

**ORDINANCE NO. 2930  
(CODE AMENDMENT NO. 759)**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
EL MONTE AMENDING CHAPTER 17.82 OF TITLE 17  
(ZONING) AND ADDING CHAPTER 17.83 TO TITLE 17  
(ZONING) OF THE EL MONTE MUNICIPAL CODE TO  
ESTABLISH UPDATED REGULATIONS AND  
PROCEDURES RELATED TO WIRELESS FACILITIES**

WHEREAS, pursuant to California Constitution Article XI, Section 7, the City of El Monte (the "City") has the authority to enact local planning and land use regulations to protect the public health, safety, and welfare of their residents through its police power; and

WHEREAS, the City's police power provides the right to adopt and enforce zoning regulations; and

WHEREAS, state and federal law do not vest local governments with complete control over the regulation of wireless facilities, such as macro cell towers or so-called small cells; and

WHEREAS, wireless service providers must apply to cities and counties for permits to build structures that support wireless telecommunications equipment, like antennae and related devices; and

WHEREAS, wireless carriers must seek local approval to place additional telecommunications equipment on structures and facilities where that equipment already exists, which are referred to as collocations; and

WHEREAS, California cities are preempted from regulating various aspects of wireless facilities siting, under both federal and state law; and

WHEREAS, federal law establishes specified limitations and preemptions in relation to the siting of wireless facilities as part of the Federal Telecommunications Act of 1996 (47 U.S.C. § 332); and

WHEREAS, federal law provides that no state or local statute or regulation, or other state or local requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service (47 U.S.C. § 253); and

WHEREAS, federal law also provides that a state or local government may not deny, but shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such a tower or base station (47 U.S.C. § 1455(a)); and

WHEREAS, Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 ("Section 6409") mandates that state or local government approve certain wireless facilities siting requests for modifications and collocations of wireless transmissions equipment on an existing tower or base station that do not result in a substantial change to the physical dimensions of such tower or base station; and

WHEREAS, in October 2014, the Federal Communications Commission unanimously approved rules interpreting Section 6409 that took effect as of April 2015; and

WHEREAS, under state law, a wireless collocation facility must be a permitted use, not subject to a local discretionary permit, if it satisfies certain requirements (Gov. Code, § 65850.6); and

WHEREAS, under California Senate Bill 1627, local governments are required to approve collocations through a ministerial process and are prohibited from limiting the duration of permits for wireless sites to less than 10 years, absent good reason; and

WHEREAS, federal and state laws impose various so-called "shot clocks" for periods of 60, 90, or 150 days that can lead to projects being deemed approved if not approved or denied within the applicable time frame; and

WHEREAS, for example, California Assembly Bill 57 specifies that a collocation or siting application for a wireless facility is deemed approved if a local government does not act on a permit application within reasonable time periods specified in federal regulations; and

WHEREAS, telecommunications companies have access to attach their equipment to utility poles in the public right-of-way, governed by a set of state and federal regulations; and

WHEREAS, this method of attachment is increasingly popular as such companies seek to deploy so-called 5G network technology; and

WHEREAS, state law establishes a framework, process, and procedures governing the attachment of telecommunications facilities to investor-owned utility poles and municipal utility poles, providing the California Public Utilities Commission (CPUC) the authority to establish and enforce rates, terms and conditions for pole attachments; and

WHEREAS, telecommunications companies are authorized to erect poles and attach to investor-owned and municipal utility poles under specified cost-based rates (Pub. Util. Code, § 7901); and

WHEREAS, local governments may not block utility pole attachments, but existing law authorizes them to regulate the time, manner, and place of pole attachments in the public right-of-way (Pub. Util. Code, § 7901.1);

WHEREAS, these local regulations are the vehicle for local police power/regulation; and

WHEREAS, on March 20, 2018, the City Council adopted Resolution No. 9841 to approve a Master License Agreement template for potential engagement with telecommunications companies for the siting of small cells on City-owned vertical infrastructure in the public right-of-way; and

WHEREAS, the City's existing wireless facility regulations have not been updated in over nine years and the City seeks to update such regulations to ensure compliance with state and federal laws, while maintaining the City's values and goals to the extent allowable by law; and

WHEREAS, the Planning Commission conducted a duly notice public hearing was held on May 22, 2018 concerning the prospective approval of Code Amendment No. 759; and

WHEREAS, evidence, both written and oral, was duly presented to and considered by the Planning Commission at such public hearing; and

WHEREAS, at the conclusion of such public hearing, the Planning Commission adopted Resolution No. 3506 recommending City Council approval of this Code Amendment No. 759/Ordinance No. 2930; and

WHEREAS, the City Council conducted a public hearing to consider this Code Amendment No. 759/Ordinance No. 2930 and associated design guidelines; and

WHEREAS, the City Council public hearing was noticed in accordance with the requirements set forth in Government Code sections 65090 and 65091.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL MONTE, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The recitals above are true and correct and incorporated herein by reference.

**SECTION 2.** Chapter 17.82 of Title 17 (Zoning) of the El Monte Municipal Code is amended in its entirety to read as follows:

## **CHAPTER 17.82 NEW AND SUBSTANTIALLY CHANGED WIRELESS FACILITIES**

### **17.82.010 PURPOSE AND INTENT**

- A. The City of El Monte intends this Chapter 17.82 to establish reasonable, uniform and comprehensive standards and procedures for wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this Chapter are intended to, and should be applied to, protect and promote public health, safety and welfare, and also balance the benefits that flow from robust, advanced wireless services with the City's local values, which include without limitation the aesthetic character of the City, its neighborhoods and community. This Chapter is also intended to reflect and promote the community interest to (1) ensure that the balance between public and private interest is maintained on a case-by-case basis; (2) protect the City's visual character from potential adverse impacts or visual blight created or exacerbated by telecommunications infrastructure; (3) protect and preserve the City's environmental resources; and (4) promote access to high-quality, advanced telecommunication services for the City's residents, businesses and visitors.
- B. This Chapter is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unfair, unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California law.

### **17.82.020 DEFINITIONS**

The abbreviations, phrases, terms and words used in this Chapter will have the meanings assigned to them in this Section 17.82.020 or, as may be appropriate, in Section 17.04.020 (Definitions), as may be amended from time to time, unless context indicates otherwise. Undefined phrases, terms or words in this section will have the meanings assigned to them in 47 U.S.C. § 153, as may be amended from time to time, and, if not defined therein, will have their ordinary meanings. In the event that any definition assigned to any phrase, term or word in this section conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

- A. **"approval authority"** means the commission or official responsible for review of permit applications and vested with the authority to approve or deny such applications. The approval authority for a conditional use permit is the Planning Commission or, on appeal, the City Council. The approval authority for an administrative wireless permit is the Economic Development Director or, on appeal, the Planning Commission. The approval authority for a temporary wireless permit is the Economic Development Director or, on appeal, the City Manager. The foregoing notwithstanding, the approval authority for administrative wireless permits or temporary wireless permits relating to wireless facilities within the public rights-of-way is the Public Works Director, or on appeal, the Planning Commission or City Manager, respectively.

- B. **"base station"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended, which defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.40001(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii).
- C. **"City Manager"** means the City Manager of the City of El Monte, or the City Manager's designee.
- D. **"concealed"** or **"concealment"** means camouflaging techniques that integrate the transmission equipment into the surrounding natural and/or built environment such that the average, untrained observer cannot directly view the equipment but would likely recognize the existence of the wireless facility or concealment technique. Camouflaging concealment techniques include, but are not limited to: (1) facade or rooftop mounted pop-out screen boxes; (2) antennas mounted within a radome above a streetlight; (3) equipment cabinets in the public rights-of-way painted or wrapped to match the background; and (4) an isolated or standalone faux-tree.
- E. **"CPCN"** means a "Certificate of Public Convenience and Necessity" granted by the CPUC or its duly appointed successor agency pursuant to California Public Utilities Code §§ 1001 *et seq.*, as may be amended.
- F. **"CPUC"** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
- G. **"Economic Development Director"** or **"Director"** means the Economic Development Director of the City of El Monte, or the Economic Development Director's designee. When used in the context of applications related to wireless facilities on private property, the Director refers to the Economic Development Director.
- H. **"FCC"** means the Federal Communications Commission or its duly appointed successor agency.
- I. **"FCC Shot Clock"** means the reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended from time to time.
- J. **"OTARD"** means any over-the-air reception device subject to 47 C.F.R. §§ 1.4000 *et seq.*, as may be amended, and which includes satellite television dishes not greater than one meter in diameter.
- K. **"personal wireless services"** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

- L. **"personal wireless service facilities"** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal wireless services.
- M. **"Planning Commission"** means the Planning Commission of the City of El Monte.
- N. **"Planning Division"** means the Planning Division of the Economic Development Department of the City of El Monte or its duly appointed successor agency.
- O. **"Public Works Department"** means the Public Works Department of the City of El Monte or its duly appointed successor agency.
- P. **"Public Works Director"** or **"Director"** means the Public Works and Utilities Director of the City of El Monte, or the Public Works Director's designee. When used in the context of applications related to wireless facilities in the public right-of-way, the Director refers to the Public Works Director.
- Q. **"RF"** means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.
- R. **"routine maintenance and repair"** means work performed solely to maintain or repair the existing transmission equipment approved in accordance with the regulatory approvals or permits required at the time the subject wireless facility was constructed or modified. As an illustration, routine maintenance and repair includes fixing the internal components of damaged, inoperable or malfunctioning transmission equipment or replacing such equipment with new equipment of the same make, model and size of the equipment being replaced. Maintenance or repair that involves adding any new transmission equipment, increasing the size or dimensions of any existing transmission equipment, or implementing technology upgrades shall not be considered routine.
- S. **"Section 6409"** means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.
- T. **"stealth"** means concealment techniques that completely screen all transmission equipment from public view and integrate the transmission equipment with the surrounding natural and/or built environment such that, given the particular context, the average, untrained observer does not recognize the existence of the wireless facility or concealment technique. These facilities are so integrated and well-hidden that the average, untrained observer would need special knowledge to recognize their existence. Stealth concealment techniques include, but are not limited to: (1) transmission equipment placed completely within existing architectural features such that the installation causes no visible change to the underlying structure and (2) new architectural features that mimic the underlying building in architectural style, physical proportion and quality of construction materials. Architectural features commonly used as stealth concealment include, but are not limited to, church steeples, cupolas, bell towers, clock towers, pitched faux-roofs, water tanks and flagpoles. Further, whether a wireless facility qualifies as a stealth facility depends on the context that exists at a given location and is evaluated on a case-by-case basis.
- U. **"temporary wireless facilities"** means portable wireless facilities intended or used to provide personal wireless services on a temporary or emergency basis, such as a large-scale special event in which more users than usual gather in a confined location or when a disaster disables permanent wireless facilities. Temporary wireless facilities include, without limitation, cells-on-wheels ("**COWs**"), sites-on-wheels ("**SOWs**"), cells-on-light-trucks ("**COLTs**") or other similarly portable wireless facilities not permanently affixed to site on which is located.

- V. **"tower"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(9), as may be amended, which defines that term as any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. Examples include, but are not limited to, monopoles (*i.e.*, a bare, unconcealed pole solely intended to support wireless transmission equipment), mono-trees and lattice towers.
- W. **"transmission equipment"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(8), as may be amended, which defines that term as equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- X. **"wireless"** means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

#### 17.82.030 APPLICABILITY

- A. **Applicable Wireless Facilities.** This Chapter applies to all existing wireless facilities within the City and all applications and requests for approval to construct, install, modify, collocate, relocate or otherwise deploy wireless facilities in the City, whether located or proposed to be located on private property or in the public right-of-way, unless exempted under Section 17.82.030(B) (Exempt Wireless Facilities) or governed under Chapter 17.83 (Eligible Facilities Requests) pursuant to Section 17.82.030(C) (Requests for Approval Pursuant to Section 6409).
- B. **Exempt Wireless Facilities.** Notwithstanding the provisions in Section 17.82.030(A) (Applicable Wireless Facilities), the provisions in this Chapter will not be applicable to: (1) wireless facilities owned and operated by the City for public purposes; (2) wireless facilities installed on City property located outside the public right-of-way (3) wireless facilities installed on City property in the public right-of-way pursuant to a valid master license agreement with the City; (4) amateur radio facilities; (5) OTARD antennas; (6) wireless facilities installed completely indoors and intended to extend signals for personal wireless services in a personal residence or a business (such as a femtocell or indoor distributed antenna system); (7) wireless facilities or equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power generation, transmission and distribution facilities subject to CPUC General Order 131-D; and (8) routine maintenance and repair performed on existing wireless facilities.
- C. **Request for Approval Pursuant to Section 6409.** Any requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409 will be first reviewed under Chapter 17.83 (Eligible Facilities Requests). Qualifying requests for Section 6409 approval will not be subject to an administrative wireless permit or conditional use permit under Section 17.82.040. To the extent that the applicant's request does not qualify for approval under Section 6409, the applicant may submit the same or a substantially similar application for approval under this Chapter.

#### 17.82.040 REQUIRED APPROVALS

- A. **Administrative Wireless Permit.** An administrative wireless permit, subject to the approval authority's prior review and approval in accordance with the procedures and standards in this Chapter, is required for:
1. all new wireless facilities and collocations, modifications or other changes to existing wireless facilities located in the public rights-of-way on non-residential used or zoned property;
  2. all new stealth wireless facilities;
  3. all collocations, modifications or other changes to existing stealth facilities.
- B. **Conditional Use Permit.** A conditional use permit, subject to the Planning Commission's prior review and approval in accordance with the procedures and standards in Chapter 17.24 (Conditional Use Permits), is required for:
1. all new wireless facilities and collocations, modifications or other changes to existing wireless facilities that require a limited exception pursuant to Section 17.82.070(C) (Limited Exception for Personal Wireless Service Facilities);
  2. all new wireless facilities and collocations, modifications or other changes to existing wireless facilities not subject to an administrative wireless permit.
- C. **Temporary Wireless Permit.** A temporary wireless permit, subject to the approval authority's prior review and approval in accordance with the procedures and standards in Section 17.82.110 (Temporary Wireless Facilities), is required for any temporary wireless facility, unless deployed in connection with an emergency pursuant to Section 17.82.110(B) (Temporary Wireless Facilities for Emergencies).
- D. **Other Permits and Regulatory Approvals.** In addition to any conditional use permit, administrative wireless permit, temporary wireless permit or other permit or approval required under this Chapter, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation other any permits and/or regulatory approvals issued by other departments or divisions within the City. Furthermore, any permit or approval granted under this Chapter or deemed granted or deemed approved by law shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or regulatory approvals.

#### 17.82.050 APPLICATION REQUIREMENTS

- A. **Application Required.** The approval authority shall not approve any request for a conditional use permit, administrative wireless permit or temporary wireless permit except upon a duly filed application consistent with this Section 17.82.050 and any other written rules the City or the Director may establish from time to time in any publicly-stated format.
- B. **Application Content.** All applications for a conditional use permit, administrative wireless permit or temporary wireless permit must include all the information and materials required by the Director for the application. The City Council authorizes the Director to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this Chapter. The City Council further authorizes the Director to establish other reasonable rules and regulations, which may include without limitation regular hours for appointments with applicants, as the Director deems necessary or appropriate to organize,

document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide applicants with prior notice.

C. **Procedures for a Duly Filed Application.** Any application for a conditional use permit or administrative wireless permit will not be considered duly filed unless submitted in accordance with the procedures in this Section 17.82.050(C).

1. **Pre-Submittal Conference.** Before application submittal, the applicant must schedule and attend a pre-submittal conference with the Director for all proposed projects (a) subject to a conditional use permit or (b) that involve the deployment of more than five (5) facilities in the public right-of-way. Pre-submittal conferences for all other proposed projects are strongly encouraged but not required. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, any latent issues in connection with the proposed or existing wireless tower or base station, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The Planning Division or Public Works Department, as the case may be, shall use reasonable efforts to provide the applicant with an appointment within five (5) working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the services rendered in the pre-submittal conference.

2. **Submittal Appointment.** All applications must be submitted to the City at a pre-scheduled appointment with the Director. Applicants may submit up to ten (10) applications per appointment whenever feasible for City staff and not prejudicial to other applicants. The Director shall use reasonable efforts to provide the applicant with an appointment within five (5) working days after the Director receives a written request and, if applicable, confirms that the applicant complied with the pre-submittal conference requirement. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed unless the applicant received a written exemption from the Director at a pre-submittal conference.

D. **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, any application governed under this Chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the Planning Division or Public Works Department, as the case may be, within 90 calendar days after the Director deems the application incomplete in a written notice to the applicant. The Director may, in the Director's discretion, grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.

E. **Peer and Independent Consultant Review.**

1. **Authorization.** The City Council authorizes the Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection any permit application.

2. **Scope.** The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation: (a) permit application completeness and/or accuracy; (b) pre-construction planned compliance with applicable regulations for human exposure to RF emissions; (c) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (d) whether and to what extent a proposed project will address a gap in the applicant's wireless services; (e) whether and to what extent any technically feasible and/or potentially available alternative sites or concealment techniques may exist; (f) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the City's discretion to review; and (g) any other issue identified by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with City staff and/or the applicant.
3. **Consultant Fees; Deposit.** Subject to applicable law, in the event that the Director elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings. Before the independent consultant may perform any services, the applicant shall tender to the City a deposit in an amount equal to the estimated cost for the services to be provided, as determined by the Director until the City adopts the initial required deposit by fee schedule. The Director may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant's services. In the event that the deposit exceeds the total costs for consultant's services, the Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection by the Building Official or his or her designee. In the event that the reasonable costs for the independent consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The City shall not issue any construction or grading permit to any applicant with any unpaid deposit requests or invoices.

#### 17.82.060 NOTICE

- A. **General Notice Requirements.** Public notice and a hearing in accordance with the provisions in Section 17.24.020(D) (Public Notice) shall be required for all conditional use permit applications. The approval authority shall administratively review a complete and duly filed application for an administrative wireless permit and may act on such application without a public hearing not less than 10 calendar days after the applicant posts notice at the project site. The posted notice must contain (1) a general explanation of the proposed project; (2) the applicant's identification and contact information as provided on the application submitted to the City; and (3) contact information for the applicable City department.
- B. **Deemed-Approval Notice.** Not more than 30 days before the applicable FCC timeframe for review expires, and in addition to the public notice required in Section 17.82.060(A) (General Notice Requirements), an applicant for a conditional use permit or administrative wireless permit must provide a posted notice at the project site that contains (1) a statement the project will be automatically deemed approved pursuant to California Government Code § 65964.1 unless the City approves or denies the application or the applicant tolls the timeframe for review within the next 30 days; (2) a general explanation of the proposed project; (3) the applicant's identification and contact information as

provided on the application submitted to the City; and (4) contact information for the applicable City department. The public notice required under this Section 17.82.060(B) will be deemed given when the applicant delivers written notice to the Director that shows the appropriate notice has been posted at the project site. Notwithstanding anything to the contrary in this Chapter, the approval authority shall be permitted to act on an application at any time so long as the public notice required in Section 17.82.060(A) (General Notice Requirements) has occurred.

- C. **Decision Notices.** Within five (5) days after the approval authority acts on an application for a conditional use permit or administrative wireless permit or before the FCC Shot Clock expires (whichever occurs first), the approval authority or its designee shall send a written notice to the applicant. In the event that the approval authority denies the application (with or without prejudice), the written notice to the applicant must contain (1) the reasons for the decision and (2) instructions for how and when to file an appeal.

#### **17.82.070 DECISIONS; LIMITED EXEMPTIONS; APPEALS**

- A. **Required Findings for Administrative Wireless Permit Approval.** The approval authority may approve or conditionally approve an application for an administrative wireless permit submitted under this Chapter when the approval authority finds all of the following:
1. the proposed wireless facility complies with all applicable site location guidelines and development standards in Sections 17.82.090 (Site Location Guidelines) and 17.82.100 (Development Standards); and
  2. the applicant has demonstrated that its proposed wireless facility will be in compliance with all applicable FCC rules and regulations for human exposure to RF emissions.
- B. **Required Findings for Conditional Use Permit Approval.** In addition to the conditional use permit findings under Section 17.24.050 (Findings) and the required findings in Section 17.82.070.A, the approval authority may approve or conditionally approve an application for a conditional use permit submitted under this Chapter when the approval authority also finds all of the following:
1. the applicant has demonstrated a good-faith effort to identify and evaluate more-preferred alternative locations and potentially less-intrusive alternative designs for the proposed wireless facility; and
  2. the applicant has provided the approval authority with a meaningful comparative analysis that shows all more-preferred alternative locations and less-intrusive alternative designs identified in the administrative record are either technically infeasible or unavailable.
- C. **Conditional Approvals; Denials Without Prejudice.** Subject to any applicable limitations in federal or state law, nothing in this Chapter is intended to limit the approval authority's ability to conditionally approve or deny without prejudice any application for a conditional use permit or administrative wireless permit as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in this Chapter, the El Monte Municipal Code or the General Plan.
- D. **Limited Exceptions for Personal Wireless Service Facilities.** In the event that an applicant claims that strict compliance with the site location guidelines in Section 17.82.090 (Site Location Guidelines) or the development standards in Section 17.82.100 (Development Standards) would effectively prohibit the applicant's ability to provide personal wireless services, the Planning Commission may grant a limited exception from such requirements to the extent necessary to prevent an effective prohibition when the Planning Commission finds all of the following:

1. the proposed wireless facility qualifies as a "personal wireless service facility" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended or superseded; and
2. the applicant has provided the Planning Commission with a reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility; and
3. the applicant has provided the Planning Commission with a written statement that contains a detailed and fact-specific explanation as to why the proposed wireless facility cannot be deployed in compliance with the applicable provisions in this Chapter, the El Monte Municipal Code, the General Plan and/or any specific plan; and
4. the applicant has provided the Planning Commission with a meaningful comparative analysis with the factual reasons why all alternative locations and/or designs identified in the administrative record (whether suggested by the applicant, the City, public comments or any other source) are not technically feasible or potentially available to reasonably achieve the applicant's reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility; and
5. the applicant has demonstrated to the Planning Commission that the proposed location and design is the least non-compliant configuration that will reasonably achieve the applicant's reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility, which includes without limitation a meaningful comparative analysis into multiple smaller or less intrusive wireless facilities dispersed throughout the intended service area.

E. **Appeals.** Any interested person or entity may appeal any decision by the approval authority to approve or deny an application for a conditional use permit or administrative wireless permit. Appeals must be filed with the City Clerk within ten (10) calendar days following the approval authority's issuance of the decision notice required under Section 17.82.060(C) (Decision Notices). On the next available meeting date after the appeal period lapses, or as soon as reasonably feasible thereafter, the appellate authority shall hold a *de novo* public hearing to consider and act on the application in accordance with the applicable provisions in the General Plan, any applicable specific plan and all applicable provisions in the El Monte Municipal Code. Appeals from an approval will not be permitted to the extent that the appeal is based on environmental effects from RF emissions that comply with all applicable FCC regulations.

#### 17.82.080 STANDARD CONDITIONS OF APPROVAL

In addition to all other conditions adopted by the approval authority, all conditional use permits and administrative wireless permits, whether approved by the approval authority or deemed approved by the operation of law, shall be automatically subject to the conditions in this Section 17.82.080. The approval authority (or the appellate authority on appeal) shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to protect public health and safety or allow for the proper operation of the approved facility consistent with the goals of this Chapter.

A. **Permit Term.** This permit will automatically expire 10 years and one day from its issuance, except when California Government Code § 65964(b), as may be amended or superseded in the future, authorizes the City to establish a shorter term for public safety or substantial land use reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law. Upon an application for permit

renewal submitted within one year from the expiration date of this permit, the Director may renew this permit for an additional 10-year term provided that the permittee's wireless facility is in compliance with all applicable conditions of approval and all applicable provisions in the El Monte Municipal Code that exist at the time of the renewal.

- B. **Compliance with Approved Plans.** Before the permittee submits any applications to the Building Department, the permittee must incorporate this permit, all conditions associated with this permit and the approved photo simulations into the project plans (the "**Approved Plans**"). The permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans, as determined by the Director. Any material alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Director's prior review and approval, who may refer the request to the original approval authority if the Director finds that the requested alteration, modification or other change substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.
- C. **Build-Out Period.** This permit will automatically expire one (1) year from the approval or deemed-granted date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use. The Director may grant one written extension to a date certain, but not to exceed one (1) additional year, when the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition.
- D. **Maintenance Obligations; Vandalism.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the Approved Plans and all conditions in this permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- E. **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("**Laws**") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this permit, which includes without limitation any Laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws. In the event that the City fails to timely notice, prompt or enforce compliance with any applicable provision in the El Monte Municipal Code, any permit, any permit condition or any applicable law or regulation, the applicant or permittee will not be relieved from its obligation to comply in all respects with all applicable provisions in the El Monte Municipal Code, any permit, any permit condition or any applicable law or regulation.
- F. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities at the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except

during normal construction work hours authorized by the El Monte Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City. The Director or the Director's designee may issue a stop work order for any activities that violates this condition.

- G. **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff or other designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the City's officers, officials, staff or other designee may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee will be permitted to supervise the City's officers, officials, staff or other designee while any such inspection or emergency access occurs.
- H. **Permittee's Contact Information.** The permittee shall furnish the Director with accurate and up-to-date contact information to reach a live person responsible for the wireless facility, which includes without limitation a direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and immediately provide the Director with updated contact information in the event that the contact information changes.
- I. **Indemnification.** The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, City Council and City boards, commissions, agents, officers, officials, employees and volunteers from any and all (1) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("**Claims**") brought against the City or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the City's approval of this permit, and (2) other Claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this permit or the wireless facility. In the event the City becomes aware of any Claims, the City will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this permit, and that such indemnification obligations will survive the expiration or revocation of this permit.
- J. **Performance Bond.** Before the applicable City department issues any construction or encroachment permit, as applicable, in connection with this permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or

adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the Director shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility and restore any areas affected by the removal work to a standard compliant with applicable laws. In addition, the Director may modify this condition to the extent reasonably necessary to comply with any reasonable requirements imposed by the permittee's surety.

- K. **Recall to Approval Authority; Permit Revocation.** This permit shall be subject to the provisions in El Monte Municipal Code Section 17.24.100 (Revocation).
- L. **Record Retention.** The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee. The permittee may keep electronic records; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form.
- M. **Undergrounded Utilities.** In the event that other electric or communications utilities in the public right-of-way underground their facilities where the permittee's wireless facility is located, and the permittee's wireless facility is located in the public right-of-way, the permittee must underground its equipment except the antennas and antenna supports. Such undergrounding shall occur at the permittee's sole cost and expense except as reimbursed pursuant to law.
- N. **Electric Meter Removal.** In the event that the electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure in the public right-of-way, the permittee on its own initiative and at its sole cost and expense shall apply to the City for the required encroachment and/or other ministerial permit(s) to remove the separate or ground-mounted electric meter and enclosure and restore the affected area to its original condition.
- O. **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (1) change any street grade, width or location; (2) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (3) perform any other work deemed necessary, useful or desirable by the City (collectively, "**City Work**"). The City reserves the rights to do any and all City Work without any admission on its part that the City would not have such rights without the express reservation in this permit. In the event that the Public Works Director determines that any City Work will require the permittee's wireless facility located in the public right-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's wireless facility within a reasonable time after the Public Works Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's wireless facility without prior notice to permittee when the Public Works Director determines that the City Work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within ten (10) days after a written demand for

reimbursement and reasonable documentation to support such costs. In addition, the permittee shall indemnify, defend and hold the City, its agents, officers, officials, employees and volunteers harmless from and against any Claims in connection with rearranging or relocating the permittee's facility, or turning on or off any water, oil, gas, electricity or other utility service in connection with the permittee's facility.

- P. **Abandoned Wireless Facilities.** The wireless facility authorized under this permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the wireless facility and all related improvements, and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the El Monte Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.

#### 17.82.090 SITE LOCATION GUIDELINES

- A. **Locations.** All applicants must, to the extent feasible, propose new wireless facilities on private property or in the public rights-of-way in locations according to the following preferences, ordered from most preferred to least preferred:
1. City-owned property or structures located outside the public rights-of-way;
  2. City-owned property or structures located in the public rights-of-way;
  3. manufacturing zones;
  4. commercial zones;
  5. office professional zones;
  6. mixed/multi-use zones;
  7. open space;
  8. residential zones or uses.
- B. **Preferred Support Structures.** In addition to the preferred locations described in Section 17.82.090(A) (Locations), the City also expresses its preference for installations on certain support structures (which include support structures on private property or in the public rights-of-way). The approval authority will take into account whether any more preferred support structures are technically feasible and potentially available. The City's preferred support structures are as follows, ordered from most preferred to least preferred:
1. collocations with existing building or other support structure-mounted wireless facilities;
  2. collocations with existing wireless facilities on electric transmission towers;
  3. collocations with existing freestanding wireless facilities;
  4. new installations on existing buildings or other support structures;
  5. new installations on existing electric transmission towers; and
  6. new freestanding wireless towers.

## 17.82.100 DEVELOPMENT STANDARDS

- A. **Generally Applicable Development Standards.** All new wireless facilities and collocations, modifications or other changes to existing wireless facilities not covered under Section 6409 must conform to the generally applicable development standards in this Section 17.82.100(A).
1. **Concealment.** Wireless facilities must incorporate concealment elements, measures and techniques that blend the equipment and other improvements into the natural and/or built environment in a manner consistent and/or compatible with the uses germane to the underlying zoning district and existing in the immediate vicinity. As an illustration and not a limitation, a wireless facility designed to mimic a native tree species or a rock outcrop may be appropriate in an open space or hillside location where other natural elements exist to provide effective camouflaging and/or concealment.
  2. **Overall Height.** Except as provided in Section 17.82.100(D) (Right-of-Way Facilities), wireless facilities may not exceed the applicable height limit for structures in the applicable zoning district or overlay zone.
  3. **Setbacks.** Wireless facilities may not encroach into any applicable setback for structures in the subject zoning district. Applicable setbacks for private property do not apply to wireless facilities located in the public rights-of-way.
  4. **Noise.** Wireless facilities and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations in Chapter 8.36 (Noise Control), and shall not exceed, either individually or cumulatively, the applicable ambient noise limit in the subject zoning district. The approval authority may require the applicant to incorporate appropriate noise-baffling materials and/or strategies whenever necessary to avoid any ambient noise from equipment (such as backup power generators) reasonably likely to exceed the applicable limit. In the event a duly authorized federal, state, county or City official declares an emergency within a region that includes the City in whole or in part, backup power generators may exceed the applicable noise control standards and regulations to the extent reasonably necessary to operate the facility until the declared emergency is lifted or power is restored to the affected facility.
  5. **Landscaping.** All wireless facilities must include landscape features and a landscape plan when proposed to be placed in a landscaped area. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscape maintenance must be performed in accordance with Chapter 17.10 (Landscaping Requirements). The approval authority may require additional landscape features to screen the wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the concealment required under this Chapter.
  6. **Site Security Measures.** Wireless facilities may incorporate reasonable and appropriate site security measures, such as fences, walls and anti-climbing devices, to prevent unauthorized access, theft or vandalism. Site security measures must be designed to enhance concealment to the maximum extent possible, such as installing equipment within an enclosure designed to mimic a trash-can corral rather than within a chain link fence. The approval authority may require additional concealment elements as the approval authority finds necessary to blend the security measures and other improvements into the natural and/or built environment. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures.

7. **Backup Power Sources.** The approval authority may approve permanent backup power sources and/or generators on a case-by-case basis. The City strongly disfavors backup power sources installed on the ground or mounted on poles within the public rights-of-way. The approval authority shall not approve any diesel generators or other similarly noisy or noxious generators in or within 250 feet from any residence; provided, however, the approval authority may approve sockets or other connections used for temporary backup generators.
8. **Lights.** Wireless facilities may not include exterior lights other than (a) as may be required under Federal Aviation Administration, FCC or other applicable governmental regulations; and (b) timed or motion-sensitive lights for security and/or worker safety. All exterior lights permitted or required to be installed must be installed in locations and within enclosures that mitigates illumination impacts on other properties to the maximum extent feasible.
9. **Signage; Advertisements.** All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.
10. **Future Collocations and Equipment.** To the extent feasible and aesthetically desirable, all new wireless facilities should be designed and sited in a manner that accommodates potential future collocations and equipment installations that can be integrated into the proposed wireless facility or its associated structures with no or negligible visual changes to the outward appearance.
11. **Utilities.** All cables and connectors for telephone, primary electric and other similar utilities must be routed underground to the extent feasible in conduits large enough to accommodate future collocated wireless facilities. Meters, panels, disconnect switches and other associated improvements must be placed in inconspicuous locations to the extent possible. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost; provided, however, that the Director may waive this requirement to the extent the approval of new overhead lines or service drops would amount to a *de minimis* visual change. Microwave or other wireless backhaul is discouraged when it would involve a separate and unconcealed antenna.
12. **Parking; Access.** Any equipment or improvements constructed or installed in connection with any wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, wireless facilities should use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements should be the minimum size necessary to reasonably accommodate the proposed use.
13. **Compliance with Laws.** All wireless facilities must be designed and sited in compliance with all applicable federal, state and local laws, regulations, rules, restrictions and conditions, which include without limitation the California Building Standards Code, General Plan and any applicable specific plan, the El Monte Municipal Code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the facility.

B. **Freestanding Wireless Facilities.** In addition to the requirements in Section 17.82.100(A) (Generally Applicable Development Standards), all new freestanding wireless facilities and collocations, modifications or other changes to existing freestanding wireless facilities not covered under Section 6409 must conform to the requirements in this Section 17.82.100(B).

1. **Tower-Mounted Equipment.** All tower-mounted equipment must be mounted as close to the vertical support structure as possible to reduce its overall visual profile. Applicants must mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors and utility demarcation boxes) directly behind the antennas to the maximum extent feasible. All tower-mounted equipment, cables and hardware must be painted with flat colors subject to the approval authority's prior approval.
2. **Ground-Mounted Equipment; Shelters.** All ground-mounted equipment must be concealed underground or within an existing or new structure, opaque fences or other enclosures subject to the approval authority's prior approval. The approval authority may require additional concealment elements as the approval authority finds necessary to blend the ground-mounted equipment and other improvements into the natural and/or built environment.

C. **Building-Mounted Wireless Facilities.** In addition to the requirements in Section 17.82.100(A) (Generally Applicable Development Standards), all new building-mounted wireless facilities and collocations, modifications or other changes to existing building-mounted wireless facilities not covered under Section 6409 must conform to the requirements in this Section 17.82.100(C).

1. **Preferred Concealment Techniques.** All applicants should, to the extent feasible, propose new non-tower wireless facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, when integration with existing building features is not feasible, the applicant should propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks). Facilities must be located behind existing parapet walls or other existing screening elements to the maximum extent feasible.
2. **Facade-Mounted Equipment.** When wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the approval authority may approve facade-mounted equipment in accordance with this section. All facade-mounted equipment must be concealed behind screen walls and mounted as flush to the facade as practicable. The approval authority may not approve "pop-out" screen boxes unless the design is architecturally consistent with the original building or support structure. Except in manufacturing zones, the approval authority may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade. To the extent feasible, facade-mounted equipment must be installed on the facade(s) along the building frontage that is the least prominent or publicly visible.
3. **Rooftop-Mounted Equipment.** All rooftop-mounted equipment must be screened from public view with concealment measures that match the underlying structure in proportion, quality, architectural style and finish. The approval authority may approve unscreened rooftop equipment only when it expressly finds that such equipment is effectively concealed due to its low height and/or setback from the roofline.

4. **Ground-Mounted Equipment; Shelters.** All ground-mounted equipment must be concealed underground or within an existing or new structure, opaque fences, building interior equipment room, or other enclosures subject to the approval authority's prior approval. The approval authority may require additional concealment elements as the approval authority finds necessary to blend the ground-mounted equipment and other improvements into the natural and/or built environment.
- D. **Right-of-Way Wireless Facilities.** In addition to the applicable requirements in Section 17.82.100(A) (Generally Applicable Development Standards), all new right-of-way wireless facilities and collocations, modifications or other changes to existing right-of-way wireless facilities not covered under Section 6409 must conform to the requirements in this Section 17.82.100(D).
1. **Concealment.** All wireless facilities in the right-of-way must be concealed to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses. In addition, wireless facilities in the rights-of-way may not unreasonably subject the public use, for any purpose including expressive or aesthetic purposes, to inconvenience, discomfort, trouble, annoyance, hindrance, impediment or obstruction.
  2. **Overall Height.** Wireless facilities in the public rights-of-way may not exceed either (a) the minimum separation from supply lines required by CPUC General Order 95, as may be amended or superseded, plus four feet or (b) four feet above the height of the existing support structure. To the extent that in the Director's discretion the four-foot height allowance would cause the applicant's wireless facility to be materially incompatible with the overall height or appearance of the surrounding support structures in the public right-of-way, the Director may require the applicant to propose an alternative design (such as mounting the antenna(s) on the side of the pole) or location to the extent technically feasible.
  3. **Existing Support Structures.** All wireless facilities in the public right-of-way must be installed on existing above-ground structures (such as light standards or utility poles) whenever possible. The approval authority shall not approve any wireless facility proposed to be installed on a traffic control pole unless the Public Works Director finds, in the Public Works Director's sole discretion, that the traffic control pole has sufficient capacity to support the wireless facility.
  4. **Replacement Support Structures.** Existing above-ground structures may be replaced with structurally hardened, fitted or reinforced support structures so long as the replacement structure is, in the Public Works Director's discretion, substantially similar to the existing structure to be replaced.
  5. **New Support Structures.** The approval authority shall not approve any new, non-replacement support structures unless: (a) the applicant demonstrates that above-ground support structures within the intended service area either do not exist or are not potentially available to the applicant; or (b) the approval authority specifically finds that a new, non-replacement support structure would be more aesthetically desirable and consistent with the objectives in this Chapter than installations on existing structures near the project site. The approval authority shall have the discretion to require that any new support structure must be a streetlight that conforms to the City's streetlight standards and specifications, which the City shall maintain for street illumination and public safety purposes.
  6. **Undergrounded Equipment.** To conceal the equipment to the maximum degree feasible, applicants must install all equipment (other than the antenna and any electric meter) underground in any area in which the existing utilities are primarily located underground. In all other areas,

applicants shall install all equipment (other than the antenna and any electric meter) underground when the approval authority finds that the above-ground equipment would unreasonably interfere with the public's ability to use the right-of-way for uses that include without limitation travel, social, expressive and/or aesthetic uses. When making a determination on whether to require undergrounded equipment, the approval authority shall take into account the presence of existing above-ground utilities. Mere additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement. If an applicant proposes to install a facility in an area in which the existing utilities are primarily located underground, the approval authority shall have the discretion, consistent with Sections 17.82.100(D)(3)-(5), to require that the applicant install a new streetlight that conforms to the City's streetlight standards and specifications as the facility support structure.

7. **Pole-Mounted Equipment.** All pole-mounted equipment must be installed as close to the pole as technically and legally feasible to minimize the overall visual profile. All pole-mounted equipment and required or permitted signage must face toward the street or otherwise placed to minimize visibility from adjacent sidewalks and structures to the extent feasible. All cables, wires and other connectors must be routed through conduits within the pole whenever possible, and all conduit attachments, cables, wires and other connectors must be concealed from public view to the extent feasible.
8. **Ground-Mounted Equipment.** To the extent that the equipment cannot be placed underground as required, applicants may be permitted to install ground-mounted equipment in a location that does not obstruct pedestrian or vehicular traffic. All ground-mounted equipment must be placed in the least conspicuous location available within a reasonable distance from the pole. The approval authority may condition approval on new or enhanced landscaping to conceal ground-mounted equipment. The approval authority shall not approve a ground-mounted electric meter pedestal or other electric meter enclosure to the extent feasible.

- E. **Administrative Design Guidelines.** The Director may develop, and from time to time amend, design guidelines consistent with the generally applicable development standards and any facility-specific development standards to clarify the aesthetic goals and standards in this Chapter for City staff, applicants and the public. In the event that a conflict arises between the development standards adopted under Sections 17.82.100(A)-(D) and the design guidelines adopted under this Section 17.82.100(E), the development standards adopted under Sections 17.82.100(A)-(D) shall control.

#### **17.82.110 TEMPORARY WIRELESS FACILITIES**

- A. **General Requirements for Temporary Wireless Facilities.** Except as provided in Section 17.82.110(B) (Temporary Wireless Facilities for Emergencies), the requirements, procedures and standards in this section shall be applicable to all applications for a temporary wireless permit for a temporary wireless facility.
1. **Applications for Temporary Wireless Facilities.** The Director shall not approve any temporary wireless facility subject to a temporary wireless permit except upon a duly filed application consistent with this Section 17.82.110(A)(1) and any other written application requirements or procedures the Director may publish in any publicly-stated format. Applicants for a temporary wireless permit must submit, at a minimum: (1) a temporary wireless permit application on the most current form prepared by the Planning Department; (2) the applicable fee for the application; (3) a site plan that shows the proposed temporary wireless facility and its equipment, physical dimensions and placement on the proposed site relative to property lines and existing structures; (4) an RF compliance

report in accordance with the City's requirements; and (5) an insurance certificate for general commercial liability that names the City as an additional insured, includes coverage for the time period in which the temporary wireless facility will be placed and carries at least \$1,000,000 in coverage per occurrence. Applications must be submitted in person to the Director unless the Director grants written consent to receive an application by mail or electronic means. No pre-submittal conference or appointment is required for a temporary wireless permit application.

2. **Administrative Review for Temporary Wireless Facilities.** After the Director receives a duly filed application for a temporary wireless permit, the Director shall review the application for completeness. After the Director deems the application complete, the Director shall review the application for conformance with the required findings in Section 17.82.110(A)(3) (Required Findings for Temporary Wireless Facilities) and render a written decision to the applicant. Any denials must include the reasons for the denial. The review shall be administrative in nature and shall not require notice or a public hearing.
3. **Required Findings for Temporary Wireless Facilities.** The Director may approve or conditionally approve a temporary wireless permit for a temporary wireless facility only when the Director finds all of the following:
  - a. the proposed temporary wireless facility will not exceed 50 feet in overall height above ground level unless the Director finds that exceeding the 50-foot overall height limit is necessary to integrate a non-freestanding temporary wireless facility with the underlying support structure; and
  - b. the proposed temporary wireless facility will be placed as far away from adjacent property lines as possible, or otherwise in a location that will be least likely to cause adverse impacts on adjacent properties; and
  - c. any excavation or ground disturbance associated with the temporary facility will not exceed two feet below grade; and
  - d. the proposed temporary wireless facility will be compliant with all generally applicable public health and safety laws and regulations, which includes without limitation compliance with maximum permissible exposure limits for human exposure to RF emissions established by the FCC; and
  - e. the proposed temporary wireless facility will not create any nuisance or violate any noise limits applicable to the proposed location; and
  - f. the proposed temporary wireless facility will be identified with a sign that clearly identifies the (I) site operator, (II) the operator's site identification name or number and (III) a working telephone number answered 24 hours per day, seven days per week by a live person who can exert power-down control over the antennas; and
  - g. the proposed temporary wireless facility will be removed within 30 days after the Director grants the temporary wireless permit, or such longer time as the Director finds reasonably related to the applicant's need or purpose for the temporary wireless facility; and
  - h. the applicant has not been denied a use permit for any permanent wireless facility in the same or substantially the same location within the previous 365 days.
4. **Appeals for Temporary Wireless Facilities.** Any applicant may appeal the Director's written decision to deny an application for a temporary

wireless permit. The written appeal together with any applicable appeal fee must be tendered to the City within ten (10) days from the Director's written decision, and must state in plain terms the grounds for reversal and the facts that support those grounds. The City Manager shall be the appellate authority for all appeals from the Director's written decision to deny a temporary wireless permit. The City Manager shall review the application *de novo*; provided, however, that the City Manager's decision shall be limited to only whether the application should be approved or denied in accordance with the provisions in this Chapter and any other applicable laws. The City Manager shall issue a written decision that contains the reasons for the decision, and such decision shall be final and not subject to any further administrative appeals.

- B. **Temporary Wireless Facilities for Emergencies.** Temporary wireless facilities may be placed and operated within the City without a temporary wireless permit only when a duly authorized federal, state, county or City official declares an emergency within a region that includes the City in whole or in part. Any temporary wireless facilities placed pursuant to this Section 17.82.110(B) must be removed within 15 days after the date the emergency is lifted. Any person or entity that places temporary wireless facilities pursuant to this section must send a written notice that identifies the site location and person responsible for its operation to the Director as soon as reasonably practicable.

**17.82.120 AMORTIZATION OF NONCONFORMING WIRELESS FACILITIES**

Any non-conforming wireless facilities in existence at the time this Chapter becomes effective must be brought into conformance with this Chapter in accordance with the amortization schedule in this Section 17.82.120. As used in this section, the "fair market value" will be the construction costs listed on the building permit application for the subject wireless facility and the "minimum years" allowed will be measured from the date on which this Chapter becomes effective.

Fair Market Value on Effective Date	Minimum Years Allowed
Less than \$50,000. . . . .	5
\$50,000 to \$500,000. . . . .	10
Greater than \$500,000. . . . .	15

The Director may grant a written extension to a date certain when the wireless facility owner shows (1) a good faith effort to cure non-conformance; (2) the application of this section would violate applicable laws; or (3) extreme economic hardship would result from strict compliance with the amortization schedule. Any extension must be the minimum time period necessary to avoid such extreme economic hardship. The Director may not grant any permanent exemption from this section.

Nothing in this section is intended to limit any permit term to less than ten (10) years. In the event that the amortization required in this section would reduce the permit term to less than 10 years for any permit granted on or after January 1, 2007, then the minimum years allowed will be automatically extended by the difference between 10 years and the number of years since the City granted such permit. Nothing in this section is intended or may be applied to prohibit any collocation or modification covered under 47 U.S.C. § 1455(a) on the basis that the subject wireless facility is a legal nonconforming wireless facility.

**SECTION 3.** Title 17 (Zoning) of the El Monte Municipal Code is amended by the addition of a new Chapter 17.83, which shall read as follows:

## Chapter 17.83 ELIGIBLE FACILITIES REQUESTS

### 17.83.010 LEGISLATIVE INTENT

- A. **Background.** Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified as 47 U.S.C. § 1455(a) ("**Section 6409**"), generally requires that State and local governments "may not deny, and shall approve" requests to collocate, remove or replace transmission equipment at an existing tower or base station. Federal Communications Commission ("**FCC**") regulations interpret this statute and establish procedural rules for local review, which generally preempt certain subjective land-use regulations, limit permit application content requirements and provide the applicant with a potential "deemed granted" remedy when the State or local government fails to approve or deny the request within 60 days after submittal (accounting for any tolling periods). Moreover, whereas Section 704 of the Telecommunications Act of 1996, Pub. L. 104-104, codified as 47 U.S.C. § 332, applies to only "personal wireless service facilities" (e.g., cellular telephone towers and equipment), Section 6409 applies to all "wireless" facilities licensed or authorized by the FCC (e.g., cellular, Wi-Fi, satellite, microwave backhaul, etc.).
- B. **Findings.** The City Council finds that the overlap between wireless deployments covered under Section 6409 and other wireless deployments, combined with the different substantive and procedural rules applicable to such deployments, creates a potential for confusion that harms the public interest in both efficient wireless facilities deployment and carefully planned community development in accordance with local values. The City Council further finds that a separate permit application and review process specifically designed for compliance with Section 6409 contained in a separate section devoted to Section 6409 will mitigate such potential confusion, streamline local review and preserve the City's land-use authority to maximum extent possible.
- C. **Intent.** The City intends this Chapter to establish reasonable and uniform standards and procedures in a manner that protects and promotes the public health, safety and welfare, consistent with and subject to federal and California state law, for collocations and modifications to existing wireless facilities pursuant to Section 6409 and related FCC regulations codified in 47 C.F.R. §§ 1.40001 *et seq.* This Chapter is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unfair, unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California state law.

### 17.83.020 DEFINITIONS

The abbreviations, phrases, terms and words used in this Chapter will have the meanings assigned to them in this Section 17.83.020 or, as may be appropriate, in Section 17.04.020 (Definitions), as may be amended from time to time, unless context indicates otherwise. Undefined phrases, terms or words in this section will have the meanings assigned to them in 47 U.S.C. § 153, as may be amended from time to time, and, if not defined therein, will have their ordinary meanings. In the event that any definition assigned to any phrase, term or word in this section conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

- Y. **"approval authority"** means the commission, board or official responsible for review of permit applications and vested with the authority to approve or deny such applications. The approval authority for a section 6409 approval is the Economic Development Director or, on appeal, the City Manager. The foregoing notwithstanding, the approval authority for a section 6409 approval relating to wireless facilities within the public rights-of-way is the Public Works Director, or, on appeal, the City Manager.
- Z. **"base station"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended, which defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.40001(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under 47 C.F.R. § 1.40001, supports or houses equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under 47 C.F.R. § 1.40001, does not support or house equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii).
- AA. **"City Manager"** means the City Manager of the City of El Monte, or the City Manager's designee.
- BB. **"collocation"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC's definition effectively means "to add" and does not necessarily refer to more than one wireless facility installed at a single site.
- CC. **"CPCN"** means a "Certificate of Public Convenience and Necessity" granted by the CPUC or its duly appointed successor agency pursuant to California Public Utilities Code §§ 1001 *et seq.*, as may be amended.
- DD. **"CPUC"** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
- EE. **"Economic Development Director"** or **"Director"** means the Economic Development Director of the City of El Monte, or the Economic Development Director's designee. When used in the context of applications related to wireless facilities on private property, the Director refers to the Economic Development Director.
- FF. **"eligible facilities request"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended, which defines that term as any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

- GG. **"eligible support structure"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which defines that term as any tower or base station as defined in 47 C.F.R. § 1.40001(b), provided that it is existing at the time the relevant application is filed with the State or local government under 47 C.F.R. § 1.40001.
- HH. **"existing"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which provides that a constructed tower or base station is existing for purposes of the FCC's Section 6409 regulations if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.
- II. **"FCC"** means the Federal Communications Commission or its duly appointed successor agency.
- JJ. **"FCC Shot Clock"** means the reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended from time-to-time.
- KK. **"Planning Division"** means the Planning Division of the Economic Development Department of the City of El Monte or its duly appointed successor agency.
- LL. **"Public Works Department"** means the Public Works Department of the City of El Monte or its duly appointed successor agency.
- MM. **"Public Works Director"** or **"Director"** means the Public Works and Utilities Director of the City of El Monte, or the Public Works Director's designee. When used in the context of applications related to wireless facilities in the public right-of-way, the Director refers to the Public Works Director.
- NN. **"RF"** means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.
- OO. **"Section 6409"** means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.
- PP. **"site"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be amended, which provides that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.
- QQ. **"substantial change"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC's criteria and thresholds for a substantial change according to the wireless facility type and location.
- a. For towers outside the public rights-of-way, a substantial change occurs when:
    - i. the proposed collocation or modification increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet (whichever is greater); or
    - ii. the proposed collocation or modification involves adding an appurtenance to the body of the tower that would protrude from the

edge of the tower by more than 20 feet or more than the width of the tower structure at the level of the appurtenance (whichever is greater); or

- iii. the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
  - iv. the proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
- b. For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
- i. the proposed collocation or modification increases the height of the structure by more than 10% or more than 10 feet (whichever is greater); or
  - ii. the proposed collocation or modification involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than 6 feet; or
  - iii. the proposed collocation or modification involves the installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure; or
  - iv. the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are more than ten percent (10%) larger in height or volume than any other ground cabinets associated with the structure; or
  - v. the proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- c. In addition, for all towers and base stations wherever located, a substantial change occurs when:
- i. the proposed collocation or modification would defeat the existing concealment elements of the support structure; or
  - ii. the proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval that is inconsistent with the thresholds for a substantial change described in 47 C.F.R. § 1.40001(b)(7)(i)-(iv).

RR. **"tower"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(9), as may be amended, which defines that term as any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. Examples include, but are not limited to, monopoles (*i.e.*, a bare, unconcealed pole solely intended to support wireless transmission equipment), mono-trees and lattice towers.

SS. **"transmission equipment"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(8), as may be amended, which defines that term as equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas,

coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

TT. "wireless" means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

#### 17.83.030 APPLICABILITY

This Section 17.83.030 applies to all requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409. However, the applicant may voluntarily elect to seek a conditional use permit or administrative wireless permit under Chapter 17.82 (New and Substantially Changed Wireless Facilities).

#### 17.83.040 APPROVALS REQUIRED

- A. **Section 6409 Approval.** Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted with a written request for approval under Section 6409 shall require an administrative approval in such form determined by the Director consistent with all valid and enforceable terms and conditions of the underlying use permit or other prior regulatory authorization for the tower or base station (each amendment a "section 6409 approval"). Each section 6409 approval shall be subject to the approval authority's approval, conditional approval or denial without prejudice pursuant to the standards and procedures contained in this Chapter.
- B. **Other Permits and Regulatory Approvals.** No collocation or modification approved pursuant to this Chapter may occur unless the applicant also obtains all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any permits and/or regulatory approvals issued by other departments or divisions within the City. Furthermore, any section 6409 approval granted under this Chapter shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or regulatory approvals.

#### 17.83.050 APPLICATION REQUIREMENTS

- A. **Application Required.** The approval authority shall not approve any request for a collocation or modification submitted for approval pursuant to Section 6409 except upon a duly filed application consistent with this Section 17.83.050 and any other written rules the City or the Director may establish from time to time in any publicly-stated format.
- B. **Application Content.** All applications for a section 6409 approval must include all the content, information and materials required by the Director. The City Council authorizes the Director to develop, publish and from time-to-time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing requests for section 6409 approvals. However, the Director may not require documentation proving the need or presenting the business case for the proposed modification. The City Council further authorizes the Director to establish other reasonable rules and regulations, which may include without limitation regular hours for appointments with applicants, as the Director deems necessary or appropriate to organize, document and manage the application intake process. All such rules and

regulations must be in written form and publicly stated to provide applicants with prior notice.

- C. **Procedures for a Duly Filed Application.** Any application for a section 6409 approval will not be considered duly filed unless submitted in accordance with the procedures in this Section 17.83.050(C).
1. **Pre-Submittal Conference.** Before application submittal, the applicant must schedule and attend a pre-submittal conference with the Director for all proposed collocations or modifications to any concealed or camouflaged wireless tower or base station. Pre-submittal conferences for all other proposed collocations or modifications are strongly encouraged but not required. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, including whether the project qualifies for approval pursuant to Section 6409 or not; any latent issues in connection with the existing wireless tower or base station, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The Planning Division or Public Works Department, as the case may be, shall use reasonable efforts to provide the applicant with an appointment within five (5) working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the services rendered in the pre-submittal conference.
  2. **Submittal Appointment.** All applications must be submitted to the City at a pre-scheduled appointment with the Director. Applicants may submit up to 10 applications per appointment whenever feasible for City staff and not prejudicial to other applicants. The Director shall use reasonable efforts to provide the applicant with an appointment within five (5) working days after the Director receives a written request and, if applicable, confirms that the applicant complied with the pre-submittal conference requirement. Any application received without an appointment, whether delivered in-person, by mail or through any other means; will not be considered duly filed unless the applicant received a written exemption from the Director at a pre-submittal conference.
- D. **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, any application governed under this Chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the Planning Division or Public Works Department, as the case may be, within 90 calendar days after the Director deems the application incomplete in a written notice to the applicant. The Director may, in the Director's discretion, grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.
- E. **Peer and Independent Consultant Review.**
1. **Authorization.** The City Council authorizes the Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection any permit application.

2. **Scope.** The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation: (a) permit application completeness and/or accuracy; (b) pre-construction planned compliance with applicable regulations for human exposure to RF emissions; (c) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (d) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the City's discretion to review; and (e) any other issue identified by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with City staff and/or the applicant.
3. **Consultant Fees; Deposit.** Subject to applicable law, in the event that the Director elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings. Before the independent consultant may perform any services, the applicant shall tender to the City a deposit in an amount equal to the estimated cost for the services to be provided, as determined by the Director until the City adopts the initial required deposit by fee schedule. The Director may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant's services. In the event that the deposit exceeds the total costs for consultant's services, the Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection by the Building Official or his or her designee. In the event that the reasonable costs for the independent consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The City shall not issue any construction or grading permit to any applicant with any unpaid deposit requests or invoices.

#### 17.83.060 DECISIONS; APPEALS

- A. **Administrative Review.** The approval authority shall administratively review a complete and duly filed application for a section 6409 approval, and may act on such application without prior notice or a public hearing.
- B. **Decision Notices.** Within five (5) days after the approval authority acts on an application for a section 6409 approval or before the FCC Shot Clock expires (whichever occurs first), the approval authority shall send a written notice to the applicant. In the event that the approval authority denies the application, the written notice to the applicant must contain (1) the reasons for the decision; (2) a statement that denial will be without prejudice; and (3) instructions for how and when to file an appeal.
- C. **Required Findings for Approval.** The approval authority may approve or conditionally approve an application any application for a section 6409 approval when the approval authority finds that the proposed project:
  1. involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
  2. does not substantially change the physical dimensions of the existing wireless tower or base station.
- D. **Criteria for Denial without Prejudice.** Notwithstanding any other provision in this Chapter, and consistent with all applicable federal laws and regulations, the

approval authority may deny without prejudice any application for a section 6409 approval when the approval authority finds that the proposed project:

1. does not meet the findings required in Section 17.83.060(C) (Required Findings for Approval);
2. involves the replacement of the entire support structure; or
3. violates any legally enforceable law, regulation, rule, standard or permit condition reasonably related to public health or safety.

E. **Conditional Approvals.** Subject to any applicable limitations in federal or state law, nothing in this Chapter is intended to limit the approval authority's authority to conditionally approve an application for a section 6409 approval to protect and promote the public health and safety.

F. **Appeals.** Any applicant may appeal the approval authority's written decision to deny without prejudice an application for section 6409 approval. The written appeal together with any applicable appeal fee must be tendered to the City Clerk within ten (10) calendar days from the approval authority's written decision, and must state in plain terms the grounds for reversal and the facts that support those grounds. The City Manager shall be the appellate authority for all appeals from the approval authority's written decision to deny without prejudice an application for section 6409 approval. The City Manager shall review the application *de novo*; provided, however, that the City Manager's decision shall be limited to only whether the application should be approved or denied in accordance with the provisions in this Chapter and any other applicable laws. The City Manager shall issue a written decision that contains the reasons for the decision, and such decision shall be final and not subject to any further administrative appeals.

#### **17.83.070 STANDARD CONDITIONS OF APPROVAL**

In addition to all other conditions adopted by the approval authority, all section 6409 approvals, whether approved by the approval authority or deemed approved by the operation of law, shall be automatically subject to the conditions in this Section 17.83.070. The approval authority (or the City Manager in the City Manager's capacity as the appellate authority) shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to protect public health and safety or allow for the proper operation of the approved facility consistent with the goals of this Chapter.

A. **Permit Term.** The City's grant or grant by operation of law of a section 6409 approval constitutes a federally-mandated modification to the underlying permit or other prior regulatory authorization for the subject tower or base station, and will be regarded as a modification to the underlying approval for the subject tower or base station. The City's grant or grant by operation of law of a section 6409 approval will not extend the permit term, if any, for any underlying permit or other underlying prior regulatory authorization. Accordingly, the term for a section 6409 approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station.

B. **Compliance Obligations Due to Invalidation.** In the event that any court of competent jurisdiction invalidates all or any portion of Section 6409 or any FCC rule that interprets Section 6409 such that federal law would not mandate approval for any section 6409 approval(s), such approval(s) shall automatically expire one (1) year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved section 6409 approvals or the Director grants an extension upon written request from the permittee that shows good cause for the extension, which includes without limitation extreme financial hardship. Notwithstanding anything in the previous sentence to the contrary, the Director may not grant a permanent exemption or indefinite extension. A permittee shall not be required to remove its

improvements approved under the invalidated section 6409 approval when it has obtained the applicable permit(s) or submitted an application for such permit(s) before the one-year period ends.

- C. **City's Standing Reserved.** The City's grant or grant by operation of law of a section 6409 approval does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409, any FCC rules that interpret Section 6409 or any section 6409 approval.
- D. **Compliance with Approved Plans.** Before the permittee submits any applications to the Building Division, the permittee must incorporate this section 6409 approval, all conditions associated with this section 6409 approval and the approved photo simulations into the project plans (the "**Approved Plans**"). The permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans, as determined by the Director. Any material alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Director's prior review and approval. The Director may revoke the section 6409 approval if the Director finds that the requested alteration, modification or other change causes a substantial change as that term is defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended.
- E. **Build-Out Period.** This section 6409 approval will automatically expire one (1) year from the approval or deemed-granted date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use. The Director may grant one written extension up to one (1) year when the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition.
- F. **Maintenance Obligations; Vandalism.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the Approved Plans and all conditions in this section 6409 approval. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- G. **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("**Laws**") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this section 6409 approval, which includes without limitation any Laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws. In the event that the City fails to timely notice, prompt or enforce compliance with any applicable provision in the El Monte Municipal Code, any permit, any permit condition or any applicable law or regulation, the applicant or permittee will not be relieved from its obligation to comply in all respects with all applicable provisions in the El Monte Municipal Code, any permit, any permit condition or any applicable law or regulation.
- H. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal

and/or other activities at the site. Undue or unnecessary adverse impacts shall not be interpreted to mean aesthetic impacts that may result from the City's issuance of this section 6409 approval consistent with applicable law. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction hours authorized by the El Monte Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City. The Director or the Director's designee may issue a stop work order for any activities that violates this condition.

- I. **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff or other designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the City's officers, officials, staff or other designee may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee will be permitted to supervise the City's officers, officials, staff or other designee while any such inspection or emergency access occurs.
- J. **Permittee's Contact Information.** The permittee shall furnish the Director with accurate and up-to-date contact information to reach a live person responsible for the wireless facility, which includes without limitation a direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and immediately provide the Director with updated contact information in the event that the contact information changes.
- K. **Indemnification.** The permittee and, if applicable, the property owner upon which the wireless facility is installed, shall defend, indemnify and hold harmless the City, City Council and City boards, commissions, agents, officers, officials, employees and volunteers from any and all (1) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("**Claims**") brought against the City or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the City's approval of this section 6409 approval, and (2) other Claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this section 6409 approval or the wireless facility. In the event the City becomes aware of any Claims, the City will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this section 6409 approval, and that such indemnification obligations will survive the expiration or revocation of this section 6409 approval.
- L. **Performance Bond.** Before the applicable City department issues any construction or encroachment permit, as applicable, in connection with this section 6409 approval, the permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove

all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the Director shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility to a standard compliant with applicable laws. In addition, the Director may modify this condition to the extent reasonably necessary to comply with any reasonable requirements imposed by the permittee's surety.

- M. **Recall to Approval Authority; Permit Revocation.** This permit shall be subject to El Monte Municipal Code Section 17.24.100 (Revocation).
- N. **Record Retention.** The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee. The permittee may keep electronic records; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form.
- O. **Undergrounded Utilities.** In the event that other electric or communications utilities in the public right-of-way underground their facilities where the permittee's wireless facility is located, and the permittee's wireless facility is located in the public right-of-way, the permittee must underground its equipment except the antennas and antenna supports. Such undergrounding shall occur at the permittee's sole cost and expense except as reimbursed pursuant to law.
- P. **Electric Meter Removal.** In the event that the electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure in the public right-of-way, the permittee on its own initiative and at its sole cost and expense shall apply to the City for the required encroachment and/or other ministerial permit(s) to remove the separate or ground-mounted electric meter and enclosure and restore the affected area to its original condition.
- Q. **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (1) change any street grade, width or location; (2) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (3) perform any other work deemed necessary, useful or desirable by the City (collectively, "**City Work**"). The City reserves the rights to do any and all City Work without any admission on its part that the City would not have such rights without the express reservation in this permit. In the event that the Public Works Director determines that any City Work will require the permittee's wireless facility located in the public right-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's wireless facility within a reasonable time after the Public Works Director's notice, the City may (but will not be obligated to) cause the

rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's wireless facility without prior notice to permittee when the Public Works Director determines that the City Work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within ten (10) days after a written demand for reimbursement and reasonable documentation to support such costs. In addition, the permittee shall indemnify, defend and hold the City, its agents, officers, officials, employees and volunteers harmless from and against any Claims in connection with rearranging or relocating the permittee's facility, or turning on or off any water, oil, gas, electricity or other utility service in connection with the permittee's facility.

**R. Abandoned Wireless Facilities.** The wireless facility authorized under this permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the wireless facility and all related improvements, and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the El Monte Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.

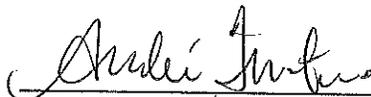
**SECTION 4. Environmental.** The proposed Ordinance and Resolution are exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) under the general rule that CEQA does not apply to activities which can be seen with certainty to have no effect on the environment. The proposed actions would not create any environmental impacts, therefore no additional action under CEQA is required.

**SECTION 5. Inconsistent Provisions.** Any provision of the El Monte Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to implement the provisions of this Ordinance.

**SECTION 6. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase would be subsequently declared invalid or unconstitutional.

**SECTION 7. Publication and Effective Date.** The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in a newspaper of general circulation within fifteen (15) days after its adoption. This Ordinance shall become effective thirty (30) days after adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of El Monte at the regular meeting of this 17th day of July, 2018.

  
\_\_\_\_\_  
Andre Quintero, Mayor  
City of El Monte

ATTEST:

  
Jonathan Hawes, City Clerk  
City of El Monte

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES    )  
CITY OF EL MONTE            )    SS:

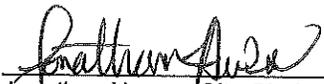
I, Jonathan Hawes, City Clerk of the City of EL Monte, hereby certify that the foregoing Ordinance No. 2930 was introduced for a first reading on the 17th day of July, 2018 and approved for a second reading and adopted by said Council at its regular meeting held on the 7th day of August, 2018 by the following vote, to-wit:

AYES:           Mayor Quintero, Mayor Pro Tem Gomez, Councilmembers Macias, Martinez and Velasco

NOES:           None

ABSTAIN:       None

ABSENT:       None

  
Jonathan Hawes, City Clerk  
City of El Monte