

## **RESOLUTION 17- 10**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN PABLO RECOMMENDING TO THE CITY COUNCIL APPROVAL OF PLAN1612-0007 AMENDING SECTIONS 17.62.200 AND 17.70.030 AND TABLES 17.32-A, 17.34-A AND 17.36-A AND ADDING SECTION 17.62.300 RELATING TO WIRELESS COMMUNICATION FACILITIES TO ADDRESS FEDERAL COMMUNICATIONS COMMISSION REGULATIONS AND TO ADDRESS THE NEEDS OF SAN PABLO.**

**WHEREAS**, 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), 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, and

**WHEREAS**, Federal Communication Commission regulations interpret this statute and create 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 sixty (60) days after submittal (accounting for any tolling periods), and

**WHEREAS**, the Planning Commission finds that the overlap between wireless deployments covered under Section 6409(a) 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, and

**WHEREAS**, the Planning Commission further finds that a separate permit application and review process specifically designed for compliance with Section 6409(a) contained in a section devoted to Section 6409(a) will mitigate such potential confusion, streamline local review and preserve the city’s land-use authority to maximum extent possible, and

**WHEREAS**, the Planning Commission finds that these zoning regulations establish reasonable and uniform 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, and

**WHEREAS**, the standards and procedures contained in this ordinance 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.

**WHEREAS**, this ordinance 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 or regulation 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 facilities comply with the Federal Communication Commission'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) otherwise authorize the city to preempt any applicable federal or California state law.

**WHEREAS**, pursuant to the California Environmental Quality Act, the proposed project has been determined to be categorically exempt from the provisions of CEQA, in accordance with CEQA Guidelines Section 15305 Minor Alterations in Land Use Limitations, with no potential for causing a significant effect on the environment; and

**WHEREAS**, a public notice hearing has been published in the East Bay Times in accordance with the requirements of Government Code Section 65091; and

**WHEREAS**, the Planning Commission conducted a public hearing on May 16, 2017, at which oral and written testimony was taken, in addition to reviewing the staff report and attachments.

NOW, THEREFORE BE IT RESOLVED that the Planning Commission of the City of San Pablo has reviewed the proposed Ordinance (Exhibit A) and recommends approval of PLAN1612-0007 to the City Council, based on the following findings:

- A. The Ordinance is consistent with the City of General Plan,  
*The proposed ordinance meets the intent of the following policies:*

**General Plan LU-G-3:** *Preserve and strengthen the City's overall image and create a safe, walkable and attractive urban environment for the current and future generations of residents.*

**General Plan PCSU-I-35:** *Continue to work with the Pacific Gas & Electric Company on undergrounding of electric lines.*

**General Plan PCSU-I-38:** *Encourage telephone and communication system providers to upgrade and incorporate state of the art communication technologies, such as wireless internet technology, within the city.*

- B. The Ordinance is consistent with applicable federal and state laws.

*The proposed ordinance is consistent based on the recitals outlined above.*

- C. The Ordinance is consistent with the purposes of the Zoning Ordinance.

*Pursuant to Zoning Ordinance Section 17.01.020 Purpose, the proposed ordinance promotes growth of the city in an orderly manner and promotes and protects the public health, safety, peace, comfort, and general welfare. Pursuant to Zoning Ordinance Section 17.32.010 Purpose of Residential Districts, the ordinance helps to produce healthy, safe, and attractive neighborhoods in San Pablo. The ordinance addresses neighborhood compatibility and ensures that new telecommunications facilities help produce safe and attractive neighborhoods. Pursuant to Zoning Ordinance Section 17.34.010 Purpose of Commercial and Industrial Districts, the ordinance supports the provision of services to residents.*

- D. Pursuant to the California Environmental Quality Act, the proposed ordinance is categorically exempt based on Section 15305 Minor Alterations in Land Use Limitations.

*The proposed ordinance consists of minor alterations in land use limitations in areas with an average slope of less than 20 percent, which do not result in any changes in land use or density, in that the provisions in that the ordinance does not change the underlying land use and density standards in all zones. The ordinance itself creates no potential for causing a significant effect on the environment. Individual applications for telecommunications facilities are subject to CEQA and any potential for causing a significant effect on the environment would be evaluated with such applications.*

- E. Public notice of the hearing has been published in the East Bay Times, in accordance with the requirements of Government Code Section 65905.

*A public hearing notice was published in the East Bay Times newspaper on Friday, May 5, 2017.*

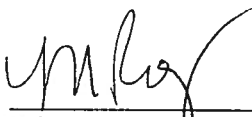
BE IT FURTHER RESOLVED that the foregoing recitations are true and correct, and are included herein by reference as findings.

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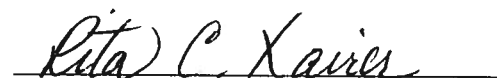
Adopted this 16<sup>th</sup> day of May, 2017, by the following vote to wit:

|          |                |                                     |
|----------|----------------|-------------------------------------|
| AYES:    | COMMISSIONERS: | Xavier, Trujillo, Feliciano, Inglis |
| NOES:    | COMMISSIONERS: | None                                |
| ABSENT:  | COMMISSIONERS: | Shi                                 |
| ABSTAIN: | COMMISSIONERS: | None                                |

ATTEST:

  
Michele Rodriguez  
Secretary

APPROVED:

  
Rita C. Xavier  
Chairperson



## ORDINANCE NO. 2017-XXX

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN PABLO AMENDING SECTIONS 17.62.200 AND 17.70.030 AND TABLES 17.32-A, 17.34-A AND 17.36-A AND ADDING SECTION 17.62.300 RELATING TO WIRELESS COMMUNICATION FACILITIES TO ADDRESS FEDERAL COMMUNICATIONS COMMISSION REGULATIONS AND TO ADDRESS THE NEEDS OF SAN PABLO

The City Council of the City of San Pablo does ordain as follows:

**SECTION 1.** The City Council makes the following findings, pursuant to Section 17.22.040 of the San Pablo Municipal Code:

- A. This ordinance was initiated by City of San Pablo staff in response to changes in federal and state law and recommended by the Planning Commission of the City of San Pablo following a duly noticed public hearing on May 16, 2017.
- B. A duly noticed public hearing was held by the City Council on \_\_\_\_\_, 2017 to consider this amendment to the Zoning Ordinance of the City of San Pablo codified as Title 17 of the San Pablo Municipal Code. The public hearing notice was published in the East Bay Times on \_\_\_\_\_, 2017.
- C. As further described in the City Council staff report accompanying this Ordinance and in the Ordinance below, the Ordinance is consistent with the City of San Pablo General Plan and meets the intent of the following policies:

**General Plan LU-G-3:** *Preserve and strengthen the City's overall image and create a safe, walkable and attractive urban environment for the current and future generations of residents.*

**General Plan PCSU-I-35:** *Continue to work with the Pacific Gas & Electric Company on undergrounding of electric lines.*

**General Plan PCSU-I-38:** *Encourage telephone and communication system providers to upgrade and incorporate state of the art communication technologies, such as wireless internet technology, within the city.*

- D. As further described in the City Council staff report accompanying this Ordinance, this Ordinance is consistent with the purposes of the Zoning Ordinance:

*Pursuant to Zoning Ordinance Section 17.01.020 Purpose, the proposed ordinance promotes growth of the city in an orderly manner and promotes and protects the public health, safety, peace, comfort, and general welfare. Pursuant to Zoning Ordinance Section 17.32.010 Purpose of Residential Districts, the ordinance helps to produce healthy, safe, and attractive neighborhoods in San Pablo. The ordinance addresses neighborhood compatibility and ensures that new telecommunications facilities help produce safe and attractive neighborhoods. Pursuant to Zoning Ordinance Section 17.34.010 Purpose of Commercial and Industrial Districts, the ordinance supports the provision of services to residents.*

E. The Ordinance is consistent with applicable federal and state laws.

*The proposed ordinance is consistent with federal state law based on the legislative findings below.*

F. Pursuant to the California Environmental Quality Act, the proposed ordinance is categorically exempt based on Section 15305 Minor Alterations in Land Use Limitations and the City Manager is directed to ensure that a Notice of Exemption is filed with the County Clerk.

*The proposed ordinance consists of minor alterations in land use limitations in areas with an average slope of less than 20 percent, which do not result in any changes in land use or density, in that the provisions in that the ordinance does not change the underlying land use and density standards in all zones. The ordinance itself creates no potential for causing a significant effect on the environment. Individual applications for telecommunications facilities are subject to CEQA and any potential for causing a significant effect on the environment would be evaluated with such applications.*

**SECTION 2.** Table 17.32-A "Residential Districts: Use Regulation" of the San Pablo Municipal Code is amended as follows with no other changes to the Table:

| Land Use/Zoning District                                                | R-1 | R-2 | R-3 | R-4 | RMU | Special Provisions               |
|-------------------------------------------------------------------------|-----|-----|-----|-----|-----|----------------------------------|
| <b>Utility, Transportation, Public Facility, and Communication Uses</b> |     |     |     |     |     |                                  |
| Wireless Communication Facilities                                       | -   | -   | -   | -   | -   | Sections 17.62.200 and 17.62.300 |
| Telecommunication Facility, Minor                                       | R   | R   | R   | R   | R   | -                                |

**SECTION 3.** Table 17.34-A “Commercial and Industrial Districts: Use Regulations” of the San Pablo Municipal Code is amended as follows with no other changes to the Table:

| Land Use/Zoning District                                                | NC | CR | CMU | IMU | Special Provisions               |
|-------------------------------------------------------------------------|----|----|-----|-----|----------------------------------|
| <b>Utility, Transportation, Public Facility, and Communication Uses</b> |    |    |     |     |                                  |
| Wireless Communications Facilities-Major                                | -  | -  | -   | -   | Sections 17.62.200 and 17.62.300 |
| Telecommunication Facility, Minor                                       | -  | U  | U   | R   |                                  |

**SECTION 4.** Table 17.36-A “Public and Semi-Public Districts: Use Regulations,” of the San Pablo Municipal Code is amended as follows with no other changes to the Table:

| Land Use/Zoning District                                                | I  | OS | Special Provisions               |
|-------------------------------------------------------------------------|----|----|----------------------------------|
| <b>Utility, Transportation, Public Facility, and Communication Uses</b> |    |    |                                  |
| Wireless Communication Facilities -Major                                | U— | U— | Sections 17.62.200 and 17.62.300 |
| Telecommunication Facility, Minor                                       | R  | U  | -                                |

**SECTION 5.** Section 17.62.200, “Wireless Communication Facilities” of the San Pablo Municipal Code is amended in its entirety to read as follows:

**§ 17.62.200 Wireless Communication Facilities: For Facilities Covered Under section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455(a))**

**A. LEGISLATIVE INTENT**

1. **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), 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 regulations interpret this statute and create 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 sixty (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(a) applies to all “wireless” facilities licensed or authorized by the FCC (e.g., cellular, Wi-Fi, satellite, microwave backhaul, etc.).

**2. Legislative Findings.** The city council finds that the overlap between wireless deployments covered under Section 6409(a) 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(a) contained in a section devoted to Section 6409(a) will mitigate such potential confusion, streamline local review and preserve the city’s land-use authority to maximum extent possible.

**3. Intent.** The city of San Pablo intends this section 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(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), and related FCC regulations codified in 47 C.F.R. §§ 1.40001 *et seq.* This section 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 or regulation 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 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) otherwise authorize the City to preempt any applicable federal or California state law.

## B. DEFINITIONS

The abbreviations, phrases, terms and words in this section will have the meanings assigned to them in this section or, as may be appropriate, in section 17.68.020 (Universal 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 section conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

1. **"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 which requires a Section 6409(a) Approval refers to the zoning administrator.
2. **"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.
  - a. 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.
  - b. 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).
  - c. 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 subsections (a)-(b), codified as 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.
  - d. 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 subsections (a)-(b), codified as 47 C.F.R. § 1.40001(b)(1)(i)-(ii).

**Note:** As an illustration and not a limitation, the FCC's definition refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles and transmission towers, light standards or traffic signals. A structure without wireless equipment replaced with

a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

3. **"city manager"** means the city manager of the city of San Pablo or his or her designee.
4. **"collocation"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC's definition effectively means "to add" and does not necessarily refer to more than one wireless facility installed at a single site.
5. **"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.
6. **"eligible support structure"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which defines that term as any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.
7. **"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(a) 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.
8. **"FCC"** means the Federal Communications Commission or its duly appointed successor agency.
9. **"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.
10. **"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.
11. **"RF"** means radio frequency or electromagnetic waves between 30 kHz and 300 GHz in the electromagnetic spectrum range.
12. **"Section 6409(a)"** 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.
13. **"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.

14. **"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 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 facility type and location.
- a. For towers outside the public rights-of-way, a substantial change occurs when:
    - i. the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or
    - ii. 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
    - iii. the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
    - iv. the proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
  - b. For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
    - i. the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
    - ii. the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or
    - iii. 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
    - iv. 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
    - v. the proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
  - c. In addition, for all towers and base stations wherever located, a substantial change occurs when:
    - i. the proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the Director; or
    - ii. the proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.

**Note:** The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a

substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012—the date that Congress passed Section 6409(a).

15. **"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, mono-trees and lattice towers.
16. **"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.
17. **"wireless"** means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

### C. APPLICABILITY

This section 17.62.200 applies to all collocations or modifications to an existing wireless tower or base station submitted with a written request for approval pursuant to Section 6409(a). However, the applicant may voluntarily elect to seek either an administrative use permit or conditional use permit, as may be appropriate, under section 17.62.300.

### D. APPROVAL REQUIRED

1. **Section 6409(a) 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(a) shall require a "Section 6409(a) Approval" subject to the zoning administrator's approval, conditional approval or denial pursuant to the standards and procedures contained in section 17.62.200F (Decisions).
2. **Other Regulatory Approvals Required.** No collocation or modification approved under any Section 6409(a) Approval may occur unless the applicant also obtains all other permits or regulatory approvals from other city departments and state or federal agencies. Furthermore, any Section 6409(a) Approval granted under this

section 17.62.200 shall remain subject to any and all lawful conditions and/or requirements associated with such other permits or regulatory approvals from other city departments and state or federal agencies.

#### **E. PERMIT APPLICATIONS**

1. **Application Requirement.** The city shall not approve any wireless facility subject to this section 17.62.200 except upon a duly filed application consistent with the provisions in this subsection 17.62.200.E and any other written rules the city or the city manager may establish from time to time in any publicly-stated format.
2. **Application Content.** The city council authorizes the city manager to develop and publish permit application forms, checklists, informational handouts and other related materials that the city manager finds necessary, appropriate or useful for processing requests for Section 6409(a) Approvals. Without further authorization from the city council, the city manager may from time-to-time update and alter any such permit application forms, checklists, informational handouts and other related materials as the city manager deems necessary, appropriate or useful to respond to regulatory, technological or other changes. The materials required under this section are minimum requirements for any application.
  - a. **Planning Application Form and Applicable Fee.** The applicant must complete, execute and submit the Planning Application Form and tender to the city the applicable fee in the amount established by city council resolution pursuant to chapter 17.06 (Fees). In the event the city does not require a specific fee for Section 6409(a) Approvals, the highest fee applicable to an administrative use permit will be required.
  - b. **Title Report and Owner's Authorization.** The applicant must provide a title report prepared within the six months prior to the application filing date in order for the city verify the property owner's identity. If the applicant does not own the subject property, the application must include a written authorization signed by the property owner that empowers the applicant to file the application and perform all facility construction, installation, operation and maintenance to the extent described in the application.
  - c. **CPCN.** To the extent that the applicant claims any regulatory authorization or other right to use the public rights-of-way, such as a Certificate of Public Convenience and Necessity, the applicant must provide a true and correct copy of the certificate, license, notice to proceed or other regulatory authorization that supports the applicant's claim.
  - d. **Prior Regulatory Approvals.** Evidence that the applicant holds all current licenses and registrations from the FCC and any other applicable regulatory bodies where such license(s) or registration(s) are necessary to provide wireless services utilizing the proposed wireless facility. For any prior local regulatory approval(s) associated with the wireless facility, the applicant must submit copies of all such approvals, including any corresponding approved project plans and conditions of approval. Alternatively, the applicant may submit a written justification that sets forth reasons why prior regulatory

approvals were not required for the wireless facility at the time it was constructed or modified.

- e. **Project Plans.** A fully dimensioned, and full color, site plan and elevation drawings prepared and sealed by a California-licensed engineer showing any existing wireless facilities with all existing transmission equipment and other improvements, the proposed facility with all proposed transmission equipment and other improvements and the legal boundaries of the leased or owned area surrounding the proposed facility and any associated access or utility easements. The plans must specifically depict and call out the original overall height of the structure and, if the structure was constructed prior to February 22, 2012, the overall height that existed on February 22, 2012. The plans must contain all other elements and details required for site plans submitted with a permit application pursuant to a conditional use permit.
- f. **Site Photos and Photo Simulations.** Photographs and photo simulations that show the proposed facility in context of the site from reasonable line-of-sight locations from public streets or other adjacent viewpoints, together with a map that shows the photo location of each view angle.
- g. **RF Compliance Demonstration.** An RF exposure compliance report prepared and certified by an RF engineer acceptable to the City that certifies that the proposed facility, as well as any colocated facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radiated power (ERP)) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- h. **Acoustic Analysis.** A written report that analyzes acoustic levels for the proposed facility and all associated equipment including without limitation all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators in order to demonstrate compliance with chapter 17.50 (Noise). The acoustic analysis must be prepared and certified by an engineer and include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of a written report, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.
- i. **Section 6409(a) Justification Analysis.** A written statement that explains in plain factual detail whether and why Section 6409(a) and the related FCC regulations at 47 C.F.R. § 1.40001 *et seq.* require approval for the specific project. A complete written narrative analysis will state the applicable standard and all the facts that allow the city to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written

analysis. As part of this written statement the applicant must also include (i) whether and why the support structure qualifies as an existing tower or existing base station; and (ii) whether and why the proposed collocation or modification does not cause a substantial change in height, width, excavation, equipment cabinets, concealment or permit compliance.

3. **Procedures for a Duly Filed Application.** The city shall not review any application unless duly filed in accordance with the provisions in this section 17.62.200.E.3.
  - a. **Pre-Submittal Conference.** Before application submittal, applicants must schedule and attend a pre-application meeting with city staff for all proposed modifications submitted for approval pursuant to Section 6409(a). Applicants must also pay the applicable fee for a pre-submittal conference. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification, including whether the project qualifies for Section 6409(a); any latent issues in connection with the existing tower or base station; potential concealment issues (if applicable); coordination with other city departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that city staff may provide informal feedback about whether such applications or other materials may be incomplete or unacceptable. The zoning administrator may, in the zoning administrator's discretion, grant a written exemption to the submittal appointment under section 17.62.200.E.3.b 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 zoning administrator'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.
  - b. **Submittal Appointment.** All applications must be filed with the city at a pre-scheduled appointment. 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 or through any other means, will not be considered duly filed unless the applicant received a written exemption from the zoning administrator at a pre-submittal conference.
  - c. **Appointment Scheduling Procedures.** For any event in the submittal process that requires an appointment, applicants must submit a written request to the zoning administrator. The zoning administrator shall endeavor to provide applicants with an appointment as soon as reasonably feasible and within five business days after a written request is received.

4. **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, and in accordance with San Pablo Municipal Code section 17.16.030(D), an application will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the city within 60 calendar days after the city deems the application incomplete in a written notice to the applicant. The zoning administrator may, in the zoning administrator's discretion, grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 60th 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.
5. **Departmental Rules.** The city council authorizes the city manager to establish other reasonable rules and regulations, which may include without limitation regular hours for appointments with applicants, as the city manager 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.

## **F. DECISIONS**

1. **Decision Notices.** Within five working days after the approving authority approves, conditionally approves or denies an application submitted for approval pursuant to Section 6409(a) or before the FCC timeframe for review expires (whichever occurs first), the approving authority shall send a written notice to the applicant and all other parties entitled to receive notice. In the event that the approving authority determines that an application submitted for approval pursuant to Section 6409(a) does not qualify for approval, the approving authority will send written notice to the applicant that includes the reasons to support the approving authority's decision and states that the application will be automatically denied without prejudice on the 60th day after the date the application was filed unless the applicant withdraws the application.
2. **Required Findings for Approval.** The approving authority may approve or conditionally approve an application submitted for approval pursuant to Section 6409(a) when it finds that the proposed project:
  - a. involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
  - b. does not substantially change the physical dimensions of the existing wireless tower or base station.
3. **Criteria for Denial.** Notwithstanding any other provisions in this section 17.62.200, and consistent with all applicable federal laws and regulations, the approving authority may deny an application submitted for approval pursuant to Section 6409(a) when it finds that the proposed project:
  - a. does not satisfy the criteria for approval;
  - b. violates any legally enforceable standard or permit condition reasonably related to public health and safety then in effect; or
  - c. involves the replacement of the entire support structure.

4. **Conditional Approvals.** Subject to any applicable limitations in federal or state law, nothing in this section 17.62.200 is intended to limit the zoning administrator's authority to conditionally approve an application for a Section 6409(a) Approval to protect and promote the public health and safety.
5. **Appeals.** Any applicant may appeal the zoning administrator's decision to deny without prejudice a Section 6409(a) application. The appeal must be filed within 10 days from the zoning administrator's decision. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The city manager shall serve as the appellate authority for all appeals of all actions of the zoning administrator taken pursuant to this section 17.62.200. The city manager shall limit its review to whether the project should be approved or denied in accordance with the provisions in subsections 17.62.200.F.2-3. The decision of the city manager shall be final and not subject to any further administrative appeals.

#### **G. STANDARD CONDITIONS OF APPROVAL**

In addition to all other conditions adopted by the approving authority, all conditional use permits and administrative use permits, whether approved by the approving authority or deemed approved by the operation of law, shall be automatically subject to the conditions in this subsection 17.62.200.G. The approving authority shall have discretion to modify the conditions in this subsection 17.62.200.G on a case-by-case basis as the approval authority deems necessary or appropriate to enable the proper operation of the wireless facility and promote public health and safety, and to advance the purposes in this section.

1. **Permit Term.** The city's grant or grant by operation of law of a Section 6409(a) Approval constitutes a federally-mandated modification to the underlying permit or other prior regulatory authorization for the subject tower or base station. The city's grant or grant by operation of law of a Section 6409(a) Approval will not extend the permit term, if any, for any administrative use permit, conditional use permit or other underlying prior regulatory authorization. Accordingly, the term for a Section 6409(a) Approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station.
2. **Accelerated Permit Terms Due to Invalidation.** In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Section 6409(a) 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(a) Approvals or the zoning administrator 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 zoning administrator 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(a) Approval when it

- has submitted an application for either an administrative use permit or conditional use permit for those improvements before the one-year period ends.
3. **No Waiver of Standing.** The city's grant or grant by operation of law of a Section 6409(a) Approval does not waive, and shall not be construed to waive, any standing by the city to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any Section 6409(a) Approval.
  4. **Approved Plans and Photo Simulations.** Before the permittee submits any applications to the building division, the permittee must incorporate this Section 6409(a) Approval, all conditions associated with this Section 6409(a) Approval and the approved photo simulations into the project plans (the "**Approved Plans**"). The permittee must construct, install and operate the 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 facility, must be submitted in a written request subject to the zoning administrator's prior review and approval, who may revoke the Section 6409(a) Approval if the zoning administrator 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.
  5. **Build-out Period.** This Section 6409(a) Approval will automatically expire one year from the issuance date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the facility or its use. The zoning administrator may grant one written extension to a date certain not exceeding one year from the permit issuance date 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.
  6. **Maintenance Obligations; Vandalism.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the Approved Plans and all conditions in this Section 6409(a) Approval. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the city, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
  7. **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 facility or any use or activities in connection with the use authorized in this Section 6409(a) Approval. 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.

8. **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 construction, installation, operation, modification, maintenance, repair, removal and/or other activities at the site. The permittee may only perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines between 7:00 AM and 6:00 PM weekdays or on Saturday from 8:00 AM to 5:00 PM. No work described above shall be done on Sunday or any city, state or federal holiday. 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 zoning administrator or the zoning administrator's designee may issue a stop work order for any work that violates this condition.
9. **Noise Complaints.** The permittee shall conduct all activities on the site in compliance with the ambient noise standards in chapter 17.50 (Noise) applicable to location in which the wireless facility is located. In the event that any person files a noise complaint and the city verifies that such complaint is valid, the permittee must remedy the violation within 10 days after notice from the city, which may include a demonstration that the permittee has amended its operational guidelines in situations where the violation arises from the permittee's personnel rather than the permittee's equipment.
10. **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the city or its designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the city or its 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 or its designee while such inspection or emergency access occurs.
11. **Contact Information.** The permittee shall furnish the development services department with accurate and up-to-date contact information for a person responsible for the 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.
12. **Indemnification.** The permittee and, if applicable, the property owner upon which the 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(a) 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(a) Approval or the 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(a) Approval, and that such indemnification obligations will survive the expiration or revocation of this Section 6409(a) Approval.

13. **Performance Bond.** Before the development services department issues any construction permit in connection with the facility, the permittee shall post a performance bond from a surety and in a form acceptable to the city manager in an amount equal to or greater than 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 facility. 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 information provided by the permittee regarding the cost to remove the facility.
14. **Revocation.** The original approving authority may recall this Section 6409(a) Approval for review at any time due to complaints about noncompliance with the applicable provisions in the San Pablo Municipal Code or any approval conditions. At a duly noticed public hearing and in accordance with all applicable laws, the zoning administrator may revoke this Section 6409(a) Approval or amend these conditions as the zoning administrator deems necessary or appropriate to correct any such noncompliance.
15. **Record Retention.** The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the 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.

## **H. COMPLIANCE OBLIGATIONS**

An applicant or permittee will not be relieved of its obligation to comply with every applicable provision in the San Pablo Municipal Code, section 17.62.200, any permit, any

permit condition or any applicable law or regulation by reason of any failure by the city to timely notice, prompt or enforce compliance by the applicant or permittee.

**SECTION 6.** Section 17.62.300, “Wireless Communication Facilities: New and Substantially Changed Facilities,” is added to the San Pablo Municipal Code to read as follows:

**§ 17.62.300 Wireless Communication Facilities: New and Substantially Changed Facilities**

**A. LEGISLATIVE INTENT**

The city of San Pablo intends this section to establish reasonable and uniform standards and procedures for wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the city’s territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this section are intended to, and should be applied to, protect and promote public health, safety and welfare, and also balance the benefits that flow from robust, advanced wireless services with the city’s local values, which include without limitation the aesthetic character of the city, its neighborhoods and community. This section 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 or regulation 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 facilities comply with the Federal Communication Commission’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) otherwise authorize the city to preempt any applicable federal or California state law.

**B. DEFINITIONS**

The abbreviations, phrases, terms and words in this section will have the meanings assigned to them in this subsection or, as may be appropriate, in section 17.68.020 (Universal 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 section conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

1. **"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 which requires an administrative use permit or temporary use permit refers to the zoning administrator. The approving authority for a project which requires a conditional use permit refers to the planning commission.
2. **"city manager"** means the city manager of the City of San Pablo or the his or her designee.
3. **"collocation"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC's definition effectively means "to add" and does not necessarily refer to more than one wireless facility installed at a single site.
4. **"eligible support structure"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which defines that term as any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.
5. **"FAA"** means the Federal Aviation Administration or its duly appointed successor agency.
6. **"FCC"** means the Federal Communications Commission or its duly appointed successor agency.
7. **"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.
8. **"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.
9. **"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.
10. **"RF"** means radio frequency or electromagnetic waves between 30 kHz and 300 GHz in the electromagnetic spectrum range.
11. **"Section 6409(a)"** 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.
12. **"temporary wireless facilities"** means portable wireless communication 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 communication facilities not permanently affixed to site on which is located.

13. **"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.
14. **"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.
15. **"wireless"** means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

#### **C. APPLICABILITY**

1. **Applicable Facilities.** This section 17.62.300 applies to all applications and requests for approval to construct, install, modify, collocate, relocate or otherwise deploy wireless facilities in the city, unless exempted pursuant to section 17.62.200.C.2 or governed under section 17.62.200 pursuant to section 17.62.200.C.3.
2. **Exempt Facilities.** Notwithstanding subsection 17.62.200.C.1, the provisions in this section 17.62.300 will not be applicable to: (1) facilities owned and operated by the city for public purposes; (2) facilities installed on city property in the public right-of-way pursuant to an approved master license agreement with the city; (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); and (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.
3. **Requests for Approval Pursuant to Section 6409(a).** All requests for approval submitted pursuant to Section 6409(a) will be first evaluated pursuant to the provisions in section 17.62.200.

#### **D. PERMITS REQUIRED**

1. **Administrative Use Permit.** An administrative use permit, subject to the zoning administrator's prior review and approval in accordance with section 17.18.080

- (Administrative use permit), is required for facilities in preferred locations as defined in section 17.62.300.G.1 that do not require an exception pursuant to section 17.62.300.F.4.
2. **Conditional Use Permit.** A conditional use permit, subject to the planning commission's prior review and approval in accordance with section 17.20.040 (Conditional use permit), is required for:
    - a. all facilities not in preferred locations as defined in section 17.62.200.G.1;
    - b. all facilities on private property within 250 feet from a single-family or multi-family residence;
    - c. all facilities in or within 250 feet from a district or structure listed or eligible to be listed on any federal, state or local historic register;
    - d. all facilities open space districts (including parks), hillside areas or Priority Development Areas;
    - e. all unconcealed facilities in any zone or district; and
    - f. all facilities that require an exception pursuant to section 17.62.300.F.4.
  3. **Temporary Use Permit.** A temporary use permit, subject to the zoning administrator's prior review and approval is required for any temporary wireless facility unless deployed in connection with an emergency pursuant to section 17.62.300.K.2.
  4. **Other Permits and Regulatory Approvals.** In addition to any conditional use permit, administrative use permit or other permit required under this section 17.62.300, the applicant must obtain all other required prior permits and other regulatory approvals from other city departments, and state and federal agencies. Any conditional use permit, administrative use permit or other permit granted under this section 17.62.300 will be subject to the conditions and/or other requirements in any other required prior permits or other regulatory approvals from other city departments, and state and federal agencies.

## **E. PERMIT APPLICATIONS**

1. **Application Requirement.** The city shall not approve any wireless facility subject to section 17.62.300 except upon a duly filed application consistent with this section 17.62.300.E and any other written rules the city manager may publish in any publicly-stated format.
2. **Application Content.** The city council authorizes the city manager to develop and publish permit application forms, checklists, informational handouts and other related materials that the city manager finds necessary, appropriate or useful for processing applications under this section 17.62.300. Without further authorization from the city council, the city manager may from time-to-time update and alter the permit application forms, checklists, informational handouts and other related materials as the city manager deems necessary, appropriate or useful to respond to regulatory, technological or other changes. The materials required under this section are minimum requirements for any application.
  - a. **Planning Application Form and Applicable Fee.** The applicant must complete, execute and submit the Planning Application Form and tender to

the city the applicable fee in the amount established by city council resolution pursuant to chapter 17.06 (Fees).

- b. **Title Report and Owner's Authorization.** The applicant must provide a title report prepared within the six months prior to the application filing date in order for the city verify the property owner's identity. If the applicant does not own the subject property, the application must include a written authorization signed by the property owner that empowers the applicant to file the application and perform all facility construction, installation, operation and maintenance to the extent described in the application.
- c. **Regulatory Authorizations.** To the extent that the applicant claims any regulatory authorization or other right to use the public rights-of-way, such as a Certificate of Public Convenience and Necessity, the applicant must provide a true and correct copy of the certificate, license, notice to proceed or other regulatory authorization that supports the applicant's claim.
- d. **Project Plans.** A fully dimensioned, and full color, site plan and elevation drawings prepared and sealed by a California-licensed engineer showing any existing wireless facilities with all existing transmission equipment and other improvements, the proposed facility with all proposed transmission equipment and other improvements and the legal boundaries of the leased or owned area surrounding the proposed facility and any associated access or utility easements. The plans must contain all other elements and details required for site plans submitted with an administrative use, temporary use or conditional use permit application, as applicable.
- e. **Site Photos and Photo Simulations.** Photographs and photo simulations that show the proposed facility in context of the site from reasonable line-of-sight locations from public streets or other adjacent viewpoints, together with a map that shows the photo location of each view angle.
- f. **RF Compliance Demonstration.** An RF exposure compliance report prepared and certified by an RF engineer acceptable to the city that certifies that the proposed facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radiated power (ERP)) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- g. **Acoustic Analysis.** A written report that analyzes acoustic levels for the proposed facility and all associated equipment including without limitation all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators in order to demonstrate compliance with chapter 17.50 (Noise). The acoustic analysis must be prepared and certified by an engineer and include an analysis of

- Project Purpose Statement.** A written statement that includes: (a) a description of the technical objectives to be achieved; (b) an annotated topographical map that identifies the targeted service area to be benefitted; (c) the estimated number of potentially affected users in the targeted service area; and (d) full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites.
    - Alternatives Analysis.** The applicant must list all existing structures considered as alternatives to the proposed location, together with a general description of the site design considered at each location. The applicant must also provide a written explanation for why the alternatives considered, such as collocation, were unacceptable or infeasible, unavailable or not as consistent with the development standards in this section 17.62.300 as the proposed location and design. This explanation must include a meaningful comparative analysis and such technical information and other factual justification as are necessary to document the reasons why each alternative is unacceptable, infeasible, unavailable or not as consistent with the development standards in this section 17.62.300 as the proposed location. If an existing facility is listed among the alternatives, the applicant must specifically address why the collocation or modification of such wireless communication facility is not a viable option. If the proposed location is in the public right-of-way, the applicant may perform the alternatives sites analysis on other locations that it considered in the public right-of-way.
- Procedures for a Duly Filed Application.** The city shall not review any application unless duly filed in accordance with the provisions in this section 17.62.300.E.3.

  - Pre-Submittal Conference.** Before application submittal, applicants must schedule and attend a pre-submittal conference with city staff for all proposed facilities that require an administrative or conditional use permit. The city strongly encourages, but does not require, a pre-submittal conference for all other proposed facilities. Applicants must also pay the applicable fee for a pre-submittal conference. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and permit requirements, concealment opportunities and/or concerns, potential alternative sites and/or designs, requirements for a complete application, scheduling matters and coordination with other city departments responsible for application review. To mitigate unnecessary delays due to

application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that city staff may provide informal feedback about whether such applications or other materials may be incomplete or unacceptable. The zoning administrator may, in the zoning administrator's discretion, grant a written exemption to the submittal appointment under section 17.62.300.E.3.b 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 zoning administrator'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.

- b. **Submittal Appointment.** All applications must be filed with the city at a pre-scheduled appointment. 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 or through any other means, will not be considered duly filed unless the applicant received a written exemption from the zoning administrator at a pre-submittal conference.
  - c. **Appointment Scheduling Procedures.** For any event in the submittal process that requires an appointment, applicants must submit a written request to the zoning administrator. The zoning administrator shall endeavor to provide applicants with an appointment as soon as reasonably feasible and within five business days after a written request is received.
4. **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, and in accordance with San Pablo Municipal Code section 17.16.030.D, an application will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the city within 60 calendar days after the city deems the application incomplete in a written notice to the applicant. The zoning administrator may, in the zoning administrator's discretion, grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 60th 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.
5. **Departmental Rules.** The city council authorizes the city manager to establish other reasonable rules and regulations, which may include without limitation regular hours for appointments with applicants, as the city manager 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.

## F. DECISIONS

### 1. Notice.

- a. **General Notice Required for the Application.** Public notice as provided in section 17.16.050 (Public hearing and public notice) will be required for any conditional use permit. The approving authority shall not act on any application for a wireless facility unless the public notice required by law has occurred.
- b. **Deemed-Approval Notice Procedures.** Not more than 30 days before the applicable FCC timeframe for review expires, and in addition to the public notice required in section 17.16.050 (Public hearing and public notice) if applicable, an applicant for a conditional use permit or administrative 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 within the next 30 days. The posted notice must be compliant with the notice content requirements in section 17.16.050.B. The public notice required under this section 17.62.300.F.1.b will be deemed given when the applicant delivers written notice to the zoning administrator that shows the appropriate notice has been posted at the project site.
- c. **Decision Notices.** Within five working days after the approving authority approves, conditionally approves or denies an application for a wireless facility or before the FCC timeframe for review expires (whichever occurs first), the approving authority shall send a written notice to the applicant and all other parties entitled to receive notice. For any denial notice, the approving authority shall include the reasons for the denial either in the notice or as a separate written document.

### 2. Required Findings for Approval.

The approving authority may approve or conditionally approve a duly filed application for a conditional use permit or administrative use permit only when the approving authority finds:

- a. the proposed wireless facility complies with all the criteria for a conditional use permit or administrative use permit in accordance with section 17.20.040.B or section 17.18.080.D, as applicable;
- b. the proposed wireless facility complies with all applicable development standards described in section 17.62.300.H;
- c. the applicant has demonstrated that its proposed facility will be in compliance with all applicable FCC rules and regulations for human exposure to RF emissions;
- d. the applicant has demonstrated a good-faith effort to identify and evaluate more-preferred locations, collocations and potentially less-intrusive designs;
- e. 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.

3. **Conditional Approvals.** The approving authority may impose any reasonable conditions on any conditional use permit or administrative use permit, related and proportionate to the subject matter in the application, as the approving authority deems necessary or appropriate to promote and ensure conformance with the General Plan, any applicable specific plan and the provisions in section 17.62.300.
4. **Limited Exception for Personal Wireless Service Facilities.** The planning commission shall not grant any limited exception pursuant to this section 17.62.300.F.4 unless the planning commission finds all the following:
  - a. the proposed 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;
  - b. the applicant has provided the planning commission with a reasonable and clearly defined technical service objective to be achieved by the proposed facility;
  - c. the applicant has provided the planning commission with a written statement that contains a detailed and fact-specific explanation as to why the proposed facility cannot be deployed in compliance with the applicable provisions in section 17.62.300, the San Pablo Municipal Code, the general plan and/or any specific plan;
  - d. the applicant has provided the planning commission with a meaningful comparative analysis with the factual reasons why all alternative locations and/or designs identified in the administrative record (whether suggested by the applicant, the city, public comments or any other source) are not technically feasible or potentially available to reasonably achieve the applicant's reasonable and clearly defined technical service objective to be achieved by the proposed facility; and
  - e. the applicant has demonstrated 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 facility, which includes without limitation a meaningful comparative analysis into multiple smaller or less intrusive facilities dispersed throughout the intended service area.
5. **Appeals.** Any interested person or entity may appeal a decision by the approving authority in accordance with the provisions in section 17.16.080 (Appeals). Within 30 days after an appeal is filed, the appeal authority shall hold a *de novo* public hearing to consider and act on the application in accordance with the applicable provisions in this section 17.62.300, the San Pablo Municipal Code and the general plan.

## **G. SITE LOCATION GUIDELINES**

1. **Preferred Locations.** All applicants must, to the extent feasible, propose new facilities in locations according to the following preferences, ordered from most preferred to least preferred. Facilities proposed to be sited in the following locations may be eligible for an administrative use permit.
  - a. city-owned properties;
  - b. city-owned structures in the public right-of-way;

- c. parcels within industrial zones
  - d. parcels within commercial sites;
2. **Preferred Support Structures.** In addition to the preferred locations described in section 17.62.300.G.1, the city also expresses its preference for installations on certain support structures. In any zone, whether preferred or not preferred, the city will consider whether any more preferred support structure is available.
- a. collocations with existing building-mounted or water tank-mounted wireless facilities;
  - b. collocations with existing wireless facilities on electric transmission towers;
  - c. collocations with existing freestanding wireless facilities;
  - d. new installations on existing buildings, water tanks, telephone or utility poles, signage or sign standards, traffic signals, light standards, and roadway overpasses;
  - e. new installations on existing electric transmission towers;
  - f. new freestanding wireless towers.

## H. DESIGN STANDARDS

1. **Generally Applicable Development Standards.** All new wireless facilities and all collocations or modifications to existing wireless facilities not subject to Section 6409(a) must conform to the generally applicable development standards in this section 17.62.300.H.
- a. **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.
  - b. **Overall Height.** Wireless facilities may not exceed the applicable height limit for structures in the applicable zoning district.
  - c. **Setbacks.** Wireless facilities may not encroach into any applicable setback for structures in the subject zoning district.
  - d. **Noise.** Wireless facilities and all accessory equipment and transmission equipment must comply with all noise regulations, which includes without limitation chapter 17.50 (Noise), and shall not exceed, either individually or cumulatively, the applicable ambient noise limit in the subject zoning district. The approving authority may require the applicant to incorporate appropriate noise-baffling materials and/or strategies whenever necessary to avoid any ambient noise from equipment reasonably likely to exceed the applicable limit.
  - e. **Landscaping.** Wireless facilities must include landscape features when proposed in a landscaped area. The approving authority may require additional landscape features, and an ongoing landscape maintenance plan, to screen the facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the concealment required under section 17.62.300.

- f. **Security Measures.** Wireless facilities may incorporate reasonable and appropriate security measures, such as fences, walls and anti-climbing devices, to prevent unauthorized access, theft and vandalism. Security measures must be designed to enhance concealment to the maximum extent possible. The approving authority may require additional concealment elements as the approving authority finds necessary to blend the security measures and other improvements into the natural and/or built environment. The approving authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures.
- g. **Backup Power Sources.** The approving authority may approve permanent backup power sources and/or generators on a case-by-case basis. The city strongly disfavors backup power sources mounted on the ground or on poles in the public rights-of-way. The approving authority shall not approve any diesel generators or other similarly noisy or noxious generators in or within 1,000 feet from any residential dwelling; provided, however, the approving authority may approve sockets or other connections used for temporary backup generators within the 1,000-foot setback.
- h. **Lights.** Wireless facilities may not include exterior lights other than (i) as may be required under FAA, FCC or other applicable governmental regulations; and (ii) 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 avoids illumination impacts on other properties.
- i. **Signage; Advertisements.** All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage or advertisements unless expressly approved by the city, required by law or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.
- j. **Future Collocations.** All wireless facilities must be designed and sited in a manner that contemplates future collocations, and will facilitate additional equipment to be integrated into the proposed facility or associated structures with no or negligible visual changes to its outward appearance to the greatest extent feasible.
- k. **Utilities.** All cables and connectors for telephone, primary electric and other similar utility services must be routed underground to the extent feasible in conduits large enough to accommodate future collocated facilities. 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.
- l. **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 specific plan, the city Municipal Code and any conditions or restrictions in any permit or other

governmental approval issued by any public agency with jurisdiction over the project.

2. **Freestanding Facilities.**

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

3. **Building-Mounted Facilities.**

- a. **Preferred Concealment Techniques.** All applicants should, to the extent feasible, propose new non-tower facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas concealed behind, and not above, existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, when integration with existing building features is not feasible, the applicant should propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks).
- b. **Facade-Mounted Equipment.** All facade-mounted equipment must be concealed behind screen walls and mounted as flush to the facade as practicable. The approving authority may not approve "pop-out" screen boxes unless the design is architecturally consistent with the original building or support structure. Except in industrial zones, the approving authority may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade.
- c. **Rooftop-Mounted Equipment.** All rooftop-mounted equipment must be screened from public view with concealment measures that match the underlying structure in proportion, quality, architectural style and finish and color. The approving authority may approve unscreened rooftop equipment only when it expressly finds that such equipment is effectively concealed due to its low height and/or setback from the roofline.
- d. **Associated Ground-Mounted Equipment.** Outdoor ground-mounted equipment associated with building-mounted facilities must be avoided

whenever feasible. In publicly visible or accessible locations, applicants must conceal outdoor ground-mounted equipment with opaque fences or landscape features that mimic the adjacent structure(s) such as dumpster corrals and other accessory structures.

4. **Right-of-Way Facilities.**

- a. **Concealment.** All wireless facilities in the right-of-way must be concealed to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses. In addition, wireless facilities in the rights-of-way may not unreasonably subject the public use, for any purpose including expressive or aesthetic purposes, to inconvenience, discomfort, trouble, annoyance, hindrance, impediment or obstruction.
- b. **Support Structures.** All wireless facilities in the public right-of-way must be installed on existing above-ground structures whenever possible and desirable. Existing above-ground structures may be replaced with hardened support structures so long as the replacement structure is substantially similar to the existing structure to be replaced. The approving authority shall not approve any new, non-replacement support structures unless: (i) the applicant demonstrates that above-ground support structures near the project site either do not exist or are not available to the applicant; or (ii) the approving authority finds that a new, non-replacement support structure would be more desirable and consistent with the objectives in this section 17.62.300 than installations on existing structures near the project site.
- c. **Undergrounded Equipment.** To conceal the non-antenna equipment, applicants for a proposed facility within any area in which the existing utilities are primarily located underground shall underground all non-antenna equipment other than any required electric meter or disconnect switch. In all other areas, applicants shall install all non-antenna equipment underground to the extent feasible or effectively required to maintain pedestrian access as may be required by the Americans with Disabilities Act or other applicable law. Additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement, except where the applicant demonstrates by clear and convincing evidence that this requirement will effectively prohibit the provision of personal wireless services.
- d. **Pole-Mounted Equipment.** All pole-mounted equipment must be installed as close to the pole as technically and legally feasible to minimize impacts to the visual profile. All required or permitted signage in the rights-of-way must face toward the street or otherwise placed to minimize visibility from adjacent sidewalks and structures. All conduits, conduit attachments, cables, wires and other connectors must be concealed from public view to the extent feasible.
- e. **Ground-Mounted Equipment.** To the extent that the equipment cannot be placed underground as required, applicants must install ground-mounted equipment in the location so that it does not obstruct pedestrian or vehicular

traffic. The approving authority may require landscaping as a condition of approval to conceal ground-mounted equipment.

## **I. STANDARD CONDITIONS OF APPROVAL**

In addition to all other conditions adopted by the approving authority, all conditional use permits and administrative use permits, whether approved by the approving authority or deemed approved by the operation of law, shall be automatically subject to the conditions in this section 17.62.300.I. The approving authority shall have discretion to modify the conditions in this section 17.62.300.I on a case-by-case basis as the approval authority deems necessary or appropriate to enable the proper operation of the wireless facility and promote public health, safety and welfare.

1. **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 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 facility, must be submitted in a written request subject to the zoning administrator's prior review and approval, who may refer the request to the original approving authority if the zoning administrator finds that the requested alteration, modification or other change implicates a significant or substantial land-use concern.
2. **Permit Duration.** This permit will automatically expire 10 years and one day from its issuance, except when California Government Code § 65964(b), as may be amended or superseded in the future, authorizes the city to establish a shorter term for public safety or substantial land use reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.
3. **Build-out Period.** This permit will automatically expire one year from the issuance date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the facility or its use. The zoning administrator may grant one written extension to a date certain not exceeding one year from the permit issuance date 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.
4. **Concealment Elements.** The permittee acknowledges that (i) the San Pablo Municipal Code requires all wireless facilities to incorporate concealment elements to the maximum extent feasible; (ii) concealment elements may take many different forms; and (iii) although the city may occasionally discuss specific concealment elements, it would be impractical and administratively difficult to enumerate or

articulate each individual concealment element on a case-by-case basis. Accordingly, the permittee expressly acknowledges and agrees that each design element and/or feature, which includes without limitation any screening, painting, texturing, proportionality or similarity with other natural features or manmade structures in the vicinity or placement within existing structures, that directly or indirectly mitigates, diminishes, reduces, avoids, alleviates or otherwise lessens the facility's visual impact or blends the facility into the natural or built environment is deemed to be a concealment element for all purposes, whether expressly stated as such in the administrative record or not.

5. **Maintenance Obligations; Vandalism.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the Approved Plans and all conditions in this permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the city, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
6. **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 facility or any use or activities in connection with the use authorized in this permit. 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.
7. **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 construction, installation, operation, modification, maintenance, repair, removal and/or other activities at the site. The permittee may only perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines between 7:00 AM and 6:00 PM weekdays or on Saturday from 8:00 AM to 5:00 PM. No work described above shall be done on Sunday or any city, state or federal holiday. 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 zoning administrator or the zoning administrator's designee may issue a stop work order for any work that violates this condition.
8. **Noise Complaints.** The permittee shall conduct all activities on the site in compliance with the ambient noise standards in chapter 17.50 (Noise) applicable to zone or district in which the facility is located. In the event that any person files a noise complaint and the city verifies that such complaint is valid, the permittee must remedy the violation within 10 days after notice from the city, which may include a demonstration that the permittee has amended its operational guidelines in situations where the violation arises from the permittee's personnel rather than the permittee's equipment.

9. **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the city or its designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the city or its 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 or its designee while such inspection or emergency access occurs.
10. **Contact Information.** The permittee shall furnish the development services department with accurate and up-to-date contact information for a person responsible for the 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.
11. **Indemnification.** The permittee and, if applicable, the property owner upon which the 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 permit, 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 permit or the 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 permit, and that such indemnification obligations will survive the expiration or revocation of this permit.
12. **Performance Bond.** Before the building division issues any construction permit in connection with the facility, the permittee shall post a performance bond from a surety and in a form acceptable to the city manager in an amount equal to or greater than 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 facility. 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 information provided by the permittee regarding the cost to remove the facility.

13. **Revocation.** The original approving authority may recall this permit for review at any time due to complaints about noncompliance with the applicable provisions of the San Pablo Municipal Code or any approval conditions. 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.
14. **Record Retention.** The permittee shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions and other documentation associated with the permit or regulatory approval. In the event that the city cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permittee fails to retain full and complete permits or other regulatory approvals in the permittee's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permittee.
15. **Undergrounded Utilities.** In the event that other public utilities or cable television operators in the public right-of-way where the permittee's wireless facility is located underground their facilities, the permittee for such wireless facility located in the public right-of-way must underground its equipment except the antennas and antenna supports. Such undergrounding shall occur at the permittee's sole cost and expense except as reimbursed pursuant to law. Telecommunications providers must fund their portions of the conversions from above ground to underground facilities either at the time of initial installation or as part of a Rule 20A conversion project for all City of San Pablo Underground Utility Districts (UUDs) qualified under CPUC Rule 32A.1, which includes service routes 100 feet from the point of service to individual property owners.
16. **Electric Meter Removal.** In the event that the commercial electric utility provider provides, adopts or amends rules that obviate the need for a separate electric meter and enclosure, the permittee for a wireless facility located in the public right-of-way that is serviced by such electric meter, on the permittee's own initiative and at the permittee's sole cost and expense, shall apply to the City for permission to remove the separate electric meter and enclosure. The permittee shall also restore the area affected by the electric meter to its original condition.

#### **J. AMORTIZATION OF NONCONFORMING FACILITIES**

Any non-conforming facilities in existence at the time this section 17.62.300 becomes effective must be brought into conformance with this section 17.62.300 in accordance with the amortization schedule in this section 17.62.300.J. As used in this section 17.62.300.J, the "fair market value" will be the construction costs listed on the building permit application for the subject facility and the "minimum years" allowed will be measured from the date on which this section 17.62.300 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 manager may grant a written extension to a date certain when the facility owner shows (1) a good faith effort to cure non-conformance and (2) 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 manager may not grant any permanent exemption from this section 17.62.300.J.

Nothing in this section 17.62.300.J is intended to limit any permit term to less than 10 years. In the event that the amortization required in this section 17.62.300.J 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 17.62.300.J 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 facility.

**K. TEMPORARY FACILITIES**

1. **Temporary Facilities for Non-Emergencies.** The zoning administrator may approve or conditionally approve a temporary use permit for a temporary wireless facility only when the zoning administrator finds all the following:
  - a. the proposed temporary wireless facility will not exceed 50 feet in overall height above ground level;
  - b. the proposed temporary wireless facility complies with all setback requirements applicable to the proposed location;
  - c. the proposed temporary wireless facility will not involve any excavation or ground disturbance;
  - d. the proposed temporary wireless facility will be compliant with all generally applicable public health and safety laws and regulations, which includes without limitation maximum permissible exposure limits for human exposure to RF emissions established by the FCC;
  - e. the proposed temporary wireless facility will not create any nuisance or violate any noise limits applicable to the proposed location;
  - f. the proposed temporary wireless facility will be identified with a sign that clearly identifies the site operator and contains a working telephone number to a live person who can exert power-down control over the antennas;
  - g. the proposed wireless temporary wireless facility will be removed within five days after the approving authority grants the temporary use permit, or such longer time as the approving authority finds reasonably related to the applicant's need or purpose for the temporary wireless facility;

- h. the applicant has not received any other temporary use permit for substantially the same location within the previous 90 days; and
  - i. the applicant has not sought approval for any permanent wireless facility in substantially the same location within the previous 365 days.
- 2. **Temporary Facilities for Emergencies.** Temporary wireless facilities may be placed and operated within the city without a temporary 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 17.62.300.K.2 must be removed within five days after the date the emergency is lifted (whichever occurs first). Any person or entity that places temporary wireless facilities pursuant to this section 17.62.300.K.2 must send a written notice that identifies the site location and person responsible for its operation to the zoning administrator as soon as reasonably practicable.

## **L. COMPLIANCE OBLIGATIONS**

An applicant or permittee will not be relieved of its obligation to comply with every applicable provision in the San Pablo Municipal Code, section 17.62.300, any permit, any permit condition or any applicable law or regulation by reason of any failure by the city to timely notice, prompt or enforce compliance by the applicant or permittee.

**SECTION 7.** Section 17.70.30, "Utility, Transportation, Public Facility and Communication Use Classes" of the San Pablo Municipal Code is amended to read as follows:

### **17.70.030 Utility, transportation, public facility, and wireless communication facilities use classes.**

- A. Telecommunication or Wireless Communication Facility. The wireless communication facility use class is defined in Sections 17.62.200 and 17.62.300 of the Municipal Code.
- B. Utilities—Major. The utilities—major use class consists of facilities that do not meet the requirements of the "utilities—minor" use class or that have the potential to have a significant effect on the surrounding environment.
- C. Utilities—Minor. The utilities—minor use class consists of unstaffed facilities involving only minor structures, if any, that are used for the provision of electricity, communications, water, gas, wastewater, through wires, pipes, and other similar means.

**SECTION 8. Severability.** If any sections, subsections, sentences, clauses, phrases or portions of this ordinance are for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause of this ordinance whether or not any one or more sections, subsections, phrases or clauses may be declared invalid or unconstitutional on their face or as applied.

**SECTION 9. Effective Date; Publication.** This ordinance shall become effective thirty (30) days following its adoption. The City Clerk's Office shall publish and post the ordinance in accordance with California Government Code section 36933.

\*\*\*\*\*

First read at a regular meeting of the City Council of the City of San Pablo on \_\_\_\_\_, 2017 and finally passed and adopted at a regular meeting of said City Council held on the \_\_\_\_\_ by the following vote:

AYES: COUNCILMEMBERS:  
NOES: COUNCILMEMBERS:  
ABSENT: COUNCILMEMBERS:  
ABSTAIN: COUNCILMEMBERS:

ATTEST:

APPROVED:

\_\_\_\_\_  
Ted J. Denney, City Clerk

\_\_\_\_\_  
Cecilia Valdez, Mayor