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Chapter 18.63 SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

18.63.010 Purpose.

The purpose and intent of this chapter is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless communications facilities in the city's public right-of-way. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless communications facilities. This chapter provides standards necessary: (1) for the preservation of the public right-of-way in the city for the maximum benefit and use of the public; (2) to promote and protect public health and safety, community welfare, visual resources and the aesthetic quality of the city consistent with the goals, objectives and policies of the general plan; and (3) to provide for the orderly, managed and efficient development of wireless communications facilities in accordance with the state and federal laws, rules and regulations. (Ord. 1807 § 2, 2019; Ord. 1806 § 2, 2019)

18.63.020 Definitions.

“Accessory equipment” means any equipment associated with the installation of a communication facility, including, but not limited to, cabling, generators, fans, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers.

“Administrative review” means ministerial review of an application by the city relating to the review and issuance of a permit, including review by the city engineer to determine where the issuance of a permit is in conformity with the applicable provisions of this chapter.

“Antenna” for this chapter means that part of a communication facility designed to radiate or receive radio frequency signals and/or electromagnetic waves.

“Cellular” means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.

“Collocation” for this chapter shall have the same meaning as set forth in Section 1.6100 of Title 47 of the Code of Federal Regulations. It also means locating wireless communication equipment for more than one provider on a single site.

“Communication facility,” “facility” or “facilities” or “wireless communications facilities” mean any facility or facilities that transmits and/or receives electromagnetic waves. It includes, but is not limited to, antennas and/or other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting such equipment, related accessory equipment, equipment buildings, parking areas, and other accessory development. Exceptions: The term “communication facility” does not apply to the following:

1. Government owned and operated telecommunications facilities.
2. Emergency medical care provider-owned and operated telecommunications facilities.
3. Mobile services providing public information coverage of news events of a temporary nature.

4. Any wireless telecommunications facilities exempted from this code by federal law or state law.

5. Police and fire communications.

“Communications service” means telecommunications service, as defined in Title 47 of the United States Code (i.e., 47 USC) Section 153(53), including wireless broadband internet service.

“Communications service provider” or “provider” means a provider of a communications service.

“Construction codes” means California Building, Electrical, Fire, Green, Plumbing, and/or Mechanical Codes adopted by the city.

“Director” means the director of public works, or designee.

“Discretionary review” means review of an application by the city relating to the review and issuance of a permit that is other than an administrative review.

“Distributed antenna system” or “DAS” means a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.

“Eligible facilities request” means the same as is set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision.

“Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

“FCC” means the Federal Communications Commission.

“Interference” means disturbances to reception caused by radio frequency waves or other electronic fields.

“Laws” means, collectively, any and all federal, state, or local laws, statutes, common law, codes, construction codes, rules, regulations, orders, and/or ordinances.

“Located within the public right-of-way” includes any facility, which in whole or in part, itself or as part of another structure, rests upon, in, over or under the public right-of-way.

“Master agreement” or “master license” means an agreement between the city and a permittee authorizing the installation and maintenance of one or more small wireless facilities.

“Modification” means a change to an existing communication facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. “Modification” does not include repair, replacement or maintenance if those actions do not involve a change to the existing facility involving any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation.

“Mounted” means attached or supported.

“Permit” means a written authorization (in electronic or hard copy format) to install a small wireless facility at a specified location in the public right-of-way. A permit may also consist of a master agreement between the applicant and city to install and maintain one or more small wireless facilities in the public right-of-way.

“Permittee” means an applicant that has received a permit under this chapter.

“Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including a governmental entity.

“Pole” means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this chapter. A pole does not include a tower or support structure.

“Public right-of-way” or “right-of-way” means a strip of land acquired and/or held by the city of La Habra intended to be or is presently occupied by a road, sidewalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary sewer, storm drain, bikeway, pedestrian walkway, or other public use.

“Radio frequency” or “RF” is a measurement representing the oscillation rate of electromagnetic radiation spectrum, or electromagnetic waves, from frequencies ranging from 300 GHz to as low as 9 kHz.

“Replace” or “replacement” means, in connection with an existing pole, support structure or tower, to replace same with a new structure, substantially similar in design, size and scale to the existing structure and in conformance with this chapter and any other applicable city code provisions, in order to address limitations of the existing structure to structurally support collocation of a communications facility.

“Sensitive uses” means any residential use, public or private school, day care, playground, and retirement facility.

“Small wireless facility” or “SWF” shall have the same meaning as described in 47 C.F.R. Section 1.6002(l).

“Support structure” means a structure in the public right-of-way other than a pole or a tower to which a wireless facility is attached at the time of the application.

“Telecommunications tower” or “tower” means a freestanding mast, pole, monopole, guyed tower, lattice tower, freestanding tower or other structure designed and primarily used to support communication facility antennas.

“Utility pole” means any pole made of wood or steel, owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission. “Wireless facility” means the equipment at a fixed location or locations in the public right-of-way that enables wireless services. The term does not include: (1) the support structure, tower or pole on, under, or within which the equipment is located or collocated; or, (2) coaxial, fiber-optic or other cabling that is between communications facilities or poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna. An SWF is one type of wireless facility.

“Wireless telecommunications services” means the provision of services using a communication facility or a wireless telecommunications collocation facility, and shall include, but not be limited to, the following services: personal wireless services as defined in the federal Telecommunications Act of 1996 at 47 USC Section 332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications. (Ord. 1807 § 2, 2019; Ord. 1806 § 2, 2019)

18.63.030 Administration.

A. Reviewing Authority. The city engineer or its designee is responsible for administering this chapter. As part of the administration of this chapter, the city engineer may:

1. Interpret the provisions of this chapter;
2. Develop and implement standards governing the placement and modification of wireless facilities consistent with the requirements of this chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;

3. Develop and implement acceptable designs and development standards for wireless facilities in the public rights-of-way, taking into account the zoning districts bounding the public rights-of-way;
4. Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this chapter;
5. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;
6. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
7. Require, as part of, and as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;
8. Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application;
9. Publish a Wireless Application Policy and Guidelines to serve as further regulatory guidance and clarification. The policy and guidelines may be updated at the discretion of the city engineer to adjust for new technologies and regulations, and compliance therewith is a condition of approval in every SWF permit;
10. Grant an administrative variance from the strict locational or physical requirements of this chapter may be granted when it is shown to the city engineer's satisfaction based on substantial evidence that, because of special, unique circumstances, an installation cannot meet those standards; and
11. Take such other steps as may be required to timely act upon applications for placement of wireless facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

B. Appeal.

1. Any aggrieved person or entity may appeal a decision by the city engineer to the director of public works, which may decide the issues de novo, and whose written decision will be the final decision of the city. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the personal wireless services facility.
2. Where the city engineer grants an application based on a finding that denial would result in a prohibition or effective prohibition under applicable federal law, the decision shall be automatically appealed to the director of public works. All appeals must be filed within five business days of the written decision of the city engineer, unless the city engineer extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law.
3. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law.

C. Regulations. The wireless regulations and decisions on applications for placement of wireless facilities in the right-of-way shall, at a minimum, ensure that the requirements of this chapter are satisfied, unless it is determined that applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this chapter may be waived, but only to the minimum extent required to avoid the prohibition or violation. (Ord. 1807 § 2, 2019; Ord. 1806 § 2, 2019)

18.63.040 Scope.

- A. In General. There shall be a type of permit entitled an “SWF permit,” which shall be subject to all of the requirements of this chapter. Unless exempted, every person who desires to place a wireless facility in the public rights-of-way or modify an existing wireless facility in the public rights-of-way must obtain an SWF permit authorizing the placement or modification in accordance with this chapter. Except for small wireless facilities, facilities qualifying as eligible facilities requests, or any other type of facility expressly allowed in the public right-of-way by state or federal law, no other wireless facilities shall be permitted pursuant to this chapter.
- B. Exemptions. This chapter does not apply to:
1. The placement or modification of facilities by the city or by any other agency of the state solely for public safety purposes.
 2. Installation of a “cell on wheels,” “cell on truck” or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.
- C. Pre-Existing Facilities in the Right-of-Way. Any wireless facility already existing in the right-of-way as of the date of this chapter’s adoption shall remain subject to the provisions of the city code in effect prior to this chapter, unless and until an extension of such facility’s then-existing permit is granted, at which time the provisions of this chapter shall apply in full force going forward as to such facility. The review of any request for a renewal of a permit for such pre-existing facilities shall be conducted pursuant to this chapter, rather than the portion(s) of the city code under which it was previously reviewed.
- D. Public Use. Except as otherwise provided by California law, any use of the right-of-way authorized pursuant to this chapter will be subordinate to the city’s use and use by the public. (Ord. 1807 § 2, 2019; Ord. 1806 § 2, 2019)

18.63.050 Installation requirements for small wireless facilities.

- A. Site Selection.
1. Preferred Locations. The preferred location for a small wireless facility (SWF) shall be on existing infrastructure such as utility poles or streetlights. The infrastructure selected should be located at public alleys, streets and/or near property line prolongations. If the SWF is not able to be placed on existing infrastructure, the applicant shall provide a map of existing infrastructure in the service area and describe why each such site was not feasible.
 2. Master License Agreement. When existing infrastructure sites have been exhausted or there is no available infrastructure in the proposed location, the city will consider entering into a master license agreement with an applicant on mutually, agreeable terms, but which may require that the applicant dedicate new infrastructure such as a street light, on which the SWF can be installed. The installation shall be subject to any of the size, attachment, and other physical restrictions set forth in subsections 1 and 3, below, as determined necessary by the city engineer. The city engineer shall approve all plans and specifications, including the means of providing electrical power and fiber optic.
 3. Prohibited Locations. The city engineer has determined that in order to ensure protection of the public health and safety, no SWF may be installed or maintained: (a) where any hazard to normal traffic flow could occur or exist, such as obscuring of drivers’ visibility or sight lines; or (b)

which would result any obstruction or restriction of pedestrian movement or risk to pedestrian safety; or (c) which would or could result in violation of any law, including any Americans with Disability Act (ADA) standard; or (d) which would or could result in violation of any applicable federal, state, county or local standard including standards of the American Association of State Highway and Transportation Officials. Additionally, mid-strand facilities are not permitted.

4. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight or attractive nuisances. The director may require the provision of warning signs, fencing, anti-climbing devices, anti-graffiti texture or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance.

B. Existing Infrastructure Requirements.

1. Street Light.

a. The antenna shall be the smallest possible volume but in no case greater than three cubic feet. The antenna must be enclosed in an RF transparent screen unless a whip style antenna is used. Antenna installations will be located at the top of pole mount and shall not increase the height of the underlying streetlight by more than ten percent or ten feet, whichever is greater, over other streetlights in the immediate vicinity. The antenna shall be as small as technically possible, and RF screen and/or color treatment shall be utilized to camouflage the installation.

b. Equipment, other than antennas, shall be mounted as prescribed by the city engineer in one of the manners described herein.

i. Underground Vault. Underground equipment shall be placed in vaults. Vault vents shall be flush to the ground. Wires and cables shall run in conduit underground from the vault to the pole. Underground entry into the pole through the foundation shall be required. Wires and cables shall run in conduit inside the pole.

ii. Base Shroud. Equipment shall be mounted in a base shroud of approved design to be retrofitted to an existing light standard. The base shroud shall be coated or painted with an approved color to match the existing pole.

iii. Integrated Base Shroud. The applicant may propose or the city may require that the existing light standard be replaced with a city-approved pole that is manufactured with a base shroud designed to accept wireless equipment and integrated RF screen to accept a wireless antenna.

iv. Alternative Infrastructure. The city engineer may consider and allow the use of other infrastructure not described above and not otherwise prohibited herein, when it is determined that the proposed alternate infrastructure: (1) is substantially similar in physical characteristics to the improvements identified in subsection B. ii.; (2) the visual impact that would be suffered by the public is no greater than the impact if installed on a structure per subsection B. iii.; and (3) the proposed alternative infrastructure can accommodate the proposed SWF without creating any risk to the public health or safety. Any approved alternate infrastructure shall be subject to all requirements for SWFs set forth in this chapter.

2. Utility Pole.

a. All installations on utility poles shall fully comply with the California Public Utilities Commission (CPUC) general orders (GOs), including, but not limited to, GO 95. None of the following design standards are meant to conflict with or cause a violation of GO 95,

including, but not limited to, its standards for a safe installation on a utility pole. Accordingly, size limits can be adjusted at the city engineer's discretion to ensure compliance with CPUC rules on safety.

b. The antenna shall be the smallest possible volume but in no case greater than three cubic feet and shall be mounted at the top of the pole or on the side of the pole with a bracket. When mounted with a bracket the bracket may extend no more than eighteen inches from the surface of the pole and will be coated or painted to match the existing pole. The antenna must be enclosed in an RF transparent screen unless a whip style antenna is used. The antenna shall be as small as technically possible, and RF screen and/or color treatment shall be utilized if possible to camouflage the installation.

c. Equipment, other than antennas, shall be mounted as prescribed by the city engineer in one of the manners described herein.

i. **Underground Vault.** Equipment is to be placed in an underground vault. Vault vents shall be flush to the ground. Wires and cables shall run in conduit underground from the vault to the pole and then up the pole to the antenna(s). The conduit shall be painted to match the pole. If the existing utility pole already has more than two existing risers/drops (i.e. conduit), the pole must be replaced with a metal pole that allows the new cable and wires to be located inside the pole, in conduit. The existing drops will also be relocated inside the new pole and underground entry into the pole through the foundation is required.

ii. **Alternative Infrastructure.** The city engineer may consider and allow the use of other infrastructure not described above and not otherwise prohibited herein, when it is determined that the proposed alternate infrastructure: (1) is substantially similar in physical characteristics to the improvements identified in subsection B. ii.; (2) the visual impact that would be suffered by the public is no greater than the impact if installed on a structure per subsection B. iii.; and (3) the proposed alternative infrastructure can accommodate the proposed SWF without creating any risk to the public health or safety. Any approved alternate infrastructure shall be subject to all requirements for SWFs set forth in this chapter.

3. **Replacement Poles.** These poles should be placed as close to the location of the existing pole as is technically feasible. Replacement poles should be designed to match the aesthetics (e.g., color, materials, and appearance) of the existing pole.

4. **New Poles.** A waiver is required for permission to install a new pole. The design should match the dimensions and appearance (e.g., colors, materials, and size) of existing poles in the area. New wooden poles are discouraged. (Ord. 1807 § 2, 2019; Ord. 1806 § 2, 2019)

18.63.060 Permit required.

A. Pre-Submittal Requirements.

1. Prior to application submittal, the applicants may schedule and attend a pre-submittal conference with public works department staff to receive informal feedback on the proposed location, design and application materials as well as a master plan of improvements within the city. The pre-submittal conference is intended to identify potential concerns and streamline the formal application review process after submittal. Public works department staff will endeavor to provide applicants with an appointment within approximately ten business days after receipt of a written request.

2. Application Submittal Appointment. All applications must be submitted to the public works department at a pre-scheduled appointment. City staff will endeavor to provide applicants with an appointment within ten business days after receipt of a written request.

B. Permits. An SWF permit must be obtained from the city before an SWF may be installed or maintained in the public right-of-way. An encroachment permit shall also be required as a condition of SWF permit approval. An SWF permit is conditionally valid for six months from the date of issuance. To ensure the greatest availability to other applicants of preferred locations for SWFs, installation of each SWF for which the permit is issued shall be completed within six months of issuance. Upon a showing of good cause not based on fault of the permittee, the city engineer may extend the time to complete the installation under an SWF permit, for an additional six months. Upon a failure of a permittee to complete installation in the required period of time, the permit shall be deemed void and the proposed SWF location shall be made available to other SWF applicants. In the event that an application is deemed granted by rule of law or court decision, all conditions and design guidelines set forth in this chapter are still applicable to the installation.

An application for a permit to install an SWF shall be made in writing on such forms as the city engineer prescribes, and shall comply with the following minimum requirements, in addition to all other information and documentation determined to be necessary by the city engineer to effectuate the purpose and intent of this section. A review of an application for an SWF that complies in all respects with this chapter shall be deemed an administrative review. Any proposed wireless facility not satisfying all requirements of this chapter for SWFs, or for any kind of facility that is not an SWF, shall be subject to discretionary review.

The application form shall specify the number, size and format of the project plans and application materials to be provided, including, but not limited to, electronic format. The city engineer may waive certain submittal requirements or require additional information based on specific project factors. Unless an exemption or waiver applies, all applications shall include all of the following and will not be accepted if any submittal material is missing or not fully completed. An application shall not be deemed complete by the city unless all required information, submittals, and documentation has been submitted to the city as follows:

1. Complete Application. A fully completed and executed city application form for the type of approval sought, and all information, materials, fees, attachments, submittals, and proof of insurance specified in the city approved application form, must be submitted. Where the city determines that it requires expert assistance in evaluating an application, the city may hire a consultant and the fee charged by the consultant shall be reimbursed to the city by the applicant regardless of the outcome of the application.
2. Executed Under Penalty of Perjury. All applications shall be signed under penalty of perjury under the laws of the state of California by an authorized representative of the applicant.
3. Applicant Information. Complete legal name and contact information for the facility owner, facility operator, agent (if any), and property owner (for any collocation facility on any existing SWF or shared utility pole), and related letter(s) of authorization if the owner is other than the city.
4. Detailed Description of the SWF. A full written description of the proposed facility, its purpose, and specifications. Special requirements pertain to the following installations:
 - a. Fiber Only. Applicants shall not be permitted to install fiber only and subsequently seek to install antennas and accessory equipment pursuant to an SWF permit at a later date. The applications for all installations in the public right-of-way shall simultaneously request fiber installation or other cable installation when applying for an SWF permit.

- b. Distributed Antenna System. Applications for an SWF permit for a DAS shall be submitted as a single SWF application for the entire project. Each individual location within the system shall be processed and considered for approval separately. Permitting fees will be applied to each site. Each location will be evaluated and must comply with the all design and development standards as defined by this chapter.
- c. Utility Pole Attachments. For any SWF proposed to be collocated on a pole or structure owned by a public or private utility, the application shall include written evidence of the utility's approval of applicant's specific proposed attachment including any and all applicable terms and conditions, and detailed description of the approved SWF. An SWF authorized by law and approved by the utility company for attachment to a utility owned pole or structure, shall be subject to all provisions of this chapter except to the extent any such provisions are preempted by state or federal law related to utility pole attachments by wireless providers.
5. Inventory. An inventory list and map of the applicant's existing SWFs, including, but not limited to, collocations, operated by the applicant within two miles of the proposed site ("service area"), and longer range conceptual plans for a period of five years shall also be provided, if available. The inventory list must include specific information as to location, height, and design of each facility. The city may share such information with other applicants seeking to locate SWFs within the service area, in order to encourage collocation.
6. Geographic Service Area. A written description identifying the geographic service area for the subject installation, accompanied by a five-year master plan of anticipated future installations and/or modifications, including maps.
7. Report on Alternatives. A report explaining why the SWF is needed at the requested location, including a written statement explaining the rationale for selecting the proposed site, and, in the event the proposed location is not proposed for a preferred location set forth in Section 18.63.050 (A)(1), how locating the proposed SWF in a preferred location would material limit the applicants provision of wireless service in the proposed service area. Said statement shall include all existing structures and/or alternative sites evaluated for potential installation of the proposed SWF and why said alternatives are not a viable option. If the city has requested that the applicant collocate its SWF on a site, the applicant shall explain why collocation is not feasible, including efforts made to develop such an alternative.
8. SWF Plans. Detailed engineering plans of the proposed SWF installation showing all equipment and antennas, including height, shape, size and nature of construction in accordance with the requirements established by the city engineer. The plans shall include, but are not limited to, a fully dimensioned diagram of the proposed SWF and antennas, including height, diameter, design, shape, size, structural integrity, power output and frequency, back-up power source (if any), nature of construction, purpose of the facility, and technical engineering specifications, economic and other pertinent factors governing selection of the proposed design, together with evidence that demonstrates that the proposed facility has been designed to the minimum height and diameter required from a technological standpoint for the proposed site.

The plans for any new freestanding structure must provide sufficient detail to demonstrate that the structure will be able to accommodate at least one other similar telecommunications provider in addition to the applicant. The plans shall include a diagram showing the separation between the proposed SWF and any existing facility or facilities on the same support structure or site, if collocation is planned.

In order to minimize visual impact of equipment boxes/vaults, every applicant seeking to collocate with another SWF shall utilize its best efforts to arrange with the existing SWF operator to share

equipment enclosures. The collocating wireless provider shall provide a written description of its efforts made to share any equipment enclosure. If unable to achieve a sharing arrangement, the applicant's written description shall clearly state the reasons why.

9. Site Plans. A fully-dimensioned site plan that includes, at a minimum, the following information: specific placement of the proposed equipment shelters, antenna(s), and any other SWF on the site; setbacks from adjacent property lines, offset from street centerline and curb face, show sidewalk width and clearances around all new equipment; the location of existing structures, trees, and other significant site features; the type and locations of materials proposed to screen SWF antennas and other components; the proposed materials and color(s) for the SWF, street improvements, and all other information required by the director.

10. Photographs and Visual Analysis. Photo-simulations showing views of the proposed SWF from surrounding properties and adjoining public right-of-way at varying distances and angles with a map indicating the locations used for the analysis and their distances from the site.

11. Documentation of Federal and State Compliance. Copies of all applicable licenses, permits and/or other approvals required by the FCC, CPUC, and any other federal, state, and/or local agency with authority to regulate SWFs, and documentation of compliance with all conditions imposed in conjunction with such licenses or approvals. The required documentation shall include, but is expressly not limited to, the following:

- a. Engineering calculations demonstrating that the proposed SWF will comply with all applicable FCC rules, regulations, and/or specifications.
- b. Completion of the radio frequency (RF) emissions exposure guidelines checklist contained in Appendix A to the Federal Communications Commission's (FCC) "Local Government Official's Guide to Transmitting Antenna RF Emission Safety", or any successor regulations, to determine whether the SWF will be "categorically excluded", as that term is used by the FCC.
- c. For an SWF that is not categorically excluded under the FCC regulations for RF emissions, the applicant shall submit an RF exposure compliance report prepared and certified by an RF engineer acceptable to the city that certifies that the proposed SWF, as well as any SWFs that contribute to the cumulative exposure in the subject area, will comply with applicable federal RF exposure standards, exposure limits and emission levels. 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.

12. Any environmental documentation required to obtain such federal and/or state license, permit or other approval.

13. CPUC. A copy of the certificate of public convenience and necessity issued by the California Public Utilities Commission ("CPUC") to the applicant, and a copy of the CPUC decision that authorizes the applicant to provide the wireless telecommunications service for which the facilities are proposed to be constructed in the public right-of-way. Any applicant that, prior to 1996, provided telecommunications service under administratively equivalent documentation issued by the CPUC may submit copies of that documentation in lieu of a certificate of public convenience and necessity.

14. Environmental Compliance. A completed environmental assessment and documentation establishing that all applicable environmental mitigation measures imposed by the CPUC, city and any other federal or state environmental determinations: (a) have been met; (b) will be met as part of the proposed SWF; or (c) are not applicable.

15. Noise Compliance. A statement made under penalty of perjury that the level of noise emitted by the proposed SWF will comply with this noise standards contained in the applicable section of the La Habra Municipal Code.

16. Traffic Control Plan. A traffic control plan will be necessary when the proposed installation will require use of any active traffic lane on any street. It may require the plan to be stamped by a traffic or civil engineer.

17. Any other information, studies and/or other documentation determined necessary by the city engineer, particularly when there may be the creation of radio interference with existing communications systems such as the police 800 MHz system and other emergency systems.

C. Findings; Decisions; Consultants.

1. Findings Required for Approval.

a. Except for facilities requests, the city engineer or the director of public works, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:

- i. The facility is not detrimental to the public health, safety, and welfare;
- ii. The facility complies with this chapter and all applicable design and development standards; and
- iii. The facility meets applicable requirements and standards of state and federal law.

b. For eligible facilities requests, the city engineer or the director of public works, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:

- i. That the application qualifies as an eligible facilities request; and
- ii. That the proposed facility will comply with all generally applicable laws.

2. Decisions. Decisions on an application by the city engineer or the director of public works shall be in writing and include the reasons for the decision.

3. Independent Consultants. The city engineer or the director of public works, as the case may be, is authorized, in its discretion, to select and retain independent consultant(s) with expertise in telecommunications in connection with the review of any application under this chapter. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application, including, but not limited to, application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards.

D. Conditions of Approval. In addition to any supplemental conditions imposed by the city engineer or the director of public works, as the case may be, all permits granted pursuant to this chapter shall be subject to the following conditions, unless modified by the approving authority:

1. Construction Requirements. Every permitted SWF shall be constructed/installed in strict compliance with the approved plans and specifications, provisions of this chapter, all laws, and all written policies and direction of the city engineer related to installation of utilities and/or other physical encroachments into the public right-of-way. All cabling and wiring must be either contained in conduit, inside a metal pole or affixed directly to the face of a wood pole, for as long

as it is technically feasible. No exposed slack or extra cable will be allowed. No visible electrical meters will be allowed. The applicant shall negotiate directly with the electric utility to determine a flat rate for installation. The applicant is responsible for the cost of all electrical usage.

All work shall be done in accordance with latest city's Standards, Caltrans, California Manual on Uniform Traffic Control Devices, Work Area Traffic Control Handbook, County and Federal Standards and Specifications or as otherwise required by the city engineer. It is the contractor's responsibility to obtain the city Standards before starting work. Any work done without inspection or not conforming to said standards and specifications shall be subject to removal and replacement in the presence of a city public works inspector.

2. Permit Duration. An SWF permit shall be valid for a period of ten years, unless pursuant to another provision of the code or these conditions, it expires sooner or is terminated. At the end of ten years from the date of issuance, such permit shall automatically expire, unless an extension or renewal has been granted. A person holding a wireless encroachment permit must either: (a) remove the facility within thirty days following the permit's expiration (provided that removal of support structure owned by the city, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the city); or (b) at least ninety days prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the city and all appeals from the city's decision exhausted.

3. Insurance and Indemnity. As a condition of approval of every SWF permit, and by accepting such permit, the permittee, to the fullest extent permitted by law, agrees to and shall indemnify, defend and pay reasonable attorneys' fees and costs, and hold harmless the city of La Habra, its elected officials, officers, employees, attorneys, contractors, agents, and volunteers, with respect to any and all claims, liabilities, and legal actions, allegedly or actually arising out of or related to, the acts and/or omissions of the applicant, its owners, officers, employees, contractors, agents, and any other person or entity acting on behalf of the applicant, in the exercise of rights and/or performance of obligations, in connection with any SWF or other permit issued to the applicant pursuant to this chapter.

Prior to entering any public right-of-way pursuant to an SWF permit, the permittee shall procure, provide satisfactory evidence of, and maintain commercial general auto liability, and workers compensation insurance in such form and with such limits as required by the city's risk manager or otherwise as required as a condition of the issuance of a city encroachment permit. Unless approved in writing by the city risk manager, self-insurance shall not be deemed to satisfy the requirements of this chapter.

4. Repair Obligations. The permittee shall repair, at its sole cost and expense, any damage including, but not limited to, subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation, use, and/or maintenance of a communication facility in the public right-of-way. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. The permittee shall complete such repair within the number of days stated on a written notice by the city engineer. Such time period for correction shall be based on the facts and circumstances, danger to the community and severity of the disrepair. Should the permittee not make said correction within the

time period allotted, the city engineer shall cause such repair to be completed at permittee's sole cost and expense

5. **Written Policy and Guidelines.** Compliance with any additional Wireless Application Policies and Guidelines issued by the city engineer is required.

6. **RF Exposure Compliance.** All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit

7. **Abandonment.** Whenever a wireless permittee intends to abandon a wireless facility, including any SWF, the permittee must notify the city engineer in writing of its planned abandonment. A wireless facility including an SWF shall be removed within ninety days of abandonment with attainment of all required permits. Any wireless facility not in use for a period of six months shall be considered abandoned and shall be removed within ninety days. (Ord. 1807 § 2, 2019; Ord. 1806 § 2, 2019)

18.63.070 Fees.

Each applicant/permittee shall pay one-time and recurring fees, per each SWF, in amounts: (1) not less than those amounts deemed presumptively reasonable under then-in effect federal law or regulations; or (2) established by the city by resolution as a reasonable, non-discriminatory approximation of the city's costs; or (3) agreed upon by the city and a permittee in a master agreement. All the applicable fees shall be paid as established in the city of La Habra Master Schedule of Fees. (Ord. 1807 § 2, 2019; Ord. 1806 § 2, 2019)

18.63.080 Conflicting code provisions superseded.

The provisions of this chapter shall govern and supersede any conflicting provisions of the code with respect to the permitting and regulation of SWFs in the public right-of-way. (Ord. 1807 § 2, 2019; Ord. 1806 § 2, 2019)

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