

Article 39A Wireless Communication Facilities (City-wide)

Sections:

- 3901 Statement of Purpose
- 3902 Definitions
- 3903 Applicability
- 3904 Approvals Required
- 3905 Application Requirements
- 3906 Notice
- 3907 Decisions, Limited Exceptions, Appeals
- 3908 Standard Conditions of Approval
- 3909 Site Location Guidelines
- 3910 Development Standards
- 3911 Temporary Wireless Facilities
- 3912 Public Right-of-Ways
- 3913 Amortization of Nonconforming Wireless Facilities

3901 Statement of Purpose

- A. The purpose of this Article is 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, inclusive of the Coastal Act and the City's certified Local Coastal Program (LCP). The standards and procedures contained in this Article 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.
- B. This Article 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.

3902 Definitions

The abbreviations, phrases, terms and words used in this Article will have the meanings assigned to them in this Section 3902 or, as may be appropriate, in Oceanside Zoning Ordinance Article 3 (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. § 702, 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 Article conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

- A. “Approving 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 approving authority for a conditional use permit is the Community Development Commission (CDC) within the D Downtown District, and the Planning Commission elsewhere within the City boundaries or, on appeal, the City Council. The approval authority for an administrative conditional use permit is the City Planner or, on appeal, the CDC or Planning Commission, as the case may be.
- 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. “Concealed” or “Concealment” means camouflaging techniques that integrate the transmission equipment into the surrounding natural and/or built environment such that
-

CITY OF OCEANSIDE COMPREHENSIVE ZONING ORDINANCE

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.

- D. “City Planner” means the City Planner of the Planning Division of the City of Oceanside, California or the City Planner’s designee.
- E. “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” transmission equipment to an eligible support structure.
- F. “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.
- G. “CPUC” means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or it’s duly appointed successor agency.
- H. “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, provided that it is existing at the time the relevant application is filed with the State or local government under this section.
- I. “FCC” means the Federal Communications Commission or its duly appointed successor agency.
- 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.

CITY OF OCEANSIDE COMPREHENSIVE ZONING ORDINANCE

- M. “RF” means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.
- N. “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.
- O. “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.
- P. “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.
- (1) For towers outside the public rights-of-way, a substantial change occurs when:
- a. The proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet (whichever is greater); or
 - b. The proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
 - c. 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
 - d. 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.
-

CITY OF OCEANSIDE COMPREHENSIVE ZONING ORDINANCE

(2) For towers in the public rights-of-way and for all base stations, a substantial change occurs when:

- a. The proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
- b. The proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or
- c. The proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
- d. The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or
- e. The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.

(3) In addition, for all towers and base stations wherever located, a substantial change occurs when:

- a. The proposed collocation or modification would defeat the existing concealment elements of the support structure as reasonably determined by the City Planner; or
- b. 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 related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.

Q. “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.

R. “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, mono-trees and lattice towers.

- S. “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.
- T. “Wireless” means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

3903 Applicability

- A. Applicable Wireless Facilities. This Article 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, unless exempted under Section 3903(B) or governed under Oceanside Zoning Ordinance Article 39B pursuant to Section 3903(C).
- B. Exempt Wireless Facilities. Notwithstanding the provisions in Section 3903(A) (Applicable Wireless Facilities), the provisions in this Article will not be applicable to: (1) wireless facilities owned and operated by the City for public purposes; (2) wireless facilities installed in the public right-of-way except as provided in Section 3912 (Public R-O-W); (3) amateur radio facilities; (4) OTARD antennas; (5) 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); (6) 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 as may be amended or superseded; and (7) temporary wireless facilities approved in conjunction with special event permits.
- 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 Oceanside Zoning Ordinance Article 39B.
- D. LCP Compliance. Notwithstanding the aforementioned exemptions in this section, if the

provisions of this section conflict with the provisions of the City's certified LCP governing exemptions or any other LCP provisions, the City's certified LCP provisions shall control to the extent permitted under applicable state and federal law.

3904 Approvals Required

- A. Administrative Conditional Use Permit. An administrative conditional use permit, subject to the City Planner's review and approval in accordance with the provisions in Oceanside Zoning Ordinance Article 41 (Use Permits and Variances), as modified by this Article, is required for:
- (1) All new stealth wireless facilities;
 - (2) All collocations, modifications or other changes to existing stealth facilities not qualifying for Section 6409 permitting pursuant to Article 39B;
 - (3) All new camouflaged wireless facilities, and substantial changes to existing camouflaged wireless facilities, proposed to be located or existing in any non-Residential District.
- B. Conditional Use Permit. A conditional use permit, subject to the CDC's or Planning Commission's review and approval in accordance with provisions in Oceanside Zoning Ordinance Article 41 (Use Permits and Variances), as modified by this Article, is required for:
- (1) All new wireless facilities and substantial changes to existing wireless facilities that require a limited exception pursuant to Section 3907(C);
 - (2) All other new wireless facilities and substantial changes to existing wireless facilities not subject to an administrative conditional use permit, or a section 6409 approval.
- C. Coastal Development Permit. For a project located in the coastal zone, the applicant shall obtain a Coastal Development Permit pursuant to the City's certified LCP, if applicable, except where clearly inconsistent with federal law.
- D. Other Permits and Regulatory Approvals. In addition to any administrative conditional use permit, conditional use permit or other permit required under this Article, 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 any other permits and/or regulatory approvals issued by other departments or divisions within the City. Furthermore, any permit or approval granted under this Article 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.

3905 Application Requirements

- A. Application Required. The approving authority shall not approve any request for an administrative conditional use permit or conditional use permit except upon a duly filed application consistent with this Section 3905 and any other written rules the City or the City Planner may establish from time to time in any publicly-stated format.
- B. Application Content. All applications for an administrative conditional use permit or conditional use permit must include all the content, information and materials required by the City Planner for the application. The City Council authorizes the City Planner 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 City Planner finds necessary, appropriate or useful for processing any application governed under this Article. The City Council further authorizes the City Planner to establish other reasonable rules and regulations, which may include without limitation regular hours for appointments with applicants, as the City Planner 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 an administrative conditional use permit or conditional use permit will not be considered duly filed unless submitted in accordance with the procedures in this Section 3905(C).
- (1) Pre-Submittal Conference. Before application submittal, unless waived by the City Planner upon the applicant's written request, the applicant must schedule and attend a pre-submittal conference with the City Planner for all proposed projects subject to an administrative or conditional use permit. The City Planner shall use reasonable efforts to provide the applicant with an appointment within approximately five (5) to ten (10) working days after a request is received.
- (2) Submittal Appointment. All applications must be submitted to the City at a pre-scheduled appointment with the City Planner. Applicants may generally submit one application per appointment, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. 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 City Planner at a pre-submittal conference. The City Planner shall use reasonable efforts to provide the applicant with an appointment within approximately five (5) to ten (10) working days after a request is received.

- D. Applications Deemed Withdrawn. To promote efficient review and timely decisions, any application governed under this Article will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the City Planner within 90 calendar days after the City Planner deems the application incomplete in a written notice to the applicant. The City Planner may, in the City Planner'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.

3906 Notice

- A. General Notice Requirements. Public notice in accordance with the provisions in Oceanside Zoning Ordinance section 4104 (Notice, Administrative Decision, and Public Hearing), The Coastal Permit Handbook, or other applicable City of Oceanside notification policy(ies), as may be amended from time to time, shall be required for all administrative conditional use permit and conditional use permit applications.
- B. Deemed-Approved Notices. Not more than 40 days before, but not less than 30 days before, the applicable FCC timeframe for review expires, and in addition to the public notice required in Section 3906(A), an applicant for an administrative conditional use permit or conditional use permit must provide a posted notice at the project site that states 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. The posted notice must be compliant with all applicable provisions in Oceanside Zoning Ordinance section 4104 (Notice, Administrative Decision, and Public Hearing). The public notice required under this Section 3906(B) will be deemed given when the applicant delivers written notice to the City Planner that shows the appropriate notice has been posted at the project site. Notwithstanding anything to the contrary in this article, the approving authority shall be permitted to act on an application at any time so long as the public notice required in Section 3906(A) has occurred.
- C. Decision Notice. Within five days after the approving authority acts on an application for an administrative conditional use permit or conditional use permit or before the applicable FCC shot clock expires (whichever occurs first), the approving authority or its designee shall send a written notice to the applicant. In the event that the approving 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.

3907 Decisions, Limited Exceptions, Appeals

- A. Required Findings for Approval. The approving authority may approve or conditionally approve any application for any use permit when the approval authority finds that:
-

CITY OF OCEANSIDE COMPREHENSIVE ZONING ORDINANCE

- (1) The proposed wireless facility complies with all required findings for use permit approval in Oceanside Zoning Ordinance section 4105(A);
 - (2) The proposed wireless facility complies with all applicable development standards described in Section 3910, or qualifies for a limited exception pursuant to Section 3907(C);
 - (3) For proposed facilities that are not stealth, the applicant has demonstrated a good-faith effort to identify and evaluate more-preferred locations and potentially less-intrusive designs; and
 - (4) For proposed facilities that are not stealth, the applicant has provided the approving authority with a meaningful comparative analysis that shows all less-intrusive alternative locations and designs identified in the administrative record are either technically infeasible or not potentially available.
- B. Conditional Approvals; Denials Without Prejudice. Subject to any applicable limitations in federal or state law, nothing in this Article is intended to limit the approving authority's ability to conditionally approve or deny without prejudice any application for an administrative conditional use permit or conditional use 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 Article, the certified LCP or the General Plan.
- C. Limited Exceptions for Personal Wireless Service Facilities. In the event that an applicant claims that strict compliance with the site location guidelines in Section 3909 or the development standards in Section 3910 would effectively prohibit the applicant's ability to provide personal wireless services, the CDC or Planning Commission may grant a limited exception from such requirements to the extent necessary to prevent an effective prohibition when the CDC or Planning Commission finds:
- (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;
 - (2) The applicant has provided the approving authority with a reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility;
 - (3) The applicant has provided the approving authority 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 Article, the Oceanside Zoning Ordinance, the Oceanside City Code, the general plan and/or any specific plan;
 - (4) The applicant has provided the approving authority 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 approving authority 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.

D. Appeals. Any interested person or entity may appeal any decision by the approving authority in accordance with the standards and procedures in Oceanside Zoning Article 46 (Appeals and Calls for Review), except as modified in this Section 3907(D). On the next available meeting date after the appeal period lapses, or as soon as reasonably feasible thereafter, the appellate body 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 Oceanside City Code and Oceanside Zoning Ordinance. 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.

E. Permit Term. Term limits shall not be imposed to wireless facility permits, unless deemed necessary for public safety or substantial land use reasons, pursuant to California Government Code § 65964(b), as may be amended or superseded in the future. Term limits for use permits issued prior or subsequent to the adoption of this ordinance may be extended or waived by the City Planner, upon submittal of a written request by the applicant no less than 30 days from the permit's expiration date, after due consideration of evidence indicating that the facility is in compliance with Article 39.

3908 Standard Conditions of Approval

In addition to all other conditions adopted by the approving authority, all administrative conditional use permits and conditional use permits, whether approved by the approving authority or deemed approved by operation of law, shall be automatically subject to the conditions in this Section 3908. The approving 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 Article.

A. Strict Compliance with Approved Plans. Before the permittee submits any applications to the Building Division, 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 strict compliance with the Approved Plans. Any 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 City Planner’s review and approval, who may refer the request to the original approving authority if the City Planner finds that the requested alteration, modification or other change substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.

- B. Build-Out Period. This permit will automatically expire one 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 City Planner may grant one written extension to a date certain 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.
- C. Maintenance Obligations; Vandalism. Before the permittee may commence any construction or installation activities, the permittee must execute a facility maintenance and removal agreement, on a form prepared by the City. 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. Any concealment elements shall be kept in “like new” condition at all times. 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. The permittee and property owner shall maintain any and all landscape features in accordance with an approved landscape plan, if any, and shall replace dying or dead trees, foliage or other landscape elements shown on the Approved Plans within 30 calendar days after written notice from the City.
- D. 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 California Building Code, certified Local Coastal Program (LCP), Oceanside Municipal Code, or the Comprehensive Zoning Ordinance, any permit, any permit condition or any applicable law or regulation, the applicant or permittee will

CITY OF OCEANSIDE COMPREHENSIVE ZONING ORDINANCE

not be relieved from its obligation to comply in all respects with all applicable provisions in any such permit, permit condition or any applicable law or regulation.

- E. 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 hours authorized by the Oceanside City 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 City Planner or the City Planner's designee may issue a stop work order for any activities that violates this condition.
- F. Backup Power; Generators. The permittee shall not operate backup power generators except during (1) primary power outages or (2) normal construction hours authorized by the Oceanside City Code as reasonably necessary to maintain the generator in working order. The City Planner may approve a temporary power source and/or generator in connection with initial construction or major repairs.
- 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 City Planner with accurate and up-to-date contact information for a person responsible for the wireless facility, which includes without limitation such person's full name, title, 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 City Planner with updated contact information in the event that either the responsible person or such person's 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, its 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,

CITY OF OCEANSIDE COMPREHENSIVE ZONING ORDINANCE

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 Building Division issues any construction permit in connection with this permit, the permittee shall post a performance bond from a surety and in a form acceptable to the City Manager 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 City Manager 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.
- K. Recall to Approving Authority; Permit Revocation. The approving authority may recall this permit for review at any time due to complaints about noncompliance with applicable laws or any approval conditions attached to this permit. At a duly noticed public hearing and in accordance with all applicable laws, the approving authority may revoke this permit or amend these conditions as the approving authority deems necessary or appropriate to correct any such noncompliance.
- 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 kept in the City's regular files will control over any conflicts between such hard copies and the permittee's electronic copies, and complete originals will control over all other copies in any form.

3909 Site Location Guidelines

- A. Preferred Locations. All applicants must, to the extent feasible, propose new wireless facilities in locations according to the following preferences, ordered from most preferred to least preferred:
- (1) City-owned or controlled property and structures on private property and in the public rights-of-way;
 - (2) Industrial Districts;
 - (3) Commercial Districts;
 - (4) Public and Semi-Public Districts;
 - (5) Open Space Districts;
 - (6) Agricultural Districts;
 - (7) Residential Districts;
- B. Preferred Locations in the Coastal Zone. In addition to the preferential ranking above, for proposals located in the coastal zone, sites that will have no or minimal impacts to sensitive habitat, public views and public access and recreation shall be given priority.
- C. referred Support Structures. In addition to the preferred locations described in section 3909(A), the City also expresses its preference for installations on certain support structures. The approving authority will take into account whether any less discouraged (or 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 wireless facilities on non-tower structures;
 - (2) Collocations with existing wireless facilities on towers;
 - (3) New installations on existing buildings, utility structures and other non-tower structures;

- (4) New freestanding towers.

3910 Development Standards

A. Generally Applicable Development Standards. All new wireless facilities and substantial changes to existing wireless facilities not covered under Section 6409 must conform to the generally applicable development standards in this Section 3910(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.
 - (2) **Overall Height**. Wireless facilities may not exceed the applicable height limit for structures in the applicable zoning district; provided, however, that stealth concealment elements such as faux-spires, bell towers, cupolas, chimneys, monuments and other similar features that would be used to fully integrate the facility with the built and/or natural environment may exceed the applicable height limit by no more than ten (10) feet.
 - (3) **Setbacks**. Wireless facilities may not encroach into any applicable setback for structures in the subject zoning district.
 - (4) **Noise**. Wireless facilities and all accessory equipment and transmission equipment must comply with all noise regulations, which includes without limitation Oceanside City Code Chapter 38 (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.
 - (5) **Landscaping**. All wireless facilities must include landscape features and a landscape maintenance plan when proposed to be placed in a landscaped area. The approving 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 Article. All plants proposed or required under this Article must be native and/or drought-resistant.
 - (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
-

CITY OF OCEANSIDE COMPREHENSIVE ZONING ORDINANCE

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 approving authority may approve permanent backup power sources and/or generators on a case-by-case basis. 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 FAA, 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) Parking Requirements. 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.
- (10) 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 in compliance with Oceanside City Code Article 33, required by law or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.
- (11) 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 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.
- (12) 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 approving authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
- (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 includes without limitation the California Building Standards Code, general plan and any applicable specific plan, the Oceanside City Code, the Oceanside Zoning Ordinance, the Oceanside Traffic Code and any conditions or restrictions in any permit or other governmental approving issued by any public agency with jurisdiction over the project.

- B. Facility-Specific Development Standards. In addition to the requirements in Section 3910(A), all new and substantially changed wireless facilities not covered under Section 6409 must conform to the facility-specific development standards adopted by the City Council. The City Council shall adopt such standards following a public hearing conducted pursuant to the requirements of the Oceanside City Code and/or Oceanside Zoning Ordinance. The facility-specific development standards may include, without limitation, standards for freestanding facilities and building-mounted facilities.
- C. Administrative Design Guidelines. The City Planner 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 Article for City staff, applicants and the public. In the event that a conflict arises between the development standards adopted under Sections 3910(A)-(B) and the design guidelines adopted under this Section 3910(C), the development standards adopted under Sections 3910(A)-(B) shall control.

3911 Temporary Wireless Facilities

- A. Temporary Wireless Facilities for Emergencies. Temporary wireless facilities may be placed and operated within the City without an administrative conditional use 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 3911 must be removed within five 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 City Planner as soon as reasonably practicable.
- B. Temporary Wireless Facilities for Special Events. Requests for the placement of temporary wireless facilities associated with special events shall be considered on a case by case basis in conjunction with a Special Events Permit.
- C. Temporary Wireless Facilities for Construction or Relocation. Requests for the placement of temporary wireless facilities associated with facility construction, relocation or other similar circumstances shall be considered on a case by case basis by the Building Division in connection with the building permit associated with the proposed project.

3912 Public Right-of-Ways

Wireless facilities located in City right-of-way areas shall be required to enter into an encroachment agreement prior to installation and shall be subject to the jurisdiction of the City Engineer or his designee who shall, consistent with California Public Utility Code Sections 7901 and 7901.1, determine the time, place and manner of construction for all facilities located within public right-of-ways. If the City Engineer determines that a substantial portion of the wireless facility will be located outside the right-of-way, then the wireless facility shall be required to comply with this Article.

3913 Amortization of Nonconforming Wireless Facilities

Any non-conforming wireless facilities in existence at the time this Article becomes effective must be brought into conformance with this Article in accordance with the amortization schedule in this Section 3913. 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 Article 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 City Planner 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 City Planner may not grant any permanent exemption from this section.

Nothing in this section is intended to limit any permit term to less than 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 September 29, 2006, 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.

Article 39B Wireless Communication Facilities (Section 6409) (City-wide)

Sections:

- 3914 Statement of Purpose
- 3915 Definitions
- 3916 Applicability
- 3917 Approvals Required
- 3918 Application Requirements
- 3919 Decisions
- 3920 Standard Conditions of Approval

3914 Statement of Purpose

- 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 Communication 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 an article 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 of Oceanside intends this Article 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 wireless facilities collocations and modifications pursuant to Section 6409, and related FCC regulations codified in 47 C.F.R. §§ 1.40001 et seq. This Article 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; or (6) impose and 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.

3915 Definitions

The abbreviations, phrases, terms and words used in this Article will have the meanings assigned to them in this Section 3915 or, as may be appropriate, in Oceanside Zoning Ordinance Article 3 (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. § 702, 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 Article conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

- A. "Approving 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 approving authority for a project that requires a section 6409 approval refers to the City Planner or on appeal, the City Manager.

 - 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
-

CITY OF OCEANSIDE COMPREHENSIVE ZONING ORDINANCE

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 Planner” means the City Planner of the Planning Division of the City of Oceanside, California or the City Planner’s designee.
 - D. “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” transmission equipment to an eligible support structure.
 - 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 it’s duly appointed successor agency.
 - G. “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.
 - H. “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, provided that it is existing at the time the relevant application is filed with the State or local government under this section.
 - I. “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.
 - J. “FCC” means the Federal Communications Commission or its duly appointed successor agency.
-

CITY OF OCEANSIDE COMPREHENSIVE ZONING ORDINANCE

- K. “RF” means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz.
- L. “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.
- M. “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.
- N. “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.
- (1) For towers outside the public rights-of-way, a substantial change occurs when:
- a. The proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet (whichever is greater); or
 - b. The proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
 - c. 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
 - d. 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.
- (2) For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
- a. The proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
 - b. The proposed collocation or modification increases the width more than 6 feet
-

CITY OF OCEANSIDE COMPREHENSIVE ZONING ORDINANCE

from the edge of the wireless tower or base station; or

- c. The proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
 - d. The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or
 - e. The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- (3) In addition, for all towers and base stations wherever located, a substantial change occurs when:
- a. The proposed collocation or modification would defeat the existing concealment elements of the support structure as reasonably determined by the City Planner; or
 - b. 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 related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.
- O. “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, mono-trees and lattice towers.
- P. “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.
- Q. “Wireless” means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.
-

3916 Applicability

This Article 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 conditional use permit under Article 39A.

3917 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 a changed plan to the underlying use permit for the tower or base station (each amendment a “section 6409 approval”) subject to the City Planner’s approval, conditional approval or denial without prejudice pursuant to the standards and procedures contained in this Article. If the proposed collocation, replacement or removal meets the criteria for approval under this Article, it shall be deemed to be in substantial conformance with the underlying use permit and shall not require a new use permit application. If a use permit was not required for the existing facility at the time it was constructed, then the section 6409 approval shall be considered a modification to the approval or permit that was issued in connection with the underlying facility.
- B. Other Permits and Regulatory Approvals. No collocation or modification approved pursuant to this Article 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 other any permits and/or regulatory approvals issued by other departments or divisions within the City. Furthermore, any section 6409 approval granted under this Article shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or regulatory approvals.

3918 Application Requirements

- A. Application Required. The City Planner 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 3918 and any other written rules the City or the City Planner 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 City Planner for the application. The City Council authorizes the City Planner 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 City Planner finds necessary, appropriate or useful for processing requests for section 6409 approvals. The City Council further authorizes the City Planner to establish other reasonable rules and regulations, which may

include without limitation regular hours for appointments with applicants, as the City Planner 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 3918(C).

(1) Pre-Submittal Conference. Before application submittal, the applicant must schedule and attend a pre-submittal conference with the City Planner. The City Planner may, in the City Planner's discretion, grant a written exemption to the submittal appointment under Section 3918(C)(2) and/or for a specific requirement for a complete application to any applicant who (i) schedules, attends and fully participates in any pre-submittal conference and (ii) shows to the City Planner's satisfaction that such specific requirement duplicates information already provided in other materials to be submitted or is otherwise unnecessary to the City's review under facts and circumstances in that particular case. Any written exemption will be limited to the project discussed at the pre-submittal conference and will not be extended to any other project.

(2) Submittal Appointment. All applications must be submitted to the City at a pre-scheduled appointment with the City Planner. Applicants may generally submit one application per appointment, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. 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 City Planner at a pre-submittal conference.

(3) For any event in the submittal process that requires an appointment, applicants must submit a written request to the City Planner. The City Planner shall use reasonable efforts to provide the applicant with an appointment within five (5) to ten (10) working days after a request is received.

D. Applications Deemed Withdrawn. To promote efficient review and timely decisions, any application governed under this Article will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the City Planner within 90 calendar days after the City Planner deems the application incomplete in a written notice to the applicant. The City Planner may, in the City Planner'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.

3919 Decisions

- A. Administrative Review. The City Planner 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 working days after the City Planner acts on an application for a section 6409 approval or before the FCC shot clock expires (whichever occurs first), the City Planner shall send a written notice to the applicant. In the event that the City Planner denies the application, the written notice to the applicant must contain (1) the reasons for the decision; (2) a statement that the denial will be without prejudice; and (3) instructions for how and when to file an appeal.
- C. Required Findings for Approval. The City Planner may approve or conditionally approve any application for a section 6409 approval when the City Planner 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 Article, and consistent with all applicable federal laws and regulations, the City Planner may deny without prejudice any application for a section 6409 approval when the City Planner finds that the proposed project:
- (1) Does not meet the findings required in Section 3919(C);
 - (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 and safety.
- E. Conditional Approvals. Subject to any applicable limitations in federal or state law, nothing in this Article is intended to limit the City Planner'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 City Planner'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 within 10 days from the City Planner'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 City Planner'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 Article 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.

3920 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 operation of law, shall be automatically subject to the conditions in this Section 3920. The City Planner (or the City Manager in his/her 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 Article.

- 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 wireless tower or base station, and will be regarded as a modification to the underlying approval for the subject wireless 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 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 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 City Planner 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 City Planner 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.
-

CITY OF OCEANSIDE COMPREHENSIVE ZONING ORDINANCE

- D. Strict 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 strict compliance with the Approved Plans. Any 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 City Planner’s prior review and approval, who may revoke the section 6409 approval if the City Planner finds that the requested alteration, modification or other change may cause 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 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 City Planner may grant one written extension to a date certain 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. Before the permittee may commence any construction or installation activities, the permittee must execute a facility maintenance and removal agreement, on a form prepared by the City, unless the permittee has already executed a facility maintenance and removal agreement for the underlying tower or base station. 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. Any concealment elements shall be kept in “like new” condition at all times. 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. The permittee and property owner shall maintain any and all landscape features in accordance with an approved landscape plan, if any, and shall replace dying or dead trees, foliage or other landscape elements shown on the Approved Plans within 30 calendar days after written notice from the City.
- 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
-

CITY OF OCEANSIDE COMPREHENSIVE ZONING ORDINANCE

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 California Building Code, certified Local Coastal Program (LCP), Oceanside Municipal Code, or the Comprehensive Zoning Ordinance, 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 any such 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. 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 Oceanside 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 City Planner or the City Planner's designee may issue a stop work order for any activities that violate this condition.
 - I. Backup Power; Generators. The permittee shall not operate backup power generators except during (1) primary power outages or (2) normal construction hours authorized by the Oceanside City Code as reasonably necessary to maintain the generator in working order. The City Planner may approve a temporary power source and/or generator in connection with initial construction or major repairs.
 - J. 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.
 - K. Permittee's Contact Information. The permittee shall furnish the Planning Division with accurate and up-to-date contact information for a person responsible for the wireless facility, which includes without limitation such person's full name, title, 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 City Planner with updated contact information in the event that either the responsible person or such person's contact information changes.
-

CITY OF OCEANSIDE COMPREHENSIVE ZONING ORDINANCE

- L. Indemnification. The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its 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 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 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.
- M. Performance Bond. Before the Building Division issues any construction permit in connection with this section 6409 approval, the permittee shall post a performance bond from a surety and in a form acceptable to the City Manager 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 City Manager 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.
- N. Recall to the Approving Authority; Permit Revocation. The original approving authority may recall this section 6409 approval for review at any time due to complaints about noncompliance with the applicable laws or any approval conditions attached to this section 6409 approval. At a duly noticed public hearing and in accordance with all applicable laws, the approving authority may revoke this section 6409 approval or amend

these conditions as the approving authority deems necessary or appropriate to correct any such noncompliance.

- O. 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 kept in the City's regular files will control over any conflicts between such hard copies and the permittee's electronic copies, and complete originals will control over all other copies in any form.

Article 39C Amateur Radio Antenna and Support Structure Standards (City-wide)

Sections:

- 3921 Purpose, Scope and Intent
- 3922 Administrative Conditional Use permit, When Required
- 3923 Operation and Maintenance Standards
- 3924 Site Development Standards
- 3925 Duration, Transfer, revocation and Discontinuance

3921 Purpose, Scope and Intent

This Article is intended to provide standards for Amateur Radio antennas and support structures (hereinafter an “Amateur Facility”), consistent with federal and state law, taking into account the general welfare of City residents and visual compatibility with the existing surroundings. All definitions set forth in Article 39A are hereby incorporated and made a part of this Article 39C.

3922 Administrative Conditional Use Permit, When Required

A. Only a ministerial building permit shall be required for an Amateur Facility such as a mast, tower and/or building, and including the antenna(s) affixed thereto used by authorized amateur radio stations licensed by the FCC, as long as the maximum height of such Amateur Facility including all elements (including without limitation, antennas, masts, booms, arms, cables, and rotors attached thereto) does not exceed the greater of:

- (1) Fifty-one (51) feet above existing grade, or
- (2) Fifteen (15) feet above the height of the building to which the antenna and/or mast is attached, or
- (3) Fifteen (15) feet above the maximum structure height prescribed for the zone in which the antenna is located.

B. An Amateur Facility exceeding the maximum height set forth in Section 3922A. shall be required to obtain one or more Administrative Conditional Use Permits pursuant to Article 41. In order to issue such an Administrative Conditional Use Permit, the City Planner, in addition to any other required findings, must also find that:

- (1) The application is submitted by an amateur radio operator licensed by the FCC; and
 - (2) The permitted location is listed by the FCC as the address associated with the amateur radio operator or is the residence of the amateur radio operator; and
-

- (3) Allowance of the additional height and/or width is necessary to reasonably accommodate amateur radio service communications; and
 - (4) Based on technical showings by the amateur radio operator applicant, no lesser antenna heights and no alternative antenna structures would reasonably accommodate the amateur radio operator's needs; and
 - (5) The conditions of approval, if any, constitute the minimum practicable regulation to accomplish the city's goal of promoting public health, safety, and welfare; and
 - (6) The conditions of approval, if any, do not preclude amateur radio service communications; and
 - (7) The Amateur Facility as proposed will facially comply with all adopted Building Codes and all other adopted health and safety codes.
- C. Amateur Facilities shall be subject to City building permit requirements, as well as all construction and post-installation permit inspections by the City to determine compliance therewith.

3923 Operation and Maintenance Standards

- A. An Amateur Facility requiring an Administrative Conditional Use Permit shall comply with the following operation and maintenance standards at all times. Failure to comply shall be a violation of the conditions of approval and constitute a violation of this Article subject to any remedy available under the Zoning Ordinance or other applicable law as well as a basis for institution of revocation proceedings of a permit pursuant to this Article, Article 41 and Article 47.
 - B. A maintenance and facility removal agreement shall be executed by the operator and the property owner (if other than the City). No building permit shall become effective until such agreement has been executed and attached to the building permit as a continuing condition thereof. Said agreement shall bind the operator and property owner and their successors and assigns to the facility to the following:
 - (1) Maintenance of the Amateur Facility to ensure compliance with the Administrative Conditional Use Permit and the building permit;
 - (2) Maintenance of the Facility in safe and good repair;
 - (3) Removal of the Amateur Facility when required by this Article or by any condition of approval, or when it is determined that the Amateur Facility will not have been used during any current consecutive six month period, or if the Facility will be abandoned;
 - (4) Reimbursement to the City for any and all costs incurred for work required by this
-

Article, applicable law, or the conditions of a permit issued by the City for the Amateur Facility which the operator and property owner fail to perform within 30 days after written notice from the City to do so or sooner if required by the City for good cause.

3924 Site Development Standards

General Development Standards. All Amateur Radio Antennas shall comply with the following:

A. Height shall be measured as follows:

- (1) Ground mounted Amateur Facilities (which may include those side-braced to a building). The height of the antenna and support structure shall be measured from the natural undisturbed ground surface below the center of the base of the antenna support (i.e., tower) to the top of the tower or from the top of the highest antenna or piece of equipment attached thereto, whichever is higher.
- (2) Building mounted Amateur Facilities. The height of the antenna and support structure shall be measured from the highest point of the building roof on which the Amateur Facility is mounted, to the top of the Amateur Facility.

B. Amateur Facilities (including without limitation, antennas, masts, booms, arms, cables, wires, and rotors attached thereto) attached thereto, shall conform to all building setback requirements, and all equipment associated with their operation shall comply with the development standards for the zone in which they are located. The building setback requirements shall not apply to Amateur Facility guy wires and guy anchors, or to antenna radial wires, or to ground wires and ground rods.

C. Amateur Facilities shall, in the opinion of the City’s Chief Building Official, be no greater in diameter or any other cross-sectional dimension than is reasonably necessary for proper physical support.

D. All Amateur Facilities shall be designed, located and operated to avoid disturbing the quiet enjoyment of adjacent properties and at a minimum shall be subject to the noise standards of Article 38 of the Municipal Code.

3925 Duration, Transfer, Revocation and Discontinuance

A. Two-year expiration for non-exercise of an Administrative Conditional Use Permit. An Administrative Conditional Use Permit for an Amateur Facility shall expire two (2) years after permit approval unless the applicant has obtained a Building Permit and has requested an initial building inspection.

B. Duration of Approvals and Permits.

- (1) Any Administrative Conditional Use Permit and/or building permit for an Amateur Facility shall be personal to the amateur radio operator to whom the permit is granted, and shall not run with the land, and shall be transferrable only to another amateur radio licensee taking possession of the property where the permitted Amateur Facility is located, upon prior written application to the City for and non-discretionary approval by the City.
- (2) Any Administrative Conditional Use Permit issued for an Amateur Facility shall terminate at the earlier of the following:
 - a. Two (2) years after the expiration of the permittee's amateur radio license; or
 - b. Sixty (60) days after surrender of the permittee's FCC license; or
 - c. Sixty (60) days after the revocation of the permittee's FCC license, or
 - d. Sixty (60) days after the permittee has notified the City of his or her intention to abandon or discontinue the use of the permitted Amateur Facility.

- C. Removal. All abandoned Amateur Facilities shall be physically removed by the Operator no more than ninety (90) days following the final day of use or permit termination, whichever occurs first.