

1 [Permits for communications companies and equipment.]
2

3 **Ordinance amending Chapter 11, Article 1 of the San Francisco Administrative Code by**
4 **amending sections 11.1 and 11.9 to authorize state video franchise holders and**
5 **personal wireless service carriers to obtain utility conditions permits, requiring**
6 **persons installing personal wireless service facilities in the public rights-of-way to**
7 **obtain personal wireless service facilities site permits, imposing fees for personal**
8 **wireless service facilities site permits, and making environmental findings.**

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

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

13 Section 1. Findings.

14 (a) The City and County of San Francisco ("City") has various means of authorizing
15 the use of the public rights-of-way to provide communications services. The City will issue a
16 utility conditions permit ("UCP") to a landline telecommunications carrier and a franchise to a
17 video services provider. No City law expressly authorizes a personal wireless services carrier
18 to use the public rights-of-way, allows for use of the public rights-of-way for the construction of
19 personal wireless service facilities, or regulates that construction in any way. In the past, the
20 City had required entities seeking to construct personal wireless services in the public rights-
21 of-way to obtain major encroachment permits.

22 (b) Changes in federal and state law and litigation against the City now require the
23 City to amend its permitting processes for video service providers and entities seeking to
24 construct personal wireless services facilities.
25

1 (c) Due to changes in State law, the City will no longer issue franchises to video
2 services providers. In 2006, the State of California enacted the Digital Infrastructure and
3 Video Competition Act (“DIVCA”) (Public Utilities Code § 5800, et seq.). Under DIVCA, the
4 California Public Utilities Commission is now the sole franchising authority for video service
5 providers. Nevertheless, the City retains the authority to regulate construction by state video
6 franchise holders. Consistent with DIVCA, the proposed ordinance requires state video
7 franchise holders to obtain UCPs prior to constructing facilities in the public rights-of-way that
8 would be used to provide video service.

9 (d) In two separate lawsuits, the plaintiffs successfully challenged the City’s
10 authority to require telecommunications carriers to obtain encroachment permits to construct
11 personal wireless services facilities in the public rights-of-way. The courts in those cases held
12 that federal law (47 U.S.C. § 253) preempted the City’s authority to regulate the provision of
13 telecommunications services in this manner. In ruling against the City, the courts found that
14 federal law preempted the City’s major encroachment permit process because that process
15 “may have the effect of prohibiting” the provision of telecommunications services.

16 (e) The proposed ordinance requires all entities seeking to construct such facilities
17 to obtain UCPs and personal wireless services facilities site permits (“Wireless Permits”). The
18 proposed ordinance would allow the City to regulate the location and design of personal
19 wireless services facilities in the public rights-of-way through a permitting process that does
20 not contain any of the features the courts had found were preempted.

21 (f) The proposed ordinance would also: (i) authorize the Department of Public
22 Works to establish a procedure for obtaining Wireless Permits; (ii) establish certain
23 requirements for Wireless Permits; and (iii) authorize the Department of Public Works and
24 other City departments to impose fees to recover their costs related to issuing Wireless
25 Permits and inspecting facilities constructed under Wireless Permits.

1 Section 2. The San Francisco Administrative Code is hereby amended by amending
2 Sections 11.1, to read as follows:

3 SEC. 11.1. DEFINITIONS.

4 For purposes of Articles I through VIII of this Chapter, and of any Franchise granted
5 pursuant to this Chapter, the following terms, phrases, words, abbreviations, their derivations,
6 and other similar terms, when capitalized, shall have the meanings given herein. When not
7 inconsistent with the context, words used in the present tense include the future tense; words
8 in the plural number include the singular number; and words in the singular number include
9 the plural number. The words "shall" and "will" are mandatory. "May" is permissive. However,
10 as applied to official action, the words "shall" and "will" shall be directory in effect. Unless
11 otherwise expressly stated, words not defined herein shall be given their common and
12 ordinary meaning. References to governmental entities (whether persons or entities) refer to
13 those entities or their successors in authority. Unless otherwise expressly stated, if specific
14 provisions of law referred to herein are renumbered or amended, then the reference shall be
15 read to refer to the renumbered or amended provision.

16 (a) "Affiliate," when used in relation to any Person means another Person who owns
17 or Controls is owned or Controlled by, or is under common ownership or Control with, such
18 Person.

19 (b) "Applicable law" means all applicable federal, state, and City laws, ordinances,
20 codes, rules, regulations and orders, as the same may be amended or adopted from time to
21 time.

22 (c) "Applicant" means any Person submitting a Proposal pursuant to this Chapter.

23 (d) "Board" means the City's Board of Supervisors.

24 (e) "Bona Fide Institutional Lender" means any one or more of the following: (1) a
25 savings bank, a savings and loan association, a commercial bank or trust company, an

1 insurance company, a real estate investment trust, or any other Person which at the time a
2 pledge in trust or mortgage is recorded in favor of such Person or Persons, has assets of at
3 least \$500 million in the aggregate (or the equivalent in foreign currency, and is regularly
4 engaged in the financial services business; or (2) any special account, managed fund,
5 department, agency or Affiliate of any of the foregoing. For purposes hereof: (1) acting in a
6 “fiduciary capacity” shall be deemed to include acting as a trustee, agent, or in a similar
7 capacity under a mortgage, loan agreement, indenture or other loan document; and (2) a
8 lender, even if not a Bona Fide Institutional Lender, shall be deemed to be a Bona Fide
9 Institutional Lender if, no more than thirty (30) City business days after such loan is
10 consummated, the notes or other evidence of indebtedness or the collateral securing the
11 same are assigned to a Person then qualifying as a Bona Fide Institutional Lender.

12 (f) “Cable Service” means the one way transmission to Subscribers of video
13 programming or other programming service and subscriber interaction, if any, required to
14 select or use such video programming or other programming service.

15 (g) “Cable System” means a Facility that consists of a set of closed transmission
16 paths and associated signal generation, reception, and control equipment designed to provide
17 Cable Service to multiple Subscribers. Except where expressly stated otherwise, Cable
18 System includes an Open Video System. Cable System does not include: (1) a Facility that
19 serves only to retransmit the television signals of one or more television broadcast stations,
20 (2) a Facility of a common carrier which is subject, in whole or in part, to the provisions of Title
21 II of the Communications Act of 1934 (47 U.S.C. Sections 201—276) except that such Facility
22 shall be considered a Cable System to the extent such Facility is used to provide Cable
23 Services; and (3) any Facilities of a gas or electric utility necessary or proper and used solely
24 for: (i) the transmission, distribution, or supply of gas or electricity; or (ii) the transmission or
25

1 collection of gas and electric usage and pricing information incidental thereto; or (iii) to provide
2 services required by the City.

3 (h) "Cable System Franchise" means a Franchise authorizing construction,
4 installation, or operation of a Cable System or the provision of Cable Service over a Cable
5 System. "Cable System Franchise" includes an OVS Franchise, unless expressly excluded
6 hereunder.

7 (i) "CPUC" means the California Public Utilities Commission.

8 (j) "City" means the City and County of San Francisco, a municipal corporation of
9 the State of California.

10 (k) "Control" means the power to control the affairs and key decisions of another
11 Person, in whatever manner exercised, whether directly or indirectly.

12 (l) "Department," in reference to a Cable System Franchise or any other
13 communications-related Franchise, means the Department of Telecommunications and
14 Information Services. In reference to any gas, electric, or steam Franchise, "Department"
15 means the San Francisco Public Utilities Commission. In reference to any other type of
16 Franchise, "Department" means the City department assigned by the Board to ~~process~~
17 Proposal or administer the Franchise.

18 (m) "Facilities" includes any physical element used in connection with, or designed
19 to be used in connection with, the provision of Services, whether or not located in the Public
20 Rights-of-Way, including, without limitation, pedestals, cabinets, ducts and conduits (whether
21 empty or occupied), transformers, equipment, drains, handholds, lines, line extensions,
22 service drops, manholes, poles, power supplies and generators, splice boxes, surface location
23 markers, vaults, tunnels, amplifiers, power guards, nodes, cables, and fiber optics (whether
24 active or dark).

25 (n) "FCC" means the Federal Communications Commission.

1 (o) "Final Report" means a report submitted to the Board by the Department making
2 a final recommendation upon a Proposal.

3 (p) "Franchise" means an authorization granted by ordinance of the Board to a
4 Person to construct, install, or operate Facilities in the Public Rights-of-Way or to provide
5 Services using Facilities installed in the Public Rights-of-Way. "Franchise" shall not mean or
6 include any license or permit required for the privilege of transacting and carrying on a
7 business within the City as required by other ordinances or laws of the City, including, without
8 limitation:

9 (1) Any permit, agreement or authorization required in connection with operations
10 on public streets or property such as permits and agreements for placing devices on or in
11 poles, conduits or other structures, whether owned by the City or a private entity, or for
12 excavating or performing other work in or along Public Rights-of-Way; and

13 (2) Express or implicit authorization to provide Service to, or install Facilities on,
14 private property without owner consent.

15 (q) "Franchise Area" means the geographic area of the City in which a Franchise
16 authorizes a Grantee to construct, install, or operate Facilities or to provide Services.

17 (r) "Franchise Fee" means a payment made to the City in accordance with Section
18 11.21 below. In the case of a UVPP, "Franchise Fee" shall mean a fee in lieu of a franchise
19 fee, pursuant to 47 U.S.C. Section 573(c)(2)(B).

20 (s) "Grantee" means a Person granted a Franchise by the City, and any lawful
21 permitted successor or assign.

22 (t) "Gross Revenues" means any and all income, receipts and other revenue of any
23 kind or nature arising from or in connection with the operation of, or provision of Service using,
24 Facilities in the Franchise Area and as may be more specifically defined in a Franchise.

25

1 (u) "Material Breach" means a breach of the Franchise that has a substantial and
2 significant effect on the rights or benefits either party to the Franchise has secured pursuant to
3 the Franchise. "Material Breach" shall include, but not be limited to, those breaches
4 designated as such in the Franchise and this Chapter.

5 (v) "Open Video System" or "OVS" means a Cable System owned, operated, or
6 Controlled by a Person certified by the FCC pursuant to 47 U.S.C. Section 573 and holding an
7 OVS Franchise pursuant to this Article.

8 (w) "Operator" means any Person who: (1) provides Service over Facilities and
9 either directly or indirectly owns, or has an Affiliate that owns, a significant interest in the
10 Facilities; or (2) otherwise Controls, or is responsible for, through any arrangement, the
11 operation or management of Facilities.

12 (x) "OVS Franchise" means a Franchise authorizing construction, installation, or
13 operation of an Open Video System or the provision of Cable Service over an Open Video
14 System.

15 (y) "Permittee" means a person granted a UCP.

16 (z) "Person" means any individual, group, company, partnership, association, joint
17 stock company, trust, corporation, society, syndicate, club, business, or governmental entity.
18 "Person" shall not include the City.

19 (aa) "Personal Wireless Service" means commercial mobile services provided under a
20 license issued by the FCC.

21 (bb) "Personal Wireless Service Facilities" means antennas and related Facilities used to
22 provide or facilitate the provision of Personal Wireless Service.

23 (cc) "Personal Wireless Service Facilities Site Permit" means a permit issued by the
24 Department of Public Works authorizing a Person to construct Personal Wireless Service Facilities.

1 (~~zdd~~) “Proposal” means any application proposal submission or request filed pursuant
2 to the requirements of this Chapter to: (1) obtain a new Franchise; (2) Transfer a Franchise;
3 (3) extend a Franchise; or otherwise modify a Franchise. A Proposal includes an Applicant's
4 initial proposal, submission or request, as well as any and all amendments or supplements to
5 the Proposal and relevant correspondence.

6 (~~aaa~~) “Proposal Fee” means a charge to recover the City's actual costs of processing
7 Proposals hereunder.

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

14 (~~eeeg~~) “Required Service Area” means the geographic area of the City a Grantee must
15 construct, install or operate Facilities in or provide Service in, pursuant to its Franchise.

16 (~~adhh~~) “Revocation” means the City's affirmative act of Terminating a Franchise.

17 (~~eeii~~) “Service” means any service provided on a Commercial or for hire basis using
18 Facilities installed in the Public Rights-of-Way. “Service” includes without limitation: (1)
19 leasing or, through any other arrangement, offering the use of a Facility installed in the Public
20 Rights-of-Way (except for the mandatory provision of Facilities pursuant to 47 U.S.C. Section
21 224 or California Public Utility Commission orders) and (2) the transmission of electronic
22 signals through Facilities installed in the Public Rights-of-Way, whether or not owned by
23 Person providing service to Subscribers. “Service” shall not include Telecommunications
24 Service, State Video Service or Personal Wireless Service ~~unless and until Applicable Law permits~~
25 ~~local governments to require telephone corporations in California to obtain a local Franchise or pay~~

1 ~~fair and reasonable compensation for the use of the Public Rights-of-Way in connection with the~~
2 ~~provision of Telecommunications Service.~~

3 (jj) “State Video Service” means video programming services, Cable Service, or OVS
4 Service authorized under a State Video Service Franchise that is provided through Facilities located at
5 least in part in Public Rights-of-Way without regard to delivery technology, including Internet protocol
6 or other technology.

7 (kk) “State Video Service Franchise” means a franchise issued by the CPUC pursuant to
8 California Public Utilities Code Section 5800, et. seq.

9 (ll) “Subscriber” means the City or any Person who legally receives any Service.

10 (mm) “Telecommunications Service” means any service ~~regulated~~ subject to regulation
11 by the CPUC or the FCC as a telecommunications service and provided to customers by a
12 telephone corporation regulated by the CPUC.

13 (nn) “Termination” means the conclusion of a Franchise by any means, including, but
14 not limited to, by expiration of its term, abandonment, or Revocation.

15 (oo) “Transfer” means any transaction in which: (1) all or a portion of any Facilities or
16 any rights to use or operate Facilities located in the Public Rights-of-Way are sold, conveyed,
17 transferred, assigned, encumbered (except as set forth herein) or leased, in whole or in part,
18 directly or indirectly, by one or more transactions to another Person, whether voluntarily or by
19 operation of law or otherwise; or (2) there is any change, acquisition, or transfer in the identity
20 of the Person in Control of the Grantee, or any Person that controls Grantee, including,
21 without limitation, forced or voluntary sale, merger, consolidation, or receivership; or (3) the
22 rights or obligations under the Franchise are sold, conveyed, transferred, assigned,
23 encumbered (except as set forth herein) or leased, in whole or in part, directly or indirectly, by
24 one or more transactions to another Person, whether voluntarily or by operation of law or
25 otherwise. It will be presumed, for purposes of clause (2) above, that any transfer or

1 cumulative transfer of a voting interest by a Person or group of Persons acting in concert of
2 twenty five percent (25%) or more of Grantee, or Person that Controls Grantee, or any change
3 in the managing general partners of a Grantee is a change of Control. "Transfer" does not
4 include: (1) a lease to a UVPP pursuant to 47 U.S.C. Sections 532 or 573; (2) the
5 transmission of a commodity or electronic signal using Facilities on a common carrier basis;
6 (3) a lease or other right to use Facilities mandated pursuant to 47 U.S.C. Section 224,
7 California Public Utilities Code Section 767.5, or by an order of the CPUC; or (4) a pledge in
8 trust, mortgage or other encumbrance against the Facilities, or any portion thereof, given to a
9 Bona Fide Institutional Lender in connection with a loan or other financing required to secure
10 the construction, operation, or repair of the Facilities ("Loan") provided that such Loan is
11 subject to the rights and powers of the City pursuant to the Franchise and Applicable Law,
12 including, without limitation, the right of the City to approve any Transfer pursuant to Section
13 11.14 below upon foreclosure. "Transferring" and "Transferee" shall have correlative
14 meanings.

15 (~~jjpp~~) "Unaffiliated Video Programming Provider" or "UVPP" means any Person who
16 uses capacity on a franchised Cable System to deliver Cable Service or other
17 communications service (as that term is used in 47 U.S.C. Section 542(h)) to Subscribers and
18 who is not an Affiliate of the Grantee.

19 (~~kkqq~~) "Utility Conditions Permit" or "UCP" means a permit issued by the Department of
20 Public Works authorizing a Person to construct, install, and maintain ~~operate~~ specific Facilities
21 in the Public Rights-of-Way.

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

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1 SEC. 11.9. UTILITY CONDITIONS PERMIT, PERSONAL WIRELESS SERVICE
2 FACILITIES SITE PERMIT.

3 (a) Utility Conditions Permit.

4 (1) ~~Telephone Corporations~~Required for Providers of Telecommunications Service, State
5 Video Service and Personal Wireless Service. The Department of Public Works ~~may~~ shall require
6 a Person, ~~including a Grantee of an existing Franchise,~~ to obtain a Utility Conditions Permit prior
7 to their construction, installation, or maintenance of Facilities in the Public Rights-of-Way that
8 will be used to provide Telecommunications Service, State Video Service Telephone Lines (as defined
9 in the California Public Utilities Code) or Personal Wireless Service in the Public Rights-of-Way.

10 UCPs shall be issued by the Department of Public Works in a manner consistent with
11 Applicable Law to Persons who are willing to comply with the City's requirements regarding the
12 physical use and occupation of the Public Rights-of-Way and who have: (A) authority as a Telephone
13 Corporation (as defined in the California Public Utilities Code) to occupy the Public Rights-of-Way
14 pursuant to California Public Utilities Code Section 7901; (B) authority to occupy the Public
15 Rights-of-Way pursuant to California Public Utilities Code Section 5885; or (C) a license to provide
16 Personal Wireless Service issued under federal law, and who are willing to comply with the City's
17 requirements regarding the physical use and occupation of the Public Rights-of-Way. Persons
18 intending to construct, install, or maintain Facilities Telephone Lines to provide
19 Telecommunications Services, State Video Service or Personal Wireless Service shall prove their
20 legal right to occupy and use the Public Rights-of-Way by providing the Department of Public
21 Works a ~~current~~ copy of their current: (a) certificate of public convenience and necessity issued
22 by the CPUC (which shall expressly state the Person's authority to provide facilities-based
23 Telecommunications Service); (b) State Video Service Franchise issued by the CPUC; or (c) license to
24 provide Personal Wireless Service issued by the FCC, or otherwise demonstrate that they have been
25 authorized to occupy the Public Rights-of-Way by the CPUC ("CPCN"). Such "CPCN" shall

1 ~~expressly state the Person's authority to provide facilities-based Telecommunications Service.~~ The
2 Department of Public Works shall include in a UCP shall set forth such conditions, in addition to
3 those already set forth in Applicable Law, as may be required to govern the Permittee's
4 construction, installation, or maintenance of Facilities occupancy in the Public Rights-of-Way to
5 protect and benefit the public health, safety and welfare. The terms and conditions of a UCP
6 shall be limited to those areas consistent with the City's authority under Applicable Law. A
7 UCP ~~shall expressly limit the services which may be offered using the Telephone Lines to those~~
8 ~~services that do not require a Franchise and~~ shall have a term of no longer than two (2) years and
9 may be renewed in accordance with requirements established by the Department in the UCP. A UCP
10 shall provide that the Permittee is not entitled to construct, install, or maintain Personal Wireless
11 Service Facilities in the Public Rights-of-Way without obtaining a Personal Wireless Service Facilities
12 Site Permit under Section 11.9(b) below.

13 ~~(b) — Persons Subject To Franchise Requirements. Where a Person seeks to construct or~~
14 ~~install Facilities that will be used to provide both Telecommunications Service and Service requiring a~~
15 ~~Franchise pursuant to Section 11.3 above, a UCP may be issued only if: (1) the Person has obtained or~~
16 ~~has submitted a Proposal to obtain any required Franchise; and (2) the Person agrees not to provide~~
17 ~~Service requiring a Franchise until a Franchise has been granted by the Board. Where a Person has~~
18 ~~not already obtained any required Franchise, the term of its UCP shall be limited to six (6) months and~~
19 ~~shall not be extended more than twice. A UCP shall not be issued to a Person seeking to construct or~~
20 ~~install Facilities to provide only Service requiring a Franchise.~~

21 ~~(c)(2) CPU UCP fee.~~ Any Person required to obtain or renew a UCP shall pay to the
22 Department of Public Works a non-refundable application fee of two thousand dollars (\$2,000) to
23 compensate the City for all costs (including the City Attorney's costs) related to: ~~(1A)~~
24 establishing the Person's applicants' authority to occupy the Public Rights-of-Way public right-of-
25 way; (2B) establishing the terms on which Persons applicants may occupy the Public Rights-of-

1 ~~Way public right-of-way~~; and (3C) granting, monitoring, enforcing, renewing, revising or
2 revoking UCPs. These fees shall be deposited in the Public Works Excavation Fund
3 established by Section 10.100-230 of the San Francisco Administrative Code.

4 (b) Personal Wireless Service Facilities Site Permit.

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

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

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

1 and conserved. The Planning Department shall not recommend approval of a Personal Wireless
2 Service Facilities Site Permit unless the Planning Department determines that a Personal Wireless
3 Service Facility in the proposed location is consistent with the public health, safety, convenience and
4 general welfare and will not unreasonably affect, intrude upon or diminish any of the identified City
5 resources. Where review by the Planning Department is required, the Department of Public Works
6 shall not issue a Wireless Services Facilities Site Permit unless the Planning Department has
7 recommended approval.

8 (B) Review by the Recreation and Park Department. The Department of Public Works shall
9 submit to the Recreation and Park Department for review any application for a Personal Wireless
10 Service Facilities Site Permit allowing for the construction, installation, or maintenance of a Personal
11 Wireless Service Facility adjacent to a City park or open space. The Recreation and Park Department
12 shall not recommend approval of a Personal Wireless Service Facilities Site Permit unless the
13 Recreation and Park Department determines that a Personal Wireless Service Facility in the proposed
14 location will not unreasonably affect, intrude upon or diminish a City park or open space. Where
15 review by the Recreation and Park Department is required, the Department of Public Works shall not
16 issue a Wireless Services Facilities Site Permit unless the Recreation and Park Department has
17 recommended approval.

18 (C) Review by the Department of Public Health. The Department of Public Works shall
19 submit to the Department of Public Health for review any application for a Personal Wireless Service
20 Facilities Site Permit allowing for the construction, installation, or maintenance of a Personal Wireless
21 Service Facility. The Department of Public Health shall not recommend approval of a Personal
22 Wireless Service Facilities Site Permit unless the Department of Public Health determines that any
23 human exposure to radio frequency emissions from the proposed Personal Wireless Service Facility is
24 within limits established by the FCC. The Department of Public Works shall not issue a Wireless
25 Services Facilities Site Permit unless the Department of Public Health has recommended approval.

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2 (3) Personal Wireless Service Facilities Site Permit Fees.

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

14 (B) Fees of Other City Departments. Where as required under this Section the Department
15 of Public Works has referred an application for a Personal Wireless Service Facilities Site Permit to
16 the Planning Department, the Recreation and Park Department or the Department of Public Health,
17 the applicant shall pay the following additional fees for each Personal Wireless Service Facility
18 contained in an application for a Personal Wireless Service Facilities Site Permit: (i) a Planning
19 Department non-refundable fee of one hundred and five dollars (\$105.00) plus time and materials;
20 (ii) a Recreation and Park Department non-refundable fee of one hundred and twenty-five dollars
21 (\$125.00) and (iii) a Department of Public Health non-refundable fee of one hundred and thirty-five
22 dollars (\$135.00) plus time and materials for any review that takes more than thirty (30) minutes. The
23 purpose of these fees is to compensate the applicable City department for all costs related to reviewing
24 an application for a Personal Wireless Service Facilities Site Permit.

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

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

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

24 Section 2. Environmental Findings. The Planning Department has reviewed the
25 ordinance in accordance with the California Environmental Quality Act (California Public

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

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6 APPROVED AS TO FORM:
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