

FILE NO. 081078

ORDINANCE NO.

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

Department of Public Works
BOARD OF SUPERVISORS

4/22/09 - Filed pursuant to Rule 5.57

1 *California L.P. v. City and County of San Francisco*, 2007 WL 420089 (N.D. Cal., Feb. 6,
2 2007); *NextG Networks of California, Inc. v. City of San Francisco*, 2006 WL 1529990 (N.D.
3 Cal., June 2, 2006).

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

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

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

23 (E) Four of the proposed amendments to Section 11.9(b) amend the law in a
24 manner that is required by the court's decision. Another amendment changes the term of a
25 personal wireless service facilities site permit from two to ten years to comply with California

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*
4 ~~twoten (2)(10)~~ years and may be renewed in accordance with requirements established by the
5 Department and may be renewed in accordance with requirements established by the Department in
6 the Personal Wireless Service Facilities Site Permit.

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

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

22 (A) Review by the Planning Department.

23 (i) The Department of Public Works shall submit to the Planning Department for
24 review any application for a Personal Wireless Service Facilities Site Permit allowing for the
25 construction, installation, or maintenance of Personal Wireless Service Facilities in any of the

1 locations enumerated in subsection (ii) below: (i) on historic, historically or architecturally significant,
2 decorative, or specially designed utility poles; (ii) in a historic or locally significant district; (ii)
3 adjacent to a historic, architecturally significant or locally significant building; or (iv) on a street
4 where the City and County of San Francisco General Plan has identified the presence of valued scenic
5 resources that should be protected and conserved. The Planning Department will review the
6 application without conducting a public hearing.

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

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

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

24 (cc) On a utility or streetlight pole that is adjacent to a national historic landmark,
25 California landmark, San Francisco landmark, structure of merit, architecturally significant building,

1 or locally significant building, the Planning Department shall not recommend approval of the
2 application unless the Planning Department determines that the installation of the proposed Personal
3 Wireless Service Facility would not significantly degrade the aesthetic attributes that were the basis for
4 the special designation of the building. When used in this subsection, the word "adjacent" shall mean
5 on the same side of the street or streets (in the case of a building on a site with multiple street
6 frontages) and in front of the building or the next building on either side.

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

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

19 (iii) Where review by the Planning Department is required, the Department of Public
20 Works shall not issue a Personal Wireless Service-s Facilities Site Permit unless the Planning
21 Department has recommended approval. The recommendation of the Planning Department to
22 grant or deny an application for a Personal Wireless Service Facilities Site Permit shall be in writing
23 and shall set forth the reason(s) for the recommendation. The Planning Department may recommend
24 that the Department of Public Works grant the application only if the applicant complies with certain
25 conditions requested by the Planning Department. Any such proposed conditions must be consistent

1 with the requirements of subsection (ii) above and may include a condition that any or all of the
2 equipment proposed to be installed on a utility or streetlight pole as part of a Personal Wireless Service
3 Facility (not including any antennas) be placed underground instead of on the pole.

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

11 (v) Consistent with the requirements of subsection (ii) above, the Planning Department may
12 shall by order or regulation develop and submit to the Planning Commission for approval
13 objective standards for Personal Wireless Service Facilities proposed to be installed in the locations
14 set forth in subsection (ii). Such objective standards shall be based on Personal Wireless
15 Service Facilities that are currently available for use by applicants for Personal Wireless
16 Service Facilities Site Permits and may be modified as the Planning Department and Planning
17 Commission deem appropriate to reflect changes in available Personal Wireless Service
18 Facilities. The Planning Department may include in such order or regulation a determination also
19 determine that the Department of Public Works should approve any application to install a Personal
20 Wireless Service Facility that meets these objective standards without a reference to the Planning
21 Department.

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

23 (i) The Department of Public Works shall submit to the Recreation and Park
24 Department for review any application for a Personal Wireless Service Facilities Site Permit
25 allowing for the construction, installation, or maintenance of a Personal Wireless Service

1 Facility adjacent to a City park or open space. The Recreation and Park Department will review
2 the application without conducting a public hearing. When used in this subsection, the word
3 “adjacent” shall mean a block face contiguous with and on the same side of the street as the City park
4 or open space.

5 (ii) The Recreation and Park Department shall not recommend approval of an
6 application for a Personal Wireless Service Facilities Site Permit unless the Recreation and
7 Park Department determines on review of the application that installation of the proposed a
8 Personal Wireless Service Facility in the proposed location will would not unreasonably affect,
9 intrude upon or diminish a City park or open space significantly impair the views of the City park or
10 open space or significantly degrade the aesthetic or natural attributes that define the City park or open
11 space.

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

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

1 (v) Consistent with the requirements of subsection (ii) above, the Recreation and Park
2 Department may shall by order or regulation develop objective standards for Personal Wireless
3 Service Facilities proposed to be installed adjacent to a City park or open space. Such objective
4 standards shall be based on Personal Wireless Service Facilities that are currently available
5 for use by applicants for Personal Wireless Service Facilities Site Permits and may be
6 modified as the Recreation and Park Department deems appropriate to reflect changes in
7 available Personal Wireless Service Facilities. ~~The Recreation and Park Department may include in~~
8 ~~such order or regulation a determination that the Department of Public Works should approve any~~
9 ~~application to install a Personal Wireless Service Facility that meets these objective standards without~~
10 ~~a reference to the Recreation and Park Department.~~

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

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

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

20 (iii) The Department of Public Works shall not issue a Personal Wireless Service-
21 Facilities Site Permit unless the Department of Public Health has recommended approval.
22 The recommendation of the Department of Public Health to grant or deny an application for a
23 Personal Wireless Service Facilities Site Permit shall be in writing and shall set forth the reason(s) for
24 the recommendation. The Department of Public Health may recommend that the Department of Public
25 Works grant the application only if the applicant complies with certain conditions requested by the

1 Department of Public Health. Any such proposed conditions must be intended to ensure that any
2 human exposure to radio frequency emissions from the proposed Personal Wireless Service Facility is
3 within limits established by the FCC.

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

7 (D) Determinations.

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

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

16 (E) Notices of Determinations.

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

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

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

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

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

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

7 (B) Protests to City Administrator. Any protest allowed under subsection (A) above shall
8 be submitted to the City Administrator.

9 (C) Grounds for Protests. On any protest allowed under subsection (A) above, the City
10 Administrator shall consider only whether: (i) the Department of Public Works properly applied any
11 requirements established by the Department under Section 11.9(b)(2) (if that was a basis for the
12 determination) or (ii) the Planning Department, the Recreation and Park Department, and/or the
13 Department of Public Health properly recommended denying the application or granting the
14 application (with or without conditions) under Sections 11.9(b)(3)(A)(ii), 11.9(b)(3)(B)(ii) and/or
15 11.9(b)(3)(C)(ii) respectively (if such recommendations were a basis for the determination).

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

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

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

4 (iii) The City Administrator shall decide a protest only on the grounds set forth in Section
5 11.9(b)(4)(C). If the protest concerns a Department of Public Works determination that was based on
6 a recommendation from the Planning Department, the Recreation and Park Department, and/or the
7 Department of Public Health, the City Administrator shall confer with the applicable City department
8 head before issuing a decision on the protest.

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

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

13 (3)(5) Personal Wireless Service Facilities Site Permit Fees. City departments may
14 require fees as set forth below. The purpose of these fees is to enable City departments to recover their
15 costs related to reviewing applications for Personal Wireless Service Facilities Site Permits.

16 (A) Fees of the Department of Public Works. An applicant for a Personal Wireless
17 Service Facilities Site Permit shall pay to the Department of Public Works: (i) a non-
18 refundable application fee of seventy-five dollars (\$75.00) for each Personal Wireless Service
19 Facility contained in the application to compensate the Department of Public Works for all
20 costs related to reviewing the application and; (ii) a non-refundable time and materials
21 inspection fee not to exceed one hundred and fifty dollars (\$150.00) for each Personal
22 Wireless Service Facility contained in the application to compensate the Department of Public
23 Works for all costs related to inspecting any Personal Wireless Service Facility constructed
24 under a Personal Wireless Service Facilities Site Permit to ensure compliance with all of the
25 terms and conditions of contained therein, including any costs incurred by the Department of

1 Public Health to confirm that human exposure to radio frequency emissions from the Personal
2 Wireless Services Facility is within FCC limits.

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

9 (i) The applicant shall pay a Planning Department non-refundable fee of one hundred
10 and ~~five ninety~~ dollars ~~(\$105.00)~~ (\$190.00) plus time and materials for any review that takes more
11 than thirty (30) minutes. In the event the Planning Department develops objective standards to review
12 applications for Personal Wireless Service Facilities Site Permits, as authorized by Section
13 11.9(b)(3)(A)(v), the Planning Department may establish a fee to recover from applicants for Personal
14 Wireless Service Facilities Site Permits the actual costs incurred to develop these standards.:

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

22 (iii) The applicant shall pay a Department of Public Health non-refundable fee of one
23 hundred and thirty-five dollars (\$135.00) plus time and materials for any review that takes
24 more than thirty (30) minutes. The purpose of these fees is to compensate the applicable City
25

1 ~~department for all costs related to reviewing an application for a Personal Wireless Service Facilities~~
2 ~~Site Permit.~~

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

6 ~~(C)(D)~~ Adjustment of Fees for CPI. Beginning with fiscal year ~~2009-2010~~~~2008-2009~~, the
7 fees established herein may be adjusted each year, without further action by the Board of
8 Supervisors, to reflect changes in the relevant Consumer Price Index ("CPI") (as determined
9 by the Controller). No later than April 15th of each year, the Director of Public Works shall
10 submit the current fee schedule to the Controller, who shall apply the CPI adjustment to
11 produce a new fee schedule for the following year. No later than May 15th of each year, the
12 Controller shall file a report with the Board of Supervisors reporting the new fee and certifying
13 that: (i) the fees produce sufficient revenue to support the costs of providing the services for
14 which the fee is charged; and (ii) the fees do not produce revenue that exceeds the costs of
15 providing the services for which each permit fee is charged.

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

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

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

13 Section 4. Environmental Findings. The Planning Department has reviewed the
14 ordinance in accordance with the California Environmental Quality Act (California Public
15 Resources Code Section 21000 *et seq.*). The Board hereby affirms the determination of the
16 Planning Department, which is on file with the Clerk of the Board of Supervisors in File No.
17 081078 and which is hereby declared to be a part of this ordinance as if set forth fully herein.

18
19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21
22 By:


23 WILLIAM K. SANDERS
24 Deputy City Attorney
25