

BOARD of SUPERVISORS



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MEMORANDUM

TO: Julie Rosenberg, Executive Director, Board of Appeals
Ben Rosenfield, Controller, Office of the Controller

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: June 26, 2019

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Mayor Breed on June 18, 2019:

File No. 190598

Ordinance amending the Public Works Code to modify the requirements for obtaining Personal Wireless Service Facility Site Permits; and affirming the Planning Department's determination under the California Environmental Quality Act.

If you have 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 or by email at: erica.major@sfgov.org.

c: Gary Cantara, Board of Appeals
Todd Rydstrom, Office of the Controller

1 [Public Works Code - Personal Wireless Service Facility Site Permits]

2

3 **Ordinance amending the Public Works Code to modify the requirements for obtaining**
4 **Personal Wireless Service Facility Site Permits; and affirming the Planning**
5 **Department’s determination under the California Environmental Quality Act.**

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 *strikethrough italics Times New Roman font*.
9 **Board amendment additions** are in double-underlined Arial font.
10 **Board amendment deletions** are in ~~strikethrough 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. _____ and is incorporated herein by reference.

18 Section 2. Article 25 of the Public Works Code is hereby amended by revising
19 Sections 1501, 1502, 1507, 1508, 1509, 1510, 1511, 1514, and 1527, and deleting sections
20 1512 and 1513, to read as follows:

21 SEC. 1501. DEPARTMENT ORDERS AND REGULATIONS.

22 (a) The Department may adopt such orders or regulations as it deems necessary
23 to implement the requirements of this Article 25, or to otherwise preserve and maintain the
24
25

1 public health, safety, welfare, and convenience, as are consistent with this requirements of
2 this Article 25 and Applicable Law.

3 (b) The Department will work with the Planning Department and Recreation and Park
4 Department to adopt regulations or orders establishing initial Objective Standards for the Department
5 to use to determine whether a proposed Personal Wireless Service Facility satisfies the applicable
6 Tier A, B, or C Compatibility Standard. The Department may by order or regulation modify the initial
7 Objective Standards when necessary to, among other things, approve additional or different
8 equipment, designs, or configurations that the Department determines also satisfy the applicable Tier
9 A, B, or C Compatibility Standards.

10
11 **SEC. 1502. DEFINITIONS.**

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

17 "Adjacent" means:

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

22 (b) On front of and on the same side of the street, when used in connection with a
23 City park or open space.

24 "Applicable Law" means all applicable federal, state, and City laws, ordinances, codes,
25 rules, regulations and orders, as the same may be amended or adopted from time to time.

1 “Applicant” means any Person submitting an Application for a Personal Wireless
2 Service Facility Site Permit or Modification Permit under this Article 25.

3 “Application” means an application for a Personal Wireless Service Facility Site Permit
4 or Modification Permit under this Article 25.

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

11 “City” means the City and County of San Francisco.

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

16 “Department” means the Department of Public Works.

17 “Director” means the Director of Public Works.

18 “Disfavored Design” means any design for a Personal Wireless Service Facility that is
19 identified in the Objective Standards as disfavored.

20 “Eligible Facilities Request” shall have the meaning determined by the Department in
21 an order or regulation, provided that the Department’s definition shall be consistent with the
22 definition of that term:(a) as it is used in Section 6409(a) of the Middle Class Tax Relief and
23 Job Creation Act of 2012, codified at 47 U.S.C. § 1455(a) as may be amended from time to
24 time; and (b) as it is defined by the FCC in any decision addressing that section or any
25 regulation implementing that section._

1 "FCC" means the Federal Communications Commission.

2 ~~"Immediate Vicinity" means:~~

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

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

11 (c) ~~—Within one (1) block in any direction from the boundary of a Zoning Protected~~
12 ~~Location; and~~

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

14 "Modification Permit" means a Permit issued by the Department pursuant to Section
15 1522 below, authorizing a Permittee to modify equipment installed on a Utility, ~~Transit, or~~
16 ~~Street Light~~ Pole by the Permittee pursuant to a Personal Wireless Service Facility Site
17 Permit.

18 "Objective Standards" means standards to determine whether a proposed Personal Wireless
19 Service Facility satisfies the applicable Tier A, B, or C Compatibility Standard that are based largely
20 on factors that are quantifiable, measurable, and verifiable.

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

23 "Park Protected Location Compatibility Standard" means whether a Personal Wireless
24 Service Facility that is proposed to be located in a Park Protected Location would

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

3 "Permittee" means a Person issued a Personal Wireless Service Facility Site Permit.

4 "Person" means any individual, group, company, partnership, association, joint stock
5 company, trust, corporation, society, syndicate, club, business, or governmental entity.

6 "Person" shall not include the City.

7 "Personal Wireless Service" means commercial mobile services provided under a
8 license issued by the FCC.

9 "Personal Wireless Service Facility" or "Facility" means antennas and related facilities
10 used to provide or facilitate the provision of Personal Wireless Service.

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

14 "Planning Protected Location" means any of the following proposed locations for a
15 Personal Wireless Service Facility:

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

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

23 (c) On a ~~Utility, Transit, or Street Light~~ Pole that is on a Public Right-of-Way that is
24 Adjacent to a national historic landmark, California landmark, San Francisco landmark,
25 structure of merit, architecturally significant building, or locally significant building, as more

1 specifically described and cataloged in materials prepared and maintained by the Planning
2 Department;

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

6 (e) On a Utility, ~~Transit, or Street Light~~ Pole that is on a Public Right-of-Way that the
7 General Plan has designated as having views that are rated “excellent” or “good.”

8 “Planning Protected Location Compatibility Standard” means whether an Applicant for
9 a Personal Wireless Service Facility Site Permit demonstrates that a proposed Personal
10 Wireless Service Facility would be compatible with any of the Planning Protected Locations:

11 (a) For a historic, historically or architecturally significant, decorative, or specially
12 designed ~~Street Light~~ Utility Pole, the applicable standard is whether a proposed Personal
13 Wireless Service Facility would significantly degrade or detract from the aesthetic attributes
14 that distinguish the ~~Street Light~~ Utility Pole as historic, historically significant, architecturally
15 significant, decorative, or specially designed.

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

22 (c) For a Utility, ~~Transit, or Street Light~~ Pole that is Adjacent to a national historic
23 landmark, California landmark, San Francisco landmark, structure of merit, architecturally
24 significant building, or locally significant building, the applicable standard is whether a
25

1 proposed Personal Wireless Service Facility would significantly degrade *or detract from* the
2 aesthetic attributes that were the basis for the special designation of the building.

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

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

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

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

1 "Replace" means to remove previously permitted equipment and install new
2 equipment at a permitted Personal Wireless Service Facility that is identical in size or smaller
3 than the previously permitted equipment.

4 ~~"Street Light Pole" means a pole used solely for street lighting and which is located in the~~
5 ~~Public Right-of-Way.~~

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

12 "Tier A Compatibility Standard" means that an Applicant for a Personal Wireless
13 Service Facility on a Public Right-of-Way that is within an Unprotected Location has
14 demonstrated that the proposed Personal Wireless Service Facility would not significantly
15 detract from any of the defining characteristics of the neighborhood.

16 "Tier A Personal Wireless Service Facility" means a Personal Wireless Service Facility
17 where the proposed location for the facility is in an Unprotected Location.

18 "Tier B Compatibility Standard" means that an Applicant for a Personal Wireless
19 Service Facility on a Public Right-of-Way that is either within or Adjacent to a Planning
20 Protected Location or Zoning Protected Location has demonstrated that the proposed
21 Personal Wireless Service Facility ~~would not significantly detract from any of the defining~~
22 ~~characteristics of the~~ satisfies the applicable Planning Protected Location Compatibility Standard
23 or Zoning Protected Location Compatibility Standard.

1 "Tier B Personal Wireless Service Facility" means a Personal Wireless Service Facility
2 where the proposed location for the facility is in a Planning Protected Location or Zoning
3 Protected Location.

4 "Tier C Compatibility Standard" means that an Applicant for a Personal Wireless
5 Service Facility on a Public Right-of-Way that is either within or Adjacent to a Park Protected
6 Location has demonstrated that the proposed Personal Wireless Service Facility satisfies the
7 applicable would not significantly detract from any of the defining characteristics of the Park
8 Protected Location Compatibility Standard.

9 "Tier C Personal Wireless Service Facility" means a Personal Wireless Service Facility
10 where the proposed location for the facility is in a Park Protected Location.

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

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

19 "Unprotected Location" means a proposed location for a Personal Wireless Service
20 Facility that is neither a Planning Protected Location, Zoning Protected Location, nor a Park
21 Protected Location.

22 "Utility Pole" means a power pole, telephone pole, or other similar pole subject to
23 California Public Utilities Commission General Order 95, and located within the Public Rights-of-
24 Way.

1 "Zoning Protected Location" means on a Utility, ~~Transit, or Street Light~~ Pole that is on a
2 Public Right-of-Way that is within a Residential or Neighborhood Commercial zoning district
3 under the Planning Code.

4 "Zoning Protected Location Compatibility Standard" means that an Applicant for a
5 Personal Wireless Service Facility Site Permit on a Public Right-of-Way that is within a
6 Zoning Protected Location has demonstrated that the proposed Personal Wireless Service
7 Facility would not significantly detract from any of the defining characteristics of the
8 Residential or Neighborhood Commercial zoning district.

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

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

15 (b) Department of Public Health Determination. The Department of Public Health
16 shall make a determination whether the Application satisfies the Public Health Compliance
17 Standard. The determination of the Department of Public Health shall be in writing and shall
18 set forth the reasons therefor. The Department of Public Health shall transmit its
19 determination to the Department within ~~twenty (20)~~ ten (10) business days of receipt of the
20 Application from the Department. With the concurrence of the Applicant, the Department of
21 Public Health may extend this review period beyond ten (10) business days.

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

1 **SEC. 1508. DEPARTMENT REVIEW OF A PERSONAL WIRELESS SERVICE FACILITY**
2 **SITE PERMIT APPLICATION.**

3 The Department shall review an Application for a Personal Wireless Service Facility
4 Site Permit to determine whether the Application:

5 (a) Receives an affirmative determination from the Department of Public Health
6 under the Public Health Compliance Standard; and

7 (b) Meets ~~Receives an affirmative determination from the Planning Department or the~~
8 ~~Recreation and Park Department (or both if required) under~~ the applicable Tier A, Tier B, or Tier C
9 Compatibility Standard based on the Department's application of the Objective Standards; or

10 (c) Must be referred to the Planning Department and/or the Recreation and Park
11 Department for additional review because: (1) the Objective Standards have not been adopted; (2) the
12 proposed Personal Wireless Service Facility is a Disfavored Design; or (3) the Department's
13 application of the Objective Standards resulted in a finding the Application did not meet the applicable
14 Tier A, Tier B, or Tier C Compatibility Standard, but the Application may still comply with the
15 applicable Tier A, Tier B, or Tier C Compatibility Standard.

16
17 **SEC. 1509. PLANNING DEPARTMENT REVIEW OF A TIER A OR TIER B PERSONAL**
18 **WIRELESS SERVICE FACILITY SITE PERMIT APPLICATION.**

19 (a) Referral to Planning Department.

20 (1) Until such time as the Department has adopted Objective Standards, the ~~The~~
21 Department shall refer an Application for a Tier A or Tier B Personal Wireless Service Facility
22 Site Permit to the Planning Department for a review of the proposed Personal Wireless
23 Service Facility under the applicable Tier A or Tier B Compatibility Standard.

24 (2) After the Department has adopted Objective Standards, the Department shall
25 refer an Application for a Tier A or Tier B Personal Wireless Service Facility Site Permit to the

1 Planning Department for additional review under the applicable Tier A or Tier B Compatibility
2 Standard if: (A) the proposed Personal Wireless Service Facility does not meet the Tier A or B
3 Compatibility Standard based on the Department's application of the Objective Standards; or (B) the
4 proposed Personal Wireless Service Facility is a Disfavored Design.

5 (b) Planning Department Determination.

6 ~~(1) — If the Department has referred an Application for a Tier A or Tier B Personal~~
7 ~~Wireless Service Facility Site Permit to the Planning Department, the~~ The Planning Department
8 shall make a determination whether ~~the an~~ Application for a Tier A or Tier B Personal Wireless
9 Service Facility Site Permit satisfies the applicable Tier A or Tier B Compatibility Standard.

10 The Planning Department's determination shall be in writing and shall set forth the reasons
11 therefor. The Planning Department shall transmit its determination to the Department within
12 ~~ten (10) twenty (20)~~ business days of receipt of the Application from the Department. With the
13 concurrence of the Applicant, the Planning Department may extend this review period
14 beyond ~~ten (10) twenty (20)~~ business days.

15 ~~(2) — The Planning Department's determination that an Application for a Tier B~~
16 ~~Personal Wireless Service Facility Site Permit satisfies the Tier B Compatibility Standard for a Zoning~~
17 ~~Protected Location may include a Condition that the Personal Wireless Service Facility not obstruct~~
18 ~~the view from or the light into any adjacent residential window.~~

19 (c) Affirmative Determination Required. The Department shall not approve an
20 Application for a Tier A or Tier B Personal Wireless Service Facility Site Permit that has been
21 referred to the Planning Department unless the Planning Department makes a determination
22 that the Application satisfies the applicable Tier A or B Compatibility Standard.

23
24 **SEC. 1510. RECREATION AND PARK DEPARTMENT REVIEW OF A TIER C**
25 **PERSONAL WIRELESS SERVICE FACILITY SITE PERMIT APPLICATION.**

1 (a) Referral to Recreation and Park Department Required.

2 (1) Until such time as the Department has adopted Objective Standards, the
3 Department shall refer an Application for a Tier C Personal Wireless Service Facility Site
4 Permit to the Recreation and Park Department for a review of the proposed Personal
5 Wireless Service Facility under the Tier C Compatibility Standard.

6 (2) After the Department has adopted Objective Standards, the Department shall
7 refer an Application for a Tier C Personal Wireless Service Facility Site Permit to the Recreation and
8 Park Department for additional review under the Tier C Compatibility Standard if: (A) the proposed
9 Personal Wireless Service Facility does not meet the Tier C Compatibility Standard based on the
10 Department's application of the Objective Standards; or (B) the proposed Personal Wireless Service
11 Facility is a Disfavored Design.

12 (b) Recreation and Park Department Determination. If the Department has referred an
13 Application for a Tier C Personal Wireless Service Facility Site Permit to the Recreation and Park
14 Department the The Recreation and Park Department shall make a determination whether the
15 an Application for a Tier C Personal Wireless Service Facility Site Permit satisfies the Tier C
16 Compatibility Standard. The Recreation and Park Department's determination shall be in
17 writing and shall set forth the reasons therefor. The Recreation and Park Department shall
18 transmit its determination to the Department within ten (10) twenty (20) business days of
19 receipt of the Application from the Department. With the concurrence of the Applicant, the
20 Recreation and Park Department may extend this review period beyond ten (10) twenty (20)
21 business days.

22 (c) Affirmative Determination Required. The Department shall not approve an
23 Application for a Tier C Personal Wireless Service Facility Site Permit that has been referred to
24 the Recreation and Park Department unless the Recreation and Park Department makes a
25 determination that the Application satisfies the Tier C Compatibility Standard.

1 **SEC. 1511. DEPARTMENT FINAL DETERMINATION.**

2 (a) Determination in Writing.

3 ~~(1) — Tentative Approval. A Department tentative approval of an Application for a~~
4 ~~Personal Wireless Service Facility Site Permit shall be in writing and shall set forth the reasons~~
5 ~~therefor. If a Department tentative approval contains any Conditions, the Conditions shall also be in~~
6 ~~writing.~~

7 (2) ~~Final Determination.~~ A Department final determination to approve or
8 deny an Application for a Personal Wireless Service Facility Site Permit shall be in writing
9 and shall set forth the reasons therefor. If a Department final determination to approve an
10 Application contains any Conditions imposed by and City department that reviewed the
11 Application, the Conditions shall also be in writing.

12 (b) Denial. The Department shall issue a final determination denying an Application
13 for a Personal Wireless Service Facility Site Permit within three (3) business days of any of
14 the following events:

15 (1) The Department's receipt of a determination from the Department of
16 Public Health that the Application does not ~~comply with~~ satisfy the Public Health Compliance
17 Standard;

18 (2) (i) The Department's receipt of a determination from the Planning
19 Department or the Recreation and Park Department (or both if required) that the Application does
20 not meet the applicable Tier A, B, or C Compatibility Standard based on the Department's
21 application of the Objective Standards; or (ii) where applicable, the Department's receipt of a
22 determination from the Planning Department or the Recreation and Park Department that the
23 Application does not meet the applicable Tier A, B, or C Compatibility Standard; or

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

4 ~~(e) — Approval Without Conditions.~~

5 ~~————— (1) — Tentative Approval. If no City department reviewing an Application for a~~
6 ~~Personal Wireless Service Facility Site Permit adds any Conditions to its approval of the Application,~~
7 ~~the Department shall issue a tentative approval of an Application for a Personal Wireless Service~~
8 ~~Facility Site Permit without Conditions within three (3) business days of the occurrence of the last of~~
9 ~~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; and~~

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.~~

15 ~~(2) — Final Approval. Following the Department's tentative approval of an~~
16 ~~Application for a Personal Wireless Service Facility Site Permit without any Conditions, the~~
17 ~~Department shall issue a final determination as follows:~~

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

20 ~~(B) — If no protest is timely submitted, the Department shall issue a final~~
21 ~~determination approving the Application within a reasonable time after the time to file a protest has~~
22 ~~expired; or~~

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

1 ~~(c)~~(d) Approval ~~with Conditions~~.

2 (1) ~~Tentative Approval~~Time for Issuance. ~~If any City department reviewing an~~
3 ~~Application for a Personal Wireless Service Facility Site Permit adds any Conditions to its approval of~~
4 ~~the Application, the~~ The Department shall issue a ~~tentative~~ final approval of ~~the~~ an Application
5 ~~with Conditions~~ within three (3) business days of the occurrence of the last of the following
6 events:

7 (A) The Department's receipt of a determination from the Department
8 of Public Health that the Application complies with the Public Health Compliance Standard;

9 (B) (i) The Department's receipt of a determination from the Planning
10 Department or the Recreation and Park Department (or both if required) that the Application meets
11 the applicable Tier A, B, or C Compatibility Standard based on the Department's application of the
12 Objective Standards; or (ii) where applicable, the Department's receipt of a determination from the
13 Planning Department or the Recreation and Park Department that the Application meets the
14 applicable Tier A, B, or C Compatibility Standard; ~~or and~~

15 (C) If applicable, the ~~The~~ Department's receipt of a notice from the
16 Applicant that it accepts ~~all of those~~ any Conditions imposed by any City department that reviewed
17 the Application.

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

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

23 (B) — ~~If no protest is timely submitted, the Department shall issue a final~~
24 ~~determination approving the Application within a reasonable time after the time to file a protest has~~
25 ~~expired; or~~

1 (1) — Provide a description and a photo-simulation of the proposed Personal
2 *Wireless Service Facility;*

3 (2) — Summarize the determinations of any City departments that were necessary for
4 *the tentative approval of the Application;*

5 (3) — Identify any Conditions added by any City departments that have been accepted
6 *by the Applicant and are now part of the Application;*

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

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

10 (6) — Specify the applicable grounds for protesting the Application under this Article
11 *25;*

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

14 (8) — State whether the Applicant intends to file an Application for a Modification
15 *Permit at any time during the term of the Personal Wireless Service Facility Site Permit and, if so,*
16 *identify: (A) the time frame the Applicant anticipates applying for a Modification Permit; and (B) the*
17 *nature of any modifications the Applicant anticipates including in the Application for a Modification*
18 *Permit.*

19
20 ***SEC. 1513. PROTEST OF A PERSONAL WIRELESS FACILITY SITE PERMIT.***

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

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

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

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

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

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

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

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

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

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

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

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

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

7 ~~(1) — The Department of Public Health incorrectly determined that the Application~~
8 ~~complies with the Public Health Compliance Standard;~~

9 ~~(2) — In the case of an Application for a Tier A or Tier B Personal Wireless Service~~
10 ~~Facility Site Permit, the Planning Department incorrectly determined that the Application meets the~~
11 ~~applicable Tier A or Tier B Compatibility Standard;~~

12 ~~(3) — In the case of an Application for a Tier C Personal Wireless Service Facility~~
13 ~~Site Permit, the Recreation and Park Department incorrectly determined that the Application meets~~
14 ~~the Tier C Compatibility Standard;~~

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

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

20
21 **SEC. 1514. NOTICE OF FINAL DETERMINATION OF A PERSONAL WIRELESS**
22 **SERVICE FACILITY SITE PERMIT APPLICATION.**

23 (a) Notice of Approval. The Applicant Department shall provide notice to the general
24 public of a final determination to approve an Application for a Personal Wireless Service
25 Facility Site Permit.

1 (1) Types of Notice Required.

2 (A) ~~The Department shall promptly mail a notice of final determination to~~
3 ~~approve an Application for a Personal Wireless Service Facility Site Permit to both the Applicant and~~
4 ~~to any neighborhood association identified by the Planning Department for any neighborhood within~~
5 ~~three hundred (300) feet of the approved Personal Wireless Service Facility. The Applicant shall~~
6 ~~promptly mail a copy of a Department final determination to approve an Application for a Personal~~
7 ~~Wireless Service Facility Site Permit to: (i) any Person who owns property that is within three~~
8 ~~hundred (300) feet of the approved location for the Personal Wireless Service Facility; (ii) any Person~~
9 ~~who is a tenant in any residential property that is within three hundred (300) feet of the approved~~
10 ~~location for the Personal Wireless Service Facility; (iii) any neighborhood association identified by~~
11 ~~the Planning Department for any neighborhood that is within six hundred (600) feet of the approved~~
12 ~~location for the Personal Wireless Service Facility; and (iv) the member of the Board of Supervisors~~
13 ~~who represents the district in which the approved Personal Wireless Service Facility would be located.~~

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

18 (C)(B) ~~The Department shall require an Applicant shall for a Personal~~
19 ~~Wireless Service Facility Site Permit to promptly post notice of a Department final determination~~
20 ~~to approve an Application for a Personal Wireless Service Facility Site Permit on the Utility~~
21 ~~Pole to be used for the proposed Personal Wireless Service Facility and in on a minimum of four (4)~~
22 ~~other Utility Poles, other poles, or other conspicuous places throughout the block face located~~
23 ~~within three hundred (300) feet of the where the approved location for the Personal Wireless~~
24 ~~Service Facility is to be located and to provide the Department with evidence, as the Department may~~
25 ~~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 set forth in Section 1530 below; and~~

17 (F) Explain how any interested Person may obtain additional
18 information and documents related to the ~~Application Permit; 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)~~ Notice of Denial. The Department shall provide notice of a final determination to
24 deny an Application for a Personal Wireless Service Facilities Site Permit.

1 (1) Type of Notice Required. The Department shall promptly mail a notice of
2 final determination to deny an Application for a Personal Wireless Service Facility Site Permit
3 to 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~~ set forth in Section 1530.

15
16 **SEC. 1527. FEES AND COSTS.**

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

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

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

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

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

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

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

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

24 ~~(d)(c)~~ Modification Permit Fees. Each Applicant for a Modification Permit shall pay to:
25 (1) the Department a non-refundable fee of three hundred thirty-eight dollars (\$338.00); and

1 (2) ~~any the Department of Public Health other City department reviewing the Application the fees~~
2 set forth in Section 1527(a)(2) above.

3 ~~(e)(d)~~ Inspection Fees. The Department and the Department of Public Health shall
4 impose fees for the inspection of a permitted Personal Wireless Service Facility. The purpose
5 of these fees is to enable these City departments to recover their costs related to inspecting
6 a permitted Personal Wireless Service Facility.

7 (1) Department Inspection Fee. Each Permittee shall pay the Department a
8 non-refundable time and materials inspection fee not to exceed one hundred fifty dollars
9 (\$150.00) to inspect a permitted Personal Wireless Service Facility as required under Section
10 1516(b) above.

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

15 ~~(f)(e)~~ Adjustment of Fees ~~for CPI~~.

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

1 (2) Controller Adjustments. Beginning with fiscal year 2019-2020, the fees
2 established herein may be adjusted each year on July 1 without further action by the Board of
3 Supervisors, to reflect changes in City department costs to provide the services required herein. Not
4 later than April 1 of each year the Controller will determine whether the current fees have produced
5 or are projected to produce revenues sufficient to enable City departments to recover the costs of the
6 permitting services required by this Article 25, and that the fees will not produce revenue that is
7 significantly more than the costs of providing such services. If necessary, the Controller will adjust
8 the fees upward or downward for the upcoming fiscal year as appropriate to ensure that City
9 departments recover their costs without producing revenue that is significantly more than such costs.
10 The adjusted fees shall become operative on July 1.

11 ~~(g)~~(f) Discretion to Require Additional Fees. In instances where the review of an
12 Application for a Personal Wireless Service Facility Site Permit is or will be unusually costly
13 to the Department or to other City departments, the Director, in his or her discretion, may,
14 after consulting with other applicable City departments, agencies, boards, or commissions,
15 require an Applicant for a Personal Wireless Service Facility Site Permit to pay a sum in
16 excess of the amounts charged pursuant to this Section 1527. This additional sum shall be
17 sufficient to recover actual costs incurred by the Department and/or other City departments,
18 agencies, boards, or commissions, in connection with an Application for a Personal Wireless
19 Service Facility Site Permit and shall be charged on a time and materials basis. Whenever
20 additional fees are charged, the Director, upon request, shall provide in writing the basis for
21 the additional fees and an estimate of the additional fees.


22 ~~(h)~~(g) Deposit of Fees. All fees paid to the Department for Personal Wireless Service
23 Facility Site Permits shall be deposited in the Public Works Excavation Fund established by
24 Administrative Code Section 10.100-230. All other fees shall go directly to the appropriate
25 City department.

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

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

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

16
17 APPROVED AS TO FORM:
18 DENNIS J. HERRERA, City Attorney

19 By: 
20 WILLIAM K. SANDERS
21 Deputy City Attorney

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LEGISLATIVE DIGEST

[Public Works Code - Personal Wireless Service Facility Site Permits]

Ordinance amending the Public Works Code to modify certain of the requirements for obtaining Personal Wireless Service Facility Site Permits, including the requirements for public notice and adjustment of permit fees; and affirming the Planning Department’s determination under the California Environmental Quality Act.

Existing Law

Among other things, Article 25 of the Public Works Code allows the City and County of San Francisco (“City”) to regulate the location and design of a personal wireless service facility (“Wireless Facility”). Article 25 requires a permit issued by Public Works to install a Wireless Facility on a utility, transit or street light pole in the public right-of-way (“Wireless Permit”).

Article 25 requires other City departments to review applications for Wireless Permits. Public Works may not issue a Wireless Permit without the approval of these other departments:

- The Planning Department and/or the Recreation Park Department must review an application for a Wireless Permit in specified locations based on the aesthetic standards contained in Article 25.
- The Department of Public Health must review an application for a Wireless Permit to determine whether: (i) any potential human exposure to radio frequency (“RF”) emissions from a proposed Wireless Facility would comply with the Federal Communications Commission (“FCC”) regulations¹; 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.

Article 25 requires public notice that Public Works has issued a tentative approval an application for a Wireless Permit and allows local residents and business owners to protest the issuance of the proposed Wireless Permit. If a protest is filed, Public Works will conduct a hearing before issuing a Wireless Permit. Public Works will only issue the Wireless Permit if the Director of Public Works determines after the

¹ Under federal law, the City cannot impose standards related to the “environmental effects” of RF emissions that exceed those contained in the FCC’s regulations. See 47 U.S.C. § 332(c)(7)(B)(iv).

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.

Amendments to Current Law

The proposed Ordinance would amend Article 25 to expedite the permitting process in order that: (1) wireless carriers in San Francisco will be able to timely deploy the facilities necessary to improve their services and provide 5G service; and (2) the City will comply with federal law as recently interpreted by the Federal Communications Commission (“FCC”). The proposed Ordinance accomplishes those goals by doing three things.

First, the proposed Ordinance would repeal those provisions that require tentative approvals of Wireless Permit applications and allow for protests and public hearings if protests are submitted. The FCC has interpreted federal law to require a final determination on these types of applications within 60 days. Under present law, Public Works cannot meet the 60-day requirement. The tentative approval, protest, and public hearing requirements are the major reasons the permitting process takes longer than 60 days.

Second, the proposed Ordinance would require Public Works to work with the Planning Department and the Recreation and Park Department to develop objective standards to determine whether an application for a Wireless Permit satisfies Article 25’s aesthetic criteria. Article 25’s aesthetic standards are subjective. The FCC has interpreted federal law to require the use of objective standards. In addition, using objective standards to review Permit applications—rather than subjective ones—will expedite the permitting process. Once Public Works has adopted objective standards, neither the Planning Department nor the Recreation and Park Department will have to review any applications for Wireless Permits that meet those standards.

Third, the proposed Ordinance would repeal those provisions that require Wireless Permits to install Wireless Facilities on San Francisco Public Utilities Commission (“SFPUC”)-owned streetlight poles and San Francisco Municipal Transportation Agency (“SFMTA”)-owned transit poles. Because the SFPUC and SFMTA own these poles, they can impose the City’s aesthetic standards through their pole licenses. Through their license agreements, these agencies can also require wireless carriers to demonstrate compliance with the FCC’s RF emissions regulations. Finally, the FCC has interpreted federal law to require that both the license and Wireless Permit be issued within 60 days. If a Wireless Permit is required for City-owned poles, it will be difficult for the City to issue both the license and Wireless Permit in 60 days.

Background Information

One of the purposes of the proposed Ordinance is to ensure that the City's permitting process for Wireless Facilities complies with federal laws. In its *Declaratory Ruling and Third Report and Order in the Wireless and Wireline Proceedings* (Sept. 26, 2018) ("*FCC Order*")², the FCC construed two federal laws limiting state and local government authority to regulate telecommunications services³ that implicate Article 25's requirements.

The *FCC Order* finds that those federal laws did not prohibit state and local governments from addressing aesthetic concerns when issuing permits for small wireless facilities on utility poles. But, the FCC ruled that any such aesthetic requirements must be reasonable, objective, publicly available, and applied to other entities in similar situations.

The *FCC Order* also finds that under federal law state and local governments must issue final determinations on applications for permits to small wireless facilities on utility poles within 60 days of receipt of the application.

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² San Francisco and other local governments have sought federal court review of the *FCC Order*. While those petitions were filed in different appeals courts, they have all been consolidated and will be heard by the Ninth Circuit Court of Appeals in San Francisco. The Ninth Circuit has ordered the briefing in those appeals be completed by September 18, 2019. No date has been set for oral argument.

³ See 47 U.S.C. §§ 253, 332(c)(7).