopted Ordinance No.
21 214-07 to amend Chapter 11, Article 1, Section 11.9(b) of the San Francisco Administrative
22 Code to require a telecommunications carrier seeking to install a personal wireless service
23 facility in the public rights-of-way to obtain a personal wireless service facilities site permit
24 from the Department of Public Works.

1 (b) The Need to Regulate the Size and Appearance of Wireless Facilities

2 (1) Surrounded by water on three sides, San Francisco is widely recognized to be
3 one of the world's most beautiful cities. Scenic vistas and views throughout San Francisco of
4 both natural settings and human-made structures contribute to its great beauty.

5 (2) The City's beauty is vital to the City's tourist industry and is an important reason
6 for businesses to locate in the City and for residents to live here. Beautiful views enhance
7 property values and increase the City's tax base. The City's economy, as well as the health
8 and well-being of all who visit, work or live in the City, depends in part on maintaining the
9 City's beauty.

10 (3) The types of wireless antennas and other associated equipment that
11 telecommunications providers install in the public rights-of-way can vary considerably in size
12 and appearance. The City needs to regulate the placement of such facilities in order to
13 prevent telecommunications providers from installing wireless antennas and associated
14 equipment in the City's public rights-of-way either in manners or in locations that will diminish
15 the City's beauty.

16 Section 2. The San Francisco Public Works Code is hereby amended to add Article
17 25, to read as follows:

18
19 **ART. 25 PERSONAL WIRELESS SERVICE FACILITIES.**

20
21 **SEC. 1500. PERSONAL WIRELESS SERVICE FACILITY SITE PERMIT.**

22 (a) Personal Wireless Service Facility Site Permit Required. The Department shall require
23 any Person seeking to construct, install, or maintain a Personal Wireless Service Facility in the Public
24 Rights-of-Way to obtain a Personal Wireless Service Facility Site Permit.

1 (b) Minimum Permit Requirements.

2 (1) The Department shall not issue a Personal Wireless Service Facility Site Permit if the
3 Application for a Personal Wireless Service Facility Site Permit does not comply with all of the
4 requirements of this Article 25.

5 (2) The Department shall require an Applicant for a Personal Wireless Service Facility
6 Site Permit to demonstrate to the satisfaction of the Department that:

7 (A) The Department has issued the Applicant a Utility Conditions Permit as required by
8 San Francisco Administrative Code Section 11.9;

9 (B) The pole owner has authorized the Applicant to use or replace the Utility or Street
10 Light Pole identified in the Application; and

11 (C) The Applicant has obtained any approvals that may be required under the California
12 Environmental Quality Act (California Public Resources Code Section 21000 et seq.) to construct,
13 install, and maintain the proposed Personal Wireless Service Facility.

14 (c) The Department shall not issue a Personal Wireless Service Facility Site Permit if the
15 Applicant seeks to:

16 (1) Install a new Utility or Street Light Pole on a Public Right-of-Way where there
17 presently are no overhead utility facilities; or

18 (2) Add a Personal Wireless Service Facility on a Utility or Street Light Pole for which a
19 Personal Wireless Service Facility Site Permit has already been approved.

20 (d) Permit Conditions. The Department may include in a Personal Wireless Service
21 Facility Site Permit such conditions, in addition to those already set forth in this Article 25 and other
22 Applicable Law, as may be required to govern the construction, installation, or maintenance of
23 Personal Wireless Service Facilities in the Public Rights-of-Way, and to protect and benefit the public
24 health, safety, welfare, and convenience. Such conditions may also govern the installation and use of
25

1 equipment that is not located on a Utility or Street Light Pole, but that is necessary for the use of a
2 permitted Personal Wireless Service Facility.

3 (e) Installation of Cabinets or Vaults in the Public Rights-of-Way. The Department shall
4 not include in a Personal Wireless Service Facility Site Permit an authorization for the Permittee to
5 install a surface-mounted equipment cabinet or underground equipment vault in the Public Rights-of-
6 Way. In order to install such an equipment cabinet or vault in the Public Rights-of-Way for use with a
7 Personal Wireless Service Facility, a Permittee must fully comply with any other City permitting
8 requirements related to the installation of such facilities.

9 (f) Other Provisions Inapplicable. Notwithstanding the requirements of San Francisco
10 Business and Tax Code Sections 5, 6, and 26(a), the provisions of this Article 25 shall govern all
11 actions taken by the City with respect to the approval or denial of an Application for a Personal
12 Wireless Service Site Facility Site Permit under this Article 25.

13
14 **SEC. 1501. DEPARTMENT ORDERS AND REGULATIONS.**

15 The Department may adopt such orders or regulations as it deems necessary to implement the
16 requirements of this Article 25, or to otherwise preserve and maintain the public health, safety,
17 welfare, and convenience, as are consistent with this requirements of this Article 25 and Applicable
18 Law.

19
20 **SEC. 1502. DEFINITIONS.**

21 For purposes of this Article 25, the following terms, phrases, words, abbreviations, their
22 derivations, and other similar terms, when capitalized, shall have the meanings given herein. When
23 not inconsistent with the context, words used in the present tense include the future tense; words in the
24 plural number include the singular number; and words in the singular number include the plural
25 number.

1 (a) “Adjacent” means:

2 (1) On the same side of the street and in front of the building or the next building on either
3 side, when used in connection with a national historic landmark, California landmark, San Francisco
4 landmark, structure of merit, architecturally significant building, or locally significant building; and

5 (2) In front of and on the same side of the street, when used in connection with a City park
6 or open space.

7 (b) “Applicable Law” means all applicable federal, state, and City laws, ordinances,
8 codes, rules, regulations and orders, as the same may be amended or adopted from time to time.

9 (c) “Applicant” means any Person submitting an Application for a Personal Wireless
10 Service Facility Site Permit under this Article 25.

11 (d) “Application” means an application for a Personal Wireless Service Facility Site
12 Permit under this Article 25.

13 (e) “City” means the City and County of San Francisco.

14 (f) “Conditions” means any additional requirements that a City department reviewing an
15 Application for a Personal Wireless Service Facility Site Permit has determined are necessary for the
16 Application to meet those requirements of this Article 25 that are within that department’s purview.

17 (g) “Department” means the Department of Public Works.

18 (h) “Director” means the Director of Public Works.

19 (i) “FCC” means the Federal Communications Commission.

20 (j) “Park Protected Location” means a proposed location for a Personal Wireless Service
21 Facility in the Public Rights-of-Way that is Adjacent to a City park or open space.

22 (k) “Park Protected Location Compatibility Standard” means whether a Personal Wireless
23 Service Facility that is proposed to be located in a Park Protected Location would significantly impair
24 the views of a City park or open space or significantly degrade the aesthetic or natural attributes that
25 define the City park or open space.

1 (l) “Permittee” means a Person issued a Personal Wireless Service Facility Site Permit.

2 (m) “Person” means any individual, group, company, partnership, association, joint stock
3 company, trust, corporation, society, syndicate, club, business, or governmental entity. “Person” shall
4 not include the City.

5 (n) “Personal Wireless Service” means commercial mobile services provided under a
6 license issued by the FCC.

7 (o) “Personal Wireless Service Facility” or “Facility” means antennas and related
8 facilities used to provide or facilitate the provision of Personal Wireless Service.

9 (p) “Personal Wireless Service Facility Site Permit” or “Permit” means a permit issued
10 by the Department pursuant to this Article 25 authorizing a Permittee to construct, install, and
11 maintain a Personal Wireless Service Facility.

12 (q) “Planning Protected Location” means any of the following proposed locations for a
13 Personal Wireless Service Facility:

14 (1) On an historic, historically or architecturally significant, decorative, or specially
15 designed Street Light Pole located in the Public Rights-of-Way;

16 (2) On a Utility or Street Light Pole that is on a Public Right-of-Way that is within a
17 national historic landmark district, listed or eligible national register historic district, listed or eligible
18 California register historic district, San Francisco landmark district, local historic or conservation
19 district, or locally significant district, as more specifically described and cataloged in materials
20 prepared and maintained by the Planning Department;

21 (3) On a Utility or Street Light Pole that is on a Public Right-of-Way that is Adjacent to a
22 national historic landmark, California landmark, San Francisco landmark, structure of merit,
23 architecturally significant building, or locally significant building, as more specifically described and
24 cataloged in materials prepared and maintained by the Planning Department;

1 (4) On a Utility or Street Light Pole that is on a Public Right-of-Way that the San
2 Francisco General Plan has designated as being most significant to City pattern, defining City form,
3 or having an important street view for orientation; or

4 (5) On a Utility or Street Light Pole that is on a Public Right-of-Way that the San
5 Francisco General Plan has designated as having views that are rated “excellent” or “good.”

6 (r) “Planning Protected Location Compatibility Standard” means whether an Applicant
7 for a Personal Wireless Service Facility Site Permit demonstrates that a proposed Personal Wireless
8 Service Facility would be compatible with any of the Planning Protected Locations as follows:

9 (1) For a historic, historically or architecturally significant, decorative, or specially
10 designed Street Light Pole, the applicable standard is whether a proposed Personal Wireless Service
11 Facility would significantly degrade the aesthetic attributes that distinguish the Street Light Pole as
12 historic, historically significant, architecturally significant, decorative, or specially designed.

13 (2) For a Public Right-of-Way that is within a national historic landmark district, listed or
14 eligible national register historic district, listed or eligible California register historic district, San
15 Francisco landmark district, local historic or conservation district, or locally significant district, the
16 applicable standard is whether a proposed Personal Wireless Service Facility would significantly
17 degrade the aesthetic attributes that were the basis for the special designation of the district.

18 (3) For a Utility or Street Light Pole that is Adjacent to a national historic landmark,
19 California landmark, San Francisco landmark, structure of merit, architecturally significant building,
20 or locally significant building, the applicable standard is whether a proposed Personal Wireless
21 Service Facility would significantly degrade the aesthetic attributes that were the basis for the special
22 designation of the building.

23 (4) For a Public Right-of-Way that the San Francisco General Plan has designated as
24 being most significant to City pattern, defining City form, or having an important street view for
25 orientation, the applicable standard is whether a proposed Personal Wireless Service Facility would

1 significantly degrade the aesthetic attributes that were the basis for the designation of the street for
2 special protection under the General Plan.

3 (5) For a Public Right-of-Way that the San Francisco General Plan has designated as
4 having views that are rated “excellent” or “good,” the applicable standard is whether a proposed
5 Personal Wireless Service Facility would significantly impair the views of any of the important
6 buildings, landmarks, open spaces, or parks that were the basis for the designation of the street as a
7 view street.

8 (s) “Public Health Compliance Standard” means whether: (i) any potential human
9 exposure to radio frequency emissions from a proposed Personal Wireless Service Facility described
10 in an Application is within the FCC guidelines; and (ii) noise at any time of the day or night from the
11 proposed Personal Wireless Service Facility described in an Application is not greater than forty-five
12 (45) dBA as measured at a distance three (3) feet from any residential building facade.

13 (t) “Public Rights-of-Way” means the area in, on, upon, above, beneath, within, along,
14 across, under, and over the public streets, sidewalks, roads, lanes, courts, ways, alleys, spaces, and
15 boulevards within the geographic area of the City in which the City now or hereafter holds any
16 property interest, which is dedicated to public use and which, consistent with the purposes for which it
17 was dedicated, may be used for the purpose of installing and maintaining Personal Wireless Service
18 Facilities to provide Personal Wireless Service to customers.

19 (u) “Step-Down Tier III Facility” means a Personal Wireless Service Facility that would
20 be a Tier III Facility because of the size of the antenna enclosure(s) being added to a Utility or Street
21 Light Pole, but that would not add any equipment enclosure(s) to any Utility or Street Light Pole.

22 (v) “Step-Down Tier II Facility” means a Personal Wireless Service Facility that would be
23 a Tier II Facility because of the size of the antenna enclosure(s) being added to a Utility or Street
24 Light Pole, but that would not add any equipment enclosure(s) to any Utility or Street Light Pole.

1 (w) “Street Light Pole” means a pole used solely for street lighting and which is located in
2 the Public Rights-of-Way.

3 (x) “Tier III-A Compatibility Standard” the standard by which the Planning Department
4 shall make a compatibility determination based on an analysis of the additional impact, if any, that a
5 proposed Tier III-A Facility would have on the character of the neighborhood, as compared to the
6 impact a Tier II Facility would have at the same location.

7 (y) “Tier III-B Compatibility Standard” means a Planning Protected Location
8 Compatibility Standard or Zoning Protected Location Compatibility Standard by which the Planning
9 Department shall make a compatibility determination based on an analysis of the additional impact, if
10 any, that a proposed Tier III-B Facility would have on a Planning Protected Location or Zoning
11 Protected Location, as compared to the impact a Tier II Facility would have at the same location.

12 (z) “Tier III-C Compatibility Standard” means a Park Protected Location Compatibility
13 Standard by which the Recreation and Park Department shall make a compatibility determination
14 based on an analysis of the additional impact, if any, that a Proposed Tier III-C Facility would have
15 on a Park Protected Location, as compared to the impact a Tier II Facility would have at the same
16 location.

17 (aa) “Tier II-B Compatibility Standard” means a Planning Protected Location
18 Compatibility Standard or Zoning Protected Location Compatibility Standard by which the Planning
19 Department shall make a compatibility determination based on an analysis of the additional impact, if
20 any, that a proposed Tier II-B Facility would have on a Planning Protected Location or Zoning
21 Protected Location, as compared to the impact a Tier I Facility would have at the same location.

22 (bb) “Tier II-C Compatibility Standard” means a Park Protected Location Compatibility
23 Standard by which the Recreation and Park Department shall make a compatibility determination
24 based on an analysis of the additional impact, if any, that a Proposed Tier II-C Facility would have on
25

1 a Park Protected Location, as compared to the impact a Tier I Facility would have at the same
2 location.

3 (cc) “Tier I Criteria” is the criteria for the equipment allowed to be used with a Tier I
4 Personal Wireless Service Facility, as set forth in Section 1503(a) below.

5 (dd) “Tier II Criteria” is the criteria for the equipment allowed to be used with a Tier II
6 Personal Wireless Service Facility, as set forth in Section 1503(b) below.

7 (ee) “Tier I Facility” is a Personal Wireless Service Facility that complies with the Tier I
8 Criteria.

9 (ff) “Tier III Facility” is a Personal Wireless Service Facility that does not meet the Tier I
10 or Tier II Criteria.

11 (gg) “Tier II Facility” is a Personal Wireless Service Facility that complies with the Tier II
12 Criteria.

13 (hh) “Tier I Facility Permit” is a Permit to install a Tier I Facility.

14 (ii) “Tier III Facility Permit” is a Permit to install a Tier III Facility.

15 (jj) “Tier II Facility Permit” is a Permit to install a Tier II Facility.

16 (kk) “Tier III Necessity Standard” means whether a Tier II Facility is insufficient to meet
17 the Applicant’s service needs because the Applicant has demonstrated one of the following:

18 (1) A Tier II Facility would not provide the coverage or functionality the Applicant
19 requires to meet its service needs in the vicinity of the proposed Tier III Facility.

20 (2) Approval of the Application for a Tier III Facility Permit would reduce the number of
21 Personal Wireless Service Facilities that the Applicant would otherwise need to install in the vicinity
22 of the proposed Tier III Facility.

23 (3) Any other showing related to the Applicant’s service needs that the Department may
24 allow by order or regulation.

1 (ll) “Tier II Necessity Standard” means whether a Tier I Facility is insufficient to meet the
2 Applicant’s service needs because the Applicant has demonstrated one of the following:

3 (1) A Tier I Facility would not provide the coverage or functionality the Applicant requires
4 to meet its service needs in the vicinity of the proposed Tier II Facility.

5 (2) Approval of the Application for a Tier II Facility Permit would reduce the number of
6 Personal Wireless Service Facilities that the Applicant would otherwise need to install in the vicinity
7 of the proposed Tier II Facility.

8 (3) Any other showing related to the Applicant’s service needs that the Department may
9 allow by order or regulation.

10 (mm) “Unprotected Location” means a proposed location for a Personal Wireless Service
11 Facility that is neither a Planning Protected Location nor a Park Protected Location.

12 (nn) “Utility Pole” means a power pole, telephone pole, or other similar pole located
13 within the Public Rights-of-Way.

14 (oo) “Zoning Protected Location” means on a Utility or Street Light Pole that is on a Public
15 Right-of-Way that is within a Residential or Neighborhood Commercial zoning district under the San
16 Francisco Planning Code.

17 (pp) “Zoning Protected Location Compatibility Standard” means whether an Applicant for
18 a Personal Wireless Service Facility Site Permit on a Public Right-of-Way that is within a Zoning
19 Protected Location demonstrates that a proposed Personal Wireless Service Facility would not
20 significantly detract from the character of the Residential or Neighborhood Commercial zoning
21 district.

22
23 **SEC. 1503. TYPES OF PERSONAL WIRELESS SERVICES FACILITIES**

24 (a) Tier I Facility. The Department shall not approve an Application for a Tier I Facility
25 Permit unless the Application complies with the following Tier I Criteria:

1 (1) Antenna Facilities.

2 (A) A Tier I Facility may add no more than three (3) antenna enclosures to a Utility or
3 Street Light Pole mounted to either the top or the side of the Utility or Street Light Pole as follows:

4 (i) If only (1) antenna enclosure is to be added to a Utility or Street Light Pole, then the
5 antenna enclosure shall be no more than four (4) feet high and have a diameter that is not greater
6 than the diameter of the Utility or Street Light Pole at the point to which it is attached.

7 (ii) If more than one (1) antenna enclosure is to be added to a Utility or Street Light Pole,
8 then each antenna enclosure shall be no more than four (4) feet high and three (3) inches in diameter.

9 (2) Supporting Elements.

10 (A) If Applicable Law, or generally applicable written rules of the pole owner, require a
11 supporting element for any antenna enclosure such as a cross-arm or pole top extension, such
12 supporting element shall be no larger, longer, or bulkier than is necessary to comply with Applicable
13 Law or such generally applicable written rules.

14 (B) If an antenna enclosure is mounted to the top of the Utility or Street Light Pole, the
15 antenna enclosure may not extend the Utility or Street Light Pole in such a manner that the antenna
16 enclosure obstructs the view from or the light into any adjacent residential window.

17 (3) Equipment Enclosures. A Tier I Facility may add no more than two (2) equipment
18 enclosures to a Utility or Street Light Poles, as follows:

19 (A) A primary equipment enclosure installed on the same Utility or Street Light Pole as the
20 antenna enclosure(s), preferably facing the street or perpendicular to the street, shall be no larger
21 than three (3) cubic feet in volume with a width not exceeding twelve (12) inches and a depth not
22 exceeding ten (10) inches. An electric meter and a cut-off switch may be located outside of the
23 primary equipment enclosure; and

24 (B) A secondary equipment enclosure installed on a Utility or Street Light Pole that is near
25 the Utility or Street Light Pole to be used for the antenna enclosure(s) and primary equipment

1 enclosure, preferably facing the street or perpendicular to the street, shall be no larger than three (3)
2 cubic feet in volume with a width not exceeding twelve (12) inches and a depth not exceeding ten (10)
3 inches.

4 (3) The Department may, by order, allow a larger primary equipment enclosure if the
5 Applicant demonstrates that the enclosure will contain an electricity meter and cut-off switch,
6 provided that the width of the enclosure does not exceed twelve (12) inches and the depth does not
7 exceed ten (10) inches.

8 (b) Tier II Facility. The Department shall not approve an Application for a Tier II Facility
9 Permit unless the Application complies with the following Tier II Criteria:

10 (1) Antenna Facilities. A Tier II Facility may add one (1) or more antenna enclosures to a
11 Utility or Street Light Pole mounted to either the top or the side of the Utility or Street Light Pole as
12 follows:

13 (A) For an installation on top of a Utility or Street Light Pole, the antenna enclosure(s)
14 shall:

15 (i) Be cylindrical in shape;

16 (ii) Not exceed four (4) feet in height; and

17 (iii) Not exceed the diameter of the top of the pole.

18 (B) For an installation on the side of a Utility or Street Light Pole, the size of the antenna
19 enclosure(s) shall:

20 (i) Not exceed four (4) feet in height; and

21 (ii) In the case of a cylindrical antenna enclosure, not exceed eighteen (18) inches in
22 diameter; or

23 (iii) In the case of a rectangular antenna enclosure, not exceed eighteen (18) inches in
24 width or depth.

25 (2) Supporting Elements.

1 (A) If Applicable Law, or generally applicable written rules of the pole owner, require a
2 supporting element for any antenna enclosure such as a cross-arm or pole top extension, such
3 supporting element shall be no larger, longer, or bulkier than is necessary to comply with Applicable
4 Law or such generally applicable written rules.

5 (B) If an antenna enclosure is mounted to the top of the Utility or Street Light Pole, the
6 antenna enclosure may not extend the Utility or Street Light Pole in such a manner that the antenna
7 enclosure obstructs the view from or the light into any adjacent residential window.

8 (3) Equipment Enclosures. A Tier II Facility may add no more than two (2) equipment
9 enclosures to a Utility or Street Light Pole, as follows:

10 (A) A primary equipment enclosure installed on the same Utility or Street Light Pole as the
11 antenna enclosure(s), preferably facing the street or perpendicular to the street, shall be no larger
12 than four (4) cubic feet in volume, with a width not exceeding twelve (12) inches and a depth not
13 exceeding ten (10) inches. An electric meter and a cut-off switch may be located outside of the
14 primary equipment enclosure; and

15 (B) A secondary equipment enclosure installed on a Utility or Street Light Pole that is near
16 the Utility or Street Light Pole to be used for the antenna enclosure(s) and primary equipment
17 enclosure, preferably facing the street or perpendicular to the street, shall be no larger than four (4)
18 cubic feet in volume with a width not exceeding twelve (12) inches and a depth not exceeding ten (10)
19 inches.

20 (C) The Department may, by order, allow a larger primary equipment enclosure if the
21 Applicant demonstrates that the enclosure will contain an electricity meter and cut-off switch,
22 provided that the width of the enclosure does not exceed twelve (12) inches and the depth does not
23 exceed ten (10) inches

24 (5) Types of Tier II Facilities.

1 (A) A Tier II Facility shall be designated a Tier II-A Facility if the proposed location for
2 the facility is in an Unprotected Location.

3 (B) A Tier II Facility shall be designated a Tier II-B Facility if the proposed location for
4 the facility is in a Planning Protected Location or Zoning Protected Location.

5 (C) A Tier II Facility shall be designated a Tier II-C Facility if the proposed location for
6 the facility is in a Park Protected Location.

7 (c) Tier III Facility.

8 (1) No Limitations on Equipment. The Department shall not place any limitations on the
9 antennas, antenna enclosures or other equipment that may be contained in an Application for a Tier
10 III Facility Permit.

11 (2) Types of Tier III Facilities.

12 (A) A Tier III Facility shall be designated a Tier III-A Facility if the proposed location for
13 the facility is in an Unprotected Location.

14 (B) A Tier III Facility shall be designated a Tier III-B Facility if the proposed location for
15 the facility is in a Planning Protected Location or Zoning Protected Location.

16 (C) A Tier III-C Facility shall be designated a Tier III-C Facility if the proposed location
17 for the facility is in a Park Protected Location.

18 (d) Step-Down Facilities.

19 (1) Step-Down Tier II Facility. A Step-Down Tier II Facility shall be designated a Tier I
20 Facility.

21 (2) Step-Down Tier III Facility. A Step-Down Tier III Facility shall be designated a Tier II
22 Facility.

1 **SEC. 1504. INITIAL REVIEW OF A PERSONAL WIRELESS FACILITY SITE PERMIT**

2 **APPLICATION.**

3 (a) Completeness Review.

4 (1) Initial Determination. Following receipt of an Application for a Personal Wireless
5 Service Facility Site Permit, the Department shall make an initial determination whether the
6 Application is complete.

7 (2) Notice of Completeness Determination. The Department shall promptly notify an
8 Applicant for a Personal Wireless Service Facility whether the Application is complete.

9 (b) Tier Review.

10 (1) Initial Determination. Following a Department determination that an Application for a
11 Personal Wireless Service Facility Site Permit is complete, the Department shall make an initial
12 determination as follows:

13 (A) The Application is for a Tier I, Tier II, or Tier III Facility Permit.

14 (B) The Department is required to refer the Application to the Planning Department,
15 and/or the Recreation and Park Department under Sections 1509(a)(1) and 1510(a)(1) below.

16 (C) The Department is exercising its discretion to refer an Application for a Tier II-A
17 Facility Permit to the Planning Department and/or the Recreation and Park Department under
18 Sections 1509(a)(2) and 1510(a)(2) below.

19 (2) Notice of Tier Determination. The Department shall promptly notify an Applicant for a
20 Personal Wireless Service Facility of the Department's tier determination.

21
22 **SEC. 1505. CONDITIONS OF APPROVAL.**

23 (a) Conditions of Approval. Any City department reviewing an Application for a Personal
24 Wireless Service Facility Site Permit, as required by this Article 25, may add Conditions to its
25 approval, tentative approval, or determination.

1 **(b) Conditions in Writing.** *Any Conditions that a City department includes in its approval,*
2 *tentative approval, or determination with respect to an Application for a Personal Wireless Service*
3 *Facility Site Permit shall be in writing.*

4 **(c) Notice of Conditions.** *The Department shall promptly notify the Applicant of any such*
5 *Conditions and shall give the Applicant a reasonable time to accept or reject the Conditions.*

6 **(d) Acceptance of Conditions Required.** *The Department shall not approve an Application*
7 *for a Personal Wireless Service Facility Site Permit unless the Applicant accepts all of the Conditions*
8 *added to an approval, tentative approval, or determination by any City department that reviewed the*
9 *Application.*

10
11 **SEC. 1506 STREET TREE.**

12 **(a) Condition of Approval.** *When reviewing an application for a Tier II or Tier III Facility*
13 *Permit, the Planning Department and/or Recreation and Park Department (as appropriate) may*
14 *require as a condition of approval that the Permittee plant and maintain an appropriate street tree*
15 *adjacent to the Utility or Street Light Pole so as to provide a screen for a permitted Tier II or Tier III*
16 *Facility.*

17 **(b) Implementation of Street Tree Requirement.** *When installation of a street tree is*
18 *required by the Planning Department and/or Recreation and Park Department, the Department shall*
19 *implement the requirement as follows:*

20 **(1)** *The Department shall require the Permittee to install a street tree that is a minimum of*
21 *twenty-four (24)-inch box size. The Department's Bureau of Urban Forestry shall work with the*
22 *Permittee to select the appropriate species and location for the required tree.*

23 **(2)** *In any instance in which the Department cannot require the Permittee to install a street*
24 *tree, on the basis of inadequate sidewalk width, interference with utilities, or other reasons regarding*
25

1 the public health, safety, or welfare, the Department shall instead require the Permittee to make an “in-
2 lieu” payment into the Department’s “Adopt-A-Tree” fund. This payment shall be in the amount
3 specified in San Francisco Public Works Code § 807(f), and shall be payable prior to the Department’s
4 issuance of the Personal Wireless Service Facility Site Permit.

5 (c) Care and Maintenance of Street Trees. The Permittee shall be responsible for the care
6 and maintenance of any street tree required to be installed in the Public Rights-of-Way under this
7 Section. In this regard, the Permittee shall assume the duty of a “property owner” as set forth in San
8 Francisco Public Works Code § 805.

9
10 **SEC. 1507. DEPARTMENT OF PUBLIC HEALTH REVIEW.**

11 (a) Department of Public Health Referral. The Department shall refer every Application
12 for a Personal Wireless Service Facility Site Permit to the Department of Public Health for review of
13 the proposed Personal Wireless Service Facility under the Public Health Compliance Standard.

14 (b) Department of Public Health Determination. The Department of Public Health shall
15 make a determination whether the Application satisfies the Public Health Compliance Standard. The
16 determination of the Department of Public Health shall be in writing and shall set forth the reasons
17 therefore. The Department of Public Health shall transmit its determination to the Department within
18 twenty (20) business days of receipt of the Application from the Department. With the concurrence of
19 the Applicant, the Department of Public Health may extend this review period beyond twenty (20)
20 business days.

21 (c) Affirmative Determination Required. The Department shall not approve an Application
22 for a Personal Wireless Service Facility Site Permit unless the Department of Public Health makes a
23 determination that the Application satisfies the Public Health Compliance Standard.

1 **SEC. 1508. DEPARTMENT REVIEW OF A PERSONAL WIRELESS SERVICE FACILITY**

2 **SITE PERMIT APPLICATION.**

3 (a) Tier I Facility Permit. The Department shall review an Application for a Tier I Facility
4 Permit to determine whether the Application:

5 (1) Satisfies the Tier I Criteria; and

6 (2) Receives an affirmative determination from the Department of Public Health under the
7 Public Health Compliance Standard.

8 (b) Tier II-A Facility Permit. The Department shall review an Application for a Tier II-A
9 Facility Permit to determine whether the Application:

10 (1) Satisfies the Tier II Criteria;

11 (2) Satisfies the Tier II Necessity Standard; and

12 (3) Receives an affirmative determination from the Department of Public Health under the
13 Public Health Compliance Standard.

14 (c) Tier II-B or Tier II-C Facility Permit. The Department shall review an Application for
15 a Tier II-B or Tier II-C Facility Permit to determine whether the Application:

16 (1) Satisfies the Tier II Criteria;

17 (2) Satisfies the Tier II Necessity Standard;

18 (3) Receives an affirmative determination from the Department of Public Health under the
19 Public Health Compliance Standard; and

20 (4) Receives an affirmative determination from the Planning Department or the Recreation
21 and Park Department (or both if required) under the applicable Tier II-B or Tier II-C Compatibility
22 Standard.

23 (d) Tier III Facility Permit. The Department shall review an Application for a Tier III
24 Facility Permit to determine whether the Application:

25 (1) Satisfies the Tier III Necessity Standard;

1 (2) Receives an affirmative determination from the Department of Public Health under the
2 Public Health Compliance Standard; and

3 (3) Receives an affirmative determination from the Planning Department or the Recreation
4 and Park Department (or both if required) under the applicable Tier III-A, Tier III-B, or Tier III-C
5 Compatibility Standard.

6
7 **SEC. 1509. PLANNING DEPARTMENT REVIEW OF A TIER II-B, TIER III-A, OR TIER III-**
8 **B FACILITY PERMIT APPLICATION.**

9 (a) Referral to Planning Department.

10 (1) Referral Required. If the Department determines that an Application for a Tier II-B,
11 Tier III-A, or Tier III-B Facility Permit satisfies the applicable Tier II or Tier III Necessity Standard,
12 the Department shall refer the Application to the Planning Department for a review of the proposed
13 Personal Wireless Service Facility under the applicable Tier II-B, Tier III-A, or Tier III-B
14 Compatibility Standard.

15 (2) Referral Allowed. The Department may refer an Application for a Tier II-A Facility
16 Permit to the Planning Department if the proposed location for the Personal Wireless Service Facility
17 is in the immediate vicinity of a Planning Protected or Zoning Protected Location. The Department
18 shall designate such a facility a Tier II-B Facility. The Planning Department shall then review the
19 Application under the Tier II-B Compatibility Standard that would apply to the Planning Protected or
20 Zoning Protected Location that is in the immediate vicinity of the proposed Tier II-A Facility.

21 (b) Planning Department Determination. The Planning Department shall make a
22 determination whether an Application for a Personal Wireless Service Facility Site Permit referred to
23 the Planning Department under this Section satisfies the applicable Tier II-B, Tier III-A, or Tier III-B
24 Compatibility Standard. The Planning Department's determination shall be in writing and shall set
25

1 forth the reasons therefore. The Planning Department shall transmit its determination to the
2 Department

3 (c) Affirmative Determination Required. The Department shall not approve an Application
4 for a Tier II-B, Tier III-A, or Tier III-B Facility Permit unless the Planning Department makes a
5 determination that the Application satisfies the applicable Tier II-B, Tier III-A, or Tier III-B
6 Compatibility Standard.

7
8 **SEC. 1510. RECREATION AND PARK DEPARTMENT REVIEW OF A TIER II-C OR**
9 **TIER III-C FACILITY PERMIT APPLICATION.**

10 (a) Referral to Recreation and Park Department.

11 (1) Referral Required. If the Department determines that an Application for a Tier II-C or
12 Tier III-C Facility Permit satisfies the applicable Tier II or Tier III Necessity Standard, the
13 Department shall refer the Application to the Recreation and Park Department for a review of the
14 proposed Personal Wireless Service Facility under the applicable Tier II-C or Tier III-C Compatibility
15 Standard.

16 (2) Referral Allowed. The Department may refer an Application for a Tier II-A or Tier
17 III-A Permit to the Recreation and Park Department if the proposed location for the Personal Wireless
18 Service Facility is in the immediate vicinity of a Park Protected Location. The Department shall
19 designate such a facility a Tier II-C or Tier III-C Facility. The Recreation and Park Department shall
20 then review the Application under the applicable Tier II-C Compatibility Standard or Tier III-C
21 Compatibility Standard.

22 (b) Recreation and Park Department Determination. The Recreation and Park
23 Department shall make a determination whether an Application for a Personal Wireless Service
24 Facility Site Permit referred to the Planning Department under this Section satisfies the applicable
25 Tier II-C or Tier III-C Compatibility Standard. The Recreation and Park Department's determination

1 shall be in writing and shall set forth the reasons therefore. The Recreation and Park Department
2 shall transmit its determination to the Department within twenty (20) business days of receipt of the
3 Application from the Department. With the concurrence of the Applicant, the Recreation and Park
4 Department may extend this review period beyond twenty (20) business days.

5 (c) Affirmative Determination Required. The Department shall not approve an Application
6 for a Tier II-C or Tier III-C Facility Permit unless the Recreation and Park Department makes a
7 determination that the Application satisfies the applicable Tier II-C or Tier III-C Compatibility
8 Standard.

9
10 **SEC. 1511. DEPARTMENT DETERMINATION.**

11 (a) Determination in Writing.

12 (1) Tentative Approval. A Department tentative approval of an Application for a Tier III
13 Facility Permit shall be in writing and shall set forth the reasons therefore. If a Department tentative
14 approval contains any Conditions, the Conditions shall also be in writing.

15 (2) Final Determination. A Department final determination to approve or deny an
16 Application for a Personal Wireless Service Facility Site Permit shall be in writing and shall set forth
17 the reasons therefore. If a Department final determination to approve an Application contains any
18 Conditions, the Conditions shall also be in writing.

19 (b) Tier I or Tier II-A Facility Permit.

20 (1) Denial. The Department shall issue a final determination denying an Application for a
21 Tier I or Tier II-A Facility Permit within three (3) business days of any of the following events:

22 (A) The Department making a determination that the Application does not meet the Tier I
23 or Tier II Criteria, as applicable;

24 (B) The Department's receipt of a determination from the Department of Public Health that
25 the Application does not meet the Public Health Compliance Standard; or

1 (C) If the Department or the Department of Public Health adds any Conditions to its
2 approval of the Application, the Department's receipt of a notice from the Applicant that it rejects any
3 of those Conditions.

4 (2) Approval without Conditions. If neither the Department nor the Department of Public
5 Health adds any Conditions to its approval of an Application for a Tier I or Tier II-A Facility Permit,
6 the Department shall issue a final determination approving the Application within three (3) business
7 days of the occurrence of the last of the following events:

8 (A) The Department making a determination that the Application meets the Tier I or Tier II
9 Criteria, as applicable; or

10 (B) The Department's receipt of a determination from the Department of Public Health that
11 the Application meets the Public Health Compliance Standard.

12 (3) Approval with Conditions. If the Department or the Department of Public Health adds
13 any Conditions to its approval of an Application for a Tier I or Tier II-A Facility Permit, the
14 Department shall issue a final determination approving the Application within three (3) business days
15 of the occurrence of the last of the following events:

16 (A) The Department making a determination that the Application meets the Tier I or Tier II
17 Criteria, as applicable;

18 (B) The Department's receipt of a determination from the Department of Public Health that
19 the Application meets the Public Health Compliance Standard; or

20 (C) The Department's receipt of a notice from the Applicant that it accepts all of those
21 Conditions.

22 (c) Tier II-B or Tier II-C Facility Permit.

23 (1) Denial. The Department shall issue a final determination denying an Application for a
24 Tier II-B or Tier II-C Facility Permit within three (3) business days of any of the following events:

1 (A) The Department making a determination that the Application does not meet the Tier II
2 Criteria or Tier II Necessity Standard;

3 (B) The Department's receipt of a determination from the Department of Public Health that
4 the Application does not meet the Public Health Compliance Standard;

5 (C) The Department's receipt of a determination from the Planning Department or the
6 Recreation and Park Department that the Application does not meet the applicable Compatibility
7 Standard; or

8 (D) If any City department that reviewed the Application adds any Conditions to its
9 approval of the Application, the Department's receipt of a notice from the Applicant that it rejects any
10 of those Conditions.

11 (2) Approval without Conditions. If no City department reviewing an Application for a
12 Tier II-B or Tier II-C Facility Permit adds any Conditions to its approval of the Application, the
13 Department shall issue a final determination approving the Application within three (3) business days
14 of the occurrence of the last of the following events:

15 (A) The Department making a determination that the Application meets the Tier II Criteria
16 and Tier II Necessity Standard;

17 (B) The Department's receipt of a determination from the Department of Public Health that
18 the Application meets the Public Health Compliance Standard; or

19 (C) The Department's receipt of a determination from the Planning Department or the
20 Recreation and Park Department (or both if required) that the Application meets the applicable
21 Compatibility Standard.

22 (3) Approval with Conditions. If any City department reviewing an Application for a Tier
23 II-B or Tier II-C Facility Permit adds any Conditions to its approval of the Application, the
24 Department shall issue a final determination approving the Application within three (3) business days
25 of the occurrence of the last of the following events:

1 (A) The Department making a determination that the Application meets the Tier II Criteria
2 and Tier II Necessity Standard;

3 (B) The Department's receipt of a determination from the Department of Public Health that
4 the Application meets the Public Health Compliance Standard;

5 (C) The Department's receipt of a determination from the Planning Department or the
6 Recreation and Park Department (or both if required) that the Application meets the applicable
7 Compatibility Standard; or

8 (D) The Department's receipt of a notice from the Applicant that it accepts all of those
9 Conditions.

10 (d) Tier III Facility Permit.

11 (1) Denial. The Department shall issue a final determination denying an Application for a
12 Tier III Facility Permit within three (3) business days of any of the following events:

13 (A) The Department making a determination that the Application does not meet the Tier III
14 Necessity Standard;

15 (B) The Department's receipt of a determination from the Department of Public Health that
16 the Application does not meet the Public Health Compliance Standard;

17 (C) The Department's receipt of a determination from the Planning Department or the
18 Recreation and Park Department (or both if required) that the Application does not meet the
19 applicable Compatibility Standard; or

20 (D) If any City department reviewing the Application adds any Conditions to its approval of
21 the Application, the Department's receipt of a notice from the Applicant that it rejects any of those
22 Conditions.

23 (2) Approval without Conditions.

24 (A) If no City department reviewing an Application for a Tier III Facility Permit adds any
25 Conditions to its approval of the Application, the Department shall issue a tentative approval of an

1 Application for a Tier III Facility Permit without Conditions within three (3) business days of the
2 occurrence of the last of the following events:

3 (i) The Department making a determination that the Application meets the Tier III
4 Necessity Standard;

5 (ii) The Department's receipt of a determination from the Department of Public Health that
6 the Application meets the Public Health Compliance Standard; and

7 (iii) The Department's receipt of a determination from the Planning Department or the
8 Recreation and Park Department (or both if required) that the Application meets the applicable
9 Compatibility Standard.

10 (B) Following the Department's tentative approval of an Application for a Tier III Facility
11 Permit without any Conditions, the Department shall issue a final determination as follows:

12 (i) The Department shall require the Applicant to give notice of the tentative approval as
13 required by Section 1512 below; and

14 (ii) If no protest is timely submitted, the Department shall issue a final determination
15 approving the Application within a reasonable time after the time to file a protest has expired; or

16 (iii) If a protest is timely submitted, the Department shall issue a final determination
17 approving or denying the Application within a reasonable time after the Director issues a decision
18 under Section 1513(g) below.

19 (3) Approval with Conditions.

20 (A) If any City department reviewing an Application for a Tier III Facility Permit adds any
21 Conditions to its approval of the Application, the Department shall issue a tentative approval of the
22 Application with Conditions within three (3) business days of the occurrence of the last of the
23 following events:

24 (i) The Department making a determination that the Application meets the Tier III
25 Necessity Standard;

1 (ii) The Department's receipt of a determination from the Department of Public Health
2 that the Application meets the Public Health Compliance Standard;

3 (iii) The Department's receipt of a determination from the Planning Department or the
4 Recreation and Park Department (or both if required) that the Application meets the applicable
5 Compatibility Standard; or

6 (iv) The Department's receipt of a notice from the Applicant that it accepts all of those
7 Conditions.

8 (B) Following the Department's tentative approval of an Application for a Tier III Facility
9 Permit with Conditions, the Department shall issue a final determination as follows:

10 (i) The Department shall require the Applicant to give notice of the tentative approval as
11 required by Section 1512 below; and

12 (ii) If no protest is timely submitted, the Department shall issue a final determination
13 approving the Application within a reasonable time after the time to file a protest has expired; or

14 (iii) If a protest is timely submitted, the Department shall issue a final determination
15 approving or denying the Application within a reasonable time after the Director issues a decision
16 under Section 1513(g) below.

17
18 **SEC. 1512. NOTICE FOLLOWING TENTATIVE APPROVAL OF A TIER III FACILITY**

19 **PERMIT APPLICATION.**

20 (a) Notice Required. The Department shall require an Applicant for a Tier III Facility
21 Permit to notify the public of a tentative approval of the Application under Sections 1511(d)(2) or
22 1511(d)(3) above, and to provide the Department with evidence, as the Department may require, of
23 compliance with this requirement.

24 (b) Types of Notice Required.

25 (1) Notice by Mail. The Applicant shall mail a copy of the notice to:

1 (A) Any Person owning property or residing within one hundred and fifty (150) feet of the
2 proposed location of the Tier III Facility; and

3 (B) Any neighborhood association identified by the Planning Department for any
4 neighborhood within three hundred (300) feet of the proposed Tier III Facility.

5 (2) Notice by Posting. The Applicant shall post a copy of the notice in conspicuous places
6 throughout the block face where the proposed Tier III Facility is to be located.

7 (c) Contents and Form of Notice. The notice shall contain such information, and be in
8 such form, as the Department reasonably requires in order to inform the general public as to the
9 nature of the Application for a Tier III Facility Permit. At a minimum, the notice shall:

10 (1) Provide a description and a photo-simulation of the proposed Tier III Facility;

11 (2) Summarize the determinations of any City departments that were necessary for the
12 tentative approval of the Application;

13 (3) Identify any Conditions added by any City departments that have been accepted by the
14 Applicant and are now part of the Application;

15 (4) State that any Person seeking to protest the Application must submit a protest to the
16 Department within twenty (20) days of the date the notice was mailed and posted;

17 (5) Describe the procedure for submitting a timely protest;

18 (6) Specify the applicable grounds for protesting the Application under this Article 25; and

19 (7) Explain how any interested Person may obtain additional information and documents
20 related to the Application.

21
22 **SEC. 1513. PROTEST OF A TIER III FACILITY PERMIT.**

23 (a) Protest Allowed. Any Person may protest a tentative approval of an Application for a
24 Tier III Facility Permit. A protest must be in writing and must be submitted to the Department within
25 twenty (20) days of the date the notice was mailed and posted as required under Section 1512 above.

1 (b) Hearing Required. If a protest is timely submitted, the Department shall hold a
2 hearing. The Department shall set a date for the hearing that is at least fifteen (15) days, but no more
3 than forty-five (45) days, after the Department's receipt of the protest, unless the Applicant and any
4 Person submitting a protest agree to a later hearing date.

5 (c) Notice of Hearing Date. The Department shall send written notice to any Person
6 submitting a protest and to the Applicant of the date the Department has set for the hearing at least ten
7 (10) days before the date set for the hearing. The Department shall follow its regular procedures for
8 notifying the general public of the date set for the hearing.

9 (d) Hearing Officer. The Department shall appoint an impartial hearing officer to conduct
10 a public hearing on a protest.

11 (e) Hearing Record. The hearing record shall include:

12 (1) The Department's tentative approval of the Application;

13 (2) Any written determination from the Department, the Planning Department, the
14 Recreation and Park Department, and the Department of Public Health (as applicable);

15 (3) Any further written evidence from any City departments submitted either prior to or
16 during the hearing;

17 (4) Any written submissions from the Applicant, any Person submitting a protest, or any
18 other interested Person submitted either prior to or during the hearing; and

19 (5) Any oral testimony from any City departments, the Applicant, any Person submitting a
20 protest, or any interested Person taken during the hearing.

21 (f) Hearing Officer's Report. The hearing officer shall issue a written report and
22 recommendation within ten (10) days of the close of evidence. The hearing officer shall include in the
23 report a summary of the evidence and a recommendation to the Director to either grant or deny the
24 protest of an Application.

1 (g) Director's Decision. The Director shall issue a written decision adopting, modifying,
2 or rejecting the hearing officer's written report and recommendation within seven (7) days of receipt
3 of the report.

4 (h) Grounds for Granting a Protest. The Director may grant a protest of a tentative
5 approval of Application for a Tier III Facility Permit only if the Director finds that the evidence at the
6 hearing supports any one of the following findings:

7 (1) The Department of Public Health incorrectly determined that the Application meets the
8 Public Health Compliance Standard;

9 (2) The Department incorrectly determined that the Application meets the Tier III
10 Necessity Standard;

11 (3) In the case of an Application for a Tier III-A or Tier III-B Facility Permit, the Planning
12 Department incorrectly determined that the Application meets the Tier III-A or Tier III-B
13 Compatibility Standard, as applicable; or

14 (4) In the case of an Application for a Tier III-C Facility Permit, the Recreation and Park
15 Department incorrectly determined that the Application meets the Tier III-C Compatibility Standard.

16
17 **SEC. 1514. NOTICE OF FINAL DETERMINATION.**

18 (a) Approval. The Department shall provide notice of a final determination to approve an
19 Application for a Personal Wireless Service Facilities Site Permit.

20 (1) Notice Required.

21 (A) The Department shall promptly mail a notice of final determination to approve an
22 Application for a Personal Wireless Service Facility Site Permit to both the Applicant and to any
23 neighborhood association identified by the Planning Department for any neighborhood within three
24 hundred (300) feet of the approved Personal Wireless Service Facility.

1 (B) If a hearing was held on an Application for a Tier III Facility Permit, the Department
2 shall promptly mail a notice of final determination to approve an Application for a Personal Wireless
3 Service Facility Site Permit to any Person who either filed a protest, submitted evidence, or appeared
4 at the hearing, and whose name and address are known to the Department.

5 (C) The Department shall require an Applicant for a Personal Wireless Service Facility
6 Site Permit to promptly post notice of a Department final determination to approve an Application for
7 a Personal Wireless Service Facility Site Permit in conspicuous places throughout the block face
8 where the approved Personal Wireless Service Facility is to be located and to provide the Department
9 with evidence, as the Department may require, of compliance with this requirement.

10 (2) Contents and Form of Notice. A notice of final determination to approve an
11 Application for a Personal Wireless Service Facility Site Permit shall contain such information, and
12 be in such form, as the Department reasonably requires in order to inform the general public of the
13 approved Application. At a minimum, the notice of final determination shall:

14 (A) Provide a description and a photo-simulation of the approved Personal Wireless
15 Service Facility;

16 (B) Summarize the determinations of the City departments that were necessary for the
17 approval of the Application, including any Conditions added by any City departments that were
18 accepted by the Applicant;

19 (C) State that any Person may file an appeal of the approval of the Application with the
20 Board of Appeals within fifteen (15) days after the date that all notices required by Section 1514(a)
21 above have been provided;

22 (D) Describe the procedure for submitting a timely appeal;

23 (E) Specify the applicable grounds for appealing the approval of the Application under this
24 Article 25; and

1 (F) Explain how any interested Person may obtain additional information and documents
2 related to the Application.

3 (b) Denial. The Department shall provide notice of a final determination to deny an
4 Application for a Personal Wireless Service Facilities Site Permit.

5 (1) Notice Required. The Department shall promptly mail a notice of final determination
6 to deny an Application for a Personal Wireless Service Facility Site Permit to the Applicant.

7 (2) Contents of Notice. A notice of final determination to deny an Application for a
8 Personal Wireless Service Facility Site Permit shall at a minimum:

9 (A) Summarize the determinations of any City departments that were necessary for the
10 denial of the Application, including any Conditions added by any City departments that were rejected
11 by the Applicant.

12 (B) State that the Applicant may file an appeal of the denial of the Application with the
13 Board of Appeals within fifteen (15) days of the Department's mailing of the notice.

14 (C) Describe the procedure for submitting a timely appeal; and

15 (D) Specify the applicable grounds for appealing the denial of the Application under this
16 Article 25.

17
18 **SEC. 1515. APPEALS.**

19 (a) Appeal Permitted. Any Person may appeal a Department final determination with
20 respect to an Application for a Personal Wireless Service Facility Site Permit to the Board of Appeals.

21 (b) Final Determination.

22 (1) Approval or Denial. The Department's approval or denial of an Application for a
23 Personal Wireless Service Facility Site Permit shall be an appealable final determination under this
24 Section.

1 (2) Refusal To Accept Conditions. The Department’s denial of an Application for a
2 Personal Wireless Service Facility Site Permit based on the Applicant’s refusal to accept any
3 Conditions imposed by a City department shall be an appealable final determination under this
4 Section.

5 (c) Board of Appeals Review. Upon such appeal, the Board of Appeals shall determine
6 whether the final determination was correct under the provisions of this Article 25.

7
8 **SEC. 1516. NOTICE OF COMPLETION AND INSPECTION.**

9 (a) Notice of Completion. A Permittee shall notify the Department immediately upon
10 completion of the installation of a Personal Wireless Service Facility. The notice of completion must
11 include a written statement from a certified engineer confirming that the potential human exposure to
12 radio frequency emissions from the installed Personal Wireless Service Facility complies with FCC
13 guidelines.

14 (b) Inspection.

15 (1) Required After Installation. The Department shall inspect a Personal Wireless Service
16 Facility installed in the Public Rights-of-Way within a reasonable time after a Permittee provides the
17 Department with a notice of completion required under Section 1516(a) above. The Department shall
18 determine during the inspection whether:

19 (A) The installation is in accordance with the requirements of the Personal Wireless
20 Service Facility Site Permit; and

21 (B) The potential human exposure to radio frequency emissions from the installed Personal
22 Wireless Service Facility is within FCC guidelines.

23 (2) Subsequent Inspection. If at any time the Department has a valid reason to believe that
24 potential human exposure to radio frequency emissions from a permitted and installed Personal
25 Wireless Service Facility exceeds FCC guidelines, the Department shall require the Permittee to

1 provide additional proof of compliance with FCC guidelines. The Department may also request that
2 the Department of Public Health inspect the facility.

3
4 **SEC. 1517. COMPLIANCE.**

5 (a) Compliance Required. Any Personal Wireless Service Facility installed in the Public
6 Rights-of-Way pursuant to a Personal Wireless Service Facility Site Permit issued under this Article
7 25 must comply with the terms and conditions of the Permit and this Article 25.

8 (b) Notice of Deficiency.

9 (1) Non-Compliance with Permit. If the Department determines, either after an inspection
10 required under Section 1516(b) above or at any other time, that a Personal Wireless Service Facility is
11 not in compliance with the Personal Wireless Service Facility Site Permit or this Article 25, the
12 Department shall issue a notice of deficiency and require the Permittee to take corrective action to
13 bring the Personal Wireless Service Facility into compliance.

14 (2) Radio Frequency Emissions. If the Department determines, either after an inspection
15 required under 1515(b) above or at any other time, that potential human exposure to radio frequency
16 emissions from a permitted Personal Wireless Service Facility exceeds FCC guidelines, the Department
17 shall issue a notice of deficiency and require the Permittee to take corrective action to bring the
18 Personal Wireless Service Facility into compliance with FCC guidelines.

19 (3) Noise. If the Department determines, either after an inspection required under 1515(b)
20 above or at any other time, that noise from a permitted Personal Wireless Service Facility at any time
21 of the day or night exceeds forty-five (45) dBA as measured at a distance three (3) feet from any
22 residential building facade, the Department shall issue a notice of deficiency and require the Permittee
23 to take corrective action to bring the Personal Wireless Service Facility into compliance with the noise
24 limit.

25 (c) Department Remedies.

1 (1) Required Action. If a Permittee fails to take corrective action with respect to a Personal
2 Wireless Service Facility within a reasonable time after receiving a notice of deficiency the Department
3 shall:

4 (A) Take all reasonable, necessary, and appropriate action to remedy a Permittee's non-
5 compliance; or

6 (B) Require a Permittee to remove the non-compliant Personal Wireless Service Facility
7 from the Public Rights-of-Way; and

8 (C) Charge to a Permittee the reasonable costs that the City has actually incurred including,
9 but not limited to, administrative costs.

10 (2) Discretionary Action. In addition to the foregoing, if a Permittee fails to take corrective
11 action with respect to a Personal Wireless Service Facility within a reasonable time after receiving a
12 notice of deficiency the Department may deny any pending Application for a Personal Wireless Service
13 Facility Site Permit.

14
15 **SEC. 1518. ABANDONMENT.**

16 (a) Permittee Must Maintain Facilities. Any Personal Wireless Service Facility installed in
17 the Public Rights-of-Way pursuant to a Personal Wireless Service Facility Site Permit issued under
18 this Article 25 must be properly maintained and used to provide Personal Wireless Services.

19 (b) Notice of Abandonment. A Permittee shall notify the Department, or the Department
20 may determine and notify a Permittee, that a Personal Wireless Service Facility installed in the Public
21 Rights-of-Way has been abandoned either because it has not been properly maintained or because it is
22 no longer being used to provide Personal Wireless Services. In such event, a Permittee shall promptly
23 remove the abandoned Personal Wireless Service Facility as required by the Department and at
24 Permittee's expense.

1 (c) Remedy for Non-Compliance. If a Permittee fails to remove an abandoned Personal
2 Wireless Service Facility within a reasonable period of time after receiving a notice of abandonment,
3 the Department shall take all reasonable, necessary, and appropriate action to remedy the Permittee's
4 failure to comply with the notice (including removing the Personal Wireless Service Facility) and may
5 charge to the Permittee the reasonable costs the City has actually incurred including, but not limited
6 to, administrative costs.

7
8 **SEC. 1519. TERM OF PERMIT.**

9 A Personal Wireless Service Facility Site Permit shall have a term of two (2) years. The term
10 shall commence upon the completion of the inspection required under Section 1516(b)(1) above.

11
12 **SEC. 1520. RENEWAL.**

13 (a) Renewal Permitted. At the end of the term set forth in Section 1519 above, the
14 Department may renew a Personal Wireless Service Facility Site Permit for the identical Personal
15 Wireless Service Facility at the same permitted location for four (4) additional two (2)-year terms.

16 (b) Renewal Application Required. A Permittee seeking to renew a Personal Wireless
17 Service Facility Site Permit must file a renewal Application with the Department prior to the end of the
18 existing term. The renewal Application shall include a written report from a certified engineer
19 confirming that human exposure to radio frequency emissions from the permitted Personal Wireless
20 Service Facility complies with FCC guidelines.

21 (c) Approval of Renewal Application.

22 (1) Approval Required. The Department shall approve a renewal Application using the
23 existing equipment at the same permitted location unless, since the commencement of the Permit term
24 as set forth in Section 1519 above, provided that there have been no changes to: (A) Applicable Law
25 that would allow authorize the Department to deny a new Application for a Personal Wireless Service

1 Facility Site Permit for the identical Personal Wireless Service Facility at the permitted location; or
2 (B) readily available technology for Personal Wireless Service Facilities that would make it feasible for
3 the Applicant for a renewal Permit to replace the existing equipment with more advanced and/or less
4 visually obtrusive equipment.

5 (2) Denial Required. Notwithstanding the foregoing, the Department shall deny a renewal
6 Application if the Permittee fails to provide the Department with a written report from a certified
7 engineer confirming that human exposure to radio frequency emissions from the permitted Personal
8 Wireless Service Facility complies with FCC guidelines.

9 (d) Referral to Other Departments. The Department shall refer a renewal Application to
10 other City departments for review before approving or denying the Application under the following
11 circumstances.

12 (1) Department of Public Health. Notwithstanding the requirements of Section 1520 (c)(2)
13 above, if Applicable Law with respect to human exposure to radio frequency emissions has changed
14 since the date of the approval of the original Application for a Personal Wireless Service Facility Site
15 Permit the Department shall refer the renewal Application to the Department of Public Health for
16 further review. The Department may not renew the Permit unless the Department of Public Health
17 makes a determination that the Application satisfies the Public Health Compliance Standard and/or
18 other Applicable Law related to human exposure to radio frequency emissions.

19 (2) Planning Department and Recreation and Park Department.

20 (A) If a renewal Application is for a Personal Wireless Service Facility that is in a location
21 that was not a Planning Protected, Zoning Protected, or Park Protected Location on the date of the
22 approval of the original Application for a Personal Wireless Service Facility Site Permit, the
23 Department shall determine whether changes to Applicable Law since that date have made the location
24 a Planning Protected, Zoning Protected, or Park Protected Location. If so, the Department shall refer
25

1 the renewal Application to the appropriate City department for review under any Compatibility
2 Standards that did not apply to the original Application.

3 (B) The Department may also exercise its discretion to refer a renewal Application to the
4 Planning Department and/or Recreation and Park Department if the location of the Personal Wireless
5 Service Facility is in the vicinity of a Planning Protected, Zoning Protected, or Park Protected
6 Location, whether or not the Department referred the original Application to the applicable City
7 department.

8 (C) If the Department refers a renewal Application to the Planning Department and/or
9 Recreation and Park Department under this Section, the Department shall not renew the Permit unless
10 the Planning Department and/or Recreation and Park Department recommends approval under the
11 newly applicable Compatibility Standards.

12 (e) Applicability of Other Provisions. All the other provisions of this Article 25 related to
13 approval of an Application for a Personal Wireless Service Facility Site Permit shall apply following
14 the Department's approval of a renewal Application. These provisions shall include, but are not
15 limited to, Notice of Final Determination (Section 1514 above), Appeals (Section 1515 above), and
16 Notice of Completion and Inspection (Section 1516 above).

17
18 **SEC. 1521. REPLACEMENT OF EQUIPMENT.**

19 During the term of a Personal Wireless Service Facility Site Permit, a Permittee may replace
20 equipment that is part of a permitted Personal Wireless Service Facility; provided that the
21 replacement equipment would be of substantially the same size, appearance, and power as the
22 previously permitted equipment. The Permittee shall notify the Department prior to replacing any
23 permitted equipment. The Permittee shall not install the proposed replacement equipment unless and
24 until the Department notifies Permittee in writing that the Department has determined that the
25 proposed replacement equipment complies with the requirements of this Section.

1 **SEC. 1522. MODIFICATION OF PERMIT.**

2 *A Permittee may file an Application with the Department to modify a Personal Wireless*
3 *Service Facility Site Permit to replace any equipment that is part of a permitted Personal Wireless*
4 *Service Facility if the proposed replacement equipment would not be of substantially the same size,*
5 *appearance, and power as the previously permitted equipment. The Department shall not approve an*
6 *Application to modify a Permit unless the Application complies with all of the requirements of this*
7 *Article 25.*

8
9 **SEC. 1523. DEPOSIT.**

10 *Each Permittee shall submit and maintain with the Department a bond, cash deposit, or other*
11 *security acceptable to the Department securing the faithful performance of the obligations of the*
12 *Permittee and its agents under any and all Personal Wireless Service Facility Site Permits issued to*
13 *the Permittee under this Article 25. The deposit shall be in the sum of twenty-five thousand dollars*
14 *(\$25,000) in favor of the "Department of Public Works, City and County of San Francisco." If, in*
15 *accordance with this Article 25, the Director deducts any amounts from such a deposit, the Permittee*
16 *must restore the full amount of the deposit prior to the Department's issuance of a subsequent Permit.*
17 *The Department shall return the deposit to the Permittee should Permittee cease to operate any*
18 *Personal Wireless Service Facilities in the Public Rights-of-Way.*

19
20 **SEC. 1524. LIABILITY.**

21 *As a condition of a Personal Wireless Service Site Facility Site Permit, each Permittee agrees*
22 *on its behalf and on behalf of any agents, successors, or assigns to be wholly responsible for the*
23 *construction, installation, and maintenance of any permitted Personal Wireless Service Facility. Each*
24 *Permittee and its agents are jointly and severally liable for all consequences of such construction,*
25 *installation, and maintenance of a Personal Wireless Service Facility. The issuance of any Personal*

1 Wireless Service Facility Site Permit, inspection, repair suggestion, approval, or acquiescence of any
2 person affiliated with the City shall not excuse any Permittee or its agents from such responsibility or
3 liability.

4
5 **SEC. 1525. INDEMNIFICATION AND DEFENSE OF CITY.**

6 (a) Indemnification of City. As a condition of a Personal Wireless Service Site Facility Site
7 Permit, each Permittee agrees on its behalf and on behalf of its agents, successors, or assigns, to
8 indemnify, defend, protect, and hold harmless the City from and against any and all claims of any kind
9 allegedly arising directly or indirectly from the following:

10 (1) Any act, omission, or negligence of a Permittee or its any agents, successors, or assigns
11 while engaged in the construction, installation, or maintenance of any Personal Wireless Service
12 Facility authorized by a Personal Wireless Service Facility Site Permit, or while in or about the Public
13 Rights-of-Way that are subject to the Permit, for any reason connected in any way whatsoever with the
14 performance of the work authorized by the Permit, or allegedly resulting directly or indirectly from
15 the construction, installation, or maintenance of any Personal Wireless Service Facility authorized
16 under the Permit;

17 (2) Any accident, damage, death, or injury to any of a Permittee's contractors or
18 subcontractors, or any officers, agents, or employees of either of them, while engaged in the
19 performance of the construction, installation, or maintenance of any Personal Wireless Service
20 Facility authorized by a Personal Wireless Service Facility Site Permit, or while in or about the Public
21 Rights-of-Way that are subject to the Permit, for any reason connected with the performance of the
22 work authorized by the Permit, including from exposure to radio frequency emissions;

23 (3) Any accident, damage, death, or injury to any Person or accident, damage, or injury to
24 any real or personal property in, upon, or in any way allegedly connected with the construction,
25 installation, or maintenance of any Personal Wireless Service Facility authorized by a Personal

1 Wireless Service Facility Site Permit, or while in or about the Public Rights-of-Way that are subject to
2 the Permit, from any causes or claims arising at any time, including any causes or claims arising from
3 exposure to radio frequency emissions; and

4 (4) Any release or discharge, or threatened release or discharge, of any hazardous
5 material caused or allowed by a Permittee or its agents about, in, on, or under the Public
6 Rights-of-Way.

7 (b) Defense of the City. Each Permittee agrees that, upon the request of the City, the
8 Permittee, at no cost or expense to the City, shall indemnify, defend, and hold harmless the City
9 against any claims as set forth in Sections 1525(a) above, regardless of the alleged negligence of City
10 or any other party, except only for claims resulting directly from the sole negligence or willful
11 misconduct of the City. Each Permittee specifically acknowledges and agrees that it has an immediate
12 and independent obligation to defend the City from any claims that actually or potentially fall within
13 the indemnity provision, even if the allegations are or may be groundless, false, or fraudulent, which
14 obligation arises at the time such claim is tendered to the Permittee or its agent by the City and
15 continues at all times thereafter. Each Permittee further agrees that the City shall have a cause of
16 action for indemnity against the Permittee for any costs the City may be required to pay as a result of
17 defending or satisfying any claims that arise from or in connection with a Personal Wireless Service
18 Facility Site Permit, except only for claims resulting directly from the sole negligence or willful
19 misconduct of the City. Each Permittee further agrees that the indemnification obligations assumed
20 under a Personal Wireless Service Facility Site Permit shall survive expiration of the Permit or
21 completion of installation of any Personal Wireless Service Facility authorized by the Permit.

22 (c) Additional Requirements. The Department may specify in a Personal Wireless Service
23 Facility Site Permit such additional indemnification requirements as are necessary to protect the City
24 from risks of liability associated with the Permittee's construction, installation, and maintenance of a
25 Personal Wireless Service Facility.

1 **SEC. 1525. INSURANCE.**

2 (a) Minimum Coverages. The Department shall require that each Permittee maintain in
3 full force and effect, throughout the term of a Personal Wireless Service Facility Site Permit, an
4 insurance policy or policies issued by an insurance company or companies satisfactory to the City's
5 Risk Manager. Such policy or policies shall, at a minimum, afford insurance covering all of the
6 Permittee's operations, vehicles, and employees, as follows:

7 (1) Workers' compensation, in statutory amounts, with employers' liability limits not less
8 than one million dollars (\$1,000,000) each accident, injury, or illness.

9 (2) Commercial general liability insurance with limits not less than one million dollars
10 (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including
11 contractual liability, personal injury, products and completed operations.

12 (3) Commercial automobile liability insurance with limits not less than one million dollars
13 (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including
14 owned, non-owned and hired auto coverage, as applicable.

15 (4) Contractors' pollution liability insurance, on an occurrence form, with limits not less
16 than one million dollars (\$1,000,000) each occurrence combined single limit for bodily injury and
17 property damage and any deductible not to exceed twenty five thousand dollars (\$25,000) each
18 occurrence.

19 (b) Other Insurance Requirements.

20 (1) Said policy or policies shall include the City and its officers and employees jointly and
21 severally as additional insureds, shall apply as primary insurance, shall stipulate that no other
22 insurance effected by the City will be called on to contribute to a loss covered thereunder, and shall
23 provide for severability of interests.

24 (2) Said policy or policies shall provide that an act or omission of one insured, which
25 would void or otherwise reduce coverage, shall not reduce or void the coverage as to any other

1 insured. Said policy or policies shall afford full coverage for any claims based on acts, omissions,
2 injury, or damage which occurred or arose, or the onset of which occurred or arose, in whole or in
3 part, during the policy period.

4 (3) Said policy or policies shall be endorsed to provide thirty (30) days advance written
5 notice of cancellation or any material change to the Department.

6 (4) Should any of the required insurance be provided under a claims-made form, a
7 Permittee shall maintain such coverage continuously throughout the term of a Personal Wireless
8 Service Facility Site Permit, and, without lapse, for a period of three (3) years beyond the expiration
9 or termination of the Permit, to the effect that, should occurrences during the term of the Permit give
10 rise to claims made after expiration or termination of the Permit, such claims shall be covered by such
11 claims-made policies.

12 (5) Should any of the required insurance be provided under a form of coverage that
13 includes a general annual aggregate limit or provides that claims investigation or legal defense costs
14 be included in such general annual aggregate limit, such general aggregate limit shall be double the
15 occurrence or claims limits specified in Section 1526(a) above.

16 (c) Indemnity Obligation. Such insurance shall in no way relieve or decrease a
17 Permittee's or its agent's obligation to indemnify the City under Section 1524 above.

18 (d) Proof of Insurance. Before the Department will issue a Personal Wireless Service
19 Facility Site Permit, a Permittee shall furnish to the Department certificates of insurance and
20 additional insured policy endorsements with insurers that are authorized to do business in the State of
21 California and that are satisfactory to the City evidencing all coverages set forth in Section 1526 (a)
22 above.

23 (e) Self-Insurance. Where a Permittee is self-insured, and such insurance is no less broad
24 and affords no less protection to the City than the requirements specified in Section 1526(a) above, the
25 Department, in consultation with the City's Risk Manager, may accept such insurance as satisfying the

1 requirements of Section 1526(a) above. Evidence of such self-insurance shall be provided in the
2 manner required by the City's Risk Manager.

3
4 **SEC. 1527. FEES AND COSTS.**

5 (a) Application Fees. City departments shall impose fees for review of an Application for a
6 Personal Wireless Service Facility Site Permit. The purpose of these fees is to enable City
7 departments to recover their costs related to reviewing an Application for a Personal Wireless Service
8 Facility Site Permit.

9 (1) Department Application Fee. Each Applicant for a Personal Wireless Service Facility
10 Site Permit shall pay to the Department a non-refundable Application fee of one hundred dollars
11 (\$100.00) for each Personal Wireless Service Facility proposed in the Application.

12 (2) Other City Department Application Fees. Where, as required under this Article 25, the
13 Department has referred an Application for a Personal Wireless Service Facility Site Permit to the
14 Planning Department, the Recreation and Park Department, or the Department of Public Health, an
15 Applicant shall pay the following additional fees for each Personal Wireless Service Facility
16 contained in an Application for a Personal Wireless Service Facility Site Permit.

17 (A) A Planning Department non-refundable Application fee of one hundred ninety dollars
18 (\$190.00) plus time and materials for any review that takes more than thirty (30) minutes.

19 (B) A Recreation and Park Department non-refundable Application fee of one hundred
20 twenty-five dollars (\$125.00) plus time and materials for any review that takes more than thirty (30)
21 minutes.

22 (C) A Department of Public Health non-refundable Application fee of one hundred eighty-
23 one dollars (\$181.00) plus time and materials for any review that takes more than sixty (60) minutes.

24 (b) Inspection Fees. The Department and the Department of Public Health shall impose
25 fees for the inspection of a permitted Personal Wireless Service Facility. The purpose of these fees is

1 to enable these City departments to recover their costs related to inspecting a permitted and installed
2 Personal Wireless Service Facility.

3 (1) Department Inspection Fee. Each Permittee shall pay the Department a non-
4 refundable time and materials inspection fee not to exceed one hundred fifty dollars (\$150.00) to
5 inspect a permitted Personal Wireless Service Facility as required under Section 1516(b) above.

6 (2) Department of Public Health Inspection Fee. Each Permittee shall pay the Department
7 of Public Health a non-refundable time and materials inspection fee to inspect a permitted Personal
8 Wireless Service Facility where such inspection is required or requested under Section 1516(b) above.

9 (c) Adjustment of Fees for CPI. Beginning with fiscal year 2011-2012, the fees established
10 herein may be adjusted each year, without further action by the Board of Supervisors, to reflect
11 changes in the relevant Consumer Price Index ("CPI") (as determined by the Controller). No later
12 than April 15th of each year, the Director shall submit the current fee schedule to the Controller, who
13 shall apply the CPI adjustment to produce a new fee schedule for the following year. No later than
14 May 15th of each year, the Controller shall file a report with the Board of Supervisors reporting the
15 new fee and certifying that the fees produce sufficient revenue to support the costs of providing the
16 services for which the Permit fee is charged, and that the fees do not produce revenue that exceeds the
17 costs of providing the services for which each Permit fee is charged.

18 (d) Discretion to Require Additional Fees. In instances where the review of an Application
19 for a Personal Wireless Service Facility Site Permit is or will be unusually costly to the Department or
20 to other City departments, the Director, in his or her discretion, may, after consulting with other
21 applicable City departments, agencies, boards, or commissions, require an Applicant for a Personal
22 Wireless Service Facility Site Permit to pay a sum in excess of the amounts charged pursuant to this
23 Section 1527. This additional sum shall be sufficient to recover actual costs incurred by the
24 Department and/or other City departments, agencies, boards, or commissions, in connection with an
25 Application for a Personal Wireless Service Facility Site Permit and shall be charged on a time and

1 materials basis. Whenever additional fees are charged, the Director, upon request, shall provide in
2 writing the basis for the additional fees and an estimate of the additional fees.

3 (e) Deposit of Fees. All fees paid to the Department for Personal Wireless Service Facility
4 Site Permits shall be deposited in the Public Works Excavation Fund established by San Francisco
5 Administrative Code Section 10.100-230. All other fees shall go directly to the appropriate City
6 department.

7 (f) Reimbursement of City Costs. A City department may determine that it requires the
8 services of a technical expert in order to evaluate an Application for a Personal Wireless Service
9 Facility. In such case, the Department shall not approve the Application unless the Applicant agrees
10 to reimburse the applicable City department for the reasonable costs incurred by that department for
11 the services of a technical expert.

12
13 **SEC. 1528. SEVERABILITY.**

14 If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Article 25
15 or any part thereof, is for any reason held to be unconstitutional, invalid, or ineffective by any court of
16 competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining
17 portions of this Article 25 or any part thereof. The Board of Supervisors hereby declares that it would
18 have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof,
19 irrespective of the fact that any one or more sections, subsections, subdivision paragraphs, sentences,
20 clauses, or phrases be declared unconstitutional, invalid or ineffective.

21
22 Section 3. The San Francisco Administrative Code is hereby amended to read as
23 follows:

24 Sec. 11.9 UTILITY CONDITIONS PERMIT, ~~PERSONAL WIRELESS SERVICE~~
25 ~~FACILITIES SITE PERMIT.~~

1 ~~(a) Utility Conditions Permit.~~

2 ~~(+)(a)~~ Required for Providers of Telecommunications Service, State Video Service
3 and Personal Wireless Service. The Department of Public Works shall require a Person to
4 obtain a Utility Conditions Permit prior to the construction, installation, or maintenance of
5 Facilities in the Public Rights-of-Way that will be used to provide Telecommunications
6 Service, State Video Service or Personal Wireless Service. UCPs shall be issued by the
7 Department of Public Works in a manner consistent with Applicable Law to Persons who are
8 willing to comply with the City's requirements regarding the physical use and occupation of
9 the Public Rights-of-Way and who have: (A) authority to occupy the Public Rights-of-Way
10 pursuant to California Public Utilities Code Section 7901; (B) authority to occupy the Public
11 Rights-of-Way pursuant to California Public Utilities Code Section 5885; or (C) a license to
12 provide Personal Wireless Service issued under federal law. Persons intending to construct,
13 install, or maintain Facilities to provide Telecommunications Services, State Video Service or
14 Personal Wireless Service shall prove their legal right to occupy and use the Public Rights-
15 of-Way by providing the Department of Public Works a copy of their current: (a) certificate of
16 public convenience and necessity issued by the CPUC (which shall expressly state the
17 Person's authority to provide facilities-based Telecommunications Service); (b) State Video
18 Service Franchise issued by the CPUC; or (c) license to provide Personal Wireless Service
19 issued by the FCC.; The Department of Public Works shall include in a UCP such conditions,
20 in addition to those already set forth in Applicable Law, as may be required to govern the
21 Permittee's construction, installation, or maintenance of Facilities in the Public Rights-of-Way
22 to protect and benefit the public health, safety and welfare. The terms and conditions of a
23 UCP shall be limited to those areas consistent with the City's authority under Applicable Law.
24 A UCP shall have a term of no longer than two (2) years and may be renewed in accordance
25 with requirements established by the Department in the UCP. A UCP shall provide that the

1 Permitee is not entitled to construct, install, or maintain Personal Wireless Service Facilities
2 in the Public Rights-of-Way without obtaining a Personal Wireless Service ~~Facilities~~ Facility
3 Site Permit under ~~Section 11.9(b) below~~ Article 25 of the San Francisco Public Works Code.

4 (2) (b) UCP Feefee. Any Person required to obtain or renew a UCP shall pay to the
5 Department of Public Works a non-refundable application fee of two thousand dollars
6 (\$2,000.00) to compensate the City for all costs (including the City Attorney's costs) related
7 to: (A) establishing the Person's authority to occupy the Public Rights-of-Way; (B)
8 establishing the terms on which Persons may occupy the Public Rights-of-Way; and (C)
9 granting, monitoring, enforcing, renewing, revising or revoking UCPs. These fees shall be
10 deposited in the Public Works Excavation Fund established by Section 10.100-230 of the
11 San Francisco Administrative Code.

12 ~~(b) Personal Wireless Service Facilities Site Permit.~~

13 ~~(1) Required for Personal Wireless Service Facilities. The Department of Public Works shall~~
14 ~~require a Permitee to obtain a Personal Wireless Service Facilities Site Permit to install, construct,~~
15 ~~and maintain Personal Wireless Service Facilities in the Public Rights-of-Way. The Department of~~
16 ~~Public Works shall include in a Personal Wireless Service Facilities Site Permit such conditions, in~~
17 ~~addition to those already set forth in Applicable Law, as may be required to govern the construction,~~
18 ~~installation, or maintenance of Personal Wireless Service Facilities in the Public Rights-of-Way to~~
19 ~~protect and benefit the public health, safety and welfare. The terms and conditions of a Personal~~
20 ~~Wireless Service Facilities Site Permit shall be limited to those areas consistent with the City's~~
21 ~~authority under Applicable Law. A Personal Wireless Service Facilities Permit shall have a term of no~~
22 ~~longer than two (2) years and may be renewed in accordance with requirements established by the~~
23 ~~Department in the Personal Wireless Service Facilities Site Permit.~~

1 (2) ~~Procedure for Personal Wireless Service Facilities Site Permits. The Department of~~
2 ~~Public Works shall implement a procedure for issuing Personal Wireless Service Facilities Site~~
3 ~~Permits that is consistent with Applicable Law and the requirements of this Section.~~

4 (A) ~~Review by the Planning Department. The Department of Public Works shall submit to the~~
5 ~~Planning Department for review any application for a Personal Wireless Service Facilities Site Permit~~
6 ~~allowing for the construction, installation, or maintenance of Personal Wireless Service Facilities: (i)~~
7 ~~on historic, historically or architecturally significant, decorative, or specially designed utility poles;~~
8 ~~(ii) in a historic or locally significant district; (iii) adjacent to a historic, architecturally significant or~~
9 ~~locally significant building; or (iv) on a street where the City and County of San Francisco General~~
10 ~~Plan has identified the presence of valued scenic resources that should be protected and conserved.~~

11 ~~The Planning Department shall not recommend approval of a Personal Wireless Service Facilities Site~~
12 ~~Permit unless the Planning Department determines that a Personal Wireless Service Facilities in the~~
13 ~~proposed location is consistent with the public health, safety, convenience and general welfare and~~
14 ~~will not unreasonably affect, intrude upon or diminish any of the identified City resources. Where~~
15 ~~review by the Planning Department is required, the Department of Public Works shall not issue a~~
16 ~~Wireless Services Facilities Site Permit unless the Planning Department has recommended approval.~~

17 (B) ~~Review by the Recreation and Park Department. The Department of Public Works shall~~
18 ~~submit to the Recreation and Park Department for review any application for a Personal Wireless~~
19 ~~Service Facilities Site Permit allowing for the construction, installation, or maintenance of a Personal~~
20 ~~Wireless Service Facility adjacent to a City park or open space. The Recreation and Park Department~~
21 ~~shall not recommend approval of a Personal Wireless Service Facilities Site Permit unless the~~
22 ~~Recreation and Park Department determines that a Personal Wireless Service Facility in the proposed~~
23 ~~location will not unreasonably affect, intrude upon or diminish a City park or open space. Where~~
24 ~~review by the Recreation and Park Department is required, the Department of Public Works shall not~~
25

1 ~~issue a Wireless Services Facilities Site Permit unless the Recreation and Park Department has~~
2 ~~recommended approval.~~

3 ~~(C) Review by the Department of Public Health. The Department of Public Works shall~~
4 ~~submit to the Department of Public Health for review any application for a Personal Wireless Service~~
5 ~~Facilities Site Permit allowing for the construction, installation, or maintenance of a Personal~~
6 ~~Wireless Service Facility. The Department of Public Health shall not recommend approval of a~~
7 ~~Personal Wireless Service Facilities Site Permit unless the Department of Public Health determines~~
8 ~~that any human exposure to radio frequency emissions from the proposed Personal Wireless Service~~
9 ~~Facility is within limits established by the FCC. The Department of Public Works shall not issue a~~
10 ~~Wireless Services Facilities Site Permit unless the Department of Public Health has recommended~~
11 ~~approval.~~

12 ~~(3) Personal Wireless Service Facilities Site Permit Fees.~~

13 ~~(A) Fees of the Department of Public Works. An applicant for a Personal Wireless Service~~
14 ~~Facilities Site Permit shall pay to the Department of Public Works: (i) a non-refundable application~~
15 ~~fee of seventy five dollars (\$75.00) for each Personal Wireless Service Facility contained in the~~
16 ~~application to compensate the Department of Public Works for all costs related to reviewing the~~
17 ~~application and; (ii) a non-refundable time and materials inspection fee not to exceed one hundred~~
18 ~~fifty dollars (\$150.00) for each Personal Wireless Service Facility contained in the application to~~
19 ~~compensate the Department of Public Works for all costs related to inspecting any Personal Wireless~~
20 ~~Service Facility constructed under a Personal Wireless Service Facilities Site Permit to ensure~~
21 ~~compliance with all of the terms and conditions of contained therein, including any costs incurred by~~
22 ~~the Department of Public Health to confirm that human exposure to radio frequency emissions from~~
23 ~~the Personal Wireless Services Facility is within FCC limits.~~

24 ~~(B) Fees of Other City Departments. Where as required under this Section the Department of~~
25 ~~Public Works has referred an application for a Personal Wireless Service Facilities Site Permit to the~~

1 ~~Planning Department, the Recreation and Park Department or the Department of Public Health, the~~
2 ~~applicant shall pay the following additional fees for each Personal Wireless Service Facility contained~~
3 ~~in an application for a Personal Wireless Service Facilities Site Permit: (i) a Planning Department~~
4 ~~non-refundable fee of one hundred five dollars (\$105.00) plus time and materials; (ii) a Recreation~~
5 ~~and Park Department non-refundable fee of one hundred twenty-five dollars (\$125.00) and (iii) a~~
6 ~~Department of Public Health non-refundable fee of one hundred thirty-five dollars (\$135.00) plus time~~
7 ~~and materials for any review that takes more than thirty (30) minutes. The purpose of these fees is to~~
8 ~~compensate the applicable City department for all costs related to reviewing an application for a~~
9 ~~Personal Wireless Service Facilities Site Permit.~~

10 ~~(C) Adjustment of Fees for CPI. Beginning with fiscal year 2008-2009, the fees established~~
11 ~~herein may be adjusted each year, without further action by the Board of Supervisors, to reflect~~
12 ~~changes in the relevant Consumer Price Index ("CPI") (as determined by the Controller). No later~~
13 ~~than April 15th of each year, the Director of Public Works shall submit the current fee schedule to the~~
14 ~~Controller, who shall apply the CPI adjustment to produce a new fee schedule for the following year.~~
15 ~~No later than May 15th of each year, the Controller shall file a report with the Board of Supervisors~~
16 ~~reporting the new fee and certifying that: (i) the fees produce sufficient revenue to support the costs of~~
17 ~~providing the services for which the fee is charged; and (ii) the fees do not produce revenue that~~
18 ~~exceeds the costs of providing the services for which each permit fee is charged.~~

19 ~~(D) Discretion to Require Additional Fees. In instances where the review of an application~~
20 ~~for a Personal Wireless Service Facilities Site Permit is or will be unusually costly to the Department~~
21 ~~of Public Works or to other City agencies, the Director of Public Works, in his or her discretion, may~~
22 ~~require a Person filing an application for a Personal Wireless Service Facilities Site Permit to pay a~~
23 ~~sum in excess of the amount charged pursuant to this section. This additional sum shall be sufficient to~~
24 ~~recover actual costs incurred by the Department of Public Works and/or other agencies, boards,~~
25 ~~commissions, or departments of the City in connection with an application for approval of a Personal~~

1 ~~Wireless Service Facilities Permit and shall be charged on a time and materials basis. Whenever~~
2 ~~additional fees are charged, the Director of Public Works, upon request, shall provide in writing the~~
3 ~~basis for the additional fees and an estimate of the additional fees.~~

4 ~~(E) Deposit of Fees. All fees paid to the Department of Public Works for Personal Wireless~~
5 ~~Service Facilities Site Permits shall be deposited in the Public Works Excavation Fund established by~~
6 ~~Section 10.100-230 of the San Francisco Administrative Code. All other fees shall go directly to the~~
7 ~~appropriate City department.~~

8
9 Section 4. Retroactivity. This section shall not be codified. The Board of
10 Supervisor intends that the requirements of this ordinance shall be retroactive. Any permit
11 under Chapter 11, Article 1, Section 11.9(b) of the San Francisco Administrative Code that is
12 not final on the effective date of this ordinance shall be subject to the requirements of this
13 ordinance.

14
15 Section 5. Environmental Findings. The Planning Department has reviewed the
16 ordinance in accordance with the California Environmental Quality Act (California Public
17 Resources Code Section 21000, *et seq.*). The Board of Supervisors hereby affirms the
18 determination of the Planning Department, which is on file with the Clerk of the Board of
19 Supervisors in File No. _____, and which is hereby declared to be a part of this
20 ordinance as if set forth fully herein.

21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23
24 By: _____
25 WILLIAM K. SANDERS
Deputy City Attorney