

File No. 100041

Committee Item No. 8

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Land Use and Economic Development Date December 6, 2010

Board of Supervisors Meeting

Date _____

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Completed by: Alisa Somera Date December 3, 2010

Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
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[Public Works Code, Administrative Code - Personal Wireless Service Facility Site Permits and Associated Fees]

Ordinance amending the San Francisco Public Works Code by: (1) adding Article 25, Sections 1500 through 1528, to establish new requirements for Personal Wireless Service Facility Site Permits and to increase certain fees for obtaining such permits, (2) amending the San Francisco Administrative Code by amending Chapter 11, Article 1, Section 11.9, to eliminate obsolete provisions related to such permits, (3) making the provisions of the ordinance retroactive, and (4) making environmental findings.

NOTE: Additions are single-underline italics Times New Roman;
deletions are ~~strike-through italics Times New Roman~~.
Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough-normal~~.

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

Section 1. Findings.

(a) Background

(1) Growing demand for wireless telecommunications services has resulted in increasing requests from the wireless industry to place wireless antennas and other equipment on utility and street light poles in the public-rights of way.

(2) Federal law limits the authority of local governments to enact laws that prohibit or have the effect of prohibiting the provision of telecommunications service. At the same time, federal law allows local governments to regulate the use of the public rights-of-way to provide telecommunications service.

(3) The permissible boundaries of local government regulation under federal law have been the subject of considerable litigation. In 2008, the United States Court of Appeals for the Ninth Circuit interpreted a key provision of federal law to allow local governments to

1 regulate the placement of wireless facilities in the public rights-of-way based on, among other
2 factors, aesthetic impacts, provided that such regulation does not have the effect of
3 prohibiting the provision of telecommunications service.

4 (4) Federal law also limits the authority of local governments to regulate wireless
5 facilities based on the environmental effects of radio frequency emissions. Local
6 governments may only ensure that such wireless facilities comply with the regulations of the
7 Federal Communications Commission regarding radio frequency emissions.

8 (5) Under state law, "telephone corporations" have a right to use the public
9 rights-of-way to install and maintain "telephone lines" and related facilities required to provide
10 telephone service. Local governments, however, may enact laws that limit the intrusive
11 effect of these lines and facilities.

12 (6) As of the date of this Ordinance, state law is unresolved as to: (a) whether the
13 rights of "telephone corporations" to install and maintain "telephone lines" in the public
14 rights-of-way apply to companies that install and maintain wireless facilities; and (b) whether
15 and to what extent local governments may regulate the installation and maintenance of
16 "telephone lines" in the public rights-of-way based on aesthetic impacts. While a state court
17 has yet to decide these issues, in 2009 the United States Court of Appeals for the Ninth
18 Circuit interpreted state law to authorize local governments to consider aesthetics in deciding
19 whether to permit the installation of wireless facilities in the public rights-of-way.

20 (7) The City has been regulating the installation of wireless facilities in the public
21 rights-of-way since 2007. At that time, the Board of Supervisors adopted Ordinance No.
22 214-07 to amend Chapter 11, Article 1, Section 11.9(b) of the San Francisco Administrative
23 Code to require a telecommunications carrier seeking to install a personal wireless service
24 facility in the public rights-of-way to obtain a personal wireless service facilities site permit
25 from the Department of Public Works.

1 (b) The Need to Regulate the Size and Appearance of Wireless Facilities

2 (1) Surrounded by water on three sides, San Francisco is widely recognized to be
3 one of the world's most beautiful cities. Scenic vistas and views throughout San Francisco of
4 both natural settings and human-made structures contribute to its great beauty.

5 (2) The City's beauty is vital to the City's tourist industry and is an important reason
6 for businesses to locate in the City and for residents to live here. Beautiful views enhance
7 property values and increase the City's tax base. The City's economy, as well as the health
8 and well-being of all who visit, work or live in the City, depends in part on maintaining the
9 City's beauty.

10 (3) The types of wireless antennas and other associated equipment that
11 telecommunications providers install in the public rights-of-way can vary considerably in size
12 and appearance. The City does not intend to regulate the technologies used to provide
13 personal wireless services. However, the City needs to regulate the placement of such
14 facilities in order to prevent telecommunications providers from installing wireless antennas
15 and associated equipment in the City's public rights-of-way either in manners or in locations
16 that will diminish the City's beauty.

17
18 Section 2. The San Francisco Public Works Code is hereby amended to add Article
19 25, to read as follows:
20

21 **ART. 25 PERSONAL WIRELESS SERVICE FACILITIES.**

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

23 (a) Personal Wireless Service Facility Site Permit Required. The Department shall require
24 any Person seeking to construct, install, or maintain a Personal Wireless Service Facility in the Public
25 Rights-of-Way to obtain a Personal Wireless Service Facility Site Permit.

1 **(b) Minimum Permit Requirements.**

2 **(1) The Department shall not issue a Personal Wireless Service Facility Site Permit if the**
3 **Application for a Personal Wireless Service Facility Site Permit does not comply with all of the**
4 **requirements of this Article 25.**

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

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

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

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

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

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

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

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

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

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

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

14
15 **SEC. 1501. DEPARTMENT ORDERS AND REGULATIONS.**

16 The Department may adopt such orders or regulations as it deems necessary to implement the
17 requirements of this Article 25, or to otherwise preserve and maintain the public health, safety,
18 welfare, and convenience, as are consistent with this requirements of this Article 25 and Applicable
19 Law.

20
21 **SEC. 1502. DEFINITIONS.**

22 For purposes of this Article 25, the following terms, phrases, words, abbreviations, their
23 derivations, and other similar terms, when capitalized, shall have the meanings given herein. When
24 not inconsistent with the context, words used in the present tense include the future tense; words in the
25

1 plural number include the singular number; and words in the singular number include the plural
2 number.

3 (a) "Adjacent" means:

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

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

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

11 (c) "Applicant" means any Person submitting an Application for a Personal Wireless
12 Service Facility Site Permit under this Article 25.

13 (d) "Application" means an application for a Personal Wireless Service Facility Site
14 Permit under this Article 25.

15 (e) "City" means the City and County of San Francisco.

16 (f) "Conditions" means any additional requirements that a City department reviewing an
17 Application for a Personal Wireless Service Facility Site Permit has determined are necessary for the
18 Application to comply with those requirements of this Article 25 that are within that department's
19 purview, provided that no such Conditions may include a requirement that an Applicant use a
20 particular technology for a Personal Wireless Service Facility.

21 (g) "Department" means the Department of Public Works.

22 (h) "Director" means the Director of Public Works.

23 (i) "FCC" means the Federal Communications Commission.

24 (j) "Immediate Vicinity" means:

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

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

9 (3) Within one (1) block in any direction from the boundary of a Zoning Protected
10 Location; and

11 (4) Within one (1) block in any direction from the boundary of a Park Protected Location.

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

14 (l) "Park Protected Location Compatibility Standard" means whether a Personal Wireless
15 Service Facility that is proposed to be located in a Park Protected Location would significantly impair
16 the views of a City park or open space or significantly degrade the aesthetic or natural attributes that
17 define the City park or open space.

18 (m) "Permittee" means a Person issued a Personal Wireless Service Facility Site Permit.

19 (n) "Person" means any individual, group, company, partnership, association, joint stock
20 company, trust, corporation, society, syndicate, club, business, or governmental entity. "Person" shall
21 not include the City.

22 (o) "Personal Wireless Service" means commercial mobile services provided under a
23 license issued by the FCC.

24 (p) "Personal Wireless Service Facility" or "Facility" means antennas and related facilities
25 used to provide or facilitate the provision of Personal Wireless Service.

1 (q) "Personal Wireless Service Facility Site Permit" or "Permit" means a permit issued
2 by the Department pursuant to this Article 25 authorizing a Permittee to construct, install, and
3 maintain a Personal Wireless Service Facility.

4 (r) "Planning Protected Location" means any of the following proposed locations for a
5 Personal Wireless Service Facility:

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

8 (2) On a Utility or Street Light Pole that is on a Public Right-of-Way that is within a
9 national historic landmark district, listed or eligible national register historic district, listed or eligible
10 California register historic district, San Francisco landmark district, local historic or conservation
11 district, or locally significant district, as more specifically described and cataloged in materials
12 prepared and maintained by the Planning Department;

13 (3) On a Utility or Street Light Pole that is on a Public Right-of-Way that is Adjacent to a
14 national historic landmark, California landmark, San Francisco landmark, structure of merit,
15 architecturally significant building, or locally significant building, as more specifically described and
16 cataloged in materials prepared and maintained by the Planning Department;

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

20 (5) On a Utility or Street Light Pole that is on a Public Right-of-Way that the San
21 Francisco General Plan has designated as having views that are rated "excellent" or "good."

22 (s) "Planning Protected Location Compatibility Standard" means whether an Applicant
23 for a Personal Wireless Service Facility Site Permit demonstrates that a proposed Personal Wireless
24 Service Facility would be compatible with any of the Planning Protected Locations as follows:

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

5 (2) For a Public Right-of-Way that is within a national historic landmark district, listed or
6 eligible national register historic district, listed or eligible California register historic district, San
7 Francisco landmark district, local historic or conservation district, or locally significant district, the
8 applicable standard is whether a proposed Personal Wireless Service Facility would significantly
9 degrade the aesthetic attributes that were the basis for the special designation of the district.

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

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

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

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

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

12 (v) "Step-Down Tier III Facility" means a Personal Wireless Service Facility that would
13 be a Tier III Facility because of the size of the antenna enclosure(s) being added to a Utility or Street
14 Light Pole, but that would not add any equipment enclosure(s) to any Utility or Street Light Pole.

15 (w) "Step-Down Tier II Facility" means a Personal Wireless Service Facility that would be
16 a Tier II Facility because of the size of the antenna enclosure(s) being added to a Utility or Street
17 Light Pole, but that would not add any equipment enclosure(s) to any Utility or Street Light Pole.

18 (x) "Street Light Pole" means a pole used solely for street lighting and which is located in
19 the Public Rights-of-Way.

20 (y) "Tier III-A Compatibility Standard" the standard by which the Planning Department
21 shall make a compatibility determination based on an analysis of the additional impact, if any, that a
22 proposed Tier III-A Facility would have on the character of the neighborhood, as compared to the
23 impact a Tier II Facility would have at the same location.

24 (z) "Tier III-B Compatibility Standard" means a Planning Protected Location
25 Compatibility Standard or Zoning Protected Location Compatibility Standard by which the Planning

1 Department shall make a compatibility determination based on an analysis of the additional impact, if
2 any, that a proposed Tier III-B Facility would have on a Planning Protected Location or Zoning
3 Protected Location, as compared to the impact a Tier II Facility would have at the same location.

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

9 (bb) "Tier II-B Compatibility Standard" means a Planning Protected Location
10 Compatibility Standard or Zoning Protected Location Compatibility Standard by which the Planning
11 Department shall make a compatibility determination based on an analysis of the additional impact, if
12 any, that a proposed Tier II-B Facility would have on a Planning Protected Location or Zoning
13 Protected Location, as compared to the impact a Tier I Facility would have at the same location.

14 (cc) "Tier II-C Compatibility Standard" means a Park Protected Location Compatibility
15 Standard by which the Recreation and Park Department shall make a compatibility determination
16 based on an analysis of the additional impact, if any, that a Proposed Tier II-C Facility would have on
17 a Park Protected Location, as compared to the impact a Tier I Facility would have at the same
18 location.

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

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

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

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

- 1 (hh) "Tier II Facility" is a Personal Wireless Service Facility that meets the Tier II Criteria.
- 2 (ii) "Tier I Facility Permit" is a Permit to install a Tier I Facility.
- 3 (jj) "Tier III Facility Permit" is a Permit to install a Tier III Facility.
- 4 (kk) "Tier II Facility Permit" is a Permit to install a Tier II Facility.
- 5 (ll) "Tier III Necessity Standard" means whether a Tier II Facility is insufficient to meet
- 6 the Applicant's service needs because the Applicant has demonstrated one of the following:
- 7 (1) A Tier II Facility would not provide the coverage or functionality the Applicant
- 8 requires to meet its service needs in the vicinity of the proposed Tier III Facility.
- 9 (2) Approval of the Application for a Tier III Facility Permit would reduce the number of
- 10 Personal Wireless Service Facilities that the Applicant would otherwise need to install in the vicinity
- 11 of the proposed Tier III Facility.
- 12 (3) Any other showing related to the Applicant's service needs that the Department may
- 13 allow by order or regulation.
- 14 (mm) "Unprotected Location" means a proposed location for a Personal Wireless Service
- 15 Facility that is neither a Planning Protected, Zoning Protected, nor a Park Protected Location.
- 16 (nn) "Utility Pole" means a power pole, telephone pole, or other similar pole located within
- 17 the Public Rights-of-Way.
- 18 (oo) "Zoning Protected Location" means on a Utility or Street Light Pole that is on a Public
- 19 Right-of-Way that is within a Residential or Neighborhood Commercial zoning district under the San
- 20 Francisco Planning Code.
- 21 (pp) "Zoning Protected Location Compatibility Standard" means whether an Applicant for
- 22 a Personal Wireless Service Facility Site Permit on a Public Right-of-Way that is within a Zoning
- 23 Protected Location demonstrates that a proposed Personal Wireless Service Facility would not
- 24 significantly detract from the character of the Residential or Neighborhood Commercial zoning
- 25 district.

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

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

4 (1) Antenna Facilities.

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

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

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

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

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

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

23 (B) A secondary equipment enclosure installed on a Utility or Street Light Pole that is near
24 the Utility or Street Light Pole to be used for the antenna enclosure(s) and primary equipment
25 enclosure, preferably facing the street or perpendicular to the street, shall be no larger than three (3)

1 cubic feet in volume with a width not exceeding twelve (12) inches and a depth not exceeding ten (10)
2 inches.

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

7 (b) Tier II Facility. The Department shall not approve an Application for a Tier II Facility
8 Permit unless the Application meets the following Tier II Criteria:

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

12 (A) For an installation on top of a Utility or Street Light Pole, the antenna enclosure(s)
13 shall:

14 (i) Be cylindrical in shape;

15 (ii) Not exceed four (4) feet in height; and

16 (iii) Not exceed the diameter of the top of the pole.

17 (B) For an installation on the side of a Utility or Street Light Pole, the size of the antenna
18 enclosure(s) shall:

19 (i) Not exceed four (4) feet in height; and

20 (ii) In the case of a cylindrical antenna enclosure, not exceed eighteen (18) inches in
21 diameter; or

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

24 (2) Supporting Elements. If Applicable Law, or generally applicable written rules of the
25 pole owner, require a supporting element for any antenna enclosure such as a cross-arm or pole top

1 extension, such supporting element shall be no larger, longer, or bulkier than is necessary to comply
2 with Applicable Law or such generally applicable written rules.

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

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

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

15 (C) The Department may, by order, allow a larger primary equipment enclosure if the
16 Applicant demonstrates that the enclosure will contain an electricity meter and cut-off switch,
17 provided that the width of the enclosure does not exceed twelve (12) inches and the depth does not
18 exceed ten (10) inches

19 (5) Types of Tier II Facilities.

20 (A) A Tier II Facility shall be designated a Tier II-A Facility if the proposed location for
21 the facility is in an Unprotected Location.

22 (B) A Tier II Facility shall be designated a Tier II-B Facility if the proposed location for
23 the facility is in a Planning Protected Location or Zoning Protected Location.

24 (C) A Tier II Facility shall be designated a Tier II-C Facility if the proposed location for
25 the facility is in a Park Protected Location.

1 (c) Tier III Facility.

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

5 (2) Types of Tier III Facilities.

6 (A) A Tier III Facility shall be designated a Tier III-A Facility if the proposed location for
7 the facility is in an Unprotected Location.

8 (B) A Tier III Facility shall be designated a Tier III-B Facility if the proposed location for
9 the facility is in a Planning Protected Location or Zoning Protected Location.

10 (C) A Tier III-C Facility shall be designated a Tier III-C Facility if the proposed location
11 for the facility is in a Park Protected Location.

12 (d) Step-Down Facilities.

13 (1) Step-Down Tier II Facility. A Step-Down Tier II Facility shall be designated a Tier I
14 Facility.

15 (2) Step-Down Tier III Facility. A Step-Down Tier III Facility shall be designated a Tier II
16 Facility.

17
18 **SEC. 1504. INITIAL REVIEW OF A PERSONAL WIRELESS FACILITY SITE PERMIT**
19 **APPLICATION.**

20 (a) Completeness Review.

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

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

1 **(b) Tier Review.**

2 **(1) Initial Determination. Following a Department determination that an Application for a**
3 **Personal Wireless Service Facility Site Permit is complete, the Department shall make an initial**
4 **determination as follows:**

5 **(A) The Application is for a Tier I, Tier II, or Tier III Facility Permit.**

6 **(B) The Department is required to refer the Application to the Planning Department,**
7 **and/or the Recreation and Park Department under Sections 1509(a)(1) and 1510(a)(1) below.**

8 **(C) The Department is exercising its discretion to refer an Application for a Tier II-A**
9 **Facility Permit to the Planning Department and/or the Recreation and Park Department under**
10 **Sections 1509(a)(2) and 1510(a)(2) below.**

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

13
14 **SEC. 1505. CONDITIONS OF APPROVAL.**

15 **(a) Conditions of Approval. Any City department reviewing an Application for a Personal**
16 **Wireless Service Facility Site Permit, as required by this Article 25, may add Conditions to its**
17 **approval, tentative approval, or determination.**

18 **(b) Conditions in Writing. Any Conditions that a City department includes in its approval,**
19 **tentative approval, or determination with respect to an Application for a Personal Wireless Service**
20 **Facility Site Permit shall be in writing.**

21 **(c) Notice of Conditions. The Department shall promptly notify the Applicant of any such**
22 **Conditions and shall give the Applicant a reasonable time to accept or reject the Conditions.**

23 **(d) Acceptance of Conditions Required. The Department shall not approve an Application**
24 **for a Personal Wireless Service Facility Site Permit unless the Applicant accepts all of the Conditions**

1 added to an approval, tentative approval, or determination by any City department that reviewed the
2 Application.

3
4 **SEC. 1506. STREET TREE.**

5 (a) Condition of Approval. When reviewing an application for a Tier II or Tier III Facility
6 Permit, the Planning Department and/or Recreation and Park Department (as appropriate) may
7 require as a Condition of approval that the Permittee plant and maintain an appropriate street tree
8 adjacent to the Utility or Street Light Pole so as to provide a screen for a permitted Tier II or Tier III
9 Facility.

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

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

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

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

1 **SEC. 1507. DEPARTMENT OF PUBLIC HEALTH REVIEW.**

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

5 (b) Department of Public Health Determination. The Department of Public Health shall
6 make a determination whether the Application satisfies the Public Health Compliance Standard. The
7 determination of the Department of Public Health shall be in writing and shall set forth the reasons
8 therefor. The Department of Public Health shall transmit its determination to the Department within
9 twenty (20) business days of receipt of the Application from the Department. With the concurrence of
10 the Applicant, the Department of Public Health may extend this review period beyond twenty (20)
11 business days.

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

15
16 **SEC. 1508. DEPARTMENT REVIEW OF A PERSONAL WIRELESS SERVICE FACILITY**
17 **SITE PERMIT APPLICATION.**

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

- 20 (1) Satisfies the Tier I Criteria; and
21 (2) Receives an affirmative determination from the Department of Public Health under the
22 Public Health Compliance Standard.

23 (b) Tier II-A Facility Permit. The Department shall review an Application for a Tier II-A
24 Facility Permit to determine whether the Application:

- 25 (1) Satisfies the Tier II Criteria; and

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

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

5 (1) Satisfies the Tier II Criteria;

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

8 (3) Receives an affirmative determination from the Planning Department or the Recreation
9 and Park Department (or both if required) under the applicable Tier II-B or Tier II-C Compatibility
10 Standard.

11 (d) Tier III Facility Permit. The Department shall review an Application for a Tier III
12 Facility Permit to determine whether the Application:

13 (1) Satisfies the Tier III Necessity Standard;

14 (2) Receives an affirmative determination from the Department of Public Health under the
15 Public Health Compliance Standard; and

16 (3) Receives an affirmative determination from the Planning Department or the Recreation
17 and Park Department (or both if required) under the applicable Tier III-A, Tier III-B, or Tier III-C
18 Compatibility Standard.

19
20 **SEC. 1509. PLANNING DEPARTMENT REVIEW OF A TIER II-B, TIER III-A, OR TIER III-**
21 **B FACILITY PERMIT APPLICATION.**

22 (a) Referral to Planning Department.

23 (1) Referral Required.

1 (A) The Department shall refer an Application for a Tier II-B Facility Permit to the
2 Planning Department for a review of the proposed Personal Wireless Service Facility under the
3 applicable Tier II-B Compatibility Standard.

4 (B) If the Department determines that an Application for a Tier III-A, or Tier III-B
5 Facility Permit satisfies the Tier III Necessity Standard, the Department shall refer the Application to
6 the Planning Department for a review of the proposed Personal Wireless Service Facility under the
7 applicable Tier III-A, or Tier III-B Compatibility Standard.

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

14 (b) Planning Department Determination.

15 (1) The Planning Department shall make a determination whether an Application for a
16 Personal Wireless Service Facility Site Permit referred to the Planning Department under this Section
17 satisfies the applicable Tier II-B, Tier III-A, or Tier III-B Compatibility Standard. The Planning
18 Department's determination shall be in writing and shall set forth the reasons therefor. The Planning
19 Department shall transmit its determination to the Department within twenty (20) business days of
20 receipt of the Application from the Department. With the concurrence of the Applicant, the Planning
21 Department may extend this review period beyond twenty (20) business days.

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

1 (c) Affirmative Determination Required. The Department shall not approve an Application
2 for a Tier II-B, Tier III-A, or Tier III-B Facility Permit unless the Planning Department makes a
3 determination that the Application satisfies the applicable Tier II-B, Tier III-A, or Tier III-B
4 Compatibility Standard.

5
6 **SEC. 1510. RECREATION AND PARK DEPARTMENT REVIEW OF A TIER II-C OR**
7 **TIER III-C FACILITY PERMIT APPLICATION.**

8 (a) Referral to Recreation and Park Department.

9 (1) Referral Required.

10 (A) The Department shall refer an Application for a Tier II-C Facility Permit to the
11 Recreation and Park Department for a review of the proposed Personal Wireless Service Facility
12 under the Tier II-C Compatibility Standard.

13 (B) If the Department determines that an Application for a Tier III-C Facility Permit
14 satisfies the Tier III Necessity Standard, the Department shall refer the Application to the Recreation
15 and Park Department for a review of the proposed Personal Wireless Service Facility under the Tier
16 III-C Compatibility Standard.

17 (2) Referral Allowed. The Department may refer an Application for a Tier II-A or Tier
18 III-A Permit to the Recreation and Park Department if the proposed location for the Personal Wireless
19 Service Facility is in the Immediate Vicinity of a Park Protected Location. The Department shall
20 designate such a facility a Tier II-C or Tier III-C Facility. The Recreation and Park Department shall
21 then review the Application under the applicable Tier II-C or Tier III-C Compatibility Standard.

22 (b) Recreation and Park Department Determination. The Recreation and Park
23 Department shall make a determination whether an Application for a Personal Wireless Service
24 Facility Site Permit referred to the Planning Department under this Section satisfies the applicable
25 Tier II-C or Tier III-C Compatibility Standard. The Recreation and Park Department's determination

1 shall be in writing and shall set forth the reasons therefor. The Recreation and Park Department shall
2 transmit its determination to the Department within twenty (20) business days of receipt of the
3 Application from the Department. With the concurrence of the Applicant, the Recreation and Park
4 Department may extend this review period beyond twenty (20) business days.

5 (c) Affirmative Determination Required. The Department shall not approve an Application
6 for a Tier II-C or Tier III-C Facility Permit unless the Recreation and Park Department makes a
7 determination that the Application satisfies the applicable Tier II-C or Tier III-C Compatibility
8 Standard.

9
10 **SEC. 1511. DEPARTMENT DETERMINATION.**

11 (a) Determination in Writing.

12 (1) Tentative Approval. A Department tentative approval of an Application for a Tier III
13 Facility Permit shall be in writing and shall set forth the reasons therefor. If a Department tentative
14 approval contains any Conditions, the Conditions shall also be in writing.

15 (2) Final Determination. A Department final determination to approve or deny an
16 Application for a Personal Wireless Service Facility Site Permit shall be in writing and shall set forth
17 the reasons therefor. If a Department final determination to approve an Application contains any
18 Conditions, the Conditions shall also be in writing.

19 (b) Tier I or Tier II-A Facility Permit.

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

22 (A) The Department making a determination that the Application does not meet the Tier I
23 or Tier II Criteria, as applicable;

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

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

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

8 (A) The Department making a determination that the Application meets the Tier I or Tier II
9 Criteria, as applicable; or

10 (B) The Department's receipt of a determination from the Department of Public Health that
11 the Application comply with the Public Health Compliance Standard.

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

16 (A) The Department making a determination that the Application meets the Tier I or Tier II
17 Criteria, as applicable;

18 (B) The Department's receipt of a determination from the Department of Public Health that
19 the Application comply with the Public Health Compliance Standard; or

20 (C) The Department's receipt of a notice from the Applicant that it accepts all of those
21 Conditions.

22 (c) Tier II-B or Tier II-C Facility Permit.

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

1 (A) The Department making a determination that the Application does not meet the Tier II
2 Criteria;

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

5 (C) The Department's receipt of a determination from the Planning Department or the
6 Recreation and Park Department that the Application does not meet the applicable Compatibility
7 Standard; or

8 (D) If any City department that reviewed the Application adds any Conditions to its
9 approval of the Application, the Department's receipt of a notice from the Applicant that it rejects any
10 of those Conditions.

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

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

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

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

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

1 (B) The Department's receipt of a determination from the Planning Department or the
2 Recreation and Park Department (or both if required) that the Application meets the applicable
3 Compatibility Standard; or

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

6 (d) Tier III Facility Permit.

7 (1) Denial. The Department shall issue a final determination denying an Application for a
8 Tier III Facility Permit within three (3) business days of any of the following events:

9 (A) The Department making a determination that the Application does not meet the Tier III
10 Necessity Standard;

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

13 (C) The Department's receipt of a determination from the Planning Department or the
14 Recreation and Park Department (or both if required) that the Application does not meet the
15 applicable Compatibility Standard; or

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

19 (2) Approval without Conditions.

20 (A) If no City department reviewing an Application for a Tier III Facility Permit adds any
21 Conditions to its approval of the Application, the Department shall issue a tentative approval of an
22 Application for a Tier III Facility Permit without Conditions within three (3) business days of the
23 occurrence of the last of the following events:

24 (i) The Department's receipt of a determination from the Department of Public Health that
25 the Application complies with the Public Health Compliance Standard; and or

1 (ii) The Department's receipt of a determination from the Planning Department or the
2 Recreation and Park Department (or both if required) that the Application meets the applicable
3 Compatibility Standard.

4 (B) Following the Department's tentative approval of an Application for a Tier III Facility
5 Permit without any Conditions, the Department shall issue a final determination as follows:

6 (i) The Department shall require the Applicant to give notice of the tentative approval as
7 required by Section 1512 below; and

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

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

13 (3) Approval with Conditions.

14 (A) If any City department reviewing an Application for a Tier III Facility Permit adds any
15 Conditions to its approval of the Application, the Department shall issue a tentative approval of the
16 Application with Conditions within three (3) business days of the occurrence of the last of the
17 following events:

18 (i) The Department's receipt of a determination from the Department of Public Health that
19 the Application complies with the Public Health Compliance Standard;

20 (ii) The Department's receipt of a determination from the Planning Department or the
21 Recreation and Park Department (or both if required) that the Application meets the applicable
22 Compatibility Standard; or

23 (iii) The Department's receipt of a notice from the Applicant that it accepts all of those
24 Conditions.

1 (B) Following the Department's tentative approval of an Application for a Tier III Facility
2 Permit with Conditions, the Department shall issue a final determination as follows:

3 (i) The Department shall require the Applicant to give notice of the tentative approval as
4 required by Section 1512 below; and

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

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

10
11 **SEC. 1512. NOTICE FOLLOWING TENTATIVE APPROVAL OF A TIER III FACILITY**
12 **PERMIT APPLICATION.**

13 (a) Notice Required. The Department shall require an Applicant for a Tier III Facility
14 Permit to notify the public of a tentative approval of the Application under Sections 1511(d)(2) or
15 1511(d)(3) above, and to provide the Department with evidence, as the Department may require, of
16 compliance with this requirement.

17 (b) Types of Notice Required.

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

19 (A) Any Person owning property or residing within one hundred and fifty (150) feet of the
20 proposed location of the Tier III Facility; and

21 (B) Any neighborhood association identified by the Planning Department for any
22 neighborhood within three hundred (300) feet of the proposed Tier III Facility.

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

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

4 (1) Provide a description and a photo-simulation of the proposed Tier III Facility;

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

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

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

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

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

13 (7) Explain how any interested Person may obtain additional information and documents
14 related to the Application.

15
16 **SEC. 1513. PROTEST OF A TIER III FACILITY PERMIT.**

17 (a) Protest Allowed. Any Person may protest a tentative approval of an Application for a
18 Tier III Facility Permit. A protest must be in writing and must be submitted to the Department within
19 twenty (20) days of the date the notice was mailed and posted as required under Section 1512 above.

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

24 (c) Notice of Hearing Date. At least ten (10) days before the hearing, the Department shall
25 notify in writing any Person submitting a protest, the Applicant, and any City department that

1 reviewed the Application of the date set for the hearing. The Department shall follow its regular
2 procedures for notifying the general public of the hearing.

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

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

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

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

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

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

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

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

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

22 (h) Grounds for Granting a Protest. The Director may grant a protest of a tentative
23 approval of Application for a Tier III Facility Permit only if the Director finds that the evidence at the
24 hearing supports any one of the following findings:

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

3 (2) The Department incorrectly determined that the Application meets the Tier III
4 Necessity Standard;

5 (3) In the case of an Application for a Tier III-A or Tier III-B Facility Permit, the Planning
6 Department incorrectly determined that the Application meets the Tier III-A or Tier III-B
7 Compatibility Standard, as applicable; or

8 (4) In the case of an Application for a Tier III-C Facility Permit, the Recreation and Park
9 Department incorrectly determined that the Application meets the Tier III-C Compatibility Standard.

10
11 **SEC. 1514. NOTICE OF FINAL DETERMINATION.**

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

14 (1) Notice Required.

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

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

23 (C) The Department shall require an Applicant for a Personal Wireless Service Facility
24 Site Permit to promptly post notice of a Department final determination to approve an Application for
25 a Personal Wireless Service Facility Site Permit in conspicuous places throughout the block face

1 where the approved Personal Wireless Service Facility is to be located and to provide the Department
2 with evidence, as the Department may require, of compliance with this requirement.

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

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

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

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

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

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

18 (F) Explain how any interested Person may obtain additional information and documents
19 related to the Application.

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

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

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

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

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

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

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

9
10 **SEC. 1515. APPEALS.**

11 (a) Appeal Permitted. Any Person may appeal a Department final determination with
12 respect to an Application for a Personal Wireless Service Facility Site Permit to the Board of Appeals.

13 (b) Final Determination.

14 (1) Approval or Denial. The Department's approval or denial of an Application for a
15 Personal Wireless Service Facility Site Permit shall be an appealable final determination under this
16 Section.

17 (2) Refusal To Accept Conditions. The Department's denial of an Application for a
18 Personal Wireless Service Facility Site Permit based on the Applicant's refusal to accept any
19 Conditions imposed by a City department shall be an appealable final determination under this
20 Section.

21 (c) Board of Appeals Review. Upon such appeal, the Board of Appeals shall determine
22 whether the final determination was correct under the provisions of this Article 25.

1 **SEC. 1516. NOTICE OF COMPLETION AND INSPECTION.**

2 (a) Notice of Completion. A Permittee shall notify the Department immediately upon
3 completion of the installation of a Personal Wireless Service Facility. The notice of completion must
4 include a written statement from a certified engineer confirming that the permitted Personal Wireless
5 Service Facility complies with the Public Health Compliance Standard.

6 (b) Inspection.

7 (1) Required After Installation. The Department shall inspect a Personal Wireless Service
8 Facility installed in the Public Rights-of-Way within a reasonable time after a Permittee provides the
9 Department with a notice of completion required under Section 1516(a) above. The Department shall
10 determine during the inspection whether:

11 (A) The installation is in accordance with the requirements of the Personal Wireless
12 Service Facility Site Permit; and

13 (B) The permitted Personal Wireless Service Facility complies with the Public Health
14 Compliance Standard.

15 (2) Subsequent Inspection. If at any time the Department has a valid reason to believe that
16 a permitted Personal Wireless Service Facility does not comply with the Public Health Compliance
17 Standard, the Department shall require the Permittee to provide additional proof of compliance with
18 the Public Health Compliance Standard. The Department may also request that the Department of
19 Public Health inspect the facility.

20
21 **SEC. 1517. COMPLIANCE.**

22 (a) Compliance Required. Any Personal Wireless Service Facility installed in the Public
23 Rights-of-Way pursuant to a Personal Wireless Service Facility Site Permit issued under this Article
24 25 must comply with the terms and conditions of the Permit and this Article 25.

25 (b) Notice of Deficiency.

1 (1) Non-Compliance with Permit. If the Department determines, either after an inspection
2 required under Section 1516(b) above or at any other time, that a Personal Wireless Service Facility is
3 not in compliance with the Personal Wireless Service Facility Site Permit or this Article 25, the
4 Department shall issue a notice of deficiency and require the Permittee to take corrective action to
5 bring the Personal Wireless Service Facility into compliance.

6 (2) Radio Frequency Emissions. If the Department determines, either after an inspection
7 required under 1515(b) above or at any other time, that potential human exposure to radio frequency
8 emissions from a permitted Personal Wireless Service Facility exceeds FCC guidelines, the Department
9 shall issue a notice of deficiency and require the Permittee to take corrective action to bring the
10 Personal Wireless Service Facility into compliance with FCC guidelines.

11 (3) Noise. If the Department determines, either after an inspection required under 1516(b)
12 above or at any other time, that noise from a permitted Personal Wireless Service Facility at any time
13 of the day or night exceeds forty-five (45) dBA as measured at a distance three (3) feet from any
14 residential building facade, the Department shall issue a notice of deficiency and require the Permittee
15 to take corrective action to bring the Personal Wireless Service Facility into compliance with the noise
16 limit.

17 (c) Department Remedies.

18 (1) Required Action. If a Permittee fails to take corrective action with respect to a Personal
19 Wireless Service Facility within a reasonable time after receiving a notice of deficiency the Department
20 shall:

21 (A) Take all reasonable, necessary, and appropriate action to remedy a Permittee's non-
22 compliance; or

23 (B) Require a Permittee to remove the non-compliant Personal Wireless Service Facility
24 from the Public Rights-of-Way; and

1 (C) Charge to a Permittee the reasonable costs that the City has actually incurred including,
2 but not limited to, administrative costs.

3 (2) Discretionary Action. In addition to the foregoing, if a Permittee fails to take corrective
4 action with respect to a Personal Wireless Service Facility within a reasonable time after receiving a
5 notice of deficiency the Department may deny any pending Application for a Personal Wireless Service
6 Facility Site Permit.

7
8 **SEC. 1518. ABANDONMENT.**

9 (a) Permittee Must Maintain Facilities. Any Personal Wireless Service Facility installed in
10 the Public Rights-of-Way pursuant to a Personal Wireless Service Facility Site Permit issued under
11 this Article 25 must be properly maintained and used to provide Personal Wireless Services.

12 (b) Notice of Abandonment. A Permittee shall notify the Department, or the Department
13 may determine and notify a Permittee, that a Personal Wireless Service Facility installed in the Public
14 Rights-of-Way has been abandoned either because it has not been properly maintained or because it is
15 no longer being used to provide Personal Wireless Services. In such event, a Permittee shall promptly
16 remove the abandoned Personal Wireless Service Facility as required by the Department and at
17 Permittee's expense.

18 (c) Remedy for Non-Compliance. If a Permittee fails to remove an abandoned Personal
19 Wireless Service Facility within a reasonable period of time after receiving a notice of abandonment,
20 the Department shall take all reasonable, necessary, and appropriate action to remedy the Permittee's
21 failure to comply with the notice (including removing the Personal Wireless Service Facility) and may
22 charge to the Permittee the reasonable costs the City has actually incurred including, but not limited
23 to, administrative costs.

1 **SEC. 1519. TERM OF PERMIT.**

2 *A Personal Wireless Service Facility Site Permit shall have a term of two (2) years. The term*
3 *shall commence upon the completion of the inspection required under Section 1516(b)(1) above.*

4
5 **SEC. 1520. RENEWAL.**

6 *(a) Renewal Permitted. At the end of the term set forth in Section 1519 above, the*
7 *Department may renew a Personal Wireless Service Facility Site Permit for the identical Personal*
8 *Wireless Service Facility at the same permitted location for four (4) additional two (2)-year terms.*

9 *(b) Renewal Application Required. A Permittee seeking to renew a Personal Wireless*
10 *Service Facility Site Permit must file a renewal Application with the Department prior to the end of the*
11 *existing term. The renewal Application shall include a written report from a certified engineer*
12 *confirming that the permitted Personal Wireless Service Facility complies with the Public Health*
13 *Compliance Standard.*

14 *(c) Approval of Renewal Application.*

15 *(1) Approval Required. The Department shall approve a renewal Application using the*
16 *existing equipment at the same permitted location provided that, since the commencement of the Permit*
17 *term as set forth in Section 1519 above, there have been no changes to: (A) Applicable Law that would*
18 *allow the Department to deny a new Application for a Personal Wireless Service Facility Site Permit*
19 *for the identical Personal Wireless Service Facility at the permitted location; or (B) readily available*
20 *technology for Personal Wireless Service Facilities that would make it feasible for the Applicant for a*
21 *renewal Permit to replace the existing equipment with less visually obtrusive equipment.*

22 *(2) Denial Required. The Department shall deny a renewal Application if the Permittee*
23 *fails to provide the Department with a written report from a certified engineer confirming that the*
24 *permitted Personal Wireless Service Facility complies with the Public Health Compliance Standard.*

1 (d) Referral to Other Departments. The Department shall refer a renewal Application to
2 other City departments for review before approving or denying the Application under the following
3 circumstances.

4 (1) Department of Public Health. If Applicable Law with respect to human exposure to
5 radio frequency emissions has changed since the date of the approval of the original Application for a
6 Personal Wireless Service Facility Site Permit, the Department shall refer the renewal Application to
7 the Department of Public Health for further review. The Department may not renew the Permit unless
8 the Department of Public Health makes a determination that the Application satisfies the Public Health
9 Compliance Standard and/or other Applicable Law related to human exposure to radio frequency
10 emissions.

11 (2) Planning Department and Recreation and Park Department.

12 (A) If a renewal Application is for a Personal Wireless Service Facility that is in a location
13 that was not a Planning Protected, Zoning Protected, or Park Protected Location on the date of the
14 approval of the original Application for a Personal Wireless Service Facility Site Permit, the
15 Department shall determine whether changes to Applicable Law since that date have made the location
16 a Planning Protected, Zoning Protected, or Park Protected Location. If so, the Department shall refer
17 the renewal Application to the appropriate City department for review under any Compatibility
18 Standard that did not apply to the original Application.

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

24 (C) If the Department refers a renewal Application to the Planning Department and/or
25 Recreation and Park Department under this Section, the Department shall not renew the Permit unless

1 the Planning Department and/or Recreation and Park Department recommends approval under the
2 newly applicable Compatibility Standard.

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

9
10 **SEC. 1521. REPLACEMENT OF EQUIPMENT.**

11 During the term of a Personal Wireless Service Facility Site Permit, a Permittee may replace
12 equipment that is part of a permitted Personal Wireless Service Facility; provided that the
13 replacement equipment would be of substantially the same size, appearance, and power as the
14 previously permitted equipment. The Permittee shall notify the Department prior to replacing any
15 permitted equipment. The Permittee shall not install the proposed replacement equipment unless and
16 until the Department notifies Permittee in writing that the Department has determined that the
17 proposed replacement equipment complies with the requirements of this Section.

18
19 **SEC. 1522. MODIFICATION OF PERMIT.**

20 A Permittee may file an Application with the Department to modify a Personal Wireless
21 Service Facility Site Permit to replace any equipment that is part of a permitted Personal Wireless
22 Service Facility if the proposed replacement equipment would not be of substantially the same size,
23 appearance, and power as the previously permitted equipment.

1 **SEC. 1523. DEPOSIT.**

2 *Each Permittee shall submit and maintain with the Department a bond, cash deposit, or other*
3 *security acceptable to the Department securing the faithful performance of the obligations of the*
4 *Permittee and its agents under any and all Personal Wireless Service Facility Site Permits issued to*
5 *the Permittee under this Article 25. The deposit shall be in the sum of twenty-five thousand dollars*
6 *(\$25,000) in favor of the "Department of Public Works, City and County of San Francisco." If, in*
7 *accordance with this Article 25, the Director deducts any amounts from such a deposit, the Permittee*
8 *must restore the full amount of the deposit prior to the Department's issuance of a subsequent Permit.*
9 *The Department shall return the deposit to the Permittee should Permittee cease to operate any*
10 *Personal Wireless Service Facilities in the Public Rights-of-Way.*

11
12 **SEC. 1524. LIABILITY.**

13 *As a condition of a Personal Wireless Service Site Facility Site Permit, each Permittee agrees*
14 *on its behalf and on behalf of any agents, successors, or assigns to be wholly responsible for the*
15 *construction, installation, and maintenance of any permitted Personal Wireless Service Facility. Each*
16 *Permittee and its agents are jointly and severally liable for all consequences of such construction,*
17 *installation, and maintenance of a Personal Wireless Service Facility. The issuance of any Personal*
18 *Wireless Service Facility Site Permit, inspection, repair suggestion, approval, or acquiescence of any*
19 *person affiliated with the City shall not excuse any Permittee or its agents from such responsibility or*
20 *liability.*

21
22 **SEC. 1525. INDEMNIFICATION AND DEFENSE OF CITY.**

23 *(a) Indemnification of City. As a condition of a Personal Wireless Service Site Facility Site*
24 *Permit, each Permittee agrees on its behalf and on behalf of its agents, successors, or assigns, to*
25 *indemnify, defend, protect, and hold harmless the City from and against any and all claims of any kind*

1 arising against the City as a result of the issuance of a Personal Wireless Service Facility Site Permit
2 including, but not limited to, a claim allegedly arising directly or indirectly from the following:

3 (1) Any act, omission, or negligence of a Permittee or its any agents, successors, or assigns
4 while engaged in the permitting, construction, installation, or maintenance of any Personal Wireless
5 Service Facility authorized by a Personal Wireless Service Facility Site Permit, or while in or about
6 the Public Rights-of-Way that are subject to the Permit for any reason connected in any way
7 whatsoever with the performance of the work authorized by the Permit, or allegedly resulting directly
8 or indirectly from the permitting, construction, installation, or maintenance of any Personal Wireless
9 Service Facility authorized under the Permit;

10 (2) Any accident, damage, death, or injury to any of a Permittee's contractors or
11 subcontractors, or any officers, agents, or employees of either of them, while engaged in the
12 performance of the construction, installation, or maintenance of any Personal Wireless Service
13 Facility authorized by a Personal Wireless Service Facility Site Permit, or while in or about the Public
14 Rights-of-Way that are subject to the Permit, for any reason connected with the performance of the
15 work authorized by the Permit, including from exposure to radio frequency emissions;

16 (3) Any accident, damage, death, or injury to any Person or accident, damage, or injury to
17 any real or personal property in, upon, or in any way allegedly connected with the construction,
18 installation, or maintenance of any Personal Wireless Service Facility authorized by a Personal
19 Wireless Service Facility Site Permit, or while in or about the Public Rights-of-Way that are subject to
20 the Permit, from any causes or claims arising at any time, including any causes or claims arising from
21 exposure to radio frequency emissions; and

22 (4) Any release or discharge, or threatened release or discharge, of any hazardous
23 material caused or allowed by a Permittee or its agents about, in, on, or under the Public
24 Rights-of-Way.

1 **(b) Defense of the City.** Each Permittee agrees that, upon the request of the City, the
2 Permittee, at no cost or expense to the City, shall indemnify, defend, and hold harmless the City
3 against any claims as set forth in Sections 1525(a) above, regardless of the alleged negligence of City
4 or any other party, except only for claims resulting directly from the sole negligence or willful
5 misconduct of the City. Each Permittee specifically acknowledges and agrees that it has an immediate
6 and independent obligation to defend the City from any claims that actually or potentially fall within
7 the indemnity provision, even if the allegations are or may be groundless, false, or fraudulent, which
8 obligation arises at the time such claim is tendered to the Permittee or its agent by the City and
9 continues at all times thereafter. Each Permittee further agrees that the City shall have a cause of
10 action for indemnity against the Permittee for any costs the City may be required to pay as a result of
11 defending or satisfying any claims that arise from or in connection with a Personal Wireless Service
12 Facility Site Permit, except only for claims resulting directly from the sole negligence or willful
13 misconduct of the City. Each Permittee further agrees that the indemnification obligations assumed
14 under a Personal Wireless Service Facility Site Permit shall survive expiration of the Permit or
15 completion of installation of any Personal Wireless Service Facility authorized by the Permit.

16 **(c) Additional Requirements.** The Department may specify in a Personal Wireless Service
17 Facility Site Permit such additional indemnification requirements as are necessary to protect the City
18 from risks of liability associated with the Permittee's construction, installation, and maintenance of a
19 Personal Wireless Service Facility.

20
21 **SEC. 1526. INSURANCE.**

22 **(a) Minimum Coverages.** The Department shall require that each Permittee maintain in
23 full force and effect, throughout the term of a Personal Wireless Service Facility Site Permit, an
24 insurance policy or policies issued by an insurance company or companies satisfactory to the City's
25

1 Risk Manager. Such policy or policies shall, at a minimum, afford insurance covering all of the
2 Permittee's operations, vehicles, and employees, as follows:

3 (1) Workers' compensation, in statutory amounts, with employers' liability limits not less
4 than one million dollars (\$1,000,000) each accident, injury, or illness.

5 (2) Commercial general liability insurance with limits not less than one million dollars
6 (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including
7 contractual liability, personal injury, products and completed operations.

8 (3) Commercial automobile liability insurance with limits not less than one million dollars
9 (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including
10 owned, non-owned and hired auto coverage, as applicable.

11 (4) Contractors' pollution liability insurance, on an occurrence form, with limits not less
12 than one million dollars (\$1,000,000) each occurrence combined single limit for bodily injury and
13 property damage and any deductible not to exceed twenty five thousand dollars (\$25,000) each
14 occurrence.

15 (b) Other Insurance Requirements.

16 (1) Said policy or policies shall include the City and its officers and employees jointly and
17 severally as additional insureds, shall apply as primary insurance, shall stipulate that no other
18 insurance effected by the City will be called on to contribute to a loss covered thereunder, and shall
19 provide for severability of interests.

20 (2) Said policy or policies shall provide that an act or omission of one insured, which
21 would void or otherwise reduce coverage, shall not reduce or void the coverage as to any other
22 insured. Said policy or policies shall afford full coverage for any claims based on acts, omissions,
23 injury, or damage which occurred or arose, or the onset of which occurred or arose, in whole or in
24 part, during the policy period.

1 (3) Said policy or policies shall be endorsed to provide thirty (30) days advance written
2 notice of cancellation or any material change to the Department.

3 (4) Should any of the required insurance be provided under a claims-made form, a
4 Permittee shall maintain such coverage continuously throughout the term of a Personal Wireless
5 Service Facility Site Permit, and, without lapse, for a period of three (3) years beyond the expiration
6 or termination of the Permit, to the effect that, should occurrences during the term of the Permit give
7 rise to claims made after expiration or termination of the Permit, such claims shall be covered by such
8 claims-made policies.

9 (5) Should any of the required insurance be provided under a form of coverage that
10 includes a general annual aggregate limit or provides that claims investigation or legal defense costs
11 be included in such general annual aggregate limit, such general aggregate limit shall be double the
12 occurrence or claims limits specified in Section 1526(a) above.

13 (c) Indemnity Obligation. Such insurance shall in no way relieve or decrease a
14 Permittee's or its agent's obligation to indemnify the City under Section 1525 above.

15 (d) Proof of Insurance. Before the Department will issue a Personal Wireless Service
16 Facility Site Permit, a Permittee shall furnish to the Department certificates of insurance and
17 additional insured policy endorsements with insurers that are authorized to do business in the State of
18 California and that are satisfactory to the City evidencing all coverages set forth in Section 1526 (a)
19 above.

20 (e) Self-Insurance. Where a Permittee is self-insured, and such insurance is no less broad
21 and affords no less protection to the City than the requirements specified in Section 1526(a) above, the
22 Department, in consultation with the City's Risk Manager, may accept such insurance as satisfying the
23 requirements of Section 1526(a) above. Evidence of such self-insurance shall be provided in the
24 manner required by the City's Risk Manager.

1 SEC. 1527. FEES AND COSTS.

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

6 (1) Department Application Fee. Each Applicant for a Personal Wireless Service Facility
7 Site Permit shall pay to the Department a non-refundable Application fee of one hundred dollars
8 (\$100.00) for each Personal Wireless Service Facility proposed in the Application.

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

14 (A) A Planning Department non-refundable Application fee of one hundred ninety dollars
15 (\$190.00) plus time and materials for any review that takes more than thirty (30) minutes.

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

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

21 (b) Inspection Fees. The Department and the Department of Public Health shall impose
22 fees for the inspection of a permitted Personal Wireless Service Facility. The purpose of these fees is
23 to enable these City departments to recover their costs related to inspecting a permitted Personal
24 Wireless Service Facility.

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

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

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

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

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

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

10
11 **SEC. 1528. SEVERABILITY.**

12 If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Article 25
13 or any part thereof, is for any reason held to be unconstitutional, invalid, or ineffective by any court of
14 competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining
15 portions of this Article 25 or any part thereof. The Board of Supervisors hereby declares that it would
16 have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof,
17 irrespective of the fact that any one or more sections, subsections, subdivision paragraphs, sentences,
18 clauses, or phrases be declared unconstitutional, invalid or ineffective.

19
20 Section 3. The San Francisco Administrative Code is hereby amended to read as
21 follows:

22 Sec. 11.9 UTILITY CONDITIONS PERMIT, ~~PERSONAL WIRELESS SERVICE~~
23 ~~FACILITIES SITE PERMIT.~~

24 ~~(a) Utility Conditions Permit.~~
25

1 ~~(H)~~(a) Required for Providers of Telecommunications Service, State Video Service
2 and Personal Wireless Service. The Department of Public Works shall require a Person to
3 obtain a Utility Conditions Permit prior to the construction, installation, or maintenance of
4 Facilities in the Public Rights-of-Way that will be used to provide Telecommunications
5 Service, State Video Service or Personal Wireless Service. UCPs shall be issued by the
6 Department of Public Works in a manner consistent with Applicable Law to Persons who are
7 willing to comply with the City's requirements regarding the physical use and occupation of
8 the Public Rights-of-Way and who have: (A) authority to occupy the Public Rights-of-Way
9 pursuant to California Public Utilities Code Section 7901; (B) authority to occupy the Public
10 Rights-of-Way pursuant to California Public Utilities Code Section 5885; or (C) a license to
11 provide Personal Wireless Service issued under federal law. Persons intending to construct,
12 install, or maintain Facilities to provide Telecommunications Services, State Video Service or
13 Personal Wireless Service shall prove their legal right to occupy and use the Public Rights-
14 of-Way by providing the Department of Public Works a copy of their current: (a) certificate of
15 public convenience and necessity issued by the CPUC (which shall expressly state the
16 Person's authority to provide facilities-based Telecommunications Service); (b) State Video
17 Service Franchise issued by the CPUC; or (c) license to provide Personal Wireless Service
18 issued by the FCC. The Department of Public Works shall include in a UCP such conditions,
19 in addition to those already set forth in Applicable Law, as may be required to govern the
20 Permittee's construction, installation, or maintenance of Facilities in the Public Rights-of-Way
21 to protect and benefit the public health, safety and welfare. The terms and conditions of a
22 UCP shall be limited to those areas consistent with the City's authority under Applicable Law.
23 A UCP shall have a term of no longer than two (2) years and may be renewed in accordance
24 with requirements established by the Department in the UCP. A UCP shall provide that the
25 Permittee is not entitled to construct, install, or maintain Personal Wireless Service Facilities

1 in the Public Rights-of-Way without obtaining a Personal Wireless Service *Facilities Facility*
2 Site Permit under ~~Section 11.9(b)~~ below Article 25 of the San Francisco Public Works Code.

3 (2) (b) UCP ~~Fee~~fee. Any Person required to obtain or renew a UCP shall pay to the
4 Department of Public Works a non-refundable application fee of two thousand dollars
5 (\$2,000.00) to compensate the City for all costs (including the City Attorney's costs) related
6 to: –(A) establishing the Person's authority to occupy the Public Rights-of-Way; (B)
7 establishing the terms on which Persons may occupy the Public Rights-of-Way; and (C)
8 granting, monitoring, enforcing, renewing, revising or revoking UCPs. These fees shall be
9 deposited in the Public Works Excavation Fund established by Section 10.100-230 of the
10 San Francisco Administrative Code.

11 ~~(b) Personal Wireless Service Facilities Site Permit.~~

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

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

1 ~~(A) Review by the Planning Department. The Department of Public Works shall submit to the~~
2 ~~Planning Department for review any application for a Personal Wireless Service Facilities Site Permit~~
3 ~~allowing for the construction, installation, or maintenance of Personal Wireless Service Facilities: (i)~~
4 ~~on historic, historically or architecturally significant, decorative, or specially designed utility poles;~~
5 ~~(ii) in a historic or locally significant district; (iii) adjacent to a historic, architecturally significant or~~
6 ~~locally significant building; or (iv) on a street where the City and County of San Francisco General~~
7 ~~Plan has identified the presence of valued scenic resources that should be protected and conserved.~~
8 ~~The Planning Department shall not recommend approval of a Personal Wireless Service Facilities Site~~
9 ~~Permit unless the Planning Department determines that a Personal Wireless Service Facilities in the~~
10 ~~proposed location is consistent with the public health, safety, convenience and general welfare and~~
11 ~~will not unreasonably affect, intrude upon or diminish any of the identified City resources. Where~~
12 ~~review by the Planning Department is required, the Department of Public Works shall not issue a~~
13 ~~Wireless Services Facilities Site Permit unless the Planning Department has recommended approval.~~

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

24 ~~(C) Review by the Department of Public Health. The Department of Public Works shall~~
25 ~~submit to the Department of Public Health for review any application for a Personal Wireless Service~~

1 ~~Facilities Site Permit allowing for the construction, installation, or maintenance of a Personal~~
2 ~~Wireless Service Facility. The Department of Public Health shall not recommend approval of a~~
3 ~~Personal Wireless Service Facilities Site Permit unless the Department of Public Health determines~~
4 ~~that any human exposure to radio frequency emissions from the proposed Personal Wireless Service~~
5 ~~Facility is within limits established by the FCC. The Department of Public Works shall not issue a~~
6 ~~Wireless Services Facilities Site Permit unless the Department of Public Health has recommended~~
7 ~~approval.~~

8 ~~(3) Personal Wireless Service Facilities Site Permit Fees.~~

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

20 ~~(B) Fees of Other City Departments. Where as required under this Section the Department of~~
21 ~~Public Works has referred an application for a Personal Wireless Service Facilities Site Permit to the~~
22 ~~Planning Department, the Recreation and Park Department or the Department of Public Health, the~~
23 ~~applicant shall pay the following additional fees for each Personal Wireless Service Facility contained~~
24 ~~in an application for a Personal Wireless Service Facilities Site Permit: (i) a Planning Department~~
25 ~~non-refundable fee of one hundred five dollars (\$105.00) plus time and materials; (ii) a Recreation~~

1 and Park Department non-refundable fee of one hundred twenty five dollars (\$125.00) and (iii) a
2 Department of Public Health non-refundable fee of one hundred thirty five dollars (\$135.00) plus time
3 and materials for any review that takes more than thirty (30) minutes. The purpose of these fees is to
4 compensate the applicable City department for all costs related to reviewing an application for a
5 Personal Wireless Service Facilities Site Permit.

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

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

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

5
6 Section 4. Retroactivity. This section shall not be codified. The Board of
7 Supervisor intends that the requirements of this ordinance shall be retroactive. Any permit
8 under Chapter 11, Article 1, Section 11.9(b) of the San Francisco Administrative Code that is
9 not final on the effective date of this ordinance shall be subject to the requirements of this
10 ordinance.

11
12 Section 5. Environmental Findings. The Planning Department has reviewed the
13 ordinance in accordance with the California Environmental Quality Act (California Public
14 Resources Code Section 21000, *et seq.*). The Board of Supervisors hereby affirms the
15 determination of the Planning Department, which is on file with the Clerk of the Board of
16 Supervisors in File No. 100041, and which is hereby declared to be a part of this
17 ordinance as if set forth fully herein.

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

20
21 By: _____

22 WILLIAM K. SANDERS
23 Deputy City Attorney
24
25

REVISED LEGISLATIVE DIGEST

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

Ordinance amending the San Francisco Public Works Code by: (1) adding Article 25, Sections 1500 through 1528, to establish new requirements for Personal Wireless Service Facility Site Permits and to increase certain fees for obtaining such permits, (2) amending the San Francisco Administrative Code by amending Chapter 11, Article 1, Section 11.9, to eliminate obsolete provisions related to such permits, (3) making the provisions of the ordinance retroactive, and (4) making environmental findings.

Existing Law

San Francisco Administrative Code § 11.9(b) requires a permit from the City and County of San Francisco ("City") Department of Public Works (the "Department") to install a personal wireless service facility in the public rights-of-way ("Wireless Permit").

Section 11.9(b) enables the City to regulate the location and design of wireless facilities by requiring the Planning Department or the Recreation and/or Park Department to review an application for a Wireless Permit in specified protected locations. The Department may not issue a Wireless Permit in these protected locations unless the Planning Department and/or the Recreation and Park Department recommend approval. For facilities that are not in protected locations, the Department may issue the permit without referring the application to the Planning or Recreation and Park Departments. Section 11.9(b) does not contain any restrictions or design standards for wireless facilities that would be installed in such unprotected locations.

Section 11.9(b) requires the Department to refer an application for a Wireless Permit to the Department of Public Health to determine whether human exposure to radio frequency emissions from the proposed wireless facility complies with Federal Communications Commission ("FCC") guidelines. The Department may not issue a Wireless Permit without the approval of the Department of Public Health.

Section 11.9(b) does not require public notice of an application for a Wireless Permit, nor is public notice given after a Wireless Permit is issued. No protest is allowed, and no public hearing is required on an application for a Wireless Permit. While an appeal may be filed with the Board of Appeals, the general public may not find out that a Wireless Permit has been issued until it is too late to file an appeal.

Amendments to Current Law

The Ordinance retains the requirement to obtain a Wireless Permit presently contained in Administrative Code § 11.9(b), but moves the provisions governing Wireless Permits to Article 25 of the Public Works Code. The Ordinance therefore repeals those sections of the Administrative Code that would be rendered obsolete by the Ordinance.

The Ordinance also retains the following requirements in Section 11.9:

- A wireless carrier must obtain a Utilities Conditions Permit ("UCP") prior to applying for a Wireless Permit. The UCP sets forth general terms and conditions for such installations by utilities.
- The Planning Department must review an application for a Wireless Permit adjacent to a historic or architecturally significant building, within a historic district, or on a scenic street, and the Recreation and Park Department review an application for a Wireless Permit adjacent to a park and open space.
- The Department of Public Health must review an application for a Wireless Permit to ensure that it complies with FCC guidelines.

The Ordinance, however, changes the Wireless Permit requirements now contained in Section 11.9(b) in several respects:

- Prohibits the issuance of a Wireless Permit if it would add a new utility or street light pole to a street that does not have any existing overhead utility facilities.
- Establishes different requirements for Wireless Permits depending on the proposed size and location of the wireless facility:
 - Tier I facilities are relatively small facilities with minimal visual impact. The Ordinance establishes a streamlined process for an application to install a Tier I facility. If the Department determines that the proposed equipment meets the Tier I criteria, the Department will approve the Wireless Permit.
 - Tier II facilities are somewhat larger facilities. The Ordinance establishes different review processes depending on the location of the Tier II facility. There is a streamlined process for an application to install a Tier II facility in an unprotected location. In a protected location, the Department must refer the application for discretionary review by the Planning and/or Recreation and Park Departments to ensure that the additional visual impact of the larger facility (as compared to a Tier I facility) would be compatible with the protected resource. Under the Ordinance, the Department may also exercise its discretion to refer an application to install a

Tier II facility in an unprotected location to the Planning and/or Recreation and Park Department if the proposed location for this facility is within the immediate vicinity of a protected location.

- Tier III facilities are those that are too large to meet the Tier I or Tier II size criteria. The Ordinance does not establish any limit on the size of a Tier III facility. The Ordinance requires a discretionary review of an application for a Tier III facility by: (i) the Department to ensure that the applicant has a bona fide need for a larger facility; and (ii) the Planning and/or Recreation and Park Departments to ensure that the additional visual impact of the larger facility (as compared to a Tier II facility) would be compatible with the protected resource.
- Adds residential and neighborhood commercial zoning districts as protected areas for Wireless Permits. The Planning Department would review applications for Tier II or Tier III Wireless Permits in these zoning districts.
- Authorizes the Planning and Recreation and Park Departments to require an applicant for a Wireless Permit to plant a street tree next to the facility in order to provide a screen, or to pay an "in lieu" fee where it is impracticable to require planting a tree at the permitted location. The permittee would also be required to maintain the street tree.
- Establishes new standards for the Planning and Recreation and Park Departments to review Wireless Permit applications. The standards are both detailed and specific to the City resources that are protected by the ordinance.
- Requires public notice and an opportunity to protest before final approval of an application for a Tier III Wireless Permit. Any protest would trigger a hearing before a Department hearing officer and a final decision by the Director of Public Works.
- Requires public notice of a final determination approving any Wireless Permit application.
- Requires certification that a wireless facility complies with FCC guidelines and City-proscribed noise limitations before the Department can renew a Wireless Permit.
- Adds a number of provisions to protect the City from undue risk including liability, indemnity, and insurance requirements.

The Ordinance also provides that the requirements are retroactive. As a result, any applications for Wireless Permits presently being reviewed by the Department, or any newly filed applications, will have to be issued under the requirements of the Ordinance; rather than under the requirements of Section 11.9(b).

Background Information

In recent years, wireless carriers seeking to improve coverage and add capacity have increasingly requested permission to install antennas and associated electronic equipment (such as repeaters, electric meters, and battery back-up) on utility and street light poles in the public rights-of-way. Local governments have attempted to regulate the installation of such facilities in the public-rights-of-way to limit their aesthetic impact, among other reasons.

In the Telecommunications Act of 1996 ("TCA"), Congress limited state and local authority to regulate telecommunications carriers. (47 U.S.C. § 253.) Since 1996, telecommunications carriers have frequently sued to overturn local regulations by claiming that they are preempted by the TCA. Such lawsuits were common in California because a 2001 decision from the United States Court of Appeals for the Ninth Circuit Court in *City of Auburn v. Qwest Corp.* made it relatively easy for federal courts to preempt local regulations in California.

The *City of Auburn* court broadly construed the scope of federal preemption by holding that the TCA preempts local regulations that *may* have the effect of prohibiting the provision of telecommunications services. Following that decision, many federal courts in California preempted local regulations under the TCA, including City provisions regulating the installation of wireless facilities in the public rights-of-way.

In 2008, the Ninth Circuit in *Sprint Telephony v. County of San Diego* reversed the decision in *City of Auburn* and made it more difficult for telecommunications carriers to successfully challenge local ordinances under the TCA. Now, under *Sprint*, to preempt local regulations a telecommunications carrier must show that such local regulations *actually* prohibit or have the effect of prohibiting the provision of telecommunications services. Furthermore, *Sprint* recognized that local authority over the use of the public rights-of-way by telecommunications carriers includes the authority to regulate that use based on aesthetic concerns.

The TCA also limits the authority of local governments to regulate wireless facilities based on the environmental effects of radio frequency emissions. (47 U.S.C. § 332(c)(7)(B)(iv).) Local governments may only ensure that such wireless facilities comply with FCC guidelines regarding human exposure to radio frequency emissions.

State law also provides certain rights to "telephone corporations" to install "telephone lines" in the public rights-of-way. (Public Utilities Code § 7901.) At present, it is unclear under state law whether: (i) telecommunications carriers have a right to install wireless facilities in the public rights-of-way; or (ii) local governments may regulate the installation of such facilities based on aesthetic impacts. It is unclear because no state court has decided these issues. In 2009, however, the Ninth Circuit in *Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates* interpreted state law to authorize local governments to consider aesthetics in deciding whether to permit the installation of wireless facilities in the public rights-of-way.

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

January 19, 2010

File No. 100041

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

Dear Mr. Wycko:

On January 12, 2010, Supervisor Avalos introduced the following proposed legislation:

File: 100041

Ordinance amending the San Francisco Public Works Code by adding Article 25, Sections 1500 through 1526, to establish new requirements for Personal Wireless Service Facility Site Permits and to increase certain fees for obtaining such permits, amending the San Francisco Administrative Code by amending Chapter 11, Article 1, Section 11.9 to eliminate obsolete provisions related to such permits, making the provisions of the ordinance retroactive, and making environmental findings.

The legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, reading "Alisa Somera".

By: Alisa Somera, Committee Clerk
Land Use & Economic Development Committee

Attachment

cc: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

*Not a project per CEQA
guide lines Sections
15060(c)(3) and 15378.
Nannie R. Turrell
January 20, 2010*



SAN FRANCISCO PLANNING DEPARTMENT

October 26, 2010

Ms. Angela Calvillo, Clerk
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Transmittal of Planning Department Case Number 2010.0054U:
Affordable Housing Program
Board File Number 10-0041
Planning Commission Recommendation: Approval

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Dear Ms. Calvillo,

On October 7th the San Francisco Planning Commission (hereinafter "Commission") conducted duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance.

The proposed Ordinance would amend San Francisco Public Works Code by adding Article 25, Sections 1500 through 1528, to establish new requirements for Personal Wireless Service Facility Site Permits and to increase certain fees for obtaining such permits, amending the San Francisco Administrative Code by amending Chapter 11, Article 1, Section 11.9, to eliminate obsolete provisions related to such permits, making the provisions of the ordinance retroactive, and making environmental findings, to do the following:

1. The Ordinance retains the requirement to obtain a Wireless Permit presently contained in Administrative Code § 11.9(b), but moves the provisions governing Wireless Permits to Article 25 of the Public Works Code. The Ordinance therefore repeals those sections of the Administrative Code that would be rendered obsolete by the Ordinance.

The Ordinance also retains the following requirements in Section 11.9:

- A wireless carrier must obtain a Utilities Conditions Permit ("UCP") prior to applying for a Wireless Permit. The UCP sets forth general terms and conditions for such installations by utilities.
 - The Planning Department must review an application for a Wireless Permit adjacent to a historic or architecturally significant building, within a historic district, or on a scenic street, and the Recreation and Park Department review an application for a Wireless Permit adjacent to a park and open space.
 - The Department of Public Health must review an application for a Wireless Permit to ensure that it complies with FCC guidelines.
2. The Ordinance, however, changes the Wireless Permit requirements now contained in Section 11.9(b) in several respects:

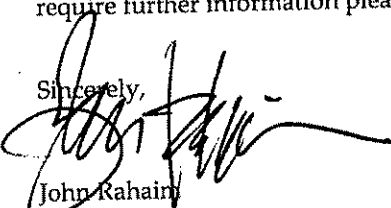
- Prohibits the issuance of a Wireless Permit if it would add a new utility or street light pole to a street that does not have any existing overhead utility facilities.
 - Establishes different requirements for Wireless Permits depending on the proposed size and location of the wireless facility:
 - Tier I facilities are relatively small facilities with minimal visual impact. The Ordinance establishes a streamlined process for an application to install a Tier I facility. If the Department determines that the proposed equipment meets the Tier I criteria, the Department will approve the Wireless Permit.
 - Tier II facilities are somewhat larger facilities. With any Tier II facility, the Department must first ensure that the applicant has a bona fide need for a larger facility. The Ordinance then establishes different review processes depending on the location of the Tier II facility. There is a streamlined process for an application to install a Tier II facility in an unprotected location. In a protected location, the Department must refer the application for discretionary review by the Planning and/or Recreation and Park Departments to ensure that the additional visual impact of the larger facility (as compared to a Tier I facility) would be compatible with the protected resource.
 - Tier III facilities are those that are too large to meet the Tier I or Tier II size criteria. The Ordinance does not establish any limit on the size of a Tier III facility. The Ordinance requires a discretionary review of an application for a Tier III facility by: (i) the Department to ensure that the applicant has a bona fide need for a larger facility; and (ii) the Planning and/or Recreation and Park Departments to ensure that the additional visual impact of the larger facility (as compared to a Tier II facility) would be compatible with the protected resource.
 - Adds residential and neighborhood commercial zoning districts as protected areas for Wireless Permits. The Planning Department would review applications for Tier II or Tier III Wireless Permits in these zoning districts.
 - Authorizes the Planning and Recreation and Park Departments to require an applicant for a Wireless Permit to plant a street tree next to the facility in order to provide a screen, or to pay an "in lieu" fee where it is impracticable to require planting a tree at the permitted location. The permittee would also be required to maintain the street tree.
 - Establishes new standards for the Planning and Recreation and Park Departments to review Wireless Permit applications. The standards are both detailed and specific to the City resources that are protected by the ordinance.
 - Requires public notice and an opportunity to protest before final approval of an application for a Tier III Wireless Permit. Any protest would trigger a hearing before a Department hearing officer and a final decision by the Director of Public Works.
 - Requires public notice of a final determination approving any Wireless Permit application.
 - Requires certification that a wireless facility complies with FCC guidelines before the Department can renew a Wireless Permit.
 - Adds a number of provisions to protect the City from undue risk including liability, indemnity, and insurance requirements.
3. The Ordinance also provides that the requirements are retroactive. As a result, any applications for Wireless Permits presently being reviewed by the Department, or any newly

filed applications, will have to be issued under the requirements of the Ordinance; rather than under the requirements of Section 11.9(b).

At the October 7th hearing, the Commission voted to recommend approval of the proposed Ordinance and encourage that the Supervisor continue to work with the industry and interested persons in regard to equipment safety.

Please find attached documents relating to the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,



John Rahaim
Director of Planning

cc: Supervisor Avalos

Attachments (one copy of the following):

Planning Commission Resolution No. 18192

Planning Commission Executive Summary for Case No. 2010.0054U

Draft Board of Supervisors Ordinance (BOS File No. 10-0041)



SAN FRANCISCO PLANNING DEPARTMENT

Resolution No. 18192

HEARING DATE: OCTOBER 7, 2010

Project Name: Personal Wireless Service Facility Site Permits Ordinance
Case Number: 2010.0054U [Board File No. 10-0041]
Initiated by: Supervisor Avalos / Introduced
Staff Contact: Jonas P. Ionin, Senior Planner
jonas.ionin@sfgov.org, 415-558-6309
Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
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Fax:
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Planning
Information:
415.558.6377

Recommendation: Recommend Approval

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE AMENDING THE SAN FRANCISCO PUBLIC WORKS CODE BY ADDING ARTICLE 25, SECTIONS 1500 THROUGH 1528, TO ESTABLISH NEW REQUIREMENTS FOR PERSONAL WIRELESS SERVICE FACILITY SITE PERMITS AND TO INCREASE CERTAIN FEES FOR OBTAINING SUCH PERMITS, AMENDING THE SAN FRANCISCO ADMINISTRATIVE CODE BY AMENDING CHAPTER 11, ARTICLE 1, SECTION 11.9, TO ELIMINATE OBSOLETE PROVISIONS RELATED TO SUCH PERMITS, MAKING THE PROVISIONS OF THE ORDINANCE RETROACTIVE, AND MAKING ENVIRONMENTAL FINDINGS.

PREAMBLE

Whereas, Supervisor Avalos introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 10-0041 which would amend the Public Works Code by adding Article 25, Sections 1500 through 1528, to establish new requirements for Personal Wireless Service Facility Site Permits and to increase certain fees for obtaining such permits, amending the San Francisco Administrative Code by amending Chapter 11, Article 1, Section 11.9, to eliminate obsolete provisions related to such permits, making the provisions of the ordinance retroactive, and making environmental findings; and

Whereas, on August 12, 2010, the San Francisco Planning Commission (hereinafter "Commission") conducted duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the proposed Public Works Code amendments have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15060(c)(2); and

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties; and

Whereas, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

Whereas, the Commission has reviewed the proposed Ordinance; and

MOVED, that the Commission hereby recommends that the Board of Supervisors recommends approval of the proposed Ordinance and adopts the attached Draft Resolution to that effect.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Planning Commission recognizes that in recent years, wireless carriers seeking to improve coverage and add capacity have increasingly requested permission to install antennas and associated electronic equipment (such as repeaters, electric meters, and battery back-up) on utility and street light poles in the public rights-of-way;
2. It is imperative that local governments consider aesthetics in deciding whether to permit the installation of wireless facilities in the public rights-of-way;
3. Expanding the scope of review by the Planning Department to all residential and neighborhood commercial zoned areas is appropriate;
4. Certain installations would create a de minimis aesthetic impact to an existing utility pole, street, view, and/or its surroundings;
5. Certain installations would create a negative aesthetic impact to an existing utility pole, street, view, and/or its surroundings;
6. Public notice of a final determination approving any wireless permit is appropriate; and
7. The Commission fully supports the intent of this legislation – to regulate the installation of wireless facilities on utility poles in the public right-of-way.
8. The Commission recommends that Supervisor's office continue to work with the Industry and interested persons regarding safety issues surrounding the telecommunications equipment.

General Plan Compliance. The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

I. URBAN DESIGN ELEMENT

OBJECTIVE 1

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION

POLICY 1.1

Recognize and protect major views in the city, with particular attention to those of open space and water.

OBJECTIVE 2

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

POLICY 2.4

Preserve notable landmarks and areas of historic, architectural or aesthetic value, and promote the preservation of other buildings and features that provide continuity with past development.

POLICY 2.9

Review proposals for the giving up of street areas in terms of all the public values that streets afford.

II. COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

POLICY 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

OBJECTIVE 6

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

POLICY 6.2

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

POLICY 6.7

Promote high quality urban design on commercial streets.

POLICY 6.8

Preserve historically and/or architecturally important buildings or groups of buildings in neighborhood commercial districts.

9. The proposed replacement project is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed Ordinance would not harm existing neighborhood serving retail and personal services.

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed Ordinance seeks to enhance neighborhood character by mitigating any potential negative aesthetic impacts that may result from the installation of wireless facilities in the public right-of-way.

- C) The City's supply of affordable housing will be preserved and enhanced:

The proposed Ordinance would have no effect on the City's supply of affordable housing.

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

Preparedness against injury and loss of life in an earthquake would not be impeded by the proposed Ordinance.

- G) That landmark and historic buildings will be preserved:

Resolution No. 18192
Hearing Date: October 7, 2010

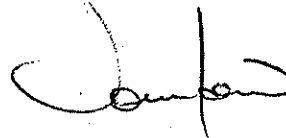
CASE NO. 2010.0054U
Public Works Code Amendment:
Personal Wireless Service Facility Site Permits

The proposed Ordinance seeks to preserve Landmarks and historic buildings by mitigating any potential negative aesthetic impacts that may result from the installation of wireless facilities in the public right-of-way.

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

The proposed Ordinance seeks to preserve parks and open space and their access to sunlight and vistas by mitigating any potential negative impacts that may result from the installation of wireless facilities in the public right-of-way.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on October 7, 2010.



For:

Linda Avery
Commission Secretary

AYES: Commissioners: Miguel, Olague, Antonini, Borden, Moore, and Sugaya
NAYS: None
ABSENT: None
ADOPTED: October 7, 2010



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Executive Summary Public Works Code Amendment HEARING DATE: AUGUST 12, 2010

1650 Mission St.
Suite 400
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CA 94103-2479

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Planning
Information:
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Project Name: Personal Wireless Service Facility Site Permits Ordinance
Case Number: 2010.0054U [Board File No. 10-0041]
Initiated by: Supervisor Avalos
Staff Contact: Jonas P. Ionin, Senior Planner
jonas.ionin@sfgov.org, 415-558-6309
Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395

Recommendation: Recommend Approval
30-Day Deadline: N/A

PUBLIC WORKS CODE AMENDMENT

The proposed Ordinance introduced by Supervisor Avalos would amend the San Francisco Public Works Code by adding Article 25, Sections 1500 through 1528, to establish new requirements for Personal Wireless Service Facility Site Permits and to increase certain fees for obtaining such permits, amending the San Francisco Administrative Code by amending Chapter 11, Article 1, Section 11.9, to eliminate obsolete provisions related to such permits, making the provisions of the ordinance retroactive, and making environmental findings.

The Way It Is Now:

Administrative Code:

San Francisco Administrative Code § 11.9(b) requires a permit from the City and County of San Francisco ("City") Department of Public Works (the "Department") to install a personal wireless service facility in the public rights-of-way ("Wireless Permit").

Section 11.9(b) enables the City to regulate the location and design of wireless facilities by requiring the Planning Department or the Recreation and/or Park Department to review an application for a Wireless Permit in specified protected locations. The Department may not issue a Wireless Permit in these protected locations unless the Planning Department and/or the Recreation and Park Department recommend approval. For facilities that are not in protected locations, the Department may issue the permit without referring the application to the Planning or Recreation and Park Departments. Section

11.9(b) does not contain any restrictions or design standards for wireless facilities that would be installed in such unprotected locations.

Section 11.9(b) requires the Department to refer an application for a Wireless Permit to the Department of Public Health to determine whether human exposure to radio frequency emissions from the proposed wireless facility complies with Federal Communications Commission ("FCC") guidelines. The Department may not issue a Wireless Permit without the approval of the Department of Public Health.

Section 11.9(b) does not require public notice of an application for a Wireless Permit, nor is public notice given after a Wireless Permit is issued. No protest is allowed, and no public hearing is required on an application for a Wireless Permit. While an appeal may be filed with the Board of Appeals, the general public may not find out that a Wireless Permit has been issued until it is too late to file an appeal.

The Way It Would Be:

Public Works Code:

The Ordinance retains the requirement to obtain a Wireless Permit presently contained in Administrative Code § 11.9(b), but moves the provisions governing Wireless Permits to Article 25 of the Public Works Code. The Ordinance therefore repeals those sections of the Administrative Code that would be rendered obsolete by the Ordinance.

The Ordinance also retains the following requirements in Section 11.9:

- A wireless carrier must obtain a Utilities Conditions Permit ("UCP") prior to applying for a Wireless Permit. The UCP sets forth general terms and conditions for such installations by utilities.
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- The Department of Public Health must review an application for a Wireless Permit to ensure that it complies with FCC guidelines.

The Ordinance, however, changes the Wireless Permit requirements now contained in Section 11.9(b) in several respects:

- Prohibits the issuance of a Wireless Permit if it would add a new utility or street light pole to a street that does not have any existing overhead utility facilities.
- Establishes different requirements for Wireless Permits depending on the proposed size and location of the wireless facility:
 - Tier I facilities are relatively small facilities with minimal visual impact. The Ordinance establishes a streamlined process for an application to install a Tier I facility. If the Department determines that the proposed equipment meets the Tier I criteria, the Department will approve the Wireless Permit.
 - Tier II facilities are somewhat larger facilities. With any Tier II facility, the Department must first ensure that the applicant has a bona fide need for a larger facility. The Ordinance then establishes different review processes depending on the location of the Tier II facility. There is a streamlined process for an application to install a Tier II facility in an unprotected

location. In a protected location, the Department must refer the application for discretionary review by the Planning and/or Recreation and Park Departments to ensure that the additional visual impact of the larger facility (as compared to a Tier I facility) would be compatible with the protected resource.

- Tier III facilities are those that are too large to meet the Tier I or Tier II size criteria. The Ordinance does not establish any limit on the size of a Tier III facility. The Ordinance requires a discretionary review of an application for a Tier III facility by: (i) the Department to ensure that the applicant has a bona fide need for a larger facility; and (ii) the Planning and/or Recreation and Park Departments to ensure that the additional visual impact of the larger facility (as compared to a Tier II facility) would be compatible with the protected resource.
- Adds residential and neighborhood commercial zoning districts as protected areas for Wireless Permits. The Planning Department would review applications for Tier II or Tier III Wireless Permits in these zoning districts.
- Authorizes the Planning and Recreation and Park Departments to require an applicant for a Wireless Permit to plant a street tree next to the facility in order to provide a screen, or to pay an "in lieu" fee where it is impracticable to require planting a tree at the permitted location. The permittee would also be required to maintain the street tree.
- Establishes new standards for the Planning and Recreation and Park Departments to review Wireless Permit applications. The standards are both detailed and specific to the City resources that are protected by the ordinance.
- Requires public notice and an opportunity to protest before final approval of an application for a Tier III Wireless Permit. Any protest would trigger a hearing before a Department hearing officer and a final decision by the Director of Public Works.
- Requires public notice of a final determination approving any Wireless Permit application.
- Requires certification that a wireless facility complies with FCC guidelines before the Department can renew a Wireless Permit.
- Adds a number of provisions to protect the City from undue risk including liability, indemnity, and insurance requirements.

The Ordinance also provides that the requirements are retroactive. As a result, any applications for Wireless Permits presently being reviewed by the Department, or any newly filed applications, will have to be issued under the requirements of the Ordinance; rather than under the requirements of Section 11.9(b).

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend approval of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

The Planning Department recognizes that in recent years, wireless carriers seeking to improve coverage and add capacity have increasingly requested permission to install antennas and associated electronic equipment (such as repeaters, electric meters, and battery back-up) on utility and street light poles in the public rights-of-way. Local governments have attempted to regulate the installation of such facilities in the public-rights-of-way to limit their aesthetic impact, among other reasons.

In the Telecommunications Act of 1996 ("TCA"), Congress limited state and local authority to regulate telecommunications carriers. (47 U.S.C. § 253.) Since 1996, telecommunications carriers have frequently sued to overturn local regulations by claiming that they are preempted by the TCA. Such lawsuits were common in California because a 2001 decision from the United States Court of Appeals for the Ninth Circuit Court in *City of Auburn v. Qwest Corp.* made it relatively easy for federal courts to preempt local regulations in California.

The *City of Auburn* court broadly construed the scope of federal preemption by holding that the TCA preempts local regulations that *may* have the effect of prohibiting the provision of telecommunications services. Following that decision, many federal courts in California preempted local regulations under the TCA, including City provisions regulating the installation of wireless facilities in the public rights-of-way.

In 2008, the Ninth Circuit in *Sprint Telephony v. County of San Diego* reversed the decision in *City of Auburn* and made it more difficult for telecommunications carriers to successfully challenge local ordinances under the TCA. Now, under *Sprint*, to preempt local regulations a telecommunications carrier must show that such local regulations *actually* prohibit or have the effect of prohibiting the provision of telecommunications services. Furthermore, *Sprint* recognized that local authority over the use of the public rights-of-way by telecommunications carriers includes the authority to regulate that use based on aesthetic concerns.

The TCA also limits the authority of local governments to regulate wireless facilities based on the environmental effects of radio frequency emissions. (47 U.S.C. § 332(c)(7)(B)(iv).) Local governments may only ensure that such wireless facilities comply with FCC guidelines regarding human exposure to radio frequency emissions.

State law also provides certain rights to "telephone corporations" to install "telephone lines" in the public rights-of-way. (Public Utilities Code § 7901.) At present, it is unclear under state law whether: (i) telecommunications carriers have a right to install wireless facilities in the public rights-of-way; or (ii) local governments may regulate the installation of such facilities based on aesthetic impacts. It is unclear because no state court has decided these issues. In 2009, however, the Ninth Circuit in *Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates* interpreted state law to authorize local governments to consider aesthetics in deciding whether to permit the installation of wireless facilities in the public rights-of-way.

ENVIRONMENTAL REVIEW

The proposed Ordinance is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

PUBLIC COMMENT

Supervisor Avalos' office, the Department of Public Works, the Planning Department, and the City Attorney's office have conducted extensive outreach to stakeholders regarding the wireless ordinance to receive input on the draft ordinance. Neighborhood and industry concerns have been incorporated into the draft legislation.

RECOMMENDATION: Recommend Approval
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Attachments:

Exhibit A: Draft Planning Commission Resolution
Exhibit B: Draft Board of Supervisors Ordinance (BOS File No. 10-0041)