

File No. 141297

Committee Item No. 6
Board Item No. 8

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date January 14, 2015

Board of Supervisors Meeting

Date February 3, 2015

Cmte Board

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Completed by: Linda Wong Date January 9, 2015
Completed by: L.W. Date January 26, 2015

1 [Public Works Code - Personal Wireless Service Facility Site Permits, and Amending Fees]

2
3 **Ordinance amending the Public Works Code to modify certain requirements for**
4 **Personal Wireless Service Facility Site Permits, amending the fees for obtaining such**
5 **permits; and making environmental findings.**

6 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
7 **Additions to Codes** are in *single-underline italics Times New Roman font*.
8 **Deletions to Codes** are in ~~*italics Times New Roman font*~~.
9 **Board amendment additions** are in double-underlined Arial font.
10 **Board amendment deletions** are in ~~Arial font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code
12 subsections or parts of tables.

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

14 Section 1. The Planning Department has determined that the actions contemplated in
15 this ordinance comply with the California Environmental Quality Act (California Public
16 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the
17 Board of Supervisors in File No. 141297 and is incorporated herein by reference.

18 Section 2. Article 25 of the Public Works Code is hereby amended by revising
19 Sections 1500, 1502, 1504, 1506, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1519, 1520,
20 1521, 1522, and 1527; deleting Section 1503; and adding Section 1529, to read as follows:

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

23 (a) Personal Wireless Service Facility Site Permit Required. The Department shall
24 require any Person seeking to construct, install, or maintain a Personal Wireless Service
25 Facility in the Public 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
3 Permit if the Application for a Personal Wireless Service Facility Site Permit does not comply
4 with all of the requirements of this Article 25.

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

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

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

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

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

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

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

21 (d) Permit Conditions. The Department may include in a Personal Wireless Service
22 Facility Site Permit such conditions, in addition to those already set forth in this Article 25 and
23 other Applicable Law, as may be required to govern the construction, installation, or
24 maintenance of Personal Wireless Service Facilities in the Public Rights-of-Way, and to
25 protect and benefit the public health, safety, welfare, and convenience, provided that no such

1 conditions may concern the particular technology used for a Personal Wireless Service
2 Facility. ~~Such conditions may also govern the installation and use of equipment that is not located on~~
3 ~~a Utility or Street Light Pole, but that is necessary for the use of a permitted Personal Wireless Service~~
4 ~~Facility.~~

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

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

15
16 **SEC. 1502. DEFINITIONS.**

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

22 (a) —“Adjacent” means:

23 ~~(a)(1)~~ On the same side of the street and in front of the building or the next building
24 on either side, when used in connection with a national historic landmark, California

1 landmark, San Francisco landmark, structure of merit, architecturally significant building, or
2 locally significant building; and

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

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

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

10 (d) —“Application” means an application for a Personal Wireless Service Facility Site
11 Permit *or Modification Permit* under this Article 25.

12 “Base Station” shall have the meaning determined by the Department in an order or
13 regulation, provided that the Department’s definition shall be consistent with the definition of that
14 term: (a) as it is used in Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012,
15 codified at 47 U.S.C. § 1455(a) as may be amended from time to time; and (b) as it is defined by the
16 FCC in any decision addressing that section or any regulation implementing that section.

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

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

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

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

24 “Eligible Facilities Request” shall have the meaning determined by the Department in an
25 order or regulation, provided that the Department’s definition shall be consistent with the definition of

1 that term: (a) as it is used in Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of
2 2012, codified at 47 U.S.C. § 1455(a) as may be amended from time to time; and (b) as it is defined by
3 the FCC in any decision addressing that section or any regulation implementing that section.

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

5 (j) —“Immediate Vicinity” means:

6 ~~(a)(1)~~ Within one (1) block in any direction from the boundary of a Planning Protected
7 Location that is a national historic landmark district, listed or eligible national register historic
8 district, listed or eligible California register historic district, San Francisco landmark district,
9 local historic or conservation district, or locally significant district;

10 ~~(b)(2)~~ Within twenty-five (25) feet of the property lines from the properties that are
11 Adjacent to a Planning Protected Location that is a national historic landmark, California
12 landmark, San Francisco landmark, structure of merit, architecturally significant building, or
13 locally significant building, or across the street from the above boundary lines;

14 ~~(c)(3)~~ Within one (1) block in any direction from the boundary of a Zoning Protected
15 Location; and

16 ~~(d)(4)~~ Within one (1) block in any direction from the boundary of a Park Protected
17 Location.

18 “Modification Permit” means a Permit issued by the Department pursuant to Section 1522
19 below, authorizing a Permittee to modify equipment installed on a Utility, Transit, or Street Light Pole
20 by the Permittee pursuant to a Personal Wireless Service Facility Site Permit.

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

23 (l) —“Park Protected Location Compatibility Standard” means whether a Personal
24 Wireless Service Facility that is proposed to be located in a Park Protected Location would
25

1 significantly impair the views of a City park or open space or significantly degrade the
2 aesthetic or natural attributes that define the City park or open space.

3 ~~(m)~~—"Permittee" means a Person issued a Personal Wireless Service Facility Site
4 Permit.

5 ~~(n)~~—"Person" means any individual, group, company, partnership, association, joint
6 stock company, trust, corporation, society, syndicate, club, business, or governmental entity.
7 "Person" shall not include the City.

8 ~~(o)~~—"Personal Wireless Service" means commercial mobile services provided under
9 a license issued by the FCC.

10 ~~(p)~~—"Personal Wireless Service Facility" or "Facility" means antennas and related
11 facilities used to provide or facilitate the provision of Personal Wireless Service.

12 ~~(r)~~—"Personal Wireless Service Facility Site Permit" or "Permit" means a permit
13 issued by the Department pursuant to this Article 25 authorizing a Permittee to construct,
14 install, and maintain a Personal Wireless Service Facility.

15 ~~(q)~~—"Planning Protected Location" means any of the following proposed locations
16 for a Personal Wireless Service Facility:

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

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

24 ~~(c)(3)~~ On a Utility, Transit, or Street Light Pole that is on a Public Right-of-Way that is
25 Adjacent to a national historic landmark, California landmark, San Francisco landmark,

1 structure of merit, architecturally significant building, or locally significant building, as more
2 specifically described and cataloged in materials prepared and maintained by the Planning
3 Department;

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

7 ~~(e)(5)~~ On a Utility, Transit, or Street Light Pole that is on a Public Right-of-Way that
8 the *San Francisco* General Plan has designated as having views that are rated "excellent" or
9 "good."

10 ~~(s)~~—"Planning Protected Location Compatibility Standard" means whether an
11 Applicant for a Personal Wireless Service Facility Site Permit demonstrates that a proposed
12 Personal Wireless Service Facility would be compatible with any of the Planning Protected
13 Locations as follows:

14 ~~(a)(1)~~ For a historic, historically or architecturally significant, decorative, or specially
15 designed Street Light Pole, the applicable standard is whether a proposed Personal Wireless
16 Service Facility would significantly degrade the aesthetic attributes that distinguish the Street
17 Light Pole as historic, historically significant, architecturally significant, decorative, or
18 specially designed.

19 ~~(b)(2)~~ For a Public Right-of-Way that is within a national historic landmark district,
20 listed or eligible national register historic district, listed or eligible California register historic
21 district, San Francisco landmark district, local historic or conservation district, or locally
22 significant district, the applicable standard is whether a proposed Personal Wireless Service
23 Facility would significantly degrade the aesthetic attributes that were the basis for the special
24 designation of the district.

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

6 (d)(4) For a Public Right-of-Way that the ~~San Francisco~~ General Plan has designated
7 as being most significant to City pattern, defining City form, or having an important street
8 view for orientation, the applicable standard is whether a proposed Personal Wireless
9 Service Facility would significantly degrade the aesthetic attributes that were the basis for the
10 designation of the street for special protection under the General Plan.

11 (e)(5) For a Public Right-of-Way that the ~~San Francisco~~ General Plan has designated
12 as having views that are rated "excellent" or "good," the applicable standard is whether a
13 proposed Personal Wireless Service Facility would significantly impair the views of any of the
14 important buildings, landmarks, open spaces, or parks that were the basis for the designation
15 of the street as a view street.

16 (f)——"Public Health Compliance Standard" means whether: (a)(i) any potential
17 human exposure to radio frequency emissions from a proposed Personal Wireless Service
18 Facility described in an Application is within the FCC guidelines; and (b)(ii) noise at any time
19 of the day or night from the proposed Personal Wireless Service Facility described in an
20 Application is not greater than forty-five (45) dBA as measured at a distance three (3) feet
21 from any residential building facade.

22 (g)——"Public Rights-of-Way" means the area in, on, upon, above, beneath, within,
23 along, across, under, and over the public streets, sidewalks, roads, lanes, courts, ways,
24 alleys, spaces, and boulevards within the geographic area of the City in which the City now
25 or hereafter holds any property interest, which is dedicated to public use and which,

1 consistent with the purposes for which it was dedicated, may be used for the purpose of
2 installing and maintaining Personal Wireless Service Facilities to provide Personal Wireless
3 Service to customers.

4 “Replace” means to remove previously permitted equipment and install new equipment at a
5 permitted Personal Wireless Service Facility that is identical in size or smaller than the previously
6 permitted equipment.

7 ~~(v) — “Step Down Tier III Facility” means a Personal Wireless Service Facility that would~~
8 ~~be a Tier III Facility because of the size of the antenna enclosure(s) being added to a Utility or Street~~
9 ~~Light Pole, but that would not add any equipment enclosure(s) to any Utility or Street Light Pole.~~

10 ~~(w) — “Step Down Tier II Facility” means a Personal Wireless Service Facility that would be~~
11 ~~a Tier II Facility because of the size of the antenna enclosure(s) being added to a Utility or Street~~
12 ~~Light Pole, but that would not add any equipment enclosure(s) to any Utility or Street Light Pole.~~

13 ~~(x) — “Street Light Pole” means a pole used solely for street lighting and which is~~
14 ~~located in the Public Rights-of-Way.~~

15 “Substantially Change the Physical Dimensions” shall have the meaning determined by the
16 Department in an order or regulation, provided that the Department’s definition shall be consistent
17 with the definition of that term: (a) as it is used in Section 6409(a) of the Middle Class Tax Relief and
18 Job Creation Act of 2012, codified at 47 U.S.C. § 1455(a) as may be amended from time to time; and
19 (b) as it is defined by the FCC in any decision addressing that section or any regulation implementing
20 that section.

21 ~~(y) — “Tier III-A Compatibility Standard” means that an Applicant for a Personal Wireless~~
22 ~~Service Facility on a Public Right-of-Way that is within an Unprotected Location has demonstrated~~
23 ~~that the proposed Personal Wireless Service Facility would not significantly detract from any of the~~
24 ~~defining the standard by which the Planning Department shall make a compatibility determination~~
25 ~~based on an analysis of the additional impact, if any, that a proposed Tier III A Facility would have~~

1 *on the character characteristics of the neighborhood, ~~as compared to the impact a Tier II Facility~~
2 ~~would have at the same location.~~*

3 *“Tier A Personal Wireless Service Facility” means a Personal Wireless Service Facility where
4 the proposed location for the facility is in an Unprotected Location.*

5 *(z) — “Tier III-B Compatibility Standard” means that an Applicant for a Personal Wireless
6 Service Facility on a Public Right-of-Way that is either within or Adjacent to a Planning Protected
7 Location Compatibility Standard or Zoning Protected Location has demonstrated that the proposed
8 Personal Wireless Service Facility would not significantly detract from any of the defining
9 characteristics of the Compatibility Standard by which the Planning Department shall make a
10 compatibility determination based on an analysis of the additional impact, if any, that a proposed Tier
11 III B Facility would have on a Planning Protected Location or Zoning Protected Location, ~~as~~
12 compared to the impact a Tier II Facility would have at the same location.*

13 *“Tier B Personal Wireless Service Facility” means a Personal Wireless Service Facility where
14 the proposed location for the facility is in a Planning Protected Location or Zoning Protected
15 Location.*

16 *(aa) — “Tier III-C Compatibility Standard” means that an Applicant for a Personal
17 Wireless Service Facility on a Public Right-of-Way that is either within or Adjacent to a Park
18 Protected Location has demonstrated that the proposed Personal Wireless Service Facility would
19 not significantly detract from any of the defining characteristics of the Compatibility Standard by
20 which the Recreation and Park Department shall make a compatibility determination based on an
21 analysis of the additional impact, if any, that a Proposed Tier III C Facility would have on a Park
22 Protected Location, ~~as compared to the impact a Tier II Facility would have at the same location.~~*

23 *“Tier C Personal Wireless Service Facility” means a Personal Wireless Service Facility where
24 the proposed location for the facility is in a Park Protected Location.*

1 ~~(bb) "Tier II B Compatibility Standard" means a Planning Protected Location Compatibility~~
2 ~~Standard or Zoning Protected Location Compatibility Standard by which the Planning Department~~
3 ~~shall make a compatibility determination based on an analysis of the additional impact, if any, that a~~
4 ~~proposed Tier II B Facility would have on a Planning Protected Location or Zoning Protected~~
5 ~~Location, as compared to the impact a Tier I Facility would have at the same location.~~

6 ~~(cc) "Tier II C Compatibility Standard" means a Park Protected Location Compatibility~~
7 ~~Standard by which the Recreation and Park Department shall make a compatibility determination~~
8 ~~based on an analysis of the additional impact, if any, that a Proposed Tier II C Facility would have on~~
9 ~~a Park Protected Location, as compared to the impact a Tier I Facility would have at the same~~
10 ~~location.~~

11 ~~(dd) "Tier I Criteria" is the criteria for the equipment allowed to be used with a Tier I~~
12 ~~Personal Wireless Service Facility, as set forth in Section 1503(a) below.~~

13 ~~(ee) "Tier II Criteria" is the criteria for the equipment allowed to be used with a Tier II~~
14 ~~Personal Wireless Service Facility, as set forth in Section 1503(b) below.~~

15 ~~(ff) "Tier I Facility" is a Personal Wireless Service Facility that meets the Tier I Criteria.~~

16 ~~(gg) "Tier III Facility" is a Personal Wireless Service Facility that does not meet the Tier I~~
17 ~~or Tier II Criteria.~~

18 ~~(hh) "Tier II Facility" is a Personal Wireless Service Facility that meets the Tier II Criteria.~~

19 ~~(ii) "Tier I Facility Permit" is a Permit to install a Tier I Facility.~~

20 ~~(jj) "Tier III Facility Permit" is a Permit to install a Tier III Facility.~~

21 ~~(kk) "Tier II Facility Permit" is a Permit to install a Tier II Facility.~~

22 "Transit Pole" means a pole used to support Municipal Transportation Agency transit
23 overhead traction power cables and which is located in the Public Rights-of-Way.

24 "Transmission Equipment" shall have the meaning determined by the Department in an order
25 or regulation, provided that the Department's definition shall be consistent with the definition of that

1 term: (a) as it is used in Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012,
2 codified at 47 U.S.C. § 1455(a) as may be amended from time to time; and (b) as it is defined by the
3 FCC in any decision addressing that section or any regulation implementing that section.

4 ~~(ll) — “Tier III Necessity Standard” means whether a Tier II Facility is insufficient to meet~~
5 ~~the Applicant’s service needs because the Applicant has demonstrated one of the following:~~

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

8 ~~(2) — Approval of the Application for a Tier III Facility Permit would reduce the~~
9 ~~number of Personal Wireless Service Facilities that the Applicant would otherwise need to install in~~
10 ~~the vicinity of the proposed Tier III Facility.~~

11 ~~(3) — Any other showing related to the Applicant’s service needs that the Department~~
12 ~~may allow by order or regulation.~~

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

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

17 ~~(oo) — “Zoning Protected Location” means on a Utility, Transit, or Street Light Pole that~~
18 ~~is on a Public Right-of-Way that is within a Residential or Neighborhood Commercial zoning~~
19 ~~district under the San Francisco Planning Code.~~

20 ~~(pp) — “Zoning Protected Location Compatibility Standard” means whether that an~~
21 ~~Applicant for a Personal Wireless Service Facility Site Permit on a Public Right-of-Way that is~~
22 ~~within a Zoning Protected Location has demonstrated that ~~a~~ the proposed Personal Wireless~~
23 ~~Service Facility would not significantly detract from any of the character defining characteristics~~
24 ~~of the Residential or Neighborhood Commercial zoning district.~~

1 **SEC. 1503. TYPES OF PERSONAL WIRELESS SERVICES FACILITIES.**

2 ~~(a) Tier I Facility. The Department shall not approve an Application for a Tier I Facility~~
3 ~~Permit unless the Application meets the following Tier I Criteria:~~

4 ~~(1) Antenna Facilities.~~

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

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

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

15 ~~(2) Supporting Elements. If Applicable Law, or generally applicable written rules~~
16 ~~of the pole owner, require a supporting element for any antenna enclosure such as a cross arm or pole~~
17 ~~top extension, such supporting element shall be no larger, longer, or bulkier than is necessary to~~
18 ~~comply with Applicable Law or such generally applicable written rules.~~

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

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

1 ~~(B) — A secondary equipment enclosure installed on a Utility or Street Light~~
2 ~~Pole that is near the Utility or Street Light Pole to be used for the antenna enclosure(s) and primary~~
3 ~~equipment enclosure, preferably facing the street or perpendicular to the street, shall be no larger~~
4 ~~than three (3) cubic feet in volume with a width not exceeding twelve (12) inches and a depth not~~
5 ~~exceeding ten (10) inches.~~

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

10 ~~(b) — Tier II Facility. The Department shall not approve an Application for a Tier II Facility~~
11 ~~Permit unless the Application meets the following Tier II Criteria:~~

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

15 ~~(A) — For an installation on top of a Utility or Street Light Pole, the antenna~~
16 ~~enclosure(s) shall:~~

17 ~~(i) — Be cylindrical in shape;~~

18 ~~(ii) — Not exceed four (4) feet in height; and~~

19 ~~(iii) — Not exceed the diameter of the top of the pole.~~

20 ~~(B) — For an installation on the side of a Utility or Street Light Pole, the size~~
21 ~~of the antenna enclosure(s) shall:~~

22 ~~(i) — Not exceed four (4) feet in height; and~~

23 ~~(ii) — In the case of a cylindrical antenna enclosure, not exceed~~
24 ~~eighteen (18) inches in diameter; or~~

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

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

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

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

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

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

23 ~~(5) Types of Tier II Facilities.~~

24 ~~(A) A Tier II Facility shall be designated a Tier II A Facility if the proposed~~
25 ~~location for the facility is in an Unprotected Location.~~

1 ~~(B) — A Tier II Facility shall be designated a Tier II B Facility if the proposed~~
2 ~~location for the facility is in a Planning Protected Location or Zoning Protected Location.~~

3 ~~(C) — A Tier II Facility shall be designated a Tier II C Facility if the proposed~~
4 ~~location for the facility is in a Park Protected Location.~~

5 ~~(e) — Tier III Facility.~~

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

9 ~~(2) — Types of Tier III Facilities.~~

10 ~~(A) — A Tier III Facility shall be designated a Tier III A Facility if the~~
11 ~~proposed location for the facility is in an Unprotected Location.~~

12 ~~(B) — A Tier III Facility shall be designated a Tier III B Facility if the~~
13 ~~proposed location for the facility is in a Planning Protected Location or Zoning Protected Location.~~

14 ~~(C) — A Tier III C Facility shall be designated a Tier III C Facility if the~~
15 ~~proposed location for the facility is in a Park Protected Location.~~

16 ~~(d) — Step Down Facilities.~~

17 ~~(1) — Step Down Tier II Facility. A Step Down Tier II Facility shall be designated a~~
18 ~~Tier I Facility.~~

19 ~~(2) — Step Down Tier III Facility. A Step Down Tier III Facility shall be designated a~~
20 ~~Tier II Facility.~~

21
22 **SEC. 1504. INITIAL REVIEW OF A PERSONAL WIRELESS FACILITY SITE PERMIT**
23 **APPLICATION.**

24 (a) Completeness Review.
25

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

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

7 (b) Tier Review.

8 (1) Initial Determination. Following a Department determination that an
9 Application for a Personal Wireless Service Facility Site Permit is complete, the Department
10 shall make an initial determination whether the proposed Personal Wireless Service Facility is a
11 Tier A, Tier B, or Tier C Personal Wireless Service Facility. as follows:

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

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

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

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

21
22 **SEC. 1506 STREET TREE.**

23 (a) Condition of Approval. When reviewing an application for a Tier II or Tier III
24 Personal Wireless Service Facility Site Permit, the Planning Department and/or Recreation and
25 Park Department (as appropriate) may require as a Condition of approval that the Permittee

1 plant and maintain an appropriate street tree adjacent to the Utility, Transit, or Street Light
2 Pole so as to provide a screen for a permitted ~~Tier II or Tier III~~ Personal Wireless Service Facility
3 Site Permit.

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

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

10 (2) In any instance in which the Department cannot require the Permittee to
11 install a street tree, on the basis of inadequate sidewalk width, interference with utilities, or
12 other reasons regarding the public health, safety, or welfare, the Department shall instead
13 require the Permittee to make an "in-lieu" payment into the Department's "Adopt-A-Tree" fund.
14 This payment shall be in the amount specified in *San Francisco* Public Works Code § 807(f),
15 and shall be payable prior to the Department's issuance of the Personal Wireless Service
16 Facility Site Permit.

17 (c) Care and Maintenance of Street Trees. The Permittee shall be responsible for
18 the care and maintenance of any street tree required to be installed in the Public Rights-of-
19 Way under this Section 1506. In this regard, the Permittee shall assume the duty of a
20 "property owner" as set forth in *San Francisco* Public Works Code § 805.

21
22 **SEC. 1508. DEPARTMENT REVIEW OF A PERSONAL WIRELESS SERVICE FACILITY**
23 **SITE PERMIT APPLICATION.**

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

1 (1) — Satisfies the Tier I Criteria; and

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

4 (b) — Tier II A Facility Permit. The Department shall review an Application for a Tier II A
5 Facility Permit to determine whether the Application:

6 (1) — Satisfies the Tier II Criteria;

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

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

11 (1) — Satisfies the Tier II Criteria;

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

14 (3) — Receives an affirmative determination from the Planning Department or the
15 Recreation and Park Department (or both if required) under the applicable Tier II B or Tier II C
16 Compatibility Standard.

17 (d) — Tier III Facility Permit. The Department shall review an Application for a Tier III
18 Personal Wireless Service Facility Site Permit to determine whether the Application:

19 (a)(1) Satisfies the Tier III Necessity Standard; (2) — Receives an affirmative
20 determination from the Department of Public Health under the Public Health Compliance
21 Standard; and

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

1 SEC. 1509. PLANNING DEPARTMENT REVIEW OF A ~~TIER II-B~~, TIER III-A, OR TIER
2 ~~III-B~~ PERSONAL WIRELESS SERVICE FACILITY SITE PERMIT APPLICATION.

3 ~~(a) — Referral to Planning Department.~~

4 ~~(a)(1) Referral to Planning Department Required. (A) —~~The Department shall refer an
5 Application for a Tier A or Tier II-B Personal Wireless Service Facility Site Permit to the Planning
6 Department for a review of the proposed Personal Wireless Service Facility under the
7 applicable Tier A or Tier II-B Compatibility Standard.

8 ~~(B) — If the Department determines that an Application for a Tier III A, or Tier III B~~
9 ~~Facility Permit satisfies the Tier III Necessity Standard, the Department shall refer the Application to~~
10 ~~the Planning Department for a review of the proposed Personal Wireless Service Facility under the~~
11 ~~applicable Tier III A, or Tier III B Compatibility Standard.~~

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

19 (b) Planning Department Determination.

20 (1) The Planning Department shall make a determination whether an
21 Application for a Tier A or Tier B Personal Wireless Service Facility Site Permit ~~referred to the~~
22 ~~Planning Department under this Section~~ satisfies the applicable ~~Tier II-B~~, Tier III-A, or Tier III-B
23 Compatibility Standard. The Planning Department's determination shall be in writing and
24 shall set forth the reasons therefor. The Planning Department shall transmit its determination
25 to the Department within twenty (20) business days of receipt of the Application from the

1 Department. With the concurrence of the Applicant, the Planning Department may extend
2 this review period beyond twenty (20) business days.

3 (2) The Planning Department's determination that an Application for a Tier B
4 Personal Wireless Service Facility Site Permit satisfies the Tier ~~II-B~~ of ~~Tier III-B~~ Compatibility
5 Standard for a Zoning Protected Location may include a Condition that the Personal Wireless
6 Service Facility not obstruct the view from or the light into any adjacent residential window.

7 (c) Affirmative Determination Required. The Department shall not approve an
8 Application for a ~~Tier II-B~~, ~~Tier III-A~~, or Tier ~~III-B~~ Personal Wireless Service Facility Site Permit
9 unless the Planning Department makes a determination that the Application satisfies the
10 applicable Tier ~~II-B~~, ~~Tier III-A~~ or Tier ~~III-B~~ Compatibility Standard.

11
12 **SEC. 1510. RECREATION AND PARK DEPARTMENT REVIEW OF A TIER ~~II-C~~ OR**
13 **TIER ~~III-C~~ PERSONAL WIRELESS SERVICE FACILITY SITE PERMIT APPLICATION.**

14 ~~(a) Referral to Recreation and Park Department.~~

15 ~~(a)(1) Referral to Recreation and Park Department~~ Required. ~~(A)~~ The Department
16 shall refer an Application for a Tier ~~II-C~~ Personal Wireless Service Facility Site Permit to the
17 Recreation and Park Department for a review of the proposed Personal Wireless Service
18 Facility under the Tier ~~II-C~~ Compatibility Standard.

19 ~~(B) If the Department determines that an Application for a Tier III C Facility Permit~~
20 ~~satisfies the Tier III Necessity Standard, the Department shall refer the Application to the Recreation~~
21 ~~and Park Department for a review of the proposed Personal Wireless Service Facility under the Tier~~
22 ~~III C Compatibility Standard.~~

23 ~~(2) Referral Allowed. The Department may refer an Application for a Tier II A or Tier III~~
24 ~~A Permit to the Recreation and Park Department if the proposed location for the Personal Wireless~~
25 ~~Service Facility is in the Immediate Vicinity of a Park Protected Location. The Department shall~~

1 ~~designate such a facility a Tier II-C or Tier III-C Facility. The Recreation and Park Department shall~~
2 ~~then review the Application under the applicable Tier II-C or Tier III-C Compatibility Standard.~~

3 (b) Recreation and Park Department Determination. The Recreation and Park
4 Department shall make a determination whether an Application for a Tier C Personal
5 Wireless Service Facility Site Permit ~~referred to the Planning Department under this Section~~
6 satisfies the ~~applicable~~ Tier II-C or Tier III-C Compatibility Standard. The Recreation and Park
7 Department's determination shall be in writing and shall set forth the reasons therefor. The
8 Recreation and Park Department shall transmit its determination to the Department within
9 twenty (20) business days of receipt of the Application from the Department. With the
10 concurrence of the Applicant, the Recreation and Park Department may extend this review
11 period beyond twenty (20) business days.

12 (c) Affirmative Determination Required. The Department shall not approve an
13 Application for a Tier II-C or Tier III-C Personal Wireless Service Facility Site Permit unless the
14 Recreation and Park Department makes a determination that the Application satisfies the
15 ~~applicable~~ Tier II-C or Tier III-C Compatibility Standard.

16
17 **SEC. 1511. DEPARTMENT DETERMINATION.**

18 (a) Determination in Writing.

19 (1) Tentative Approval. A Department tentative approval of an Application
20 for a ~~Tier III~~ Personal Wireless Service Facility Site Permit shall be in writing and shall set forth
21 the reasons ~~therefor~~ ~~therefore~~. If a Department tentative approval contains any Conditions,
22 the Conditions shall also be in writing.

23 (2) Final Determination. A Department final determination to approve or
24 deny an Application for a Personal Wireless Service Facility Site Permit shall be in writing
25

1 and shall set forth the reasons ~~therefor~~ *therefore*. If a Department final determination to
2 approve an Application contains any Conditions, the Conditions shall also be in writing.

3 ~~(b) — Tier I or Tier II A Facility Permit.~~

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

7 ~~(A) — The Department making a determination that the Application does not~~
8 ~~meet the Tier I or Tier II Criteria, as applicable;~~

9 ~~(B) — The Department's receipt of a determination from the Department of~~
10 ~~Public Health that the Application does not comply with the Public Health Compliance Standard; or~~

11 ~~(C) — If the Department or the Department of Public Health adds any~~
12 ~~Conditions to its approval of the Application, the Department's receipt of a notice from the Applicant~~
13 ~~that it rejects any of those Conditions.~~

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

18 ~~(A) — The Department making a determination that the Application meets the~~
19 ~~Tier I or Tier II Criteria, as applicable; or~~

20 ~~(B) — The Department's receipt of a determination from the Department of~~
21 ~~Public Health that the Application complies with the Public Health Compliance Standard.~~

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

1 (A) — ~~The Department making a determination that the Application meets the~~
2 ~~Tier I or Tier II Criteria, as applicable;~~

3 (B) — ~~The Department's receipt of a determination from the Department of~~
4 ~~Public Health that the Application complies with the Public Health Compliance Standard; or~~

5 (C) — ~~The Department's receipt of a notice from the Applicant that it accepts~~
6 ~~all of those Conditions.~~

7 (e) — ~~Tier II B or Tier II C Facility Permit.~~

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

11 (A) — ~~The Department making a determination that the Application does not~~
12 ~~meet the Tier II Criteria;~~

13 (B) — ~~The Department's receipt of a determination from the Department of~~
14 ~~Public Health that the Application does not comply with the Public Health Compliance Standard;~~

15 (C) — ~~The Department's receipt of a determination from the Planning~~
16 ~~Department or the Recreation and Park Department that the Application does not meet the applicable~~
17 ~~Compatibility Standard; or~~

18 (D) — ~~If any City department that reviewed the Application adds any~~
19 ~~Conditions to its approval of the Application, the Department's receipt of a notice from the Applicant~~
20 ~~that it rejects any of those Conditions.~~

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

1 (A) ~~— The Department's receipt of a determination from the Department of~~
2 ~~Public Health that the Application complies with the Public Health Compliance Standard; or~~

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

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

10 (A) ~~— The Department's receipt of a determination from the Department of~~
11 ~~Public Health that the Application complies with the Public Health Compliance Standard;~~

12 (B) ~~— The Department's receipt of a determination from the Planning~~
13 ~~Department or the Recreation and Park Department (or both if required) that the Application meets~~
14 ~~the applicable Compatibility Standard; or~~

15 (C) ~~— The Department's receipt of a notice from the Applicant that it accepts~~
16 ~~all of those Conditions.~~

17 (b) ~~— Tier III Facility Permit.~~ (1) ~~Denial.~~ The Department shall issue a final
18 determination denying an Application for a Tier III Personal Wireless Service Facility Site Permit
19 within three (3) business days of any of the following events:

20 (1)(A) ~~The Department making a determination that the Application does not meet the~~
21 ~~Tier III Necessity Standard;~~ (B) ~~— The Department's receipt of a determination from the~~
22 Department of Public Health that the Application does not comply with the Public Health
23 Compliance Standard;

1 ~~(2)(C)~~—The Department's receipt of a determination from the Planning
2 Department or the Recreation and Park Department (or both if required) that the Application
3 does not meet the applicable Compatibility Standard; or

4 ~~(3)(e)~~ If any City department reviewing the Application adds any Conditions to
5 its approval of the Application, the Department's receipt of a notice from the Applicant that it
6 rejects any of those Conditions.

7 ~~(c)(2)~~ Approval without Conditions.

8 ~~(1)(A)~~ Tentative Approval. If no City department reviewing an Application for a
9 Tier III Personal Wireless Service Facility Site Permit adds any Conditions to its approval of the
10 Application, the Department shall issue a tentative approval of an Application for a Tier III
11 Personal Wireless Service Facility Site Permit without Conditions within three (3) business days
12 of the occurrence of the last of the following events:

13 ~~(A)(i)~~ The Department's receipt of a determination from the Department
14 of Public Health that the Application complies with the Public Health Compliance Standard;
15 and

16 ~~(B)(ii)~~ The Department's receipt of a determination from the Planning
17 Department or the Recreation and Park Department (or both if required) that the Application
18 meets the applicable Compatibility Standard.

19 ~~(2)(B)~~ Final Approval. Following the Department's tentative approval of an
20 Application for a Tier III Personal Wireless Service Facility Site Permit without any Conditions,
21 the Department shall issue a final determination as follows:

22 ~~(A)(i)~~ The Department shall require the Applicant to give notice of the
23 tentative approval as required by Section 1512 below; and

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

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

7 ~~(d)(3)~~ Approval with Conditions.

8 ~~(1)(A)~~ Tentative Approval. If any City department reviewing an Application for a
9 ~~Tier III~~ Personal Wireless Service Facility Site Permit adds any Conditions to its approval of the
10 Application, the Department shall issue a tentative approval of the Application with
11 Conditions within three (3) business days of the occurrence of the last of the following
12 events:

13 ~~(A)(i)~~ The Department's receipt of a determination from the Department
14 of Public Health that the Application complies with the Public Health Compliance Standard;

15 ~~(B)(ii)~~ The Department's receipt of a determination from the Planning
16 Department or the Recreation and Park Department (or both if required) that the Application
17 meets the applicable Compatibility Standard; or

18 ~~(C)(iii)~~ The Department's receipt of a notice from the Applicant that it
19 accepts all of those Conditions.

20 ~~(2)(B)~~ Final Approval. Following the Department's tentative approval of an
21 Application for a ~~Tier III~~ Personal Wireless Service Facility Site Permit with Conditions, the
22 Department shall issue a final determination as follows:

23 ~~(A)(i)~~ The Department shall require the Applicant to give notice of the
24 tentative approval as required by Section 1512 below; and

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

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

7
8 **SEC. 1512. NOTICE FOLLOWING TENTATIVE APPROVAL OF A ~~TIER III~~ PERSONAL**
9 **WIRELESS SERVICE FACILITY SITE PERMIT APPLICATION.**

10 (a) Notice Required. The Department shall require an Applicant for a ~~Tier III~~
11 Personal Wireless Service Facility Site Permit to notify the public of a tentative approval of the
12 Application under Sections 1511~~(d)(2)~~ (c)(1) or 1511~~(d)(3)-(1)~~ above, and to provide the
13 Department with evidence, as the Department may require, of compliance with this
14 requirement.

15 (b) Types of Notice Required.

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

17 (A) Any Person owning property or residing within one hundred and
18 fifty (150) feet of the proposed location of the ~~Tier III~~ Personal Wireless Service Facility; and

19 (B) Any neighborhood association identified by the Planning
20 Department for any neighborhood within three hundred (300) feet of the proposed ~~Tier III~~
21 Personal Wireless Service Facility.

22 (2) Notice by Posting. The Applicant shall post a copy of the notice in
23 conspicuous places throughout the block face where the proposed ~~Tier III~~ Personal Wireless
24 Service Facility is to be located.

1 (c) Contents and Form of Notice. The notice shall contain such information, and
2 be in such form, as the Department reasonably requires in order to inform the general public
3 as to the nature of the Application for a ~~Tier III~~ Personal Wireless Service Facility Site Permit. At
4 a minimum, the notice shall:

5 (1) Provide a description and a photo-simulation of the proposed ~~Tier III~~
6 Personal Wireless Service Facility;

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

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

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

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

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

17 (7) Explain how any interested Person may obtain additional information
18 and documents related to the Application; *and*

19 (8) State whether the Applicant intends to file an Application for a Modification
20 Permit at any time during the term of the Personal Wireless Service Facility Site Permit and, if so,
21 identify: (A) the time frame the Applicant anticipates applying for a Modification Permit; and (B) the
22 nature of any modifications the Applicant anticipates including in the Application for a Modification
23 Permit.

1 **SEC. 1513. PROTEST OF A ~~TIER III~~ PERSONAL WIRELESS FACILITY SITE PERMIT.**

2 (a) Protest Allowed. Any Person may protest a tentative approval of an Application
3 for a ~~Tier III~~ Personal Wireless Service Facility Site Permit. A protest must be in writing and
4 must be submitted to the Department within twenty (20) days of the date the notice was
5 mailed and posted as required under Section 1512 above.

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

10 (c) Notice of Hearing Date. At least ten (10) days before the hearing, the
11 Department shall notify in writing any Person submitting a protest, the Applicant, and any City
12 department that reviewed the Application of the date set for the hearing. The Department
13 shall follow its regular procedures for notifying the general public of the hearing.

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

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

17 (1) The Application and the Department's tentative approval of the
18 Application;

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

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

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

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

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

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

10 (h) Grounds for Granting a Protest. The Director may grant a protest of a tentative
11 approval of Application for a ~~Tier III~~ Personal Wireless Service Facility Site Permit only if the
12 Director finds that the evidence at the hearing supports any one of the following findings:

13 (1) The Department of Public Health incorrectly determined that the
14 Application complies with the Public Health Compliance Standard;

15 (2) ~~The Department incorrectly determined that the Application meets the Tier III~~
16 ~~Necessity Standard;~~ (3) — In the case of an Application for a Tier III-A or Tier III-B Personal
17 Wireless Service Facility Site Permit, the Planning Department incorrectly determined that the
18 Application meets the applicable Tier III-A or Tier III-B Compatibility Standard, ~~as applicable~~;
19 ~~or~~

20 (4) (3) In the case of an Application for a Tier III-C Personal Wireless Service
21 Facility Site Permit, the Recreation and Park Department incorrectly determined that the
22 Application meets the Tier III-C Compatibility Standard;

23 (4) ~~The Application does not comply with any other requirement for obtaining a~~
24 Personal Wireless Service Facility Site Permit; or

1 (5) The evidence shows that the Applicant intends to apply for a Modification
2 Permit after the Permit is issued and that the proposed modification(s) would not comply with any
3 applicable Compatibility Standard.

4
5 **SEC. 1514. NOTICE OF FINAL DETERMINATION.**

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

8 (1) Notice Required.

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

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

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

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

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

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

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

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

15 (E) Specify the applicable grounds for appealing the approval of the
16 Application under this Article 25; ~~and~~

17 (F) Explain how any interested Person may obtain additional
18 information and documents related to the Application; ~~and~~

19 (G) State whether the Applicant intends to submit an Application for a
20 Modification Permit during the term of the Permit and, if so, identify: (i) the time frame the Applicant
21 anticipates applying for a Modification Permit; and (ii) the nature of any modifications the Applicant
22 anticipates including in the Application for a Modification Permit.

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

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

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

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

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

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

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

15
16 **SEC. 1519. TERM OF PERMIT.**

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

20
21 **SEC. 1520. RENEWAL AND NEW APPLICATIONS.**

22 (a) When Renewal Permitted.

23 (1) Renewal Permitted. At the end of the term set forth in Section 1519 above,
24 the Department may renew a Personal Wireless Service Facility Site Permit for ~~the identical~~
25 ~~Personal Wireless Service Facility at the same permitted location for four (4)~~ an additional ten (10)

1 year two (2) year terms, provided that the Department did not issue a Modification Permit for the
2 permitted Personal Wireless Service Facility during the term of the Permit.

3 (2) Renewal Not Permitted.

4 (A) A Personal Wireless Service Facility that has been issued a Modification
5 Permit may not be renewed. Instead, the Permittee may file a new Application for a Personal Wireless
6 Service Facility Site Permit for the permitted and modified Personal Wireless Service Facility at the
7 same location.

8 (B) A Personal Wireless Service Facility Site Permit that has been renewed
9 once under Section 1520(a)(1) above may not be renewed for a second time. Instead, the Permittee
10 may file a new Application for a Personal Wireless Service Facility Site Permit for the permitted
11 Personal Wireless Service Facility at the same location.

12 (b) Renewal Application Required. A Permittee seeking to renew a Personal
13 Wireless Service Facility Site Permit that may be renewed under Section 1520(a) above must file a
14 renewal Application with the Department no later than six (6) months prior to the expiration date of
15 prior to the end of the existing Permit term. The renewal Application shall include a written
16 report from a certified engineer confirming that the permitted Personal Wireless Service
17 Facility complies with the Public Health Compliance Standard.

18 (c) Approval of Renewal Application.

19 (1) Department of Public Health Approval Required. The Department shall refer
20 every Application to renew a Personal Wireless Service Facility Site Permit to the Department of
21 Public Health for review under the Public Health Compliance Standard. The Department shall
22 approve a timely-filed renewal Application unless the Department of Public Health determines that
23 the permitted using the existing equipment at the same permitted location since the commencement of
24 the Permit term as set forth in Section 1519 above, provided there have been no changes to: (A)
25 Applicable Law that would allow the Department to deny a new Application for a Personal Wireless

1 ~~Service Facility Site Permit for the identical Personal Wireless Service Facility at the permitted~~
2 ~~location; or (B) readily available technology for Personal Wireless Service Facilities that would make~~
3 ~~it feasible for the Applicant for a renewal Permit to replace the existing equipment with less visually~~
4 ~~obtrusive equipment. (2) — Denial Required. The Department shall deny a renewal Application if the~~
5 ~~Permittee fails to provide the Department with a written report from a certified engineer confirming~~
6 ~~that the permitted Personal Wireless Service Facility does not comply ~~complies~~ with the Public~~
7 ~~Health Compliance Standard.~~

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

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

18 ~~(2) — Planning Department and Recreation and Park Department.~~

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

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

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

10 (2) (e) ~~Applicability of Other Provisions of this Article. The other provisions of~~
11 ~~this Article 25 related to approval of an Application for a Personal Wireless Service Facility~~
12 ~~Site Permit shall not only apply to the Department's review of a renewal Application ~~if the~~~~
13 ~~Department refers a renewal Application to the Planning and/or Recreation and Park Departments.~~
14 These provisions shall include, but are not limited to, Notice of Final Determination (Section
15 1514 above) and Appeals (Section 1515 above).

16 (d) New Application.

17 (1) Required When Renewal Not Permitted. If, in accordance with Section
18 1520(a)(2) above, a Personal Wireless Service Facility cannot be renewed, the Permittee must submit
19 a new Application for a Personal Wireless Service Facility Site Permit in order to continue to maintain
20 the permitted Personal Wireless Service Facility in the Public Rights-of-Way.

21 (2) Removal Not Required. Notwithstanding any other Applicable Law, if the
22 Permittee submits an Application for a Personal Wireless Service Facility Site Permit no later than six
23 (6) months prior to the expiration date of a previously issued Personal Wireless Facility Site Permit,
24 the Department shall not require the Applicant to remove the permitted Personal Wireless Service
25 Facility unless and until there is a final determination denying the Application. For purposes of this

1 subsection (d)(2), a determination shall not be final until the Board of Appeals issues a final ruling on
2 any appeal.

4 **SEC. 1521. REPLACEMENT OR REMOVAL OF EQUIPMENT.**

5 (a) Replacement. During the term of a Personal Wireless Service Facility Site
6 Permit, a Permittee may ~~replace~~ Replace equipment that is part of a permitted Personal
7 Wireless Service Facility without obtaining a Modification Permit; ~~provided that the replacement~~
8 ~~equipment would be of substantially the same size, appearance, and power as the previously permitted~~
9 ~~equipment. The Permittee shall notify the Department prior to replacing any permitted equipment. The~~
10 ~~Permittee shall not install the proposed replacement equipment unless and until the Department~~
11 ~~notifies Permittee in writing that the Department has determined that the proposed replacement~~
12 ~~equipment complies with the requirements of this Section.~~

3 (b) Removal. During the term of a Personal Wireless Service Facility Site Permit, a
14 Permittee may remove equipment that is part of a permitted Personal Wireless Service Facility
15 without obtaining a Modification Permit.

16 (c) Department Procedures.

17 (1) Permittee's Notification. A Permittee shall notify the Department in writing
18 that it intends to Replace or remove equipment at a permitted Personal Wireless Service Facility as
19 permitted by this Section 1521. In the notice, the Permittee shall at a minimum:

20 (A) Identify the use and size of each piece of equipment that the Permittee is
21 seeking to remove from the Utility, Transit, or Street Light Pole;

22 (B) Identify the use and size of the equipment that the Permittee is seeking to
23 install on the Utility, Transit, or Street Light Pole to Replace existing equipment; and

1 (C) If any new equipment will Replace existing equipment, provide drawings
2 and photo-simulations of the existing and new equipment the Permittee is seeking to install on the
3 Utility, Transit, or Street Light Pole.

4 (2) Department Notification. Within five (5) business days of receipt of the
5 Permittee's request to Replace or remove equipment as described above, the Department shall notify
6 the Permittee in writing whether the Department has determined that the request complies with the
7 requirements of this Section 1521.

8 (3) Permittee Replacement or Removal. Upon receipt of a Department notice that
9 the request complies with this Section 1521, the Permittee may Replace or remove the equipment
10 identified in the request.

11 (4) Compliance with Other Requirements. Nothing in this Section 1521 shall be
12 construed to relieve the Permittee of its duty to comply with any City regulations or permitting
13 requirements when removing equipment from or Replacing Equipment on a Utility, Transit, or Street
14 Light Pole.

15
16 **SEC. 1522. MODIFICATION ~~OF~~ PERMIT.**

17 A Permittee may file an Application with the Department to modify a Personal Wireless
18 Service Facility Site Permit to replace any equipment that is part of a permitted Personal Wireless
19 Service Facility if the proposed replacement equipment would not be of substantially the same size,
20 appearance, and power as the previously permitted equipment. The Department shall not approve an
21 Application to modify a Permit unless the Application complies with all of the requirements of this
22 Article 25:

23 (a) Modification Permit Required. A Permittee seeking to add equipment to a permitted
24 Personal Wireless Service Facility that does not comply with the requirements of Section 1521 above,
25

1 because the replacement equipment is not is identical in size or smaller than the previously permitted
2 equipment, must obtain a Modification Permit.

3 (b) Department Procedures.

4 (1) Application. In an Application for a Modification Permit, the Applicant shall at
5 a minimum:

6 (A) State whether the permitted Personal Wireless Service Facility is a Base
7 Station;

8 (B) Identify the use and size of any piece of equipment that the Applicant is
9 seeking to remove from the Utility, Transit, or Street Light Pole;

10 (C) Identify the use and size of any equipment that the Applicant is seeking
11 to add to the Utility, Transit, or Street Light Pole;

12 (D) State whether any piece of equipment the Applicant is seeking to add to
13 the Utility, Transit, or Street Light Pole is Transmission Equipment and, if so, explain why it meets the
14 definition of Transmission Equipment;

15 (E) Provide drawings and photo-simulations of the existing and new
16 equipment the Permittee is seeking to install on the Utility, Transit, or Street Light Pole; and

17 (F) State whether the proposed modification will result in a Substantial
18 Change to the Physical Dimensions of the Utility, Transit, or Street Light Pole.

19 (2) Time for Department Determination. The Department shall by order or
20 regulation establish the appropriate time frame for the Department to review an Application for a
21 Modification Permit that is consistent with the requirements of Section 6409(a) of the Middle Class
22 Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. § 1455(a), as may be amended from
23 time to time, and with any FCC decision addressing that section or any FCC regulation implementing
24 that section.

25 (c) Approval of Modification Permits at Base Stations.

1 (1) No Substantial Change to the Physical Dimension. The Department shall
2 approve an Eligible Facilities Request for a Modification Permit if the installation of the modified
3 Transmission Equipment would not Substantially Change the Physical Dimensions of the Utility,
4 Transit, or Street Light Pole where the permitted Base Station equipment has been installed.

5 (2) Substantial Change to the Physical Dimensions. The Department may approve
6 an Eligible Facilities Request for a Modification Permit if the installation of the modified
7 Transmission Equipment would Substantially Change the Physical Dimensions of the Utility, Transit,
8 or Street Light Pole where the permitted Base Station equipment has been installed, provided the
9 Application complies with the requirements of Section 1522(e)(2) below.

10 (3) Equipment Other than Transmission Equipment. The Department may approve
11 an Application for a Modification Permit at a Personal Wireless Service Facility that is a Base Station
12 if the Application seeks to modify equipment other than Transmission Equipment, provided the
13 Application complies with the requirements of Section 1522(e)(2) below.

14 (d) Approval of Modification Permits at Other Types of Facilities. The Department may
15 approve an Application for a Modification Permit at a Personal Wireless Service Facility that is not a
16 Base Station, provided the Application complies with the requirements of Section 1522(e)(2) below.

17 (e) Applicability of Other Provisions of this Article.

18 (1) No Substantial Change to the Physical Dimension. The other provisions of this
19 Article 25 related to approval of an Application for a Personal Wireless Service Facility Site Permit
20 shall not apply to the Department's review of an Application for a Modification Permit that complies
21 with the requirements of Section 1522(c)(1) above. These provisions include, but are not limited to,
22 Notice of Final Determination (Section 1514 above) and Appeals (Section 1515 above).

23 (2) Other Types of Modifications. Before approving an Application for a
24 Modification Permit under Sections 1522(c)(2), (c)(3), and (d) above, the Department shall refer the
25 Application to: (A) the Department of Public Health to determine compliance with the Public Health

1 Compliance Standard; and (B) the Planning Department and/or Recreation and Park Department to
2 determine compliance with any applicable Compatibility Standards. The Department may not
3 approve the Modification Permit if any City department determines the Application does not comply
4 with the appropriate standard. In addition, the Department may determine that compliance with other
5 provisions of this Article 25, including Notice of Final Determination (Section 1514 above) and
6 Appeals (Section 1515 above), shall be required.

7 (f) Generally Applicable Laws. Nothing in this Section 1522 shall prohibit the Department
8 from denying an Application for a Modification Permit (even where the Application consists of an
9 Eligible Facilities Request) where the Department determines that the proposed modified Personal
10 Wireless Service Facility would violate any generally applicable building, structural, electrical, or
11 safety code provision, or any Applicable Law codifying objective standards reasonably related to
12 health and safety.

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

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

19 (1) Department Application Fee. Each Applicant for a Personal Wireless
20 Service Facility Site Permit shall pay to the Department a non-refundable Application fee of
21 one four hundred fifty dollars (~~\$100.00~~450.00) for each Personal Wireless Service Facility
22 proposed in the Application.

23 (2) Other City Department Application Fees. Where, as required under this
24 Article 25, the Department has referred an Application for a Personal Wireless Service
25 Facility Site to the Planning Department, the Recreation and Park Department, or the

1 Department of Public Health, an Applicant shall pay the following additional fees for each
2 Personal Wireless Service Facility contained in an Application for a Personal Wireless
3 Service Facility Site Permit.

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

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

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

13 (b) Hearing Fees. If a hearing is required following a protest of a tentative approval of an
14 Application for a Personal Wireless Service Facility Site Permit or Modification Permit, the Applicant
15 shall pay the Department a non-refundable hearing fee of three hundred sixty dollars (\$360.00) for the
16 first protest and seventy-five dollars (\$75.00) for each additional protest.

17 (c) Renewal Fees. A Permittee seeking to renew a Personal Wireless Service Facility Site
18 Permit shall pay to: (1) the Department a non-refundable fee of two hundred twenty-five dollars
19 (\$225.00); and (2) the Department of Public Health the fees set forth in Section 1527(a)(2)(C) above.

20 (d) Modification Permit Fees. Each Applicant for a Modification Permit shall pay to: (1)
21 the Department a non-refundable fee of three hundred thirty-eight dollars (\$338.00); and (2) any
22 other City department reviewing the Application the fees set forth in Section 1527(a)(2) above.

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

1 of these fees is to enable these City departments to recover their costs related to inspecting
2 a permitted Personal Wireless Service Facility.

3 (1) Department Inspection Fee. Each Permittee shall pay the Department a
4 non-refundable time and materials inspection fee not to exceed one hundred fifty dollars
5 (\$150.00) to inspect a permitted Personal Wireless Service Facility as required under Section
6 1516(b) above.

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

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

21 ~~(g)(d)~~ Discretion to Require Additional Fees. In instances where the review of an
22 Application for a Personal Wireless Service Facility Site Permit is or will be unusually costly
23 to the Department or to other City departments, the Director, in his or her discretion, may,
24 after consulting with other applicable City departments, agencies, boards, or commissions,
25 require an Applicant for a Personal Wireless Service Facility Site Permit to pay a sum in

1 excess of the amounts charged pursuant to this Section 1527. This additional sum shall be
2 sufficient to recover actual costs incurred by the Department and/or other City departments,
3 agencies, boards, or commissions, in connection with an Application for a Personal Wireless
4 Service Facility Site Permit and shall be charged on a time and materials basis. Whenever
5 additional fees are charged, the Director, upon request, shall provide in writing the basis for
6 the additional fees and an estimate of the additional fees.

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

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

16
17 **SEC. 1529. BASE STATION DETERMINATION.**

18 ~~(a)~~ Request for Determination.

19 ~~(1)~~ New Facilities. An Applicant for a Personal Wireless Service Facility may seek
20 a determination from the Department that a proposed Personal Wireless Service Facility is a Base
21 Station.

22 ~~(2)~~ Permitted Facilities. A Permittee may seek a determination from the
23 Department that a permitted Personal Wireless Service Facility is a Base Station.

24 ~~(b)~~ Single Determination Permitted. Once the Department has determined that an
25 Applicant's new Personal Wireless Service Facility or a Permittee's permitted Personal Wireless

1 Service Facility is a Base Station, the Department may apply that determination to the Applicant's or
2 Permittee's other Personal Wireless Service Facilities that use the identical equipment.

3 (c) Department Order. In lieu of a case-by-case determination, the Department may
4 determine by order or regulation those types of Personal Wireless Facilities that meet the definition of
5 the term Base Station.

6
7 Section 3. Effective Date. This ordinance shall become effective 30 days after
8 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
9 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
10 of Supervisors overrides the Mayor's veto of the ordinance.

11
12 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
13 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
14 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
15 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
16 additions, and Board amendment deletions in accordance with the "Note" that appears under
17 the official title of the ordinance.

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

21
22 By: 

23 WILLIAM K. SANDERS
24 Deputy City Attorney

25 n:\legana\as2014\1500383\00977483.doc

LEGISLATIVE DIGEST

[Public Works Code - Personal Wireless Service Facility Site Permits, and Amending Fees]

Ordinance amending the Public Works Code to modify certain requirements for Personal Wireless Service Facility Site Permits, amending the fees for obtaining such permits; and making environmental findings.

Existing Law

Since 2007, the City and County of San Francisco ("City") has required a permit to install a personal wireless service facility ("Wireless Facility") on a utility or street light pole in the public right-of-way ("Wireless Permit"). These permits are issued by the Department of Public Works ("Department"). In Ordinance, 214-07, the Board of Supervisors ("Board") added the Wireless Permit requirement to Administrative Code § 11.9(b). In Ordinance No. 12-11, the Board of Supervisors repealed § 11.9(b) and added the Wireless Permit requirement to Article 25 of the Public Works Code.

Article 25 enables the City to regulate the location and design of Wireless Facilities by requiring the Planning Department and/or the Recreation Park Department to review an application for a Wireless Permit in specified locations based on aesthetic criteria contained in Article 25. The Department may not issue a Wireless Permit in those locations unless the Planning Department and/or the Recreation and Park Department recommend approval.

Article 25 also requires the Department to refer an application for a Wireless Permit to the Department of Public Health to determine whether: (i) any potential human exposure to radio frequency emissions from a proposed Wireless Facility would comply with the Federal Communications Commission ("FCC"); and (ii) potential noise from the proposed Wireless Facility would be not greater than 45 dBA as measured at a distance three feet from any residential building facade. The Department may not issue a Wireless Permit without the approval of the Department of Public Health.

Article 25 requires public notice of an application for a Wireless Permit and allows local residents to protest the Department's issuance of the proposed Wireless Permit. If a protest is filed, the Department will conduct a hearing before issuing a Wireless Permit. The Department will only issue the Wireless Permit if the Director of Public Works determines after the hearing that the applicant complied with all of the requirements of Article 25. The Wireless Permit may then be appealed to the Board of Appeals.

Article 25 also contains certain requirements for modifying previously permitted Wireless Facilities. The modification provisions were intended to allow the Department to permit those modifications that had limited aesthetic impacts without public scrutiny or even review by other City departments.

Amendments to Current Law

The proposed Ordinance would retain the basic structure and purpose of Article 25. Wireless Permits would still be required, as would the requirement that other City departments review the application. Local residents would still be allowed to protest the Department's issuance of a Wireless Permit, and a hearing would still be held following the filing of a protest.

The purpose of the Ordinance is to amend Article 25 to simplify the present permitting scheme that divides Wireless Facilities into three sized-based tiers ("Tier System"). The Ordinance would also amend Article 25 so that its provisions are consistent with both a recent trial court decision and with changes to federal law enacted after the adoption of Article 25.

In these regards, the Ordinance would:

- Repeal the Tier System that established more rigorous permitting requirements as the proposed Wireless Facilities got larger.¹ Instead of the Tier System, the Department would use the permitting process that had been established only for the largest Wireless Facilities (called Tier III) for all Wireless Facilities, which includes aesthetic review and public notice. Eliminating the Tier System simplifies the permitting process. It could also reduce the impacts of a recently enacted federal law limiting local authority to deny requests to modify permitted Wireless Facilities by increasing the size of those facilities.²
- Repeal the provisions that allowed the City to deny a Wireless Permit application or renewal application based on the applicant's technological need for the proposed Wireless Facility. As discussed below, a Superior Court judge found that this requirement was inconsistent with State law.

¹ The Ordinance would retain a tier structure solely to identify whether the Planning Department or Recreation and Park Department will determine whether the proposed Wireless Facility is "compatible" with the proposed location.

² The Ordinance would require an applicant for a Wireless Permit to disclose whether it had any intention to modify the Wireless Facility after the Department issued the permit.

- Change the term of a Wireless Permit from two years to ten years. As discussed below, a Superior Court judge found that the two-year term was inconsistent with State law.
- Change the modification provisions to be consistent with federal law as construed by the FCC. As discussed below, a Superior Court judge found that the modification provisions were inconsistent with a federal law that was enacted after the City adopted Article 25.
- Clarify that Article 25 applies to support poles owned by the Municipal Transportation Agency (“MTA”). This change is necessary because the MTA recently entered into agreements with certain wireless carriers allowing them to install Wireless Facilities on MTA support poles.

Background Information

In May 2011, T-Mobile and two other telecommunications carriers (hereinafter “Plaintiffs”) sued the City in the Superior Court challenging the permitting requirements contained therein.

In their initial complaint, Plaintiffs alleged that: (i) under California Public Utilities Code §§ 7901³ and 7901.1⁴ the City did not have the authority to regulate Plaintiffs’ use of the public rights-of-way to install Wireless Facilities for aesthetics; and (ii) under California Government Code § 65964(b) the City could not limit the term of a Wireless Permit to fewer than ten years.⁵

³ Public Utilities Code § 7901 provides in part: “Telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway. . . in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

⁴ Public Utilities Code § 7901.1 provides in part: “(a) It is the intent of the Legislature, consistent with Section 7901, that municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed. (b) The control, to be reasonable, shall, at a minimum, be applied to all entities in an equivalent manner.”

⁵ Government Code § 65964(b) provides that a city cannot: “Unreasonably limit the duration of any permit for a wireless telecommunications facility. Limits of less than 10 years are presumed to be unreasonable absent public safety reasons or substantial land use reasons.”

In June 2011, Plaintiffs amended their complaint to allege that Article 25 improperly allowed the City to review certain of the Plaintiffs' compliance with the California Environmental Quality Act ("CEQA"). According to Plaintiffs, the California Public Utilities Commission had preempted the City's CEQA authority when permitting Wireless Facilities.

In March 2012, Plaintiffs amended their complaint for a second time to include a federal preemption claim based on Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. § 1455(a)) ("§ 6409(a)").⁶ In § 6409(a), which was passed on February 22, 2012, Congress limited local authority to deny applications to modify existing Wireless Facilities. Section 6409(a) requires the City to grant an application to modify a previously permitted Wireless Facility unless the proposed modification would "substantially change the physical dimensions" of the facility. Plaintiffs alleged that § 6409(a) preempted the provisions of Article 25 that concerned the modification of permitted Wireless Facilities.⁷

Plaintiffs and the City sought summary judgment on all of the claims in the complaint. The Superior Court ruled for the City on Plaintiffs' CEQA preemption claim, finding that the City had the authority to conduct CEQA review of all of the Plaintiffs' applications for Wireless Permits. The Superior Court ruled for the Plaintiffs on their Government Code preemption claim, finding that the City could not limit the term of Plaintiffs' Wireless Permits to two years. The Court denied both parties' motions on Plaintiffs' Public Utilities Code §§ 7901 and 7901.1 State law preemption claim and their § 6409(a) federal law preemption claim.

The matter was then sent to trial on the remaining to claims. After trial, the Court found for the City on Plaintiffs' claim that Public Utilities Code §§ 7901 and 7901.1 preempted Article 25.⁸ The Court ruled that nothing in those provisions limited the City's authority

⁶ Section 6409(a) provides in part: "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station."

⁷ Plaintiffs' also challenge certain uncodified provisions in Ordinance No. 12-11 related to obtaining new permits under Article 25 for Wireless Facilities that had been permitted under Section 11.9(b). While the City lost that aspect of the case, there is nothing in the proposed Ordinance that addresses this issue.

⁸ The Court did find that Public Utilities Code §§ 7901 and 7901.1 preempted Article 25 to the extent it allowed the City to deny an application for a Wireless Permit for economic or technological reasons. The proposed amendments would repeal the applicable sections.

to regulate Plaintiffs' use of the public right-of-way for aesthetics. The Court ruled for the Plaintiffs on their claim that the newly passed federal law – § 6409(a) – preempted the modification provisions contained in Article 25. The Court found: (i) the distributed antenna system (“DAS”) nodes that Plaintiffs had installed on utility poles pursuant to Wireless Permits are “base stations” as that term is used in § 6409(a); and (ii) that the City’s modification provisions did not comply with federal law.

On November 26, 2014, Superior Court issued a final judgment incorporating both the rulings on summary judgment and the rulings following the trial. In the final judgment, the Court enjoined the City’s enforcement of the modification provisions. The City intends to appeal the Court’s rulings that went against the City. Plaintiffs will likely appeal the Court’s rulings that were in favor of the City.

In addition to the Court’s ruling, after the trial the FCC issued a decision construing § 6409(a) and adopting implementing regulations.⁹ From the City’s prospective, the most important aspects of the FCC’s decision and regulations are the FCC’s construction of the terms “base station” and “substantially change the physical dimensions of such tower or base station” as those terms are used in § 6409(a).¹⁰

The FCC agreed with the Superior Court that Plaintiffs’ DAS nodes are “base stations” entitled to the benefits of § 6409(a). Unlike the Court, which did not address the meaning of the term “substantially change the physical dimensions,” the FCC made specific findings in this regard. Under the FCC’s decision and regulations, when applied to utility poles in the public rights-of-way that term means: (i) increasing the height of a pole by more than ten percent or more than ten feet, whichever is greater; (ii) adding an appurtenance to the body of the pole that would protrude from the edge of the pole by more than six feet; (iii) installing on the pole more than the standard number of new equipment cabinets for the technology involved, or more than four cabinets; (iv) installing equipment cabinets on the ground if there are no existing ground cabinets

⁹ *In re: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, FCC 14-153, WT Docket No. 13-238, 2014 WL 5374631 (Oct. 21, 2014). The FCC’s decision will not be effective until 90 days after is published in the Federal Register. Thereafter, parties to the FCC proceeding may file petitions for rehearing (30 days) and/or appeals to federal circuit courts (60 days).

¹⁰ The proposed Ordinance identifies these terms in the Section 1502 (Definitions), but grants the Department the authority to establish the actual definitions for these and the other terms used in § 6409(a). Granting this authority to the Department is preferable to including the definitions in the Ordinance, because the FCC’s decision is not final (see footnote 9, above). In the event the FCC on rehearing makes any changes to the definitions, or a court of appeal finds that the FCC’s construction is erroneous, the Department could amend the definitions by order or regulation.

associated with the facility; or (v) installing new ground cabinets that are more than ten percent larger in height or volume than any existing ground cabinets.

While the FCC would view these types of modifications as insubstantial, they certainly could have a negative impact on the City's streetscape. Nonetheless, the FCC determined that the City is powerless to deny a modification request that falls within these parameters.

The FCC also addressed the appropriate time for a permitting authority to issue a final determination on a modification application. While the FCC determined that 60 days was a sufficient time, the FCC did more than that. The FCC determined that a modification application would be "deemed granted" if the permitting authority did not issue a final decision within 60 days.¹¹

¹¹ The proposed Ordinance would leave it to the Department to establish a permitting process for modification permits that complies with the FCC's 60-day processing requirement.

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
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TDD/TTY No. 554-5227

December 31, 2014

File No. 141297

Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Jones:

On December 16, 2014, Supervisor Avalos introduced the following legislation:

File No. 141297

Ordinance amending the Public Works Code to modify certain requirements for Personal Wireless Service Facility Site Permits, amending the fees for obtaining such permits; and making environmental findings.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Angela Calvillo".

By: Linda Wong, Assistant Clerk
Budget and Finance Committee

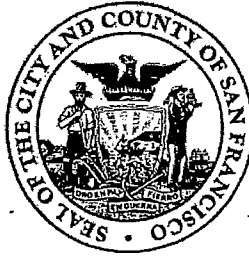
Attachment

c: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

Not defined as a project under CEQA Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

-Jeanie Poling 1/2/15

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MEMORANDUM

TO: Mohammed Nuru, Director, Public Works
Phil Ginsburg, General Manager, Recreation and Parks Department
John Rahaim, Director, Planning Department
Barbara A. Garcia, Director, Department of Public Health

FROM: Linda Wong, Assistant Clerk, Budget and Finance Committee, Board of Supervisors

DATE: December 31, 2014

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation, introduced by Supervisor Avalos on December 16, 2014:

File No. 141297

Ordinance amending the Public Works Code to modify certain requirements for Personal Wireless Service Facility Site Permits, amending the fees for obtaining such permits; and making environmental findings.

If you have any additional comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Frank Lee, Public Works
Sarah Ballard, Recreation and Parks Department
AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department
Greg Wagner, Department of Public Health
Colleen Chawla, Department of Public Health

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date.

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee.
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative

Sponsor(s):

Avalos

Subject:

Public Works Code - Personal Wireless Service Facility Site Permits

The text is listed below or attached:

Ordinance amending the Public Works Code to modify certain of the requirements for Personal Wireless Service Facility Site Permits, and amend the fees for obtaining such permits; and making environmental findings.

Signature of Sponsoring Supervisor:

For Clerk's Use Only:

141297