

ORDINANCE NO. 19-__

AN ORDINANCE OF THE CITY OF HAYWARD AMENDING CHAPTER 7 OF THE HAYWARD MUNICIPAL CODE BY ADDING ARTICLE 4 TO ESTABLISH REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES IN THE PUBLIC RIGHT OF WAY

WHEREAS, The Hayward City Council adopted Ordinance No. 97-12 to establish development standards for wireless communication facilities outside of the Public Right-of-Way; and

WHEREAS, Section 7901 of the California Public Utilities Code authorizes telephone and telegraph corporations to construct telephone or telegraph lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters; and

WHEREAS, Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner, and may involve the imposition of fees; and

WHEREAS, Technology developments and demand for high-speed mobile data service and capacity has extended beyond the capabilities of traditional macro-cell wireless communications facilities. To meet this demand, wireless providers have accelerated their small cell and distributed antenna system deployments in the public rights-of-way and the City has a clear incentive to develop public-private agreements that manage these accelerated deployments in a way that balances local aesthetics and public health and safety while also deriving the benefits of these new technologies for the City's residents to the greatest extent practicable; and

WHEREAS, Wireless providers are in the business of installing, maintaining and operating wireless communication facilities and typically installs, maintains and operates its wireless communications facilities on existing vertical infrastructure in the public rights-of-way; and

WHEREAS, The City owns and maintains approximately 4,700 existing poles within the public right-of-way that are potentially suitable for installing wireless communications facilities within the City's jurisdiction and has an interest in deriving appropriate value from the City's property; and

WHEREAS, Wireless providers desire to install, maintain and operate wireless communications facilities on the City's poles in the public rights-of-way and these wireless providers are willing to compensate the City for the right to use the City's poles for wireless communications purposes; and

WHEREAS, The City prepared a form Master License Agreement and associated Pole License form to be used by the City and certain wireless providers for the requested installation, maintenance, and operations of wireless communication facilities on City poles in the public rights-of-way; and

WHEREAS, Consistent with all applicable Laws, the City does not intend the Master License Agreement or any issued Pole License to grant any particular wireless provider the exclusive right to use or occupy the public rights-of-way within the City's territorial and/or jurisdictional boundaries, and the City may enter into similar or identical agreements with other entities, which include without limitation to any business competitors of a wireless provider who has entered into the Master License Agreement; and

WHEREAS, The City desires to authorize certain wireless providers access to individual City- owned poles based on a comprehensive set of criteria and a uniform Master License Agreement and associated Pole License form and pursuant to all the applicable permits issued by the City to protect public health and safety; and

WHEREAS, Said approval of a form Master License Agreement and associated Pole License form is not considered a "project" pursuant to the California Environmental Quality Act of 1970, as amended, and implementing state CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations (collectively "CEQA"), Section 15378 and Public Resources Code Section 21065 as the adoption of the form agreement and license is not the sort of activity that may cause a direct or reasonably foreseeable indirect physical change to the environment. In the alternative, the approval of the form Master License Agreement and associated Pole License form is exempt pursuant to Section 15061(b)(3) of the CEQA Guidelines in that there is no potential that the agreement and license approval may have a significant effect on the environment. Moreover, any site-specific future projects approved based on the Master License Agreement and associated Pole License form would necessitate further environmental review on a case by case basis; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

SECTION 1. Article 4 as shown in the attached Exhibit "A", is hereby added to Chapter 7, Public Works, of the Hayward Municipal Code, in order to establish a policy governing Wireless Communications Facilities in the Public Right of Way.

SECTION 2. Severance. Should any part of this ordinance be declared by a final

decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

SECTION 3. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ___th day of January, 2019, by Council Member_____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the ___th day of _____, 2019, by the following votes of members of said City Council:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

Mayor of the City of Hayward

DATE:_____

ATTEST:_____

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

Exhibit A

CHAPTER 7- PUBLIC WORKS

ARTICLE 4- WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT OF WAY

SECTION 7-4.00. Title and Purpose

This Article 4 is known as and may be cited as the "Public Right of Way Wireless Communication Facilities Ordinance" of the City of Hayward. The purpose of this Ordinance is to ensure that residents and businesses in the City of Hayward have reliable access to wireless telecommunications networks and state of the art communications services and that installations, modifications, and maintenance of Wireless Communications Facilities (WCF) in the Public Right-of-Way (PROW) are completed in a manner consistent with all applicable laws, are safe, and avoid or mitigate visual, environmental and neighborhood impacts. This Ordinance regulates WCF installations in the PROW to the fullest extent allowed by law.

This ordinance is adopted:

- (a) To provide uniform standards for the community desired design, placement, permitting, and monitoring of telecommunication facilities consistent with applicable state and federal requirements;
- (b) To manage the public right of way as to the time, place, and manner in which it is accessed;
- (c) To minimize the environmental and aesthetic impacts of installations in crowded public rights of way;
- (d) To strongly encourage telecommunications facilities to be installed only as ancillary uses at new and existing sites;
- (e) To require installation on arterial rather than local streets when feasible;
- (f) To preserve view corridors, to discourage visual blight and clutter, and to encourage aesthetic placement of telecommunication facilities;
- (g) To accommodate public and City use of the public right of way, so as to permit maintenance of telecommunication facilities, and to minimize disruption to vehicular traffic and pedestrian flow; and on-street parking;
- (h) To minimize unnecessary disruption of the public right of way by coordinating installations so as to effectively manage use of the public right of way;
- (i) To ensure the structural integrity, reliability, performance, safety, quality, ease of maintenance, and aesthetic integrity of the public right of way;
- (j) To ensure that similarly situated public right of way users are treated in a competitively neutral and non-discriminatory manner while complying with applicable state and federal requirements;
- (k) To ensure compliance with all federal, state, county, and local laws;
- (l) To prevent hazardous conditions along the public right of way; and
- (m) To manage the long-term use of the public right of way.

This Ordinance establishes standards for the siting, design, permitting, construction, operation, inspection, maintenance, repair, modification, removal and replacement of communications facilities in the public right of way in recognition of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, § 6409(a) (2012) (Spectrum Act), *codified at* 47 U.S.C. § 1455(a), and FCC regulations promulgated thereunder by the Federal Communications Commission (FCC), including the FCC's Report and Order of October 21, 2014, FCC 14-153 (rel. Oct. 21, 2014).

The siting and construction of antennas and facilities used in providing telecommunications services on all property other than the PROW, are subject to the provisions in Chapter 10, Article 13, of the Hayward Municipal Code.

SECTION 7-4.10. Definitions

“Accessory Equipment” means any equipment serving or being used in conjunction with a WCF. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets, storage sheds, shelters, vaults, or other structures.

“Administrative Approval” means approval granted by designated staff members authorized to grant approval after Administrative Review.

“Administrative Review” means evaluation of an application by designated staff.

“Antenna” means a device used to transmit and/or receive radio or electromagnetic waves for the provision of services including, but not limited to cellular, paging, personal communications services (PCS) and microwave communications. Such devices include but are not limited to directional antennas; such as panel antenna, microwave dishes, and satellite dishes; omnidirectional antennas; wireless access points (Wi-Fi); and strand mounted wireless access points. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

“Base Station” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended, which defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.40001(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. §§ 1.40001(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not

built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. §§ 1.40001(b)(1)(i)-(ii).

“Camouflage” means the means and methods by which a WCF is designed to conceal the equipment and blend the installation with the surrounding environment. This is accomplished by requiring the use of one or more Concealment Elements. The City of Hayward will not allow installation of monopals or other artificial trees or plants in the PROW.

“Carrier on Wheels or Cell on Wheels (“COW”)” means a portable self-contained WCF that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.

“Collocation” means the act of siting multiple WCFs on an existing structure.

“Concealment Elements” means:

- (1) Radio Frequency transparent screening;
- (2) Approved, specific colors;
- (3) Minimizing the size of the Site;
- (4) Integrating the installation into existing utility infrastructure;
- (5) Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed Site. The new infrastructure is then dedicated to the City and the installation is integrated into the new infrastructure; and
- (6) Controlling the installation location.

“CPUC” means the California Public Utilities Commission.

“Director” means the City’s Director of Public Works – Engineering & Transportation Department or designee.

“Distributed Antenna System (DAS)” means a network of one or more Antenna and fiber optic nodes connecting to a common base station or “hub.”

“EMF” means Electro-magnetic Frequency.

“Existing Height” means the height of the structure as originally approved or as of the most recent modification that received regulatory approval prior to the passage of the Spectrum Act. Height shall be measured from natural grade to the top of all appurtenances.

“Interference” means physically or electronically affecting the operation, views, signals or functions of City equipment or third-party equipment.

“Laws” means any and all applicable federal, state and local ordinances, resolutions, regulations, administrative orders, or other legal requirements.

“Macrocell Site” is a location that provides the largest area of coverage within a mobile network. The Antennas for macrocells can be mounted on ground-based masts, rooftops or other existing structures. They are generally positioned at a height that is not obstructed by terrain or buildings. They provide radio coverage over varying distances depending on the frequency used, the number of calls made and the physical terrain. Macrocell Base Stations typically occupy space greater than eight cubic feet for station equipment, greater than three cubic feet per Antenna and three or more Antennas. Macrocells have a typical power output in hundreds or thousands of watts.

“Minor Modification” means changes to an existing WCF or structure that results in less than a Substantial Change.

“Modifications” means changes to an existing WCF or structure that result in a Substantial Change to the structure, increase the number of antennas, increase the size of the antennas or increase the EMF output of the WCF.

"Public right of way" ("PROW") or "right-of-way" means the area on, below, or above a city owned or controlled street or alley public right of way and the sidewalk and/or parkway adjacent thereto.

“Routine Maintenance” means ensuring that a WCF and structure is kept in good operating condition. Routine Maintenance includes, but is not limited to: inspections, testing and alterations that do not qualify as Modifications. An encroachment permit, excavation permit and traffic control plans may still be required depending on the scope and type of work required. Replacing the existing antennas with new, larger antennas or increasing the number of antennas does not qualify as Routine Maintenance.

“Site” means the WCF area occupied by the structure supporting the Antenna, the Accessory Equipment and the path of the wires and cable connecting the Antenna to the Accessory Equipment.

“Small Cell Site” is an umbrella term for low-powered radio access nodes, including those that operate in licensed spectrum and unlicensed carrier-grade Wi-Fi. The cumulative Base Station equipment for a Small Cell sites occupy no more than seventeen (17) cubic feet, including any pole-mounted Transmission Equipment, preexisting enclosures, Transmission Equipment on the ground associated with Antennas on the structure, but exclusive of Antennas and vertical cable runs for the connection of power and other services. Small cells occupy no more than eight cubic feet for all base station equipment, and no more than three cubic feet per antenna with a maximum of two antennas and typically have a range from ten meters to several hundred meters. Types of small cells include femtocells, picocells and microcells – broadly increasing in size from femtocells (the smallest) to microcells (the largest).

“Substantial Change” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended.

“WCF PROW Permit” is a permit authorized under this Article 4 for a WCF installation in the PROW.

“Wireless Local Area Network (Wi-Fi)” means a wireless networking technology that allows computers and other devices to communicate over a wireless signal mainly using the 2.4 gigahertz (12 cm) UHF and 5 gigahertz (6 cm) SHF ISM radio bands. It describes network components that are based on one of the 802.11 standards developed by the Institute of Electrical and Electronics Engineers.

“Wireless Communications Facility (WCF)” means any facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A WCF can consist of one or more Antennas and Accessory Equipment.

SECTION 7-4.20. Application Required for Wireless Communications Facility Public Right of Way Permit

- (a) The applicant for a WCF PROW Permit shall submit an application on a City approved form to the Public Works Department and pay any required fee as established by City Council resolution in its Master Fee Schedule. The application must include all required information. Applications shall be rejected if all attachments are not included at the time of submittal. The Director has the discretion to require applications be submitted by appointment only and to set the frequency and number of appointments that will be granted each day.
- (b) In addition to any other application requirements, all utilities granted access to the right-of-way by the California Public Utilities Commission (CPUC) shall file with the City of Hayward a copy of their certificate of public necessity and convenience (CPCN) or submit a copy of said CPCN with each application for a wireless facility. The applicant shall also provide 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 communications facility.
- (c) For any change to an existing facility, the Director may require documentation to establish whether the change to the site is substantial, whether new Antennas are added or whether the change will result in an increase in EMF output.
- (d) For a Minor Modification or a Modification, the applicant shall submit an application on a City approved form to the Public Works Department. The application shall include:
 - (1) Electronic plans (in pdf format and electronic GIS-compatible file format) to sufficient detail to include and identify:
 - i. Title sheet.
 - ii. Site plan, showing:
 - 1. The exact location and route requested for applicant's proposed facilities, including other improvements in the area;

2. If excavation is required the plans must include the location and depth of all overhead and underground public utility, cable, water, sewer drainage, fiber optic, and other facilities in the public right of way along the proposed route;
 3. The location(s), if any, for interconnection with the facilities of any other parties; and
 4. The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.
- iii. If installing additional equipment or changing equipment on the pole include load calculations.
 - iv. Details of equipment to be installed and the proposed location(s).
 - v. Include all existing and proposed improvements in the project area.
 - vi. The site shall be designed per Design Standards included in these guidelines.
- (2) Photo or computer simulations representing the above ground facility before and after installation (include any pedestals, vents, conduit and exposed cable).
 - (3) Copy of permit and approved plans for the existing facility.
 - (4) Completed wireless site evaluation form with new equipment signed by certifying licensed engineer.
- (e) For a Co-location Application, the applicant shall submit an application on a City approved form to the Public Works Department. The application must be submitted per this Policy and include all required attachments, including:
- (1) Electronic plans (in pdf format and electronic GIS-compatible file format) to sufficient detail to include and identify:
 - i. Title sheet.
 - ii. Site plan. If excavation is required the plans must include the size, depth and location of all subterranean infrastructures in the excavation area.
 - iii. Load calculations.
 - iv. Details of equipment to be installed and the proposed location(s).
 - v. Include all existing and proposed improvements in the project area.
 - vi. The site shall be designed in accordance with any Design Standards in this Article.
 - (2) Photo or computer simulations representing the above ground facility before and after installation (include any pedestals, vents, conduit and exposed cable).

- (3) Completed wireless site evaluation form signed by certifying licensed engineer that includes the combined emissions of all antenna sectors (old and new).
- (f) For all new wireless communications facilities and substantial changes to existing wireless communications facilities not covered under Section 6409 of the Spectrum Act (codified at 47 U.S.C. 1455), the applicant shall submit an application on a City approved form to the Public Works Department. The application shall include:
 - (1) Title Sheet showing:
 - i. The name, address and telephone number of both the applicant and the owner of the telecommunication facility or WCF;
 - ii. The name, address and telephone number of the responsible person whom the City may contact at any time concerning the telecommunication facility or WCF;
 - (2) Legal authority to occupy and use for the purpose mentioned in the application, the streets, alleys, sidewalks or other public places where the excavation, placement, location or installation of telecommunication facilities or WCF is proposed to be made;
 - (3) Electronic plans (in pdf format and electronic GIS-compatible file format) to sufficient detail to identify and include:
 - i. The pole number(s), address, and latitude/longitude GPS coordinates of the location of the pole or poles;
 - ii. Site plan, showing:
 - 1. The exact location and route requested for applicant's proposed facilities, including other improvements in the area;
 - 2. If excavation is required the plans must include the the location and depth of all overhead and underground public utility, cable, water, sewer drainage, fiber optic, and other facilities in the public way along the proposed route;
 - 3. The location(s), if any, for interconnection with the facilities of any other parties; and
 - 4. The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.
 - iii. Load calculations.
 - iv. Details of equipment to be installed and the proposed location/s.
 - v. Include all existing and proposed improvements in the project area.

- vi. The site shall be designed in accordance with the Design Standards included in this Chapter.
- (4) Engineering certification demonstrating compliance with all existing RF emission standards. The technical information submitted must include support/analysis to justify the proposed location and height of the telecommunication facility or WCF;
- (5) Photo or computer simulations representing the above ground facility before and after installation (include any pedestals, vents, conduit and exposed cable);
- (6) A construction plan and schedule, to include start and end dates and phasing, as required by the City, including additional telecommunication facility or WCF locations which the applicant plans to install within five years from the date of application submittal. In the event an Applicant states it does not know its construction plans for a five-year period the Applicant must provide a declaration stating that fact and shall provide its construction plans as known in Applicants management and engineering planning processes, which shall be for a reasonable period of time in no event less than two years;
- (7) If the applicant's proposed facility involves installing a replacement structure (e.g., a pole) in the public right of way and attaching additional facilities, or installing a facility on a pole owned by a third party, the applicant shall also provide a signed copy of the license, lease, pole attachment agreement, or whatever authorizations are required for the placement of the wireless facility at the location proposed, including proof that the applicant is authorized by the owner of the structure to install and operate the proposed wireless facility on the structure. Such submissions need not disclose financial terms;
- (8) If the site is adjacent to a property or area that is included in or eligible for inclusion in the National Register of Historic Places, an Environmental Assessment as defined by the National Environmental Protection Act;
- (9) All applicants shall submit a justification study which includes the rationale for selecting the proposed use; if applicable, a detailed explanation of the coverage gap that the proposed use would serve; and how the proposed use is the least intrusive means for the applicant to provide wireless service. Said study shall include all existing structures and/or alternative sites evaluated for potential installation of the proposed facility and why said alternatives are not a viable option;
- (10) A coverage map indicating the area which will be served by the proposed telecommunication facility or WCF; and
- (11) A non-refundable application and processing fee, in an amount established by resolution of the City Council to defray the City's costs to

process the application and to inspect the telecommunication facility or WCF.

- (g) In the event a state or federal law prohibits the collection of any information required by this Section, the Director is authorized to omit or modify the city's application form to comply with applicable law.
- (h) Pre-submittal Requests.
 - (1) The applicant may request a pre-application consultation/submittal to the City. This consultation is for the applicant to ask questions, receive guidance on specific requirements of this Article, and receive verbal feedback on specific elements to assist in the design of their site. Multiple proposal options may be provided for the same location under one Pre-submittal application.
 - (2) Pre-submittal Application request is to be made on a City approved form to the Public Works Department and shall include any required fee as established by City Council resolution in its Master Fee Schedule for each submittal. The form shall include a tolling agreement that states the applicant's understanding that the meeting in no way constitutes review of their application and that any applicable "shot-clock," or limits on application review time provided under state or federal law, regarding their project will not begin until an official application has been submitted.
 - (3) The pre-application request shall include:
 - i. Electronic plans (in pdf format) to include:
 - 1. Site plan;
 - 2. Details of equipment to be installed and the proposed location(s);
 - 3. Include all existing and proposed improvements in the project area; and
 - 4. The site shall be designed per Hayward Municipal Code Design Standards included in these guidelines.
 - ii. Photo or computer simulations representing the above ground facility before and after installation (include any pedestals, vents, conduit and exposed cable).
 - (4) Collaboration. Once conceptual review has been completed, the Public Works Department and the applicant may communicate to address comments and resolve issues identified in advance of an application being submitted. When necessary, at the request of the applicant, City Staff may conduct site visits with the applicant to address and/or resolve specific issues related to the site. The applicant may request a meeting with City Staff to review and discuss conceptual review comments, subject to any applicable fees.

SECTION 7-4.30. Application Withdrawn

An application for a WCF PROW Permit will be deemed withdrawn if, after it has been processed by the City, the City has sent the applicant a communication requiring a response from the applicant and more than sixty (60) days lapse without a response from the applicant. Once an application has been withdrawn it may not be reopened and a new application must be made. No refunds will be provided for withdrawn applications.

SECTION 7-4.40. Application Fees

The application for a WCF PROW Permit shall be accompanied by an application processing fee established by resolution of the City Council for its Master Fee Schedule. All fees shall be paid in full before any permit is issued by the City. Application processing fees must be paid at the time that the application is submitted. These fees are for permit processing and issuance only and are in addition to any other applicable fee or any separate payments that may be required for use of City infrastructure.

SECTION 7-4.50 Administrative Review

(a) The following WCF PROW Permit applications are subject to Administrative Review:

- (1) Routine Maintenance to an existing WCF;
- (2) A Minor Modification to an existing WCF;
- (3) Optional pre-submittal applications (which include a tolling of the shot clocks);
- (4) Co-location, meaning the addition of a new wireless carrier to an existing and eligible wireless communications facility on an existing base station that will not result in a Substantial Change to the existing facility; and
- (5) Existing wireless projects that replace existing equipment with the like kind, number and size of the existing equipment and do not increase the EMF output of the WCF and are considered to be Routine Maintenance.

(b) The Director may designate staff to review and approve applications for Administrative Review. These applications are reviewed at the Public Works counter as an over the counter permit.

(c) Administrative Review approval shall be granted if the Director, or designee, finds that:

- (1) Application is complete and any associated fee is tendered to the City;
- (2) The proposed facility meets the definition for the type of facility proposed;
- (3) The plans are stamped by a registered civil engineer;
- (4) The proposed facility complies with the requirements of the Hayward Municipal Code and all other applicable Laws;
- (5) The proposed facility will not interfere with the use of the PROW; and

- (6) The applicant has provided a signed copy of the license, lease, pole attachment agreement, or whatever authorizations are required for the placement of the proposed facility at the proposed location.
- (d) Following Administrative Review and Approval and a WCF PROW Permit is issued, the applicant can begin to pursue construction and encroachment permits as required. The WCF PROW Permit issued under this Chapter is not valid without all required construction and encroachment permits and any required license under the Hayward Municipal Code.

SECTION 7-4.60 Discretionary Review.

- (a) The following WCF PROW Permit applications are subject to Discretionary Review:
 - (1) New installation of any form of WCF at any location where there is not currently a WCF;
 - (2) New installations where there is a WCF for another carrier;
 - (3) A Modification to an existing WCF;
 - (4) Addition of a new wireless carrier to an existing and eligible WCF that do result in Substantial Change (and are not considered a co-location and are considered new installations); and
 - (5) Existing wireless projects that result in a change to the existing Site, whether a Substantial Change or not, or add new Antennas or increase the EMF output of the WCF.
- (b) Applications for Discretionary Review shall require Noticing as follows:
 - (1) The City, at applicant's sole cost, shall mail a notice, in a form approved by the Director, to all owners of real property as shown on the County's current equalized assessment roll, and all occupants within a radius of 300 feet from each antenna location being proposed. The notice shall describe the proposal and the 14-day comment period.
 - (2) The 14-day comment period will run from the date the notice is deposited in the mail. The City will accept comments from the public during this comment period.
- (c) The Director is the review authority for Discretionary Review applications.
- (d) Determination. Following the 14-day comment period, the Director shall review the application, pertinent documentation and public comments. Provided all of the following findings of fact are made, the Director shall issue a written letter of determination and mail it to the applicant. The Director may impose additional conditions on the permit relating to time, place and manner. The following findings are prerequisites of an approval:
 - (1) The proposed facility complies with all of the applicable provisions of the Hayward Municipal Code;

- (2) The proposed facility will not interfere with the use of the PROW;
 - (3) The proposed construction plan and schedule will not unduly interfere with the public's use of the PROW;
 - (4) The proposed facility can be mitigated so that its impacts do not result in a material change to the character of the location and the facility relates harmoniously with the surrounding neighborhood;
 - (5) The proposed facility's impacts have been mitigated through the use of Camouflage and Concealment Elements;
 - (6) The proposed facility is in compliance with all Federal, State, and local standards and Laws; and
 - (7) The applicant has provided a signed copy of the license, lease, pole attachment agreement, or whatever authorizations are required for the placement of the proposed facility at the proposed location. If the applicant proposes placement of the proposed facility on City property, any approval shall be conditional on City Council approval of the applicant's MLA.
- (e) Modifications. The City shall require that Modifications to existing facilities bring the Site into compliance with all current Laws. Proof of the applicable contractor's licenses and insurance shall be required before the permit will be issued and must remain valid during construction.
- (f) If following Discretionary Review, a WCF PROW Permit is issued, the applicant can begin to pursue construction and encroachment permits as required. The WCF PROW Permit issued under this Chapter is not valid without all required construction and encroachment permits and any required license under the Hayward Municipal Code.

SECTION 7-4.70 Appeals.

Any applicant or interested party may appeal the Director's decision to the City Council within fourteen (14) calendar days after a determination has been made on the application. The appeal must be submitted in writing on an approved City form, along with any required fee, to the City Clerk within 14 days after the published determination letter and shall state the specific reason(s) for the appeal along with any supporting evidence. In the event that a decision is appealed, the City Clerk shall schedule the appeal for a public hearing and provide the Council with the record of any prior proceedings. The time and date of the appeal hearing before City Council shall be served on the public by the City in the same manner as the initial Noticing. As Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, appeals to the Director's decision premised on the environmental effects of radio frequency emissions will be rejected. An action of the Director of Public Works appealed to the City Council shall not become effective unless and until approved by the City Council.

Decisions of the City Council on such appeals shall be final and not subject to further appeal.

SECTION 7-4.80 Licenses for use of City Property.

In addition to the WCF PROW Permit required under this Article and any required encroachment and construction permits, the applicant shall also obtain a license from the City for the use of City property if the WCF is proposed on a City-owned or City-controlled pole, structure or property. Any Director approval under this Article is conditional on the applicant obtaining and maintaining a valid City License if the WCF PROW Permit involves the use of City property.

SECTION 7-4.90 Construction and Encroachment Permits.

Immediately following approval of the WCF PROW Permit and any required license, an applicant may begin the process of applying for construction and/or encroachment permit(s). The construction and/or encroachment permit(s) shall not be issued until the fourteen (14) day appeal time for challenging the issued WCF PROW Permit has passed. The permit issued under this Article is not valid without all required construction and encroachment permits. To begin the process the applicant must submit the following documentation to Public Works Department, in addition to any other information required under this Code for an encroachment or construction permit:

- (a) The identity and address of the applicant, including all affiliates of the applicant;
- (b) A description of the services that are or will be offered or provided by licensee over or through its facilities;
- (c) A description of the transmission medium and capacities that will be used by the licensee to offer or provide such services, both within and outside the City's corporate boundaries;
- (d) Engineering plans, specifications and a network map in both paper and electronic GIS-compatible file format of the facilities to be located within the City and any franchise or license area, all in sufficient detail to identify:
 - (1) A site plan showing the exact location and route requested for applicant's proposed facilities, including other improvements in the area;
 - (2) The location and depth of all overhead and underground public utility, cable, water, sewer drainage, fiber optic, and other facilities in the public way along the proposed route;
 - (3) The location(s), if any, for interconnection with the facilities of any other parties; and
 - (4) The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.
- (e) If applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its facilities on existing vertical infrastructure along the proposed route;

- (f) If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient details to identify:
 - (1) The excess capacity currently available in such ducts or conduits before installation of applicant's facilities; and
 - (2) The excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's facilities.
- (g) If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:
 - (1) The location proposed for the new ducts or conduits; and
 - (2) The excess capacity that will exist in such ducts or conduits after installation of applicant's facilities.
- (h) A preliminary construction schedule and completion date;
- (i) A preliminary traffic-control plan in accordance with the latest Manual on Uniform Traffic Control Devices;
- (j) Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the facilities and services described in the application;
- (k) Information to establish that the applicant has obtained all other governmental approvals, permits, licenses and certifications to construct and operate the facilities and to offer or provide the subject services;
- (l) An accurate map showing the location of any existing facilities in the City or license area that applicant intends to use or lease or could reasonably use or lease;
- (m) A description of the services or facilities that the applicant will offer or make available to the City and other public, educational and governmental institutions;
- (n) A description of applicant's access and line extension policies;
- (o) The area or areas of the City the applicant desires to serve and a schedule for build-out to the entire license area;
- (p) In the case of installation of new communications facilities, evidence that any CPUC "Certificate of Public Convenience and Necessity" or other regulatory authorization that the applicant is required by law to obtain;
- (q) All required fees, deposits or charges required as required under this Code or established by City Council resolution; and
- (r) Such other and further information as may be required by the Director.

SECTION 7-4.100 Periodic Review.

Permits are valid for a period of ten (10) years from the date issued. To extend the permit for additional five (5) year period(s) the permittee shall provide proof that it continues to have the legal authority to occupy and use the PROW for the purpose set

forth in its permit, that its site as it exists at the time of the renewal is in full compliance with the applicable City permits issued for the site, pay the fees for renewal, and amend the permittee's Small Cell Master Lease Agreement (MLA) with the City if the Permit involves the use of City property. Additionally, the carrier must provide an affidavit confirming that the site is still in compliance with the Federal Communications Commission regulations. Failure to submit such an affidavit or proof of legal authority to occupy or use the PROW shall be grounds for non-renewal of the permit. The burden is on the permittee to demonstrate that the site complies with the requirements herein. Notwithstanding anything to the contrary in this Section, for any WCF on a City-owned or City- controlled pole, structure or property, the term of the WCF Permit shall not extend beyond the term of any required license under Section 7-4.80.

SECTION 7-4.110 Inspection and Reporting.

A permittee when directed by the City, must perform an inspection of its permitted WCF and submit a report to the Public Works Department on the condition of the system to include any identified concerns and corrective action taken. Additionally, as the City performs maintenance on City infrastructure additional maintenance concerns may be identified. Upon the City reporting any identified maintenance concerns to the permittee, the permittee shall have thirty (30) days to correct the identified maintenance concerns. If the permittee fails to address the City's concerns, the City reserves the right to take any action it deems necessary, including the revocation of the permit. The burden is on the permittee to demonstrate that it complies with the requirements herein. Prior to issuance of a permit under this Chapter, the owner of the WCF shall sign an affidavit attesting to understanding the City's requirement for performance of annual inspections and reporting.

SECTION 7-4.120 Revocation.

Any permit or other authorized use of the PROW granted under this Ordinance may be revoked or modified for cause in accordance with the provisions of this Section.

- (a) Revocation proceedings may be initiated by the Director at any time provided the Director gives the permittee ten (10) days' notice prior to the revocation hearing.
- (b) Public Notice, Hearing, and Action. After conducting a duly-noticed public hearing, the Director or designee shall act on the proposed revocation within a reasonable time.
- (c) Required Findings. The Director or designee may revoke or modify the permit if it makes any of the following findings:
 - (1) The permittee obtained the approval by means of fraud or misrepresentation of a material fact;
 - (2) The permittee substantially expanded or altered the use or structure beyond what is set forth in the permit or substantially changed the installations character;
 - (3) The use in question has ceased to exist or has been suspended for 6 months or more;

- (4) Failure to comply with any condition of a permit issued or any term of a required license under this section or any other section of the Hayward Municipal Code;
 - (5) Failure to comply with this Article;
 - (6) A substantive change of law affecting a utility's authority to occupy or use the PROW or the City's ability to impose regulations relating to such occupation or use;
 - (7) A facility's Interference with a City project;
 - (8) A facility's Interference with vehicular, bicycle, or pedestrian use of the PROW;
 - (9) Failure to make a safe and timely restoration of the PROW;
 - (10) When circumstances make revocation in the best interest of the City.
- (d) Notice of Action. A written determination of revocation specifying the reasons for the revocation shall be mailed to the WCF owner within 10 days of such determination.
- (e) A permittee whose permit or right has been revoked may have the revocation reviewed, upon written appeal as set forth in Section 7-4.70. Review of the Director's decision to revoke the permit by the City Council shall be *de novo*. Review shall be limited to the evidence presented at the revocation hearing.

SECTION 7-4.130 Interference.

- (a) The WCF installation shall not damage or interfere in any way with City Property, the City's operations or the operations of prior-existing, third party installations. The City will reasonably cooperate with the permittee and/or carrier to carry out such activities as are necessary to correct the interference.
- (1) Signal Interference – The permittee shall correct any such interference within 24 hours of written notification of the Interference. Upon the expiration of the 24-hour cure period and until the cause of the Interference is eliminated, the permittee shall cease operation of any WCF causing such Interference until such Interference is cured.
 - (2) Physical Interference – In non-emergency situations, the City shall give the permittee 30 days to correct the interference after which the City reserves the right to take any action it deems necessary at the permittee's sole expense, which could include revocation of the permit.
- (b) The City, at all times, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the Sites. Such actions may temporarily interfere with the operation of the WCF. The City will in all cases, other than emergencies, give the permittee 30 days written notification of such planned, non-emergency actions. In emergency situations, the City will give notice when it is reasonably feasible which, may be after the interference is abated. The permittee shall reimburse the City for all abatement actions caused by permittee's use of the

Sites within thirty (30) days of the City mailing or otherwise serving an invoice on permittee.

SECTION 7-4.135 Site Selection Guidelines and Criteria.

- (a) Wireless facilities installed on City-owned infrastructure in the public rights-of-way shall use a valid master license agreement, approved by the City Council.
- (b) Traffic Obstruction. The placement of the telecommunication facility shall not permanently impede vehicular, bicycle, or pedestrian traffic flow.
- (c) No modification to above-ground or at-grade telecommunication facilities, including those related to size, color and shape of the housing, may be made by the permittee without first having obtained approval of the Director.
- (d) To the maximum extent feasible, all appurtenant equipment, including radio base station, electrical panel, and control panel assembly, shall be placed below ground. Where feasible, as new technology becomes available, the permittee shall place an existing or proposed above-ground telecommunication facility below ground.
- (e) No electrical meters will be allowed. The permittee should negotiate directly with the electric utility to determine a flat rate for installation. The applicant is responsible for the cost of all electrical usage. This provision may be waived on a case-by-case basis by the Director if the permittee is able to demonstrate use of flat-rated electricity is not feasible.
- (f) No net new TF or WCF Poles or Towers shall be allowed in the PROW or on City property, except for approved replacements. This provision may be waived on a case-by-case basis by the Director if the Applicant is able to demonstrate there are no alternatives that are aesthetically preferable.
- (g) No net new Transmission Equipment shall be installed above grade on a pedestal, cabinet, or other structure that is detached from the Pole or Tower in the PROW absent demonstration of clear benefit to the City. All Transmission Equipment shall be mounted on the approved Pole using Low Profile equipment or installed below grade in a vault. Vault vents must be flush to the ground.

SECTION 7-4.140 Visual Impact Guidelines.

- (a) Unobtrusive Design. Telecommunication Facilities shall be designed to be as visually unobtrusive as feasible. Colors and designs must be visually neutral, integrated and compatible with surrounding buildings and/or uses in the area. Facilities shall be sited to avoid or minimize obstruction of views from adjacent properties and otherwise preserve the aesthetic integrity of the public right of way.
- (b) An antenna array shall be installed as a shared use on an existing or replacement pole and shall not extend over seven feet beyond the top of the pole. However, no telecommunication facility located within 140 feet of a residential property shall exceed thirty-five (35) feet in height. Additionally, no telecommunication facility shall exceed sixty (60) feet in height from the ground level as measured from the nearest street curb. The Director may modify these

requirements if necessary to accommodate General Order 95 of the California Public Utilities Commission.

- (c) Camouflaged Design and Screening. When feasible, Applicant shall use state of the art, well camouflaged designs and screening to minimize visual impact of the telecommunication facility. For example, the visual impact of a telecommunication facility may be mitigated by integrating it into existing functional facilities, by the planting of trees to screen the antenna from adjacent private properties.
- (d) Landscaping. New landscaping and irrigation designs shall be restored to like or better condition approved by the Director in accordance with the City's landscaping standards.
 - (1) For telecommunication facilities installed in the PROW in an area where no sidewalk exists, the permittee shall install landscaping immediately surrounding the installation and restore any landscaping disturbed by the installation. The installed and restored landscaping shall be consistent with the existing surrounding landscaping.
 - (2) All new landscaping shall be served by an automatic irrigation system installed, or if existing, modified, to sustain landscaping. If an automatic irrigation system is not feasible, applicant shall submit a manual irrigation plan with its application and guarantee to replace any vegetation that dies from lack of watering.
- (e) No Telecommunication Facility shall be illuminated unless specifically required by the FAA or other governmental agency for security or clearance purposes.
- (f) Signs and Advertising. No advertising signage or identifying logos shall be displayed on any telecommunication facility except for small identification, address, warnings, and other similar information plates. Such information plates shall be identified in the an applicant's application and shall be subject to approval by the Director.
- (g) If an applicant proposes to replace a pole in order to accommodate their telecommunication facility, the pole shall match the appearance of the original pole to the extent feasible and shall be approved by the Director.
- (h) Historic Structures. The telecommunication facility should not be located immediately in front of, beside or behind historic resources recognized by the City pursuant to Chapter 10 of this Code.

SECTION 7-4.145 Design and Other Standards for all sites in PROW.

- (a) Engineering calculations sealed by a registered professional engineer licensed in California shall be provided to ensure that the existing pole and footing are adequate to support the new loads. When it is determined that the existing infrastructure is not adequate to support the new loads, the applicant may propose to replace the existing infrastructure with adequate, City approved, new infrastructure at the applicant's expense.

- (b) No Antenna owner or operator shall install an Antenna or any related facility on a joint-use pole unless such installation is designed and constructed to comply with the current edition of CPUC General Order 95.
- (c) 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.
- (d) Signage will be maintained in legible condition and the permittee will be required to replace any faded signage within 30 days of receiving written notification from the City that it is in need of replacing.
- (e) All wireless communications facilities, including on-site generators, shall be designed to be compliant with the Section 4, Article 1 of this Code and all other applicable Laws. Failure to comply with the City's adopted noise standard after written notice and opportunity to cure have been given shall be grounds for the City to revoke the permit.
- (f) All cabling and wiring must be contained in conduit, affixed directly to the face of the pole, for as long as it is technically feasible. No exposed slack or extra cable will be allowed.
- (g) No historic or decorative street lights are eligible for WCF installations.
- (h) The permittee shall assume full liability for damage or injury caused to any property or person by the facility.
- (i) 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, removal, and/or maintenance of a wireless telecommunications 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. 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 Director shall cause such repair to be completed at permittee's sole cost and expense.
- (j) 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. Each year after the permittee installs the wireless

facility, the permittee if requested by the Director shall submit a written report to the Director, in a form acceptable to the Director, that documents the then-current site condition.

- (k) Property Maintenance. The permittee shall ensure that all equipment and other improvements to be constructed and/or installed in connection with the Approved Plans are maintained in a manner that is not detrimental or injurious to the public health, safety, and general welfare and that the aesthetic appearance is continuously preserved, and substantially the same as shown in the approved plans at all times relevant to this permit. The permittee further acknowledges that failure to maintain compliance with this condition may result in a revocation of the permit or any other remedy available to the City under the law.

SECTION 7-4.150 Macrocell Sites in the PROW.

(a) Site Selection:

- (1) Preferred locations are on existing infrastructure such as street lights. The infrastructure selected shall be located at alleys and near property line prolongations. If the facility 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) When existing infrastructure Sites have been exhausted, the City may require that the applicant provide new infrastructure such as a street light, on which the WCF can be installed. In such cases, the new infrastructure shall be dedicated to the City and will have a primary purpose other than as a WCF and the WCF will be the secondary use. This installation will be defined as a wireless Base Station.
- (3) When all other preferred Sites have been exhausted and new infrastructure is not feasible, the applicant may request the installation of a new tower, camouflaged by City approved methods.

(b) Existing Infrastructure requirements

(1) Street light.

- i. The installation shall not increase the total height by more than 10% or ten feet, whichever is greater, over other street lights in the area.
- ii. The Antenna must be mounted to the top of the pole, or flush to the pole near the top, in a RF transparent screen that is coated or painted an approved color to match the street light pole. The screen is considered to Camouflage the installation.
- iii. Equipment, other than Antennas, must be in an underground vault. Vault vents must be flush to the ground.
- iv. Wires and cables must run in conduit inside the pole. Underground entry into the pole through the foundation is required.

- v. As requested by the City, the applicant or carrier shall host on-site training for City maintenance staff at no cost to the City or its employees. The training will be offered for each WCF project on a street light pole. The training shall include occupational safety, personal protection, proximity limits, emergency procedures and contact information.

(2) Utility Pole.

- i. Antenna installations will be top of pole mount. If this is not feasible due to California Public Utility Commission rules, then a replacement pole must be installed to comply with this requirement and the Commission rules.
- ii. The Antenna must be in a RF transparent screen that is coated or painted an approved color to match the pole. The screen is considered to Camouflage the installation.
- iii. Equipment, other than Antennas, must be in an underground vault. Vault vents must be flush to the ground.
- iv. If the existing utility pole already has more than two existing risers/drops, the pole must be replaced with a metal pole that allows the new cable and wires to be 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. When the installation will result in two or fewer risers/drops on the pole, the wires and cable may be installed as a riser/drop in conduit painted an approved color or in commercially available black or dark brown conduit, as directed by the City.

(c) Traffic pole. Installations on traffic poles shall not be allowed.

SECTION 7-4.160 Small Cell Sites in the PROW.

(a) Site Selection:

- (1) The preferred location shall be on existing infrastructure such as utility poles or street lights. The infrastructure selected should be located at alleys and near property line prolongations. If the facility 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) When existing infrastructure Sites have been exhausted, the City requires that the applicant dedicate new infrastructure such as a street light, on which the WCF can be installed. In such cases, the new infrastructure shall be owned by the City and will have a primary purpose other than as a WCF and the WCF will be a secondary use. This installation will be defined as a wireless Base Station.

(b) Existing Infrastructure requirements

- (1) Street light:

- i. 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 top of pole mount and shall not increase the height by more than 10% or ten feet, whichever is greater, over other street lights in the immediate vicinity. The small size of the Antenna or RF screen, and color treatment is considered to Camouflage the installation.
- ii. Equipment, other than Antennas, shall be mounted as prescribed by the Director in one of the manners described.
 - 1. Equipment shall be mounted in a base shroud of approved design to be retrofitted to the existing light standard. The base shroud shall be coated or painted with an approved color to match the existing pole.
 - 2. Equipment shall be mounted directly to the pole a minimum of eight (8) feet above the existing grade and be coated or painted with an approved color to match the existing pole.
 - 3. Equipment shall be mounted to the pole in an equipment box a minimum of eight (8) feet above the existing grade. The equipment box shall be coated or painted an approved color to match the existing pole and will be no wider than two times the diameter of the pole at the point it is mounted nor protrude from the surface of the pole by more than eight inches.
- iii. 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.

(2) Utility Pole:

- i. 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 (18) inches from the surface of the pole and will be coated or painted an approved color to match the existing pole. The antenna must be enclosed in an RF transparent screen unless a whip style antenna is used. The small size of the Antenna or the RF screen, and color treatment is considered to Camouflage the installation.
- ii. Equipment, other than Antennas, shall be mounted as prescribed by the Director in one of the manners described.
 - 1. Equipment shall be mounted directly to the pole a minimum of eight (8) feet above the existing grade and be coated or painted with an approved color to match the existing pole.

2. Equipment shall be mounted in an equipment box that is mounted directly to the pole a minimum of eight (8) feet above the existing grade. The equipment or box shall be coated or painted an approved color to match the existing pole and will be no wider than the diameter of the pole at the point it is mounted nor protrude from the surface of the pole by more than eight inches.
 - iii. If the existing utility pole already has more than two existing risers/drops, the pole must be replaced with a metal pole that allows the new cable and wires to be 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. When the installation will result in two or fewer risers/drops on the pole, the wires and cable may be installed as a riser/drop in conduit painted an approved color or in commercially available black or dark brown conduit, as directed by the City.
- (3) Traffic pole. Installations on traffic poles shall not be allowed.

SECTION 7-4.170 Distributed Antenna System (DAS).

Applications for DAS WCF shall be submitted as a single application and will have a single master license agreement for the entire project if located on City property. Each individual location within the system shall be processed and considered for approval separately. Permitting fees will be applied to each site, in an amount established by City Council resolution as reflected in its Master Fee Schedule. Each location will be evaluated and must comply with the installation design guidelines for the type of Site as defined by this ordinance.

SECTION 7-4.180 Carrier/Cell on Wheels (COW).

- (a) A Carrier-on-wheels (COW) may only be placed in the PROW or City owned property through a use of an encroachment permit.
- (b) The setup location requested for the COW will be reviewed and at the discretion of the Director of Public Works or designee may be modified to ensure public health and safety.
- (c) The duration of a permit for a COW will be no longer than is necessary to establish the network and provide the temporary coverage required by the event or emergency.
- (d) At the discretion of the Director or his or her designee, the permit may be revoked or modified when in the best interest of the City pursuant to the revocation procedures set forth in Section 7-4.120.

SECTION 7-4.190 Compliance with Applicable Law and Regulations.

This Article is not intended to be the exclusive means of regulating installation of Facilities in the public right of way and nothing herein is intended to waive any other applicable City requirements, including but not limited to building permit, storm water runoff, business license, excavation and undergrounding regulations. The

applicant/permittee shall obtain all permits, licenses, and similar authorizations that are required by other governmental entities for the installation of its Facilities. The applicant/permittee must also be and remain in compliance with all applicable statutes, ordinances, rules, regulations, orders, and decisions issued by any federal, state or local governmental body or agency, including without limitation those issued by the California Public Utilities Commission and the Federal Communications Commission.

SECTION 7-4.200 Nonexclusive Use of public right of way.

All permits to construct or place Facilities in the public right of way shall be nonexclusive. The granting of a permit under this article by the City does not provide any permittee with an exclusive use of the public right of way.

All telecommunication facilities permitted by this Article shall, upon the reasonable demand of the Director, be relocated if required by the City to avoid potential conflicts with a proper governmental use of a PROW including, but not limited to, any street, alley, sidewalk, facility, or other public place. All expenses incurred in relocating shall be paid by the permittee.

SECTION 7-4.210 Director's Guidelines.

To the extent not preempted by applicable laws, the Director may prescribe additional guidelines covering the location, size and depth of excavations in public streets and sidewalks as the Director may deem necessary for the public safety and welfare. Where such guidelines are general in character and are designed to apply to all excavations of a certain type or nature, they shall be promulgated in writing showing the date of their enactment, and a copy thereof, duly certified to by the Director shall be kept on file where they may be made available for public inspection upon the demand of any person. All Work performed under this Article shall be subject to such guidelines.

The Director may also prescribe Standards and Guidelines for Wireless Communications Facilities in the Public Right-of-Way. The primary purpose of these Standards and Guidelines shall be to provide procedural and design guidance and specific design standards and requirements for project applicants proposing wireless telecommunication facilities in the public right-of-way. The Standards and Guidelines Policy document is also intended for use and reference by City staff in reviewing and approving designs and verifying compliance with this Code. The Standards and Guidelines Policy document may also govern the maximum number of applications for WCF placement based on resource limitations, to promote administrative efficiency and deemed necessary or appropriate to organize, document and manage the application intake process. All such guidelines will be in written form and publicly stated to provide applicants with prior notice. Applicants for small cell permits are encouraged to apply for proposed buildout of entire neighborhoods or other contiguous areas to promote administrative efficiency.

SECTION 7-4.220 Indemnity; insurance.

Prior to issuance of any permit under this article, each applicant shall:

- (a) Represent, stipulate, contract and agree that such applicant will, to the fullest extent allowed by law, indemnify, hold harmless, and defend the City of Hayward, its officers and employees from and against any and all suits, actions, judgments, losses, costs, demands, claims, expenses (including attorney's fees), damages, and liabilities of every kind for any and all claims for damage to property, or injury to, or death of persons arising out of or resulting from the issuance of the permit or the placement of the WCF, except to the extent any damage or injury is due to the gross negligence or willful misconduct of the City, its officers or employees.
- (b) Obtain and file with the Director, and thereafter maintain during the term of any such permit, certificates evidencing comprehensive general liability insurance policy or policies, in a form acceptable to the City Attorney, issued by an insurance company or companies authorized to do business in the State of California. The City of Hayward, its officers and employees shall be named as additional insureds on said policy or policies. The policy limits of said insurance policy or policies shall be not less than one million dollars (\$1,000,000.00) combined single limit for both bodily injury and property damage, or equivalent.
- (c) Said policy or policies shall also contain a provision that no termination, cancellation, or change of coverage of insured or additional insured shall be effective until after thirty (30) days' notice thereof has been given in writing to the Director.
- (d) Applicants who self-insure shall so state and attest in writing in the Application, which self-insurance in an amount equal to the amount required by this Article or the Guidelines, whichever is higher, shall be subject to approval by the City upon presentation to the City of sufficient documentary proof.

SECTION 7-4.230 Removal Procedures for Abandoned or Discontinued WCF.

- (a) The Director may declare a WCF within the PROW abandoned or discontinued when:
 - 1. The permittee notifies the Director that it abandoned or discontinued the use of a WCF for a continuous period of 90 calendar days; or
 - 2. The permittee fails to respond within 30 calendar days to a written notice sent by Certified U.S. Mail, Return Receipt Requested, from the Director that states the basis for the Director's belief that the WCF has been: i) abandoned, or ii) discontinued for a continuous period of 90 calendar days; or
 - 3. The permit expires in the case where the permittee has failed to file a timely application for renewal.
- (b) After the Director declares a WCF abandoned or discontinued, the permittee shall have 90 calendar days from the date of the declaration (or longer time as the Director may approve in writing as reasonably necessary) to:

1. Reactivate the use of the abandoned or discontinued WCF subject to the provisions of this chapter and all conditions of approval;
 2. Transfer its rights to use the WCF, subject to the provisions of this chapter and all conditions of approval, to another person or entity that immediately commences use of the abandoned or discontinued WCF; or
 3. Remove the WCF and all improvements installed solely in connection with the WCF and restore the site to a condition compliant with all applicable codes consistent with the then-existing surrounding area.
- (c) If the permittee fails to act as required in 7-4.230(b) within the prescribed time period, the City may remove and dispose of the abandoned or discontinued WCF in any manner allowed by law. The City may, but shall not be obligated to:
1. Restore the site to a condition compliant with all applicable codes and consistent with the then-existing surrounding area, and repair any and all damages that occurred in connection with such removal and restoration work; and
 2. Use any financial security required in connection with the granting of the WCF permit to recover its costs and interest. Until the costs are paid in full, a lien may be placed on the WCF, all related personal property in connection with the WCF and, if applicable, the real private property on which the WCF was located for the full amount of all costs for removal, restoration, repair and storage.

SECTION 7-4.240 Permit Non-Compliance; No Waivers.

No permittee shall be excused from complying with any of the provisions of this Article by any failure of the City on any one or more occasions to seek, or insist upon, compliance with any requirements or provisions of this Code. Regardless of the City's failure to seek compliance on any occasions, such action shall not be considered a waiver of any requirements of this Code.

SECTION 7-4.250. Future Changes in the Law.

The City's rights under this Article are coextensive with the City's rights under state law with regard to the use of the public right of way. If future changes to state or federal law authorize the City to regulate the public rights of way to a greater degree than is now authorized by this article, nothing in this Article will be deemed to limit, restrict in any way, or to modify the City's exercise of that regulatory authority.

