

**TOWN OF SAN ANSELMO  
COUNCIL POLICY**

<b>TITLE:</b> WIRELESS COMMUNICATIONS FACILITIES	<b>PAGE</b> 1 of 35	<b>POLICY NUMBER</b> 6-1
<b>EFFECTIVE:</b> September 25, 2018	<b>REVISED:</b>	

**APPROVED BY COUNCIL ACTION** June 26, 2018, revised on September 25, 2018

**SPECIFIC SUBJECT:** Procedures and Standards for New and Substantially Changed Wireless Facilities (Part 1) and Eligible Facilities Requests (Part 2)

**BACKGROUND**

This policy replaces policies and regulations for wireless facilities that were previously found in Town municipal code Article 28 Wireless Telecommunications Facilities and Resolution 3688.

**PURPOSE**

The purpose of this Policy is to guide review of wireless facility requests, as set forth below.

**POLICY**

**PART 1           NEW AND SUBSTANTIALLY CHANGED WIRELESS FACILITIES**

**I.                   PURPOSE AND INTENT**

(A) In accordance with San Anselmo Municipal Code ("**SAMC**") Title 10, Chapter 3, Article 28, the Town of San Anselmo intends this Town Council Policy No. 6-1 Part 1 ("**Part 1**") to establish reasonable, uniform and comprehensive standards and procedures for wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the Town's territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this Part 1 are intended to, and should be applied to, protect and promote public health, safety and welfare, and also balance the benefits that flow from robust, advanced wireless services with the Town's local values, which include without limitation the natural, residential and unique aesthetic character of the Town, its neighborhoods and community. The purpose of the Policy is also to protect the citizens and visitors of San Anselmo from adverse health effects associated with exposure to non-ionizing electromagnetic radiation that exceed maximum permissible exposure levels by raising public awareness and ensuring compliance with all applicable laws. This Part 1 is also intended to reflect and promote the community interest in public notice and an opportunity to be heard to (1) ensure that the balance between public and private interest is maintained on a case-by-case basis; (2) protect the Town's visual character

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from potential adverse impacts or visual blight created or exacerbated by telecommunications infrastructure; (3) protect and preserve the Town’s environmental resources; and (4) promote access to high-quality, advanced telecommunication services for the Town’s residents, businesses and visitors.

- (B) This Part 1 is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider’s ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity’s ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC’s regulations concerning such emissions; (5) prohibit any collocation or modification that the Town may not deny under federal or California state law; (6) impose any unfair, unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the Town to preempt any applicable federal or California law.

## II. DEFINITIONS

The abbreviations, phrases, terms and words used in this Part 1 will have the meanings assigned to them in this Section II or, as may be appropriate, in SAMC, Title 10, Chapter 3, Article 17 (Definitions), as may be amended from time to time, unless context indicates otherwise. Undefined phrases, terms or words in this section will have the meanings assigned to them in 47 U.S.C. § 702, as may be amended from time to time, and, if not defined therein, will have their ordinary meanings. In the event that any definition assigned to any phrase, term or word in this Part 1 conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

- (A) **“approval authority”** means the commission, board or official responsible for review of permit applications and vested with the authority to approve or deny such applications. The approval authority for a use permit is the Planning Commission or, on appeal, the Town Council. The approval authority for a temporary use permit is the Director or, on appeal, the Town Manager.
- (B) **“base station”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended, which defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.40001(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited

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to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii).

- (C) **“collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC’s definition effectively means “to add” and does not necessarily refer to more than one wireless facility installed at a single site.
- (D) **“CPCN”** means a “Certificate of Public Convenience and Necessity” granted by the CPUC or its duly appointed successor agency pursuant to California Public Utilities Code §§ 1001 *et seq.*, as may be amended.
- (E) **“CPUC”** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or it’s duly appointed successor agency.
- (F) **“Director”** means the Director of the Planning Department of the Town of San Anselmo, or the Director’s designee.
- (G) **“FCC”** means the Federal Communications Commission or its duly appointed successor agency.
- (H) **“FCC Shot Clock”** means the reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended from time-to-time.
- (I) **“OTARD”** means any over-the-air reception device subject to 47 C.F.R. §§ 1.4000 *et seq.*, as may be amended, and which includes satellite television dishes not greater than one meter in diameter.
- (J) **“personal wireless services”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.
- (K) **“personal wireless service facilities”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal wireless services.
- (L) **“RF”** means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.
- (M) **“Section 6409”** means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.

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- (N) **“temporary wireless facilities”** means portable wireless facilities intended or used to provide personal wireless services on a temporary or emergency basis, such as a large-scale special event in which more users than usual gather in a confined location or when a disaster disables permanent wireless facilities. Temporary wireless facilities include, without limitation, cells-on-wheels (“COWs”), sites-on-wheels (“SOWs”), cells-on-light-trucks (“COLTs”) or other similarly portable wireless facilities not permanently affixed to site on which is located.
- (O) **“tower”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(9), as may be amended, which defines that term as any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. Examples include, but are not limited to, monopoles (*i.e.*, a bare, unconcealed pole solely intended to support wireless transmission equipment), mono-trees and lattice towers.
- (P) **“Town Manager”** means the Town Manager of the Town of San Anselmo, or the Town Manager’s designee.
- (Q) **“transmission equipment”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(8), as may be amended, which defines that term as equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (R) **“wireless”** means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

### III. APPLICABILITY

- (A) **Applicable Wireless Facilities.** This Part 1 applies to all existing wireless facilities within the Town and all applications and requests for approval to construct, install, modify, collocate, relocate or otherwise deploy wireless facilities in the Town, whether located or proposed to be located on private property or in the public right-of-way, unless exempted under Section III(B) (Exempt Wireless Facilities) or governed under Town Council Policy No. 6-1 Part 2 (Eligible Facilities Requests) pursuant to Section III(C) (Requests for Approval Pursuant to Section 6409).
- (B) **Exempt Wireless Facilities.** Notwithstanding the provisions in Section III(A) (Applicable Wireless Facilities), the provisions in this Part 1 will not be applicable to: (1) wireless facilities owned and operated by the Town for public purposes; (2) wireless facilities installed on Town property in the public right-of-way pursuant to a valid master license agreement with the Town; (3) amateur radio facilities; (4) OTARD antennas; (5) wireless

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facilities installed completely indoors and intended to extend signals for personal wireless services in a personal residence or a business (such as a femtocell or indoor distributed antenna system); and (6) wireless facilities or equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power generation, transmission and distribution facilities subject to CPUC General Order 131-D.

- (C) **Request for Approval Pursuant to Section 6409.** Any requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409 will be first reviewed under Town Council Policy No. 6-1 Part 2 (Eligible Facilities Requests).

**IV. PRIOR APPROVALS REQUIRED**

- (A) **Use Permit.** A use permit and design review approval, subject to the Planning Commission’s prior review and approval in accordance with the procedures and standards in SAMC, Title 10, Chapter 3, Article 13 (Conditional Use Permit) and Article 15 (Design Review) is required for all new and substantially changed wireless facilities.
- (B) **Temporary Use Permit.** A temporary use permit, subject to the Director’s prior review and approval in accordance with the procedures and standards in Section XI (Temporary Wireless Facilities) is required for any temporary wireless facility, unless deployed in connection with an emergency pursuant to Section XI(B) (Temporary Wireless Facilities for Emergencies).
- (C) **Other Permits and Regulatory Approvals.** In addition to any use permit, temporary use permit or other permit or approval required under this Part 1, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation other any permits and/or regulatory approvals issued by other departments or divisions within the Town. Furthermore, any permit or approval granted under this Part 1 or deemed granted or deemed approved by law shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or regulatory approvals.

**V. APPLICATION REQUIREMENTS**

- (A) **Application Required.** The approval authority shall not approve any request for a use permit except upon a duly filed application consistent with this Section V and any other written rules the Town or the Director may establish from time to time in any publicly-stated format.
- (B) **Application Content.** All applications for a use permit must include all the information and materials required by the Director for the application. The Town Council authorizes the Director to develop, publish and from time-to-time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this Part 1. All applications shall require the applicant to demonstrate that the proposed project will be in planned compliance with all applicable

health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions. The Town Council further authorizes the Director to establish other reasonable rules and regulations, which may include without limitation regular hours for appointments with applicants, as the Director deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide applicants with prior notice.

- (C) **Procedures for a Community Meeting/Notice.** Prior to submitting an application for a use permit, the applicant must conduct a noticed community meeting. The community meeting is intended to provide residents information about a potential application for a wireless facility and streamline the review process by providing applicants an opportunity to consider residents' suggestions prior to a public hearing before the Planning Commission. Applicants are encouraged (but not required) to bring preliminary drawings or other materials that may assist the residents' understanding of the project. The applicant must provide notice in accordance with SAMC Article 16 (Noticing: Public Hearings: Zoning Applications), except as modified in this subsection, to all property owners of parcels within 300 feet of the boundaries of the subject parcel on which the applicant intends to propose the facility or modification (or 300 feet of any proposed location within a right-of-way that is not on a parcel). The notice shall include a copy of the photo simulations, a copy of the RF compliance report, and a contact phone number that property owners may call with any questions. The outside of the mailed envelope must indicate, "Notice of a nearby cellular antennae proposal." No general circulation or posted notice is required.
- (D) **Procedures for a Duly Filed Application.** Any application for a use permit will not be considered duly filed unless submitted in accordance with the procedures in this Subsection (D).
- (1) **Pre-Submittal Conference.** Before application submittal, the applicant must schedule and attend a pre-submittal conference with the Director for all proposed projects subject to a use permit. Pre-submittal conferences for all other proposed projects are strongly encouraged but not required. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, any latent issues in connection with the proposed or existing wireless tower or base station, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other Town departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that Town staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The Director shall use reasonable efforts to provide the applicant with an appointment within five working days after the Director receives a written request and any applicable fee or deposit to reimburse

the Town for its reasonable costs to provide the services rendered in the pre-submittal conference.

- (2) **Submittal Appointment.** All applications must be submitted to the Town at a pre-scheduled appointment with the Director. Applicants may generally submit one application per appointment, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The Director shall use reasonable efforts to provide the applicant with an appointment within five working days after the Director receives a written request and, if applicable, confirms that the applicant complied with the pre-submittal conference requirement. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed unless the applicant received a written exemption from the Director at a pre-submittal conference.
- (E) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, and in accordance with SAMC Section 10-3.1604 (Expiration of Applications), any application governed under this Part 1 will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the Planning Department within 90 calendar days after the Planning Department deems the application incomplete in a written notice to the applicant. The Director may, in the Director's discretion, grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.
- (F) **Peer and Independent Consultant Review.**
- (1) **Authorization.** The Town Council authorizes the Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection any permit application.
- (2) **Scope.** The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation: (a) permit application completeness and/or accuracy; (b) pre-construction planned compliance with applicable regulations for human exposure to RF emissions; (c) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (d) whether and to what extent a proposed project will address a gap in the applicant's wireless services; (e) whether and to what extent any technically feasible and/or potentially available alternative sites or concealment techniques may exist; (f) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the Town's discretion to review; and (g) any other issue identified by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant prepare written reports, testify at public meetings,

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hearings and/or appeals and attend meetings with Town staff and/or the applicant.

- (3) **Consultant Fees; Deposits.** In the event that the Director elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings. Before the independent consultant may perform any services, the applicant shall tender to the Town a deposit in an amount equal to the estimated cost for the services to be provided, as determined by the Director. The Director may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant's services. In the event that the deposit exceeds the total costs for consultant's services, the Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection by the Building Official or his or her designee. In the event that the reasonable costs for the independent consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The Town shall not issue any construction or grading permit to any applicant with any unpaid deposit requests or invoices.

## VI. NOTICE

- (A) **General Notice Requirements.** Public notice in accordance with the provisions in SAMC Article 16 (Noticing: Public Hearings: Zoning Applications) shall be required for all use permit applications.
- (B) **Deemed-Approval Notice.** Not more than 30 days before the applicable FCC timeframe for review expires, and in addition to the public notice required in Section VI(A) (General Notice Requirements), an applicant for a use permit must provide a posted notice at the project site that states the project will be automatically deemed approved pursuant to California Government Code § 65964.1 unless the Town approves or denies the application or the applicant tolls the timeframe for review within the next 30 days. The posted notice must be compliant with all applicable provisions in SAMC Article 16 (Noticing: Public Hearings: Zoning Applications). The public notice required under this Section VI(B) will be deemed given when the applicant delivers written notice to the Director that shows the appropriate notice has been posted at the project site. Notwithstanding anything to the contrary in this Part 1, the approval authority shall be permitted to act on an application at any time so long as the public notice required in Section VI(A) (General Notice Requirements) has occurred.
- (C) **Decision Notices.** Within five days after the approval authority acts on an application for a use permit or before the FCC shot clock expires (whichever occurs first), the approval authority or its designee shall send a written notice to the applicant. In the event that the approval authority denies the application (with or without prejudice), the written notice

to the applicant must contain (1) the reasons for the decision and (2) instructions for how and when to file an appeal.

## VII. DECISIONS; LIMITED EXEMPTIONS; APPEALS

- (A) **Required Findings for Approval.** The approval authority may approve or conditionally approve an application for a use permit submitted under this Part 1 when the approval authority finds all of the following:
- (1) the proposed wireless facility complies with all required findings for use permit approval in SAMC Section 10-3.1305 (Required Findings for Use Permit), or qualifies for a limited exception pursuant to Section VII(C) (Limited Exceptions for Personal Wireless Service Facilities); and
  - (2) the proposed wireless facility complies with all required findings for design review approval in SAMC Section 10-3.1505 (Required Findings for Design Review), or qualifies for a limited exception pursuant to Section VII(C) (Limited Exceptions for Personal Wireless Service Facilities); and
  - (3) the applicant has demonstrated that its proposed wireless facility will be in compliance with all applicable FCC rules and regulations for human exposure to RF emissions; and
  - (4) the applicant has demonstrated a good-faith effort to identify and evaluate preferred alternative locations and potentially less-intrusive alternative designs for the proposed wireless facility; and
  - (5) the applicant has provided the approval authority with a meaningful comparative analysis that shows all preferred alternative locations and less-intrusive alternative designs identified in the administrative record are either technically infeasible or unavailable.
- (B) **Conditional Approvals; Denials Without Prejudice.** Subject to any applicable limitations in federal or state law, nothing in this Part 1 is intended to limit the approval authority's ability to conditionally approve or deny without prejudice any application for a use permit as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in this Part 1, the San Anselmo Municipal Code or the General Plan.
- (C) **Limited Exceptions for Personal Wireless Service Facilities.** In the event that an applicant claims that strict compliance with the site location guidelines in Section IX (Site Location Guidelines) or the development standards in Section X (Development Standards) would effectively prohibit the applicant's ability to provide personal wireless services, the Planning Commission may grant a limited exception from such requirements to the extent necessary to prevent an effective prohibition when the Planning Commission finds all of the following:
- (1) the proposed wireless facility qualifies as a "personal wireless service facility" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended or superseded; and

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

The Town shall have the right to hire an independent consultant, at the applicant's expense, to evaluate the issues raised by the exception request and shall have the right to submit rebuttal evidence to refute the applicant's claim.

- (D) **Appeals.** Any interested person or entity may appeal any decision by the approval authority in accordance with the standards and procedures in SAMC, Title 1, Chapter 4 (Appeals and Official Reviews of Administrative Decisions), except as modified in this Section VII(D). On the next available meeting date after the appeal period lapses, or as soon as reasonably feasible thereafter, the appellate body shall hold a *de novo* public hearing to consider and act on the application in accordance with the applicable provisions in the General Plan, any applicable specific plan and all applicable provisions in the San Anselmo Municipal Code. Appeals from an approval will not be permitted to the extent that the appeal is based on environmental effects from RF emissions that comply with all applicable FCC regulations.

**VIII. STANDARD CONDITIONS OF APPROVAL**

In addition to all other conditions adopted by the approval authority, all special use permits and minor use permits, whether approved by the approval authority or deemed approved by the operation of law, shall be automatically subject to the conditions in this Section VIII. The approval authority (or the appellate authority on appeal) shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances

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to protect public health and safety or allow for the proper operation of the approved facility consistent with the goals of this Part 1.

- (A) **Permit Term.** This permit will automatically expire 10 years and one day from its issuance, except when California Government Code § 65964(b), as may be amended or superseded in the future, authorizes the Town to establish a shorter term for public safety or substantial land use reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.
- (B) **Strict Compliance with Approved Plans.** Before the permittee submits any applications to the Building Department, the permittee must incorporate this permit, all conditions associated with this permit and the approved photo simulations into the project plans (the “**Approved Plans**”). The permittee must construct, install and operate the wireless facility in strict compliance with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Director’s prior review and approval, who may refer the request to the original approval authority if the Director finds that the requested alteration, modification or other change substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.
- (C) **Build-Out Period.** This permit will automatically expire one (1) year from the approval or deemed-granted date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use. The Director may grant one written extension to a date certain, but not to exceed one (1) additional year, when the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition.
- (D) **Maintenance Obligations; Vandalism.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the Approved Plans and all conditions in this permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the Town, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- (E) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“**Laws**”) applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this permit, which includes

without limitation any Laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws. In the event that the Town fails to timely notice, prompt or enforce compliance with any applicable provision in the San Anselmo Municipal Code, any permit, any permit condition or any applicable law or regulation, the applicant or permittee will not be relieved from its obligation to comply in all respects with all applicable provisions in the San Anselmo Municipal Code, any permit, any permit condition or any applicable law or regulation.

- (F) **Cooperation with RF Compliance Evaluations.** At all times relevant to this permit, the permittee and the property owner shall reasonably cooperate with efforts by the Town to evaluate whether the wireless facility complies with all applicable FCC rules and regulations for human exposure to RF emissions. Such cooperation shall be at no cost to the Town and may include, but is not limited to: (1) furnishing the Town with a written affidavit signed by an RF engineer certifying the wireless facility's compliance with applicable FCC rules and regulations; (2) providing technical data such as the frequencies in use, power output levels and antenna specifications, reasonably necessary to evaluate compliance with maximum permissible exposure levels set by the FCC; (3) allowing the Town or its designee to have supervised access to the areas near the wireless facility for inspections and field measurements; and (4) promptly responding to all requests by the Town or its designee for information and/or cooperation with respect to any of the foregoing.
- (G) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities at the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the San Anselmo Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the Town. The Director or the Director's designee may issue a stop work order for any activities that violates this condition.
- (H) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the Town's officers, officials, staff or other designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the Town's officers, officials, staff or other designee may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee will be permitted to supervise the Town's officers, officials, staff or other designee while any such inspection or emergency access occurs.

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- (I) **Permittee’s Contact Information.** The permittee shall furnish the Director with accurate and up-to-date contact information for a person responsible for the wireless facility, which includes without limitation such person’s full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and immediately provide the Director with updated contact information in the event that either the responsible person or such person’s contact information changes.
- (J) **Indemnification.** The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the Town, Town Council and Town boards, commissions, agents, officers, officials, employees and volunteers from any and all (1) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings (“**Claims**”) brought against the Town or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the Town’s approval of this permit, and (2) other Claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee’s or its agents’, directors’, officers’, employees’, contractors’, subcontractors’, licensees’, or customers’ acts or omissions in connection with this permit or the wireless facility. In the event the Town becomes aware of any Claims, the Town will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the Town shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the Town’s defense, and the property owner and/or permittee (as applicable) shall promptly reimburse Town for any costs and expenses directly and necessarily incurred by the Town in the course of the defense. The permittee expressly acknowledges and agrees that the permittee’s indemnification obligations under this condition are a material consideration that motivates the Town to approve this permit, and that such indemnification obligations will survive the expiration or revocation of this permit.
- (K) **Performance Bond.** Before the Building Department issues any construction permit in connection with this permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the Director shall take into consideration any information provided by the permittee regarding the

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cost to remove the wireless facility and restore any areas affected by the removal work to a standard compliant with applicable laws.

- (L) **Recall to Approval Authority; Permit Revocation.** In accordance with SAMC Section 10-3.1909 (Revocation of a Discretionary Permit), the approval authority may recall this permit for review at any time due to complaints about noncompliance with applicable laws or any approval conditions attached to this permit. At a duly noticed public hearing and in accordance with all applicable laws, the approval authority may revoke this permit or amend these conditions as the approval authority deems necessary or appropriate to correct any such noncompliance.
- (M) **Record Retention.** The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee. Records may be kept in electronic format.
- (N) **Existing Performance Agreements.** To the extent that the permittee has an existing Performance Agreement with the Town in connection with the subject wireless facility, the standard conditions in Town Council Policy No. 6-1 Section VIII will control to the extent that the requirements are more stringent or advantageous to the Town. The Town Attorney shall have authority to interpret and resolve any conflicts or ambiguities between the provisions in any Performance Agreement and the provisions in Town Council Policy No. 6-1 Section VIII.

**IX. SITE LOCATION GUIDELINES**

- (A) **Locations.** All applicants must, to the extent feasible, propose new wireless facilities in locations according to the following preferences, ordered from most preferred to least preferred:
  - (1) Town-owned property or structures outside the public rights-of-way;
  - (2) Town-owned property and structures in the public rights-of-way;
  - (3) commercial zones;
  - (4) open spaces;
  - (5) locations where the facility would protrude above any ridgelines;
- (B) **Additional Analysis for Discouraged Locations.** For all new sites proposed in open space areas the applicant must submit an additional analysis that identifies at least three more preferred locations and provide a meaningful comparative analysis as to why these locations are either not technically feasible or not potentially available.
- (C) **Preferred Support Structures.** In addition to the preferred locations described in Section IX(A) (Locations), the Town also expresses its preference for installations on certain support structures (both on private property and in the public rights-of-way). The

approval authority will take into account whether any more preferred support structures are technically feasible and potentially available. The Town's preferred support structures are as follows, ordered from most preferred to least preferred:

- (1) collocations with existing building-mounted wireless facilities, which includes above-ground water tanks;
- (2) collocations with existing wireless facilities on electric transmission towers;
- (3) collocations with existing freestanding wireless facilities;
- (4) new installations on existing buildings, which includes above-ground water tanks;
- (5) new installations on existing electric transmission towers; and
- (6) new freestanding wireless towers.

## X. DEVELOPMENT STANDARDS

(A) **Generally Applicable Development Standards.** All new wireless facilities and substantial changes to existing wireless facilities not covered under Section 6409 must conform to the generally applicable development standards in this Section X(A).

- (1) **Concealment.** Wireless facilities must incorporate concealment elements, measures and techniques that blend the equipment and other improvements into the natural and/or built environment in a manner consistent and/or compatible with the uses germane to the underlying zoning district and existing in the immediate vicinity. As an illustration and not a limitation, a wireless facility designed to mimic a native tree species or a rock outcrop may be appropriate in an open space or hillside location where other natural elements exist to provide effective camouflaging and/or concealment.
- (2) **Overall Height.** Wireless facilities may not exceed the applicable height limit for structures in the applicable zoning district.
- (3) **Setbacks.** Wireless facilities may not encroach into any applicable setback for structures in the subject zoning district.
- (4) **Noise.** Wireless facilities and all accessory equipment and transmission equipment must comply with all SAMC, Title 4, Chapter 7 (Loud Noises), and shall not exceed, either individually or cumulatively, the applicable ambient noise limit in the subject zoning district. The approval authority may require the applicant to incorporate appropriate noise-baffling materials and/or strategies whenever necessary to avoid any ambient noise from equipment reasonably likely to exceed the applicable limit.
- (5) **Landscaping.** All wireless facilities must include landscape features and a landscape plan when proposed to be placed in a landscaped area. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscape maintenance must be performed in accordance with SAMC Section 10-3.604 (Landscape maintenance). The approval authority may require additional landscape features to screen the wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or

otherwise enhance the concealment required under this Part 1. The approval authority may also require a tree protection plan to maintain existing heritage, protected or sensitive tree species. All plants proposed or required under this Part 1 must be fire safe, native and/or drought-resistant.

- (6) **Site Security Measures.** Wireless facilities may incorporate reasonable and appropriate site security measures, such as fences, walls and anti-climbing devices, to prevent unauthorized access, theft or vandalism. Site security measures must be designed to enhance concealment to the maximum extent possible, such as installing equipment within an enclosure designed to mimic a trash-can corral rather than within a chain link fence. The approval authority may require additional concealment elements as the approval authority finds necessary to blend the security measures and other improvements into the natural and/or built environment. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures.
- (7) **Backup Power Sources.** The approval authority may approve permanent backup power sources and/or generators on a case-by-case basis. The Town strongly disfavors backup power sources mounted on the ground or on poles within the public rights-of-way. The approval authority shall not approve any diesel generators or other similarly noisy or noxious generators in or within 250 feet from any residence; provided, however, the approval authority may approve sockets or other connections used for temporary backup generators. Storage of Class I, Class II and Class III liquids in outside above-ground tanks is prohibited in certain areas pursuant to SAMC Section 3-3.804.
- (8) **Lights.** Wireless facilities may not include exterior lights other than (a) as may be required under Federal Aviation Administration, FCC or other applicable governmental regulations; and (b) timed or motion-sensitive lights for security and/or worker safety. All exterior lights permitted or required to be installed must be installed in locations and within enclosures that mitigates illumination impacts on other properties to the maximum extent feasible.
- (9) **Signage; Advertisements.** All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage or advertisements unless expressly approved by the Town, required by law or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.
- (10) **Future Collocations and Equipment.** To the extent feasible and aesthetically desirable, all new wireless facilities should be designed and sited in a manner that accommodates potential future collocations and equipment installations that can be integrated into the proposed wireless facility or its associated structures with no or negligible visual changes to the outward appearance.
- (11) **Utilities.** All cables and connectors for telephone, primary electric and other similar utilities must be routed underground to the extent feasible in conduits

large enough to accommodate future collocated wireless facilities. Meters, panels, disconnect switches and other associated improvements must be placed in inconspicuous locations to the extent possible. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.

- (12) **Parking; Access.** Any equipment or improvements constructed or installed in connection with any wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, wireless facilities should use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements should be the minimum size necessary to reasonably accommodate the proposed use. New parking or access improvements shall be prohibited in areas zoned Open Space.
- (13) **Compliance with Laws.** All wireless facilities must be designed and sited in compliance with all applicable federal, state and local laws, regulations, rules, restrictions and conditions, which include without limitation the California Building Standards Code, General Plan and any applicable specific plan, the San Anselmo Municipal Code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the facility.
- (14) **Flood Damage Prevention.** All wireless facilities must be anchored, elevated above the Base Flood Elevation on the adopted Flood Insurance Rate Maps, or floodproofed to comply with the requirements for new or substantially improved structures under SAMC Title 7, Chapter 11, (Protection of Flood Hazard Areas).
- (B) **Freestanding Wireless Facilities.** In addition to the requirements in Section X(A) (Generally Applicable Development Standards), all new and substantially changed freestanding wireless facilities not covered under Section 6409 must conform to the requirements in this Section X(B).
- (1) **Tower-Mounted Equipment.** All tower-mounted equipment must be mounted as close to the vertical support structure as possible to reduce its overall visual profile. Applicants must mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors and utility demarcation boxes) directly behind the antennas to the maximum extent feasible. All tower-mounted equipment, cables and hardware must be painted with flat colors subject to the approval authority's prior approval.
- (2) **Ground-Mounted Equipment; Shelters.** All ground-mounted equipment must be concealed underground or within an existing or new structure, opaque fences or other enclosures subject to the approval authority's prior approval. The approval authority may require additional concealment elements as the approval authority finds necessary to blend the ground-mounted equipment and other improvements into the natural and/or built environment.
- (3) **Monopoles.** The approval authority shall not approve any unconcealed monopoles on private property within the Town's jurisdictional limits.

- (C) **Building-Mounted Wireless Facilities.** In addition to the requirements in Section X(A) (Generally Applicable Development Standards), all new and substantially changed building-mounted wireless facilities not covered under Section 6409 must conform to the requirements in this Section X(C).
- (1) **Preferred Concealment Techniques.** All applicants should, to the extent feasible, propose new non-tower wireless facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, when integration with existing building features is not feasible, the applicant should propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks). Facilities must be located behind existing parapet walls or other existing screening elements to the maximum extent feasible.
  - (2) **Facade-Mounted Equipment.** When wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the approval authority may approve facade-mounted equipment in accordance with this section. All facade-mounted equipment must be concealed behind screen walls and mounted as flush to the facade as practicable. The approval authority may not approve "pop-out" screen boxes unless the design is architecturally consistent with the original building or support structure. The approval authority may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade. To the extent feasible, facade-mounted equipment must be installed on the facade(s) along the building frontage that is the least prominent or publicly visible.
  - (3) **Rooftop-Mounted Equipment.** All rooftop-mounted equipment must be screened from public view with concealment measures that match the underlying structure in proportion, quality, architectural style and finish. The approval authority may approve unscreened rooftop equipment only when it expressly finds that such equipment is effectively concealed due to its low height and/or setback from the roofline.
  - (4) **Ground-Mounted Equipment; Shelters.** All ground-mounted equipment must be concealed underground or within an existing or new structure, opaque fences, building interior equipment room, or other enclosures subject to the approval authority's prior approval. The approval authority may require additional concealment elements as the approval authority finds necessary to blend the ground-mounted equipment and other improvements into the natural and/or built environment.
- (D) **Right-of-Way Wireless Facilities.** In addition to the requirements in Section X(A) (Generally Applicable Development Standards), all new and substantially changed right-

of-way wireless facilities not covered under Section 6409 must conform to the requirements in this Section X(D).

- (1) **Concealment.** All wireless facilities in the right-of-way must be concealed to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses. In addition, wireless facilities in the rights-of-way may not unreasonably subject the public use, for any purpose including expressive or aesthetic purposes, to inconvenience, discomfort, trouble, annoyance, hindrance, impediment or obstruction.
- (2) **Support Structures.** All wireless facilities in the public right-of-way must be installed on existing above-ground structures (such as light standards or utility poles) whenever possible and aesthetically desirable. Existing above-ground structures may be replaced with hardened support structures so long as the replacement structure is substantially similar to the existing structure to be replaced. The approval authority shall not approve any new, non-replacement support structures unless: (a) the applicant demonstrates that above-ground support structures near the project site either do not exist or are not potentially available to the applicant; or (b) the approval authority specifically finds that a new, non-replacement support structure would be more aesthetically desirable and consistent with the objectives in this Part 1 than installations on existing structures near the project site.
- (3) **Undergrounded Equipment.** To conceal the equipment to the maximum degree feasible, applicants must install all equipment (other than the antenna and any electric meter) underground in any area in which the existing utilities are primarily located underground. In all other areas, applicants shall install all equipment (other than the antenna and any electric meter) underground when the approval authority finds that the above-ground equipment would unreasonably interfere with (a) the public's ability to use the right-of-way for travel; or (b) a specific viewshed or other visual resource seen from within the public rights-of-way. Mere additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement.
- (4) **Pole-Mounted Equipment.** All pole-mounted equipment must be installed as close to the pole as technically and legally feasible to minimize the overall visual profile. All pole-mounted equipment and required or permitted signage must face toward the street or otherwise placed to minimize visibility from adjacent sidewalks and structures. All cables, wires and other connectors must be routed through conduits within pole whenever possible, and all external conduits, conduit attachments, cables, wires and other connectors must be concealed from public view to the extent feasible.
- (5) **Ground-Mounted Equipment.** To the extent that the equipment cannot be placed underground as required, applicants may be permitted to install ground-mounted equipment in a location that does not obstruct pedestrian or vehicular traffic. All ground-mounted equipment must be placed in the least conspicuous location

available within a reasonable distance from the pole. The approval authority may condition approval on new or enhanced landscaping to conceal ground-mounted equipment.

- (E) **Administrative Design Guidelines.** The Director may develop and from time-to-time amend design guidelines, consistent with the generally applicable development standards and any facility-specific development standards, to clarify the aesthetic goals and standards in this Part 1 for Town staff, applicants and the public. In the event that a conflict arises between the development standards adopted under Sections X(A)-(D) and the design guidelines adopted under this Section X(E), the development standards adopted under Sections X(A)-(D) shall control.

## XI. TEMPORARY WIRELESS FACILITIES

- (A) **General Requirements for Temporary Wireless Facilities.** Except as provided in Section XI(B) (Temporary Wireless Facilities for Emergencies), the requirements, procedures and standards in this section shall be applicable to all applications for a temporary use permit for a temporary wireless facility.

(1) **Applications for Temporary Wireless Facilities.** The Director shall not approve any temporary wireless facility subject to a temporary use permit except upon a duly filed application consistent with this Section XI(A)(1) and any other written application requirements or procedures the Director may publish in any publicly-stated format. Applicants for a temporary use permit must submit, at a minimum: (a) a temporary use permit application on the most current form prepared by the Planning Department; (b) the applicable fee for the application; (c) a site plan that shows the proposed temporary wireless facility and its equipment, physical dimensions and placement on the proposed site relative to property lines and existing structures; (d) an RF compliance report in accordance with the Town's requirements; and (e) an insurance certificate for general commercial liability that names the Town as an additional insured, includes coverage for the time period in which the temporary wireless facility will be placed and carries at least \$1,000,000 in coverage per occurrence. Applications must be submitted in person to the Director unless the Director grants written consent to receive an application by mail or electronic means. No pre-submittal conference or appointment is required for a temporary use permit application.

(2) **Administrative Review for Temporary Wireless Facilities.** After the Director receives a duly filed application for a temporary use permit, the Director shall review the application for completeness. After the Director deems the application complete, the Director shall review the application for conformance with the required findings in Section XI(A)(3) (Required Findings for Temporary Wireless Facilities) and render a written decision to the applicant. Any denials must include the reasons for the denial. The review shall be administrative in nature and shall not require notice or a public hearing.

- (3) **Required Findings for Temporary Wireless Facilities.** The Director may approve or conditionally approve a temporary use permit for a temporary wireless facility only when the Director finds all of the following:
- (a) the proposed temporary wireless facility will not exceed 50 feet in overall height above ground level; and
  - (b) the proposed temporary wireless facility will be placed as far away from adjacent property lines as possible, or otherwise in a location that will be least likely to cause adverse impacts on adjacent properties; and
  - (c) any excavation or ground disturbance associated with the temporary facility will not exceed two feet below grade; and
  - (d) the proposed temporary wireless facility will be compliant with all generally applicable public health and safety laws and regulations, which includes without limitation compliance with maximum permissible exposure limits for human exposure to RF emissions established by the FCC; and
  - (e) the proposed temporary wireless facility will not create any nuisance or violate any noise limits applicable to the proposed location; and
  - (f) the proposed temporary wireless facility will be identified with a sign that clearly identifies the (I) site operator, (II) the operator's site identification name or number and (III) a working telephone number answered 24 hours per day, seven days per week by a live person who can exert power-down control over the antennas; and
  - (g) the proposed temporary wireless facility will be removed within 30 days after the Director grants the temporary use permit, or such longer time as the Director finds reasonably related to the applicant's need or purpose for the temporary wireless facility (but in no case longer than 90 days); and
  - (h) the applicant has not been denied a use permit for any permanent wireless facility in the same or substantially the same location within the previous 365 days.
- (4) **Appeals for Temporary Wireless Facilities.** Any applicant may appeal the Director's written decision to deny an application for a temporary use permit. The written appeal together with any applicable appeal fee must be tendered to the Town within 10 days from the Director's written decision, and must state in plain terms the grounds for reversal and the facts that support those grounds. The Town Manager shall be the appellate authority for all appeals from the Director's written decision to deny a temporary use permit. The Town Manager shall review the application *de novo*; provided, however, that the Town Manager's decision shall be limited to only whether the application should be approved or denied in accordance with the provisions in this Part 1 and any other applicable laws. The Town Manager shall issue a written decision that contains the reasons for the decision, and such decision shall be final and not subject to any further administrative appeals. There is no right to appeal the Town Manager's decision

under SAMC Title 1, Chapter 4 (Appeals and Official Reviews of Administrative Decisions).

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

## **XII. AMORTIZATION OF NONCONFORMING WIRELESS FACILITIES**

Any non-conforming wireless facilities in existence at the time this Part 1 becomes effective must be brought into conformance with this Part 1 in accordance with the amortization schedule in this Section XII. As used in this section, the “fair market value” will be the construction costs listed on the building permit application for the subject wireless facility and the “minimum years” allowed will be measured from the date on which this Part 1 becomes effective.

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

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

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

## **PART 2 ELIGIBLE FACILITIES REQUESTS**

**I. PURPOSE AND INTENT**

- (A) **Background.** Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified as 47 U.S.C. § 1455(a) (“**Section 6409**”), generally requires that State and local governments “may not deny, and shall approve” requests to collocate, remove or replace transmission equipment at an existing tower or base station. Federal Communication Commission (“**FCC**”) regulations interpret this statute and establish procedural rules for local review, which generally preempt certain subjective land-use regulations, limit permit application content requirements and provide the applicant with a potential “deemed granted” remedy when the State or local government fails to approve or deny the request within 60 days after submittal (accounting for any tolling periods). Moreover, whereas Section 704 of the Telecommunications Act of 1996, Pub. L. 104-104, codified as 47 U.S.C. § 332, applies to only “personal wireless service facilities” (e.g., cellular telephone towers and equipment), Section 6409(a) applies to all “wireless” facilities licensed or authorized by the FCC (e.g., cellular, Wi-Fi, satellite, microwave backhaul, etc.).
- (B) **Findings.** The Town Council finds that the overlap between wireless deployments covered under Section 6409 and other wireless deployments, combined with the different substantive and procedural rules applicable to such deployments, creates a potential for confusion that harms the public interest in both efficient wireless facilities deployment and carefully planned community development in accordance with local values. The Town Council further finds that a separate permit application and review process specifically designed for compliance with Section 6409 contained in a policy devoted to Section 6409 will mitigate such potential confusion, streamline local review and preserve the Town’s land-use authority to maximum extent possible.
- (C) **Intent.** In accordance with San Anselmo Municipal Code (“**SAMC**”) Title 10, Chapter 3, Article 28, the Town intends this Town Council Policy No. 6-1 Part 2 (“**Part 2**”) to establish reasonable and uniform standards and procedures in a manner that protects and promotes the public health, safety and welfare, consistent with and subject to federal and California law, for wireless facilities collocations and modifications pursuant to Section 6409 and related FCC regulations codified in 47 C.F.R. §§ 1.40001 *et seq.* The intent of this Part 2 is also to protect the citizens and visitors of San Anselmo from adverse health effects associated with exposure to non-ionizing electromagnetic radiation that exceed maximum permissible exposure levels by raising public awareness and ensuring compliance with all applicable laws. This Part 2 is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider’s ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity’s ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless

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facilities comply with the FCC’s regulations concerning such emissions; (5) prohibit any collocation or modification that the Town may not deny under federal or California state law; (6) impose any unfair, unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the Town to preempt any applicable federal or California state law.

## II. DEFINITIONS

The abbreviations, phrases, terms and words used in this Part 2 will have the meanings assigned to them in this Section II or, as may be appropriate, in SAMC, Title 10, Chapter 3, Article 17 (Definitions), as may be amended from time to time, unless context indicates otherwise. Undefined phrases, terms or words in this section will have the meanings assigned to them in 47 U.S.C. § 702, as may be amended from time to time, and, if not defined therein, will have their ordinary meanings. In the event that any definition assigned to any phrase, term or word in this Part 2 conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

- (A) **“approval authority”** means the commission, board or official responsible for review of permit applications and vested with the authority to approve or deny such applications. The approval authority for a project that requires a Section 6409 approval refers to the Director.
- (B) **“base station”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended, which defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.40001(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii).
- (C) **“collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or

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receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC’s definition effectively means “to add” and does not necessarily refer to more than one wireless facility installed at a single site.

- (D) **“CPCN”** means a “Certificate of Public Convenience and Necessity” granted by the CPUC or its duly appointed successor agency pursuant to California Public Utilities Code §§ 1001 *et seq.*, as may be amended.
- (E) **“CPUC”** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or it’s duly appointed successor agency.
- (F) **“Director”** means the Director of the Planning Department of the Town of San Anselmo, or the Director’s designee.
- (G) **“eligible facilities request”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended, which defines that term as any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.
- (H) **“eligible support structure”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which defines that term as any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.
- (I) **“existing”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which provides that a constructed tower or base station is existing for purposes of the FCC’s Section 6409 regulations if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition. **“FCC”** means the Federal Communications Commission or its duly appointed successor agency.
- (J) **“FCC Shot Clock”** means the reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended from time-to-time.
- (K) **“RF”** means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.
- (L) **“Section 6409”** means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.
- (M) **“site”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be amended, which provides that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

- (N) **“substantial change”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC’s criteria and thresholds for a substantial change according to the wireless facility type and location.
- (1) For towers outside the public rights-of-way, a substantial change occurs when:
    - (a) the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or
    - (b) the proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
    - (c) the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
    - (d) the proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
  - (2) For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
    - (a) the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
    - (b) the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or
    - (c) the proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
    - (d) the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or
    - (e) the proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
  - (3) In addition, for all towers and base stations wherever located, a substantial change occurs when:
    - (a) the proposed collocation or modification would defeat the existing concealment elements of the support structure as reasonably determined by the Director; or
    - (b) the proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets

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or excavation that is inconsistent with the thresholds for a substantial change described in this section.

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

### III. APPLICABILITY

This Part 2 applies to all requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409. However, the applicant may voluntarily elect to seek a use permit under Town Council Policy No. 6-1 Part 1 (New and Substantially Changed Wireless Facilities).

### IV. PRIOR APPROVALS REQUIRED

- (A) **Section 6409 Approval.** Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted with a written request for approval under Section 6409 shall require an amendment to the underlying use permit for the tower or base station (each amendment a “Section 6409 approval”) subject to the Director’s approval, conditional approval or denial without prejudice pursuant to the standards and procedures contained in this Part 2
- (B) **Other Permits and Regulatory Approvals.** No collocation or modification approved pursuant to this Part 2 may occur unless the applicant also obtains all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any permits and/or regulatory approvals

issued by other departments or divisions within the Town. Furthermore, any Section 6409 approval granted under this Part 2 shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or regulatory approvals.

## V. APPLICATION REQUIREMENTS

- (A) **Application Required.** The Director shall not approve any request for a collocation or modification submitted for approval pursuant to Section 6409 except upon a duly filed application consistent with this Section V and any other written rules the Town or the Director may establish from time to time in any publicly-stated format.
- (B) **Application Content.** All applications for a Section 6409 approval must include all the content, information and materials required by the Director. The Town Council authorizes the Director to develop, publish and from time-to-time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing requests for Section 6409 approvals. All applications shall require the applicant to demonstrate that the proposed project will be in planned compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions. The Town Council further authorizes the Director to establish other reasonable rules and regulations, which may include without limitation regular hours for appointments with applicants, as the Director deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide applicants with prior notice.
- (C) **Procedures for a Duly Filed Application.** Any application for a Section 6409 approval will not be considered duly filed unless submitted in accordance with the procedures in this Subsection (C).
- (1) **Pre-Submittal Conference.** Before application submittal, the applicant must schedule and attend a pre-submittal conference with the Director for all proposed collocations or modifications to any concealed or camouflaged wireless tower or base station. Pre-submittal conferences for all other proposed collocations or modifications are strongly encouraged but not required. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, including whether the project qualifies for approval pursuant to Section 6409 or not; any latent issues in connection with the existing wireless tower or base station, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other Town departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that Town staff may provide informal feedback and guidance about whether such applications or other materials may

be incomplete or unacceptable. The Director shall use reasonable efforts to provide the applicant with an appointment within five working days after the Director receives a written request and any applicable fee or deposit to reimburse the Town for its reasonable costs to provide the services rendered in the pre-submittal conference.

- (2) **Submittal Appointment.** All applications must be submitted to the Town at a pre-scheduled appointment with the Director. Applicants may generally submit one application per appointment, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The Director shall use reasonable efforts to provide the applicant with an appointment within five working days after the Director receives a written request and, if applicable, confirms that the applicant complied with the pre-submittal conference requirement. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed unless the applicant received a written exemption from the Director at a pre-submittal conference.
- (D) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, and in accordance with SAMC Section 10-3.1604 (Expiration of Applications), any application governed under this Part 2 will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the Planning Department within 90 calendar days after the Planning Department deems the application incomplete in a written notice to the applicant. The Director may, in the Director's discretion, grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.
- (E) **Peer and Independent Consultant Review.**
- (1) **Authorization.** The Town Council authorizes the Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection any request for a Section 6409 approval.
- (2) **Scope.** The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation: (a) permit application completeness and/or accuracy; (b) pre-construction planned compliance with applicable regulations for human exposure to RF emissions; (c) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (d) whether and to what extent a proposed project qualifies for approval under applicable standards and regulations; (e) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the Town's discretion to review; and (f) any other issue identified by the Director that requires expert or specialized knowledge. The Director may

request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with Town staff and/or the applicant.

- (3) **Consultant Fees; Deposits.** In the event that the Director elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings. Before the independent consultant may perform any services, the applicant shall tender to the Town a deposit in an amount equal to the estimated cost for the services to be provided, as determined by the Director. The Director may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant's services. In the event that the deposit exceeds the total costs for consultant's services, the Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection by the Building Official or his or her designee. In the event that the reasonable costs for the independent consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The Town shall not issue any construction or grading permit to any applicant with any unpaid deposit requests or invoices.

## VI. DECISIONS; APPEALS

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

without prejudice any application for a Section 6409 approval when the Director finds that the proposed project:

- (1) does not meet the findings required in Section VI(C) (Required Findings for Approval);
  - (2) involves the replacement of the entire support structure; or
  - (3) violates any legally enforceable law, regulation, rule, standard or permit condition reasonably related to public health or safety.
- (E) **Conditional Approvals.** Subject to any applicable limitations in federal or state law, nothing in this Part 2 is intended to limit the Director's authority to conditionally approve an application for a Section 6409 approval to protect and promote the public health and safety.
- (F) **Appeals.** Any applicant may appeal the Director's written decision to deny without prejudice an application for Section 6409 approval. The written appeal together with any applicable appeal fee must be tendered to the Town within 10 days from the Director's written decision, and must state in plain terms the grounds for reversal and the facts that support those grounds. The Town Manager shall be the appellate authority for all appeals from the Director's written decision to deny without prejudice an application for Section 6409 approval. The Town Manager shall review the application *de novo*; provided, however, that the Town Manager's decision shall be limited to only whether the application should be approved or denied in accordance with the provisions in this Part 2 and any other applicable laws. The Town Manager shall issue a written decision that contains the reasons for the decision, and such decision shall be final and not subject to any further administrative appeals. There is no right to appeal the Town Manager's decision under SAMC Title 1, Chapter 4 (Appeals and Official Reviews of Administrative Decisions).

## VII. STANDARD CONDITIONS OF APPROVAL

In addition to all other conditions adopted by the approval authority, all Section 6409 approvals, whether approved by the approval authority or deemed approved by the operation of law, shall be automatically subject to the conditions in this Section VII. The Director (or the Town Manager in the Town Manager's capacity as the appellate authority) shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to protect public health and safety or allow for the proper operation of the approved facility consistent with the goals of this Part 2.

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

- underlying permit or other prior regulatory authorization for the subject tower or base station.
- (B) **Compliance Obligations Due to Invalidation.** In the event that any court of competent jurisdiction invalidates all or any portion of Section 6409 or any FCC rule that interprets Section 6409 such that federal law would not mandate approval for any Section 6409 approval(s), such approval(s) shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved Section 6409 approvals or the Director grants an extension upon written request from the permittee that shows good cause for the extension, which includes without limitation extreme financial hardship. Notwithstanding anything in the previous sentence to the contrary, the Director may not grant a permanent exemption or indefinite extension. A permittee shall not be required to remove its improvements approved under the invalidated Section 6409 approval when it has obtained the applicable permit(s) or submitted an application for such permit(s) before the one-year period ends.
- (C) **Town's Standing Reserved.** The Town's grant or grant by operation of law of a Section 6409 approval does not waive, and shall not be construed to waive, any standing by the Town to challenge Section 6409, any FCC rules that interpret Section 6409 or any Section 6409 approval.
- (D) **Strict Compliance with Approved Plans.** Before the permittee submits any applications to the Building Department, the permittee must incorporate this Section 6409 approval, all conditions associated with this Section 6409 approval and the approved photo simulations into the project plans (the "**Approved Plans**"). The permittee must construct, install and operate the wireless facility in strict compliance with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Director's prior review and approval. The Director may revoke the Section 6409 approval if s/he finds that the requested alteration, modification or other change may cause a substantial change as that term is defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended.
- (E) **Build-Out Period.** This Section 6409 approval will automatically expire one (1) year from the approval or deemed-granted date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use. The Director may grant one written extension up to one (1) year when the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition.
- (F) **Maintenance Obligations; Vandalism.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the Approved Plans and all conditions in this Section 6409 approval. The permittee shall keep

the site area free from all litter and debris at all times. The permittee, at no cost to the Town, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

- (G) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“**Laws**”) applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this Section 6409 approval, which includes without limitation any Laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee’s obligations to maintain compliance with all Laws. In the event that the Town fails to timely notice, prompt or enforce compliance with any applicable provision in the San Anselmo Municipal Code, any permit, any permit condition or any applicable law or regulation, the applicant or permittee will not be relieved from its obligation to comply in all respects with all applicable provisions in the San Anselmo Municipal Code, any permit, any permit condition or any applicable law or regulation.
- (H) **Cooperation with RF Compliance Evaluations.** At all times relevant to this permit, the permittee and the property owner shall reasonably cooperate with efforts by the Town to evaluate whether the wireless facility complies with all applicable FCC rules and regulations for human exposure to RF emissions. Such cooperation shall be at no cost to the Town and may include, but is not limited to: (1) furnishing the Town with a written affidavit signed by an RF engineer certifying the wireless facility’s compliance with applicable FCC rules and regulations; (2) providing technical data such as the frequencies in use, power output levels and antenna specifications, reasonably necessary to evaluate compliance with maximum permissible exposure levels set by the FCC; (3) allowing the Town or its designee to have supervised access to the areas near the wireless facility for inspections and field measurements; and (4) promptly responding to all requests by the Town or its designee for information and/or cooperation with respect to any of the foregoing.
- (I) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the permittee’s or its authorized personnel’s construction, installation, operation, modification, maintenance, repair, removal and/or other activities at the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction hours authorized by the San Anselmo Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the Town. The Director or the Director’s designee may issue a stop work order for any activities that violates this condition.

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

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

- (N) **Recall to Approval Authority; Permit Revocation.** In accordance with SAMC Section 10-3.1909 (Revocation of a Discretionary Permit), the approval authority may recall this Section 6409 approval for review at any time due to complaints about noncompliance with applicable laws or any approval conditions attached to this Section 6409 approval. At a duly noticed public hearing and in accordance with all applicable laws, the approval authority may revoke this Section 6409 approval or amend these conditions as the approval authority deems necessary or appropriate to correct any such noncompliance.
- (O) **Record Retention.** The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee. Records may be kept in electronic format.
- (P) **Existing Performance Agreements.** To the extent that the permittee has an existing Performance Agreement with the Town in connection with the subject wireless facility, the standard conditions in Town Council Policy No. 6-1 Part 2 Section VII will control to the extent that the requirements are more stringent or advantageous to the Town. The Town Attorney shall have authority to interpret and resolve any conflicts or ambiguities between the provisions in any Performance Agreement and the provisions in Town Council Policy No. 6-1 Part 2 Section VII.