

1 [Personal Wireless Service Facilities Site Permits]

2 **Ordinance amending the San Francisco Administrative Code by amending section 11.9**
 3 **to: (1) establish new standards for review by the Planning Department and the**
 4 **Recreation and Park Department of applications for personal wireless service facilities**
 5 **site permits; (2) establish the right to protest the grant or denial of applications for**
 6 **personal wireless service facilities site permits; (3) authorize the Department of Public**
 7 **Works to establish certain requirements for all applications for personal wireless**
 8 **service facilities site permits; (4) change certain fees applicable to personal wireless**
 9 **service facilities site permits; (5) extend the term of personal wireless service facilities**
 10 **site permits; and (6) make specified technical changes to the application process and**
 11 **requirements for personal wireless service facilities site permits.**

12 Note: Additions are *single-underline italics Times New Roman*;
 13 deletions are *strikethrough italics Times New Roman*.
 14 Board amendment additions are double underlined.
 Board amendment deletions are ~~strikethrough normal~~.

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

16 Section 1. Findings.

17 (A) In 2007, the Board of Supervisors adopted Ordinance No. 214-07 to amend the
 18 Administrative Code to require that persons seeking to install personal wireless service
 19 facilities in the public rights-of-way obtain personal wireless service facilities site permits.
 20 That Ordinance, which was codified in San Francisco Administrative Code § 11.9(b), was in
 21 part a response to two separate lawsuits filed against the City and County of San Francisco
 22 (“City”). The courts in those case held that federal law (47 U.S.C. § 253) preempted the City’s
 23 authority to require telecommunications carriers to obtain major encroachment permits to
 24 construct personal wireless service facilities in the public rights-of-way. See *GTE Mobilnet of*
 25 *California L.P. v. City and County of San Francisco*, 2007 WL 420089 (N.D. Cal., Feb. 6,

1 2007); *NextG Networks of California, Inc. v. City of San Francisco*, 2006 WL 1529990 (N.D.
2 Cal., June 2, 2006).

3 (B) The City's requirement in Section 11.9(b) that telecommunications carriers
4 obtain personal wireless service facilities site permits has also been challenged in federal
5 court by NextG Networks of California, Inc. ("NextG"). NextG argued that federal law
6 (47 U.S.C. § 253) preempted Section 11.9(b) in its entirety. The court upheld the ordinance in
7 large part but determined that federal law preempted certain aspects of Section 11.9(b).
8 *NextG Networks of California, Inc. v. City and County of San Francisco*, 2008 WL 2563213
9 (N.D. Cal., June 23, 2008).

10 (C) In particular, the court upheld the City's right to engage in subjective, aesthetic
11 review of applications to install personal wireless service facilities in order to protect the City's
12 valuable scenic, historical, architectural, and recreation resources. However, the court found
13 that the City's standards for such review by the Planning and Recreation and Park
14 Departments contained in Section 11.9(b) were preempted because they were not sufficiently
15 detailed and specific to give applicants appropriate notice and City decision-makers proper
16 guidance.

17 (D) The court also held that federal law preempted: (i) Section 11.9(b) to the extent
18 it would allow the City to impose discretionary fees on applicants for personal wireless service
19 facilities site permits; and (ii) City law to the extent that it would allow any person to appeal to
20 the Board of Appeals a determination by the Department of Public Works to grant or deny an
21 application for a personal wireless service facilities site permit.

22 (E) Four of the proposed amendments to Section 11.9(b) amend the law in a
23 manner that is required by the court's decision. Another amendment changes the term of a
24 personal wireless service facilities site permit from two to ten years to comply with California
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1 Government Code § 65964(b). The other amendments are consistent with the court's order
2 and will enable the City to better protect the public rights of way.

3 Section 2. The San Francisco Administrative Code is hereby amended by amending
4 Section 11.9, to read as follows:

5 SEC. 11.9. UTILITY CONDITIONS PERMIT, PERSONAL WIRELESS SERVICE
6 FACILITIES SITE PERMIT.

7 (a) Utility Conditions Permit.

8 (1) Required for Providers of Telecommunications Service, State Video Service and
9 Personal Wireless Service. The Department of Public Works shall require a Person to obtain
10 a Utility Conditions Permit prior to the construction, installation, or maintenance of Facilities in
11 the Public Rights-of-Way that will be used to provide Telecommunications Service, State
12 Video Service or Personal Wireless Service. UCPs shall be issued by the Department of
13 Public Works in a manner consistent with Applicable Law to Persons who are willing to
14 comply with the City's requirements regarding the physical use and occupation of the Public
15 Rights-of-Way and who have: (A) authority to occupy the Public Rights-of-Way pursuant to
16 California Public Utilities Code Section 7901; (B) authority to occupy the Public Rights-of-Way
17 pursuant to California Public Utilities Code Section 5885; or (C) a license to provide Personal
18 Wireless Service issued under federal law. Persons intending to construct, install, or maintain
19 Facilities to provide Telecommunications Services, State Video Service or Personal Wireless
20 Service shall prove their legal right to occupy and use the Public Rights-of-Way by providing
21 the Department of Public Works a copy of their current: (a) certificate of public convenience
22 and necessity issued by the CPUC (which shall expressly state the Person's authority to
23 provide facilities-based Telecommunications Service); (b) State Video Service Franchise
24 issued by the CPUC; or (c) license to provide Personal Wireless Service issued by the FCC.
25 The Department of Public Works shall include in a UCP such conditions, in addition to those

1 already set forth in Applicable Law, as may be required to govern the Permittee's
2 construction, installation, or maintenance of Facilities in the Public Rights-of-Way to protect
3 and benefit the public health, safety and welfare. The terms and conditions of a UCP shall be
4 limited to those areas consistent with the City's authority under Applicable Law. A UCP shall
5 have a term of no longer than two (2) years and may be renewed in accordance with
6 requirements established by the Department in the UCP. A UCP shall provide that the
7 Permittee is not entitled to construct, install, or maintain Personal Wireless Service Facilities
8 in the Public Rights-of-Way without obtaining a Personal Wireless Service Facilities Site
9 Permit under Section 11.9(b) below.

10 (2) UCP ~~fee~~Fee. Any Person required to obtain or renew a UCP shall pay to the
11 Department of Public Works a non-refundable application fee of two thousand dollars (\$2,000)
12 to compensate the City for all costs (including the City Attorney's costs) related to: (A)
13 establishing the Person's authority to occupy the Public Rights-of-Way; (B) establishing the
14 terms on which Persons may occupy the Public Rights-of-Way; and (C) granting, monitoring,
15 enforcing, renewing, revising or revoking UCPs. These fees shall be deposited in the Public
16 Works Excavation Fund established by Section 10.100-230 of the San Francisco
17 Administrative Code.

18 (b) Personal Wireless Service Facilities Site Permit.

19 (1) Required for Personal Wireless Service Facilities. The Department of Public
20 Works shall require a Permittee to obtain a Personal Wireless Service Facilities Site Permit to
21 install, construct, and maintain Personal Wireless Service Facilities in the Public Rights-of-
22 Way. The Department of Public Works shall include in a Personal Wireless Service Facilities
23 Site Permit such conditions, in addition to those already set forth in Applicable Law, as may
24 be required to govern the construction, installation, or maintenance of Personal Wireless
25 Service Facilities in the Public Rights-of-Way to protect and benefit the public health, safety

1 and welfare. The terms and conditions of a Personal Wireless Service Facilities Site Permit
 2 shall be limited to those areas consistent with the City's authority under Applicable Law. A
 3 Personal Wireless Service Facilities Permit shall have a maximum term of ~~no longer than twenty~~
 4 ~~(2)(10) years~~ and ~~may be renewed in accordance with requirements established by the Department in~~
 5 ~~the Personal Wireless Service Facilities Site Permit.~~

6 (2) Minimum Requirements for Personal Wireless Service Facilities. In addition to the
 7 other requirements set forth in this Section 11.9(b), the Department of Public Works shall adopt such
 8 orders or regulations as it deems necessary in order to preserve and maintain the Public Rights-of-Way
 9 by: (a) prohibiting the construction of additional utility poles in the Public Rights-of-Way for the
 10 purpose of installing Personal Wireless Service Facilities; (b) prohibiting increases to the height of any
 11 utility poles used to install Personal Wireless Service Facilities; (c) limiting the number of Personal
 12 Wireless Service Facilities that may be installed on a single block face; and (d) limiting the size,
 13 number and types of equipment that may be installed on a single utility pole as part of a Personal
 14 Wireless Service Facility. For purposes of this subsection, "utility poles" includes without limitation
 15 streetlight poles.

16 ~~(2)(3)~~ Procedure for Personal Wireless Service Facilities Site Permits. The
 17 Department of Public Works shall implement a procedure for issuing Personal Wireless
 18 Service Facilities Site Permits that is consistent with Applicable Law and the requirements of
 19 this Section.

20 (A) Review by the Planning Department.

21 (i) The Department of Public Works shall submit to the Planning Department for
 22 review any application for a Personal Wireless Service Facilities Site Permit allowing for the
 23 construction, installation, or maintenance of Personal Wireless Service Facilities in any of the
 24 locations enumerated in subsection (ii) below: (i) on historic, historically or architecturally significant,
 25 decorative, or specially designed utility poles; (ii) in a historic or locally significant district; (ii)

1 ~~adjacent to a historic, architecturally significant or locally significant building; or (iv) on a street~~
2 ~~where the City and County of San Francisco General Plan has identified the presence of valued scenic~~
3 ~~resources that should be protected and conserved. The Planning Department will review the~~
4 ~~application without conducting a public hearing.~~

5 (ii) The Planning Department shall not recommend approval of an application for a
6 Personal Wireless Service Facilities Site Permit unless the Planning Department determines
7 on review of the application that a Personal Wireless Service Facility in the proposed location ~~is~~
8 ~~consistent with the public health, safety, convenience and general welfare and will not unreasonably~~
9 ~~affect, intrude upon or diminish any of the identified City resources. meets the standard(s) applicable to~~
10 ~~the proposed location of the Personal Wireless Service Facility, as set forth below:~~

11 (aa) On a historic, historically or architecturally significant, decorative, or specially
12 designed streetlight pole, the Planning Department shall not recommend approval of the application
13 unless the Planning Department determines that the installation of the proposed Personal Wireless
14 Service Facility would not significantly degrade the aesthetic attributes that distinguish the pole as
15 historic, historically significant, decorative or specially designed.

16 (bb) On a street that is in a national historic landmark district, listed or eligible national
17 register historic district, listed or eligible California register historic district, San Francisco landmark
18 district, local historic or conservation district, or locally significant district, the Planning Department
19 shall not recommend approval of the application unless the Planning Department determines that the
20 installation of the proposed Personal Wireless Service Facility would not significantly degrade the
21 aesthetic attributes that were the basis for the special designation of the district.

22 (cc) On a utility or streetlight pole that is adjacent to a national historic landmark,
23 California landmark, San Francisco landmark, structure of merit, architecturally significant building,
24 or locally significant building, the Planning Department shall not recommend approval of the
25 application unless the Planning Department determines that the installation of the proposed Personal

1 Wireless Service Facility would not significantly degrade the aesthetic attributes that were the basis for
2 the special designation of the building. When used in this subsection, the word “adjacent” shall mean
3 on the same side of the street or streets (in the case of a building on a site with multiple street
4 frontages) and in front of the building or the next building on either side.

5 (dd) On a street that the City and County of San Francisco General Plan has designated as
6 being most significant to City pattern, defining City form, or having an important street view for
7 orientation, the Planning Department shall not recommend approval of the application unless the
8 Planning Department determines that the installation of the proposed Personal Wireless Service
9 Facility would not significantly degrade the aesthetic attributes that were the basis for the designation
10 of the street for special protection under the General Plan.

11 (ee) On a street that the City and County of San Francisco General Plan has designated as
12 having views that are rated “excellent” or “good,” the Planning Department shall not recommend
13 approval of the application unless the Planning Department determines that the proposed Personal
14 Wireless Service Facility would not significantly impair the views of any of the important buildings,
15 landmarks, open spaces or parks that were the reason(s) for the designation of the street as a view
16 street.

17 (iii) Where review by the Planning Department is required, the Department of Public
18 Works shall not issue a Personal Wireless Service Facilities Site Permit unless the Planning
19 Department has recommended approval. The recommendation of the Planning Department to
20 grant or deny an application for a Personal Wireless Service Facilities Site Permit shall be in writing
21 and shall set forth the reason(s) for the recommendation. The Planning Department may recommend
22 that the Department of Public Works grant the application only if the applicant complies with certain
23 conditions requested by the Planning Department. Any such proposed conditions must be consistent
24 with the requirements of subsection (ii) above and may include a condition that any or all of the
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1 equipment proposed to be installed on a utility or streetlight pole as part of a Personal Wireless Service
2 Facility (not including any antennas) be placed underground instead of on the pole.

3 (iv) The Planning Department shall make its recommendation to the Department of Public
4 Works within fifteen (15) business days of receipt of an application for a Personal Wireless Service
5 Facilities Site Permit from the Department of Public Works. If the Planning Department determines
6 that its review of an application for a Personal Wireless Service Facilities Site Permit cannot be
7 completed in the time required herein, the Planning Department shall notify the Department of Public
8 Works and the applicant that it needs an additional five (5) business days to complete its review of the
9 application.

10 (v) Consistent with the requirements of subsection (ii) above, the Planning Department may
11 by order or regulation develop objective standards for Personal Wireless Service Facilities proposed to
12 be installed in the locations set forth in subsection (ii). The Planning Department may include in such
13 order or regulation a determination that the Department of Public Works should approve any
14 application to install a Personal Wireless Service Facility that meets these objective standards without
15 a reference to the Planning Department.

16 (B) Review by the Recreation and Park Department.

17 (i) The Department of Public Works shall submit to the Recreation and Park
18 Department for review any application for a Personal Wireless Service Facilities Site Permit
19 allowing for the construction, installation, or maintenance of a Personal Wireless Service
20 Facility adjacent to a City park or open space. The Recreation and Park Department will review
21 the application without conducting a public hearing. When used in this subsection, the word
22 “adjacent” shall mean a block face contiguous with and on the same side of the street as the City park
23 or open space.

24 (ii) The Recreation and Park Department shall not recommend approval of an
25 application for a Personal Wireless Service Facilities Site Permit unless the Recreation and

1 Park Department determines on review of the application that installation of the proposed ~~Personal Wireless Service Facility~~ in the proposed location will ~~would not~~ unreasonably affect,
2 intrude upon or diminish a City park or open space significantly impair the views of the City park or
3 open space or significantly degrade the aesthetic or natural attributes that define the City park or open
4 space.

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6 (iii) Where review by the Recreation and Park Department is required, the
7 Department of Public Works shall not issue a Personal Wireless Services Facilities Site Permit
8 unless the Recreation and Park Department has recommended approval. The recommendation
9 of the Recreation and Park Department to grant or deny an application for a Personal Wireless Service
10 Facilities Site Permit shall be in writing and shall set forth the reason(s) for the recommendation. The
11 Recreation and Park Department may recommend that the Department of Public Works grant the
12 application only if the applicant complies with certain conditions requested by the Recreation and Park
13 Department. Any such proposed conditions must be consistent with the requirements of subsection (ii)
14 above and may include a condition that any or all of the equipment proposed to be installed on a utility
15 or streetlight pole as part of a Personal Wireless Service Facility (not including any antennas) be
16 placed underground instead of on the pole.

17 (iv) The Recreation and Park Department shall make its recommendation to the Department
18 of Works within fifteen (15) business days of receipt of an application for a Personal Wireless Service
19 Facilities Site Permit from the Department of Public Works.

20 (v) Consistent with the requirements of subsection (ii) above, the Recreation and Park
21 Department may by order or regulation develop objective standards for Personal Wireless Service
22 Facilities proposed to be installed adjacent to a City park or open space. The Recreation and Park
23 Department may include in such order or regulation a determination that the Department of Public
24 Works should approve any application to install a Personal Wireless Service Facility that meets these
25 objective standards without a reference to the Recreation and Park Department.

1 (C) Review by the Department of Public Health.

2 (i) The Department of Public Works shall submit to the Department of Public Health
3 for review any application for a Personal Wireless Service Facilities Site Permit allowing for
4 the construction, installation, or maintenance of a Personal Wireless Service Facility. The
5 Department of Public Health will review the application without conducting a public hearing.

6 (ii) The Department of Public Health shall not recommend approval of an application
7 for a Personal Wireless Service Facilities Site Permit unless the Department of Public Health
8 determines on review of the application that any human exposure to radio frequency emissions
9 from the proposed Personal Wireless Service Facility is within limits established by the FCC.

10 (iii) The Department of Public Works shall not issue a Personal Wireless Service-
11 Facilities Site Permit unless the Department of Public Health has recommended approval.
12 The recommendation of the Department of Public Health to grant or deny an application for a
13 Personal Wireless Service Facilities Site Permit shall be in writing and shall set forth the reason(s) for
14 the recommendation. The Department of Public Health may recommend that the Department of Public
15 Works grant the application only if the applicant complies with certain conditions requested by the
16 Department of Public Health. Any such proposed conditions must be intended to ensure that any
17 human exposure to radio frequency emissions from the proposed Personal Wireless Service Facility is
18 within limits established by the FCC.

19 (iv) The Department of Public Health shall make its recommendation to the Department of
20 Public Works within ten (10) business days of receipt of the application from the Department of Public
21 Works.

22 (D) Determinations.

23 (i) A determination by the Department of Public Works to grant or deny an application for
24 a Personal Wireless Service Facilities Site Permit shall be in writing and shall state the reasons for the
25 determination.

1 (ii) If a determination by the Department of Public Works to grant an application for a
2 Personal Wireless Service Facilities Site Permit includes any conditions proposed by the Planning
3 Department, the Recreation and Park Department, and/or the Department of Public Health, the
4 determination shall specify all the proposed conditions and state that the Personal Wireless Service
5 Facilities Site Permit is granted only if the applicant accepts all the proposed conditions.

6 (E) Notices of Determinations.

7 (i) Notice of a Department of Public Works determination to deny an application for a
8 Personal Wireless Service Facilities Site Permit shall be sent to the applicant.

9 (ii) Notice of a Department of Public Works determination to grant an application for a
10 Personal Wireless Service Facilities Site Permit without conditions or to grant an application with
11 conditions accepted by the applicant shall be sent to the applicant and posted in conspicuous places
12 throughout the block face where the proposed Personal Wireless Service Facility is to be located.

13 (4) Protests of Determinations by the Department of Public Works.

14 (A) Protests Allowed. A determination by the Department of Public Works to grant or deny
15 an application for a Personal Wireless Service Facilities Site Permit may be protested as follows:

16 (i) An applicant for a Personal Wireless Service Facilities Site Permit may protest a
17 Department of Public Works determination to deny an application or to grant an application with
18 conditions that are rejected by the applicant.

19 (ii) Any member of the public may protest a Department of Public Works determination to
20 grant an application without conditions or to grant an application with conditions accepted by the
21 applicant.

22 (B) Protests to City Administrator. Any protest allowed under subsection (A) shall be
23 submitted to the City Administrator.

24 (C) Grounds for Protests. On any protest allowed under subsection (A), the City
25 Administrator shall consider only whether: (i) the Department of Public Works properly applied any

1 requirements established by the Department under Section 11.9(b)(2) (if that was a basis for the
2 determination) or (ii) the Planning Department, the Recreation and Park Department, and/or the
3 Department of Public Health properly recommended denying the application or granting the
4 application (with or without conditions) under Sections 11.9(b)(3)(A)(ii), 11.9(b)(3)(B)(ii) and/or
5 11.9(b)(3)(C)(ii) respectively (if such recommendations were a basis for the determination).

6 (D) Procedure for Protests. The Department of Public Works shall implement a procedure
7 for filing, presenting, and reviewing protests of Personal Wireless Service Facilities Site Permits that is
8 consistent with Applicable Law and the requirements of this Section.

9 (i) A protest of a Department of Public Works determination with respect to a Personal
10 Wireless Service Facilities Site Permit must be filed with the Department of Public Works within ten
11 (10) days of the Department's determination, the date of which shall be established by the Department.
12 The City Administrator shall not decide any protest that is not filed within the time limit required herein
13 and by the Department.

14 (ii) The City Administrator shall not hold a public hearing on a protest. Instead, the City
15 Administrator shall make a determination based entirely on a review of the written record provided to
16 the City Administrator by the Department of Public Works.

17 (iii) The City Administrator shall decide a protest only on the grounds set forth in Section
18 11.9(b)(4)(C). If the protest concerns a Department of Public Works determination that was based on
19 a recommendation from the Planning Department, the Recreation and Park Department, and/or the
20 Department of Public Health, the City Administrator shall confer with the applicable City department
21 head before issuing a decision on the protest.

22 (iv) The City Administrator shall issue a decision on a protest within seven (7) days of the
23 receipt of the written record from the Department of Public Works. The City Administrator's decision
24 shall be in writing and shall set forth the reasons for the decision.

25 (v) The City Administrator's decision shall be final.

1 ~~(3)(5)~~ Personal Wireless Service Facilities Site Permit Fees. City departments may
2 require fees as set forth below. The purpose of these fees is to enable City departments to recover their
3 costs related to reviewing applications for Personal Wireless Service Facilities Site Permits.

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

16 (B) Fees of Other City Departments. Where as required under this Section the
17 Department of Public Works has referred an application for a Personal Wireless Service
18 Facilities Site Permit to the Planning Department, the Recreation and Park Department or the
19 Department of Public Health, the applicant shall pay the following additional fees for each
20 Personal Wireless Service Facility contained in an application for a Personal Wireless Service
21 Facilities Site Permit:

22 (i) The applicant shall pay a Planning Department non-refundable fee of one hundred
23 and ~~five ninety~~ dollars ~~(\$105.00)~~ (\$190.00) plus time and materials for any review that takes more
24 than thirty (30) minutes. In the event the Planning Department develops objective standards to review
25 applications for Personal Wireless Service Facilities Site Permits, as authorized by Section

1 11.9(b)(3)(A)(v), the Planning Department may establish a fee to recover from applicants for Personal
2 Wireless Service Facilities Site Permits the actual costs incurred to develop these standards.;

3 (ii) The applicant shall pay a Recreation and Park Department non-refundable fee of
4 one hundred and twenty-five dollars (\$125.00) plus time and materials for any review that takes
5 more than thirty (30) minutes. In the event the Recreation and Park Department develops objective
6 standards to review applications for Personal Wireless Service Facilities Site Permits, as authorized by
7 Section 11.9(b)(3)(B)(v), the Recreation and Park Department may establish a fee to recover from
8 applicants for Personal Wireless Service Facilities Site Permits the actual costs incurred to develop
9 these standards. and

10 (iii) The applicant shall pay a Department of Public Health non-refundable fee of one
11 hundred and thirty-five dollars (\$135.00) plus time and materials for any review that takes
12 more than thirty (30) minutes. ~~The purpose of these fees is to compensate the applicable City~~
13 ~~department for all costs related to reviewing an application for a Personal Wireless Service Facilities~~
14 ~~Site Permit.~~

15 (C) City Administrator Fee. A Person filing a protest from a determination to grant or deny
16 an application for a Personal Wireless Service Facilities Site Permit shall pay a City Administrator fee
17 of seventy-five dollars (\$75.00).

18 ~~(C)(D)~~ Adjustment of Fees for CPI. Beginning with fiscal year ~~2009-2010~~~~2008-2009~~, the
19 fees established herein may be adjusted each year, without further action by the Board of
20 Supervisors, to reflect changes in the relevant Consumer Price Index ("CPI") (as determined
21 by the Controller). No later than April 15th of each year, the Director of Public Works shall
22 submit the current fee schedule to the Controller, who shall apply the CPI adjustment to
23 produce a new fee schedule for the following year. No later than May 15th of each year, the
24 Controller shall file a report with the Board of Supervisors reporting the new fee and certifying
25 that: (i) the fees produce sufficient revenue to support the costs of providing the services for

1 which the fee is charged; and (ii) the fees do not produce revenue that exceeds the costs of
2 providing the services for which each permit fee is charged.

3 ~~(D) — Discretion to Require Additional Fees. In instances where the review of an application~~
4 ~~for a Personal Wireless Service Facilities Site Permit is or will be unusually costly to the Department~~
5 ~~of Public Works or to other City agencies, the Director of Public Works, in his or her discretion, may~~
6 ~~require a Person filing an application for a Personal Wireless Service Facilities Site Permit to pay a~~
7 ~~sum in excess of the amount charged pursuant to this section. This additional sum shall be sufficient to~~
8 ~~recover actual costs incurred by the Department of Public Works and/or other agencies, boards,~~
9 ~~commissions, or departments of the City in connection with an application for approval of a Personal~~
10 ~~Wireless Service Facilities Permit and shall be charged on a time and materials basis. Whenever~~
11 ~~additional fees are charged, the Director of Public Works, upon request, shall provide in writing the~~
12 ~~basis for the additional fees and an estimate of the additional fees.~~

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

17 Section 3. Application of the Ordinance. The amendments to San Francisco
18 Administrative Code Sections 11.9(b)(3)(A), 11.9(b)(3)(B), and 11.9(b)(4) contained herein,
19 and the repeal of former Administrative Code Section 11.9(b)(3)(D), shall apply to all
20 applications for Personal Wireless Service Facilities Site Permits, including those filed prior to
21 the June 23, 2008 court order. Retrospective application of those provisions is required in
22 order for the City to comply with the court's order. All of the other amendments to San
23 Francisco Administrative Code Section 11.9(b) contained herein shall apply only to
24 applications that are pending as of the date on which this ordinance was introduced.

1 Section 4. Environmental Findings. The Planning Department has reviewed the
2 ordinance in accordance with the California Environmental Quality Act (California Public
3 Resources Code Section 21000 *et seq.*). The Board hereby affirms the determination of the
4 Planning Department, which is on file with the Clerk of the Board of Supervisors in File No.
5 _____ and which is hereby declared to be a part of this ordinance as if set forth fully
6 herein.

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8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By: _____
11 WILLIAM K. SANDERS
12 Deputy City Attorney

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