ORDINANCE NO. 1296

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SIMI VALLEY WITH AMENDMENTS TO SIMI VALLEY MUNICIPAL CODE TITLE 5, CHAPTER 35 – WIRELESS TELECOMMUNICATION FACILITIES AND A DETERMINATION THAT THE ACTION IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, various federal and state laws limit the City of Simi Valley's ability to regulate wireless communication facilities and despite these restrictions, the City has the ability to regulate wireless communication facilities design and location for reasons of health, safety and aesthetics; and

WHEREAS, the wireless communications industry is preparing for the next generation of 5G wireless communication facilities that will utilize more numerous and dispersed antenna systems; and

WHEREAS, the City's existing codes do not establish up-to-date standards for the location, design, and operation, or maintenance of wireless telecommunication facilities; and

WHEREAS, the City desires to adopt wireless facility regulations which comply with applicable federal and state law while preserving local control to the extent feasible; and

WHEREAS, the City Council has the power under Government Code Sections 36934 and 36937, to adopt an ordinance that takes effect immediately if it is an ordinance for the immediate preservation of the public peace, health or safety, contains a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the City Council; and

WHEREAS, the City finds it is necessary for the City Council to adopt this Ordinance as such an urgency ordinance, pursuant to the powers under Government Code section 36934 and 36937, to immediately address changes to regulations imposed by the FCC Declaratory Ruling and Third Report and Order In the Matter of Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment (WT Docket No. 17-79, WC Docket No, 17-84), effective January 14, 2019, to address peace, health and safety issues related small cell wireless facilities in the public right-of-way and on private property, as the placement, size and other qualities of telecommunication equipment are a matter of community concern, and avoiding any statutory conflicts; and

WHEREAS, the City Council held a duly noticed meeting on the proposed Ordinance Amendment on March 25, 2019, where they considered the staff report and testimony.

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

SECTION 1. The City Council finds and declares that the above recitals are true and correct.

SECTION 2. Simi Valley Municipal Code Title 5, Chapter 35, Wireless Telecommunication Facilities, is hereby repealed and replaced in its entirely as indicated in Exhibit A, attached hereto.

SECTION 3. The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the adoption of the Wireless Telecommunication Facilities Ordinance Amendment may have a significant effect on the environment.

SECTION 4. The City Clerk shall cause this ordinance or a summary hereof to be published in a newspaper of general circulation, published in the County of Ventura and circulated in the City, and if applicable, to be posted, in accordance with Section 36933 of the California Government Code; shall certify to the adoption of this ordinance and shall cause a certified copy of this ordinance, together with proof of publication, to be filed in the Office of the Clerk of this City.

SECTION 5. This ordinance shall go into effect and be in full force and effect immediately after its passage.

PASSED and ADOPTED at a regular meeting of the City Council of the City of Simi Valley, California on the 25th day of March, 2019.

Attest:

FOR: Ky Spangler, City Clerk

Keith Mashburn, Mayor of the City of Simi Valley, California

Approved as to Form:

Lonnie J. Eldridge, City Attorney

Approved as to Content:

Eric J. Levitt, City Manager

Ted Drago Interim Director
Interim Environmental Services Director

CERTIFICATION

I, City Clerk of the City of Simi Valley, California, do hereby certify that the foregoing is a full, true, and correct copy of Ordinance No. 1296 which was adopted as an urgency ordinance by the City Council of the City of Simi Valley, California, at a regular meeting thereof held on the 25th day of March 2019 by the following vote of the City Council:

AYES:	Council Members Luevanos, Judge, Mayor Pro Tem Cavanaugh and Mayor Mashburn
NAYS:	None
ABSENT:	Council Member Litster
ABSTAINED:	None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Simi Valley, California, this 4th day of April 2019.

Julia Fritz

FOR: Ky Spangler
City Clerk

Simi Valley Municipal Code ("SVMC") Title 5, Chapter 35.01 through 35.13 is hereby repealed and replaced with the following chapters 5-35.01 through 5-35.19:

Chapter 35 - WIRELESS TELECOMMUNICATION FACILITIES

5-35.01 – Purpose and intent.

(a) Purpose. The purpose of this chapter is to ensure that residents, public safety operations and businesses in the City of Simi Valley have reliable access to wireless telecommunications ("telecom") facilities and networks and state of the art communications services and that installations, modifications, and maintenance of wireless communications facilities, including small cell wireless facilities, in the public right-of-way ("ROW") and on private property are completed in a manner consistent with all applicable laws, are safe, and avoid or mitigate visual, environmental and neighborhood impacts. This chapter regulates wireless facilities installations in the ROW, on publically-owned property, and on private property within the City limits. More specifically, the regulations contained herein are intended to:

(1) Encourage, but not require, the location of antennas on or adjacent to water tank sites owned by water purveyors;

(2) Encourage, but not require, the location of antennas on light poles, traffic signals, and utility poles in the Public ROW;

(3) Encourage the location of antennas in nonresidential areas;

(4) Encourage colocation at new and existing antenna sites;

(5) Encourage telecom facilities to be located in areas where adverse impacts on the community and on public views are minimized. All telecom facilities shall be camouflaged with architectural integration techniques for buildings and pseudo-natural integration techniques for those antennas in a natural or landscaped environment to the greatest extent possible.

(b) The provisions of this chapter are not intended to:

(1) Prohibit or effectively prohibit any Personal Wireless Service provider's ability to provide Personal Wireless Services;

(2) Prohibit or effectively prohibit any Personal Wireless Service provider's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulations;

(3) Unreasonably discriminate among providers of functionally equivalent services;

(4) Deny any request for authorization to place, construct or modify Personal Wireless Service Facilities on the basis of environmental effects of radio frequency emissions to the extent that such Facilities comply with the Federal Communication Commission's regulations concerning such emissions;

(5) Prohibit any collocation or modification that the City may not deny under federal or California state law; or

(6) Otherwise authorize the City to preempt any applicable federal or California state law or regulation.

5-35.02 Definitions.

(a) *"Antenna"* means a device or system of wires, poles, rods, dishes, or similar devices used to transmit and/or receive radio or electromagnetic waves.

(b) *"Antenna Array"* shall mean two (2) or more antennas having active elements extending in one or more directions, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.

(c) "*Antenna Equipment*" means equipment, switches, cabling, power sources, shelters, or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collated on a structure, is mounted or installed at the same time as such antenna.

(d) *"Applicant"* means any person, firm, corporation, company, or other entity that applies for a Telecom Permit.

(e) *"Architectural Integration"* means concealment techniques that completely screen all Transmission Equipment from public view and integrate the Transmission Equipment with the underlying structure and surrounding built environment such that, given the particular context, the average, untrained observer does not recognize the existence of the wireless facility or concealment technique. These facilities are so integrated and well-hidden that the average, untrained observer would need special knowledge to recognize their existence. Architecturally integrated projects must be designed by a California-licensed architect. Architectural Integration concealment techniques include, but are not limited to: (1) Transmission Equipment placed completely within existing architectural features such that the installation causes no visible change to the underlying structure and (2) new architectural features that mimic the underlying building in architectural style, physical proportion and quality of construction materials. Architectural features commonly used as Architectural Integration concealment include, but are not limited to, church steeples, cupolas, bell towers, clock towers, pitched faux-roofs and water tanks. Further, whether a wireless facility qualifies as an architecturally integrated facility depends on the context that exists at a given location and is evaluated on a case-by-case basis.

(f) *"Cabinet"* means a wireless communication facility equipment enclosure that is used exclusively to contain radio or other equipment necessary for the transmission and/or reception of wireless communication signals. Cabinets can be located on a rooftop, on pedestals on the ground, or underground depending on the location of the wireless antennas.

(g) *"Camouflage" or "Camouflaged Facility" means a Telecom Facility in which the antenna, and sometimes the support equipment, are hidden from view, or effectively disguised as may reasonably be determined by the Planning Commission or other appropriate Reviewing Authority, in a false tree, monument, cupola, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are not such a natural or architectural feature to the average observer do not qualify within this definition.*

(h) "*City*" means the City of Simi Valley or Ventura County Waterworks District No. 8 (VCWWD).

(i) "*City Council*" or "*Council*" means the City Council of the City of Simi Valley or the Board of Directors of VCWWD.

(j) "*City Property*" means all real property and improvements owned, operated or controlled by City other than Public ROW, within the City's jurisdiction. City Property includes, but is not limited to, City Hall, Police facilities, and City and VCWWD owned facilities, streetlights, and traffic lights.

(k) "*Collocation*" means the same as defined by the Federal Communication Commission ("FCC") in 47 C.F.R. Section 1.40001(b)(2), 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" new equipment to an existing facility and does not necessarily refer to more than one wireless facility installed at a single site.

(l) "*Design Standards*" include any features of design (as opposed to functional operation) of a Telecom Facility as set forth in this chapter or as approved by a Reviewing Authority or the City Council.

(m) *"Environmental Services Director"* means the Environmental Services Director of the City or said Director's designee.

(n) *"FCC"* means the Federal Communications Commission or its successor agency.

(o) *"Feasible"* means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal, costs and technological factors.

(p) *"Lattice Tower"* is defined as a free-standing framework tower used to support one or more antennas, typically with three (3) or four (4) support legs.

(q) *"Least Intrusive"* means that design or location of Telecom Facilities which is technically feasible and most closely conforms to local values, including aesthetics, as expressed through the municipal code and applicable Design Standards. The Least Intrusive standard balances the national and state interests in Personal Wireless Services with the local interest in orderly, planned development. A Least Intrusive design may, but is not necessarily required to,

include Architectural Integration, Camouflage, Pseudo-Natural Integration or may be a Stealth Facility.

(r) *"Monopole"* means a single freestanding pole used to act as or support an antenna or antenna arrays.

(s) *"Operator"* or "Telecom Operator" means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a Telecom Facility or facilities within the City.

(t) *"Over The Air Reception Devices (OTARD)"* means any over-the-air reception device subject to 47 C.F.R. Section 1.4000 et seq., and which includes satellite television dishes not greater than one meter in diameter.

(u) *"Personal Wireless Service Facilities"* means the same as defined in 47 U.S.C. Section 332(c)(7)(C)(i), which defines the term as facilities that provide Personal Wireless Services.

(v) *"Personal Wireless Services"* means the same as defined in 47 U.S.C. Section 332(c)(7)(C)(i), which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

(w) *"Pseudo-Natural Integration"* means concealment techniques that completely screen all Transmission Equipment from public view and integrate the Transmission Equipment with the surrounding natural environment. Given that pseudo-natural integration mimics natural features, these manmade concealment techniques are more obvious to the average, untrained observer such that the observer may not need special knowledge to recognize the existence of a pseudo-naturally integrated Telecom Facility. Such concealment techniques include faux-trees and other faux-plants or faux-geologic features (monoshrubs, monorocks and other faux-natural features).

(x) *"Public Right of Way" or "PROW" or "Public ROW"* means the improved or unimproved surface of and the space above and below a City easement for public utility purposes, or street, or similar public way of any nature, dedicated or improved for vehicular, bicycle and/or pedestrian-related use held or managed by City, however acquired.

(y) *"Public Works Director"* means the Director of Public Works of the City or said Director's designee.

(z) *"Residential Lot"* means a lot containing, or zoned for, one or more dwelling units in a residential district.

(aa) *"Remote Radio Unit or RRU"* means the electronic devices that are used to amplify radio signals so that there is increased performance (farther distance) of the outgoing radio signal from the antenna. It is generally installed in cell towers or monopoles and are controlled by a controller placed inside a closed shelter on the ground nearby the wireless facility.

(bb) "*Reviewing Authority*" means the person or body authorized under the provisions of this chapter to review and act upon an application for a Wireless Telecommunications Permit, i.e., the Environmental Services Director, Public Works Director, or the Planning Commission, or other specified individual, as the case may be.

(cc) "*RF*" means radio frequency or electromagnetic waves generally between 20 kHz and 300 GHz in the electromagnetic spectrum range. This is the frequency

range at which energy from an oscillating current can radiate off a conductor into space as radio waves.

(dd) *"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. Section 1455(a).

(ee) *"Shroud"* means an enclosure that covers or shields from public view RRUs and other cell antenna support equipment on a monopole, street light, traffic signal, or utility pole.

(ff) *"Significant Gap"* is a gap in the service provider's own wireless Telecom Facilities, as defined in federal case law interpretations of the Federal Telecommunications Act of 1996.

(gg) *"Site"* means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(6), 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."

(hh) *"Small Cell Wireless Facility" or "SCWF"* means a small wireless facility as defined by the FCC and that meets the following requirements:

(1) Meet the following mounting conditions:
   a. Are mounted on structures 50 feet or less in height including their antennas, or
   b. Are mounted on structures no more than 10 percent taller than other adjacent structures, or
   c. Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment is no more than three (3) cubic feet in volume; and

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.

(ii) "*Stealth Facility*" is any Telecom Facility designed to blend into the surrounding environment, and is visually unobtrusive. Examples of stealth facilities may include architecturally screened roof-mounted antennas, façade-mounted antennas painted and treated as architectural elements to blend with the existing building, or elements designed to appear as vegetation or trees.

(jj) *"Support Equipment"* means the physical, electrical and/or electronic equipment included within a Telecom Facility used to house, power, and/or process signals from or to the Facility's antenna or antennas.

(kk) *"Telecommunication(s) Facility, Telecom Facility, Wireless Telecommunications Facility,"* or simply "Facility" means facilities regulated by the FCC that transmit and/or receive electromagnetic signals for cellular technology, personal

communication services, enhanced specialized mobile services, paging systems, and radio and television broadcast transmission facilities. Facilities include antennas, microwave dishes, parabolic antennas, and all other types of equipment (but does not include a small wireless facility, which is defined separately under "Small Cell Wireless Facility") used in the transmission or reception of such signals; telecommunication towers or similar structures supporting said equipment; associated equipment cabinets and/or buildings; and all other accessory development. These facilities include amateur radio antenna structures that exceed thirty feet (30′) in height but do not include government-operated public safety networks.

(ll) *"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"), interim telecom sites, or other similarly portable wireless Facilities not permanently affixed to site on which it is located.

(mm) *"Tower"* means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(9), 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, monotrees, and lattice towers.

(nn) *"Transmission Equipment"* means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b) (8), 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.

(oo) *"Utility tower"* shall mean an open framework structure or steel pole used to support electric transmission facilities.

(pp) *"Wireless"* means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

(qq) *"Wireless Telecommunication Permit" or "Telecom Permit"* means an Encroachment Telecommunication Permit, Administrative Telecommunication Permit, a Planning Commission Telecommunication Permit or a Temporary Telecommunication Permit. An Encroachment Telecom Permit is functionally equivalent to a City encroachment permit, except that such Telecom Permit is applicable to a Telecom Facility.

5-35.03 Applicability.

(a) *Applicability.* These regulations are applicable to all existing Telecom Facilities and SCWFs on public property, within the Public ROW, or on private property, and all applications and requests for approval to construct, install, modify, collocate, relocate, or otherwise deploy Telecom Facilities or SCWFs unless exempted under subsection (b) of this section or governed by subsection (c), below, requests for approval pursuant to Section 6409 (collocation/modification).

(b) *Exempt facilities.* The provisions of this chapter will not be applicable to:

(1) Telecom Facilities owned and operated by City for public purposes;

(2) Amateur radio antennas, antennas used solely for the purpose of receiving local broadcast stations, and satellite dish antennas of one meter in diameter or smaller are exempt from the provisions of this chapter.

(3) OTARD antennas;

(4) Telecom 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);

(5) Telecom Facilities or equipment owned and operated by California Public Utilities Commission ("CPUC")-regulated electric companies for use in connection with electrical power generation, transmission and distribution facilities subject to CPUC General Order 131-D; and

(c) Request for Approval Pursuant to Section 6409. Any requests for approval to replace, collocate, or remove transmission equipment at an existing wireless Base Station or Tower submitted under Section 6409 (47 U.S.C. 1455(a)) shall first be reviewed under Section 5-35.12.

5-35.04 Approvals required.

Wireless Telecommunication Permits shall be subject to review as follows:

(a) Encroachment Telecommunication Permit. The Public Works Director shall have the authority to issue an encroachment permit for a Telecom Facility that is proposed to be located in the ROW on streetlight poles, traffic signals or utility poles when its design and installation is consistent with an Approved Telecommunications Facilities Design ("ATFD"), qualifies as a Small Cell Wireless Facility (see SVMC Section 5-35.07 below) and meets the City's Design Standards, or is subject to a valid master license agreement or other agreement with the City for antennas that do not exceed 35 feet in height. Telecom Facilities that do not conform to an approved ATFD or exceed the

35 foot height limit shall be approved by the Planning Commission as a Planning Commission Telecom Permit, except for SCWFs that may not exceed 50 feet in height, with certain exceptions (see Section 5-35.05(a)(ii)).

(b) Administrative Telecommunication Permit. The Environmental Services Director shall have the authority to issue a Telecom Permit for a wireless Telecom Facility or SCWF that is proposed on private property, or on water tank sites 35 feet in height or less, when its design and installation is consistent with an ATFD, is eligible for approval pursuant to Section 6409 as described in Section 5-35.12 below, qualifies as a SCWF, or modifications (that do not vary significantly in size, aesthetics or other parameters from the original installation) to existing wireless Telecom Facilities at the discretion of the Environmental Services Director.

(c) Planning Commission Telecommunication Permit. All wireless Telecom Facilities that are not eligible for approval of an Encroachment Telecom Permit by the Public Works Director or an Administrative Telecom Permit by the Environmental Services Director based upon an ATFD, modification, or is not in conformance with Section 6409 (see SVMC Section 5-35.12), or does not qualify as a Small Cell Wireless Facility, or is a new Telecom Facility on a water tank site that exceeds thirty-five (35) feet, shall be subject to review and approval by the Planning Commission in accordance with the provisions of this chapter.

(1) When the Planning Commission considers a Telecom Facility it shall also determine if the design of the Facility is eligible for approval as an ATFD. ATFDs shall be approved for facilities that are determined to constitute standardized design (i.e. height, diameter of poles, screening or Camouflaging, antenna placement, etc., as well as design, screening and placement of related equipment) that can thereafter be approved at the staff level. (For example, after approval of an ATFD for a proposed Telecom Facility incorporated into a light pole in the Public ROW, staff may thereafter approve similar proposed Facilities, provided all other findings and requirements of this chapter are satisfied).

(2) ATFDs in the Public ROW shall be kept on file by the Public Works Department, and ATFDs on private property and water tanks shall be kept on file by the Environmental Services Department. ATFDs shall be subject to review by the Planning Commission from time-to-time. Such review shall be to determine whether the ATFD is consistent with currently available designs and technologies, and to assure that wireless Facilities that are eligible for administrative level approval are designed and installed in such a manner as to constitute the Least Intrusive means for such Facilities.

(d) Temporary Telecommunication Permit. A temporary use permit subject to the Environmental Services Director's prior review for Telecom Facilities on private property or water tank sites, and by the Public Works Director for Telecom Facilities in the Public ROW. Approval in accordance with the procedures and standards in Section 5-35.09 below is required for any temporary wireless Telecom Facility, unless deployed in connection with an emergency pursuant to Title 8 Building Codes, Chapter 7 Permit Issuance, Section 8-7.09 Emergency Permits or other lawful emergency authority.

(e) Other Permits and Regulatory Approvals. In addition to any Telecom Permit, administrative permit, or other permit required under this Code, 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 building permits, encroachment permits, electrical permits, plumbing permits and any other permits and/or regulatory approvals issued by other departments or divisions within the city. Furthermore, any permit or approval granted under this chapter 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.

(f) Timing. At the time of adoption of this chapter, litigation is underway regarding certain of the required "shot clocks" or timelines for permit approvals. Per federal law and the FCC, requested permits that are Eligible Facility Requests or SCWFs proposed for installation on preexisting structures may carry a 60 day timeframe/shot clock, provided that an application is submitted and is complete in all respects. Other SCWFs that are not Eligible Facility Requests may carry a 90-day shot clock, and the City must notify the Applicant within 10 days whether an application is "materially incomplete." The City will observe all applicable federal and state timelines with respect to permits requested under this chapter, and will administratively adjust and publish those timelines should court rulings or legislation change those timelines. An ordinance modification to this chapter in due course will be thereafter sought by staff if such timelines are changed.

Notice of "Shot Clock" Expiration. The Applicant is required to provide the Reviewing Authority with written notice of the Applicant's estimate regarding the expiration of any applicable timeframe for review, which the Applicant shall send by secure method (e.g. Certified Mail, Registered Mail, overnight carrier, any one of which shall require a receipt signature), no earlier than thirty (30) nor later than (20) days prior to the Applicant's estimation of the time of shot clock expiration. The Applicant's estimate of the "shot clock" expiration is not necessarily binding on the City.

(g) *Required findings.* The Reviewing Authority shall make all of the following findings when approving Telecom Facilities, including SCWFs (however, g(4) through g(7), below, shall not apply to SCWFs):

(1) Encouraged locations as set forth in Section 5-35.01, are either not available or are not feasible;

(2) The proposed Telecom Facility complies with all applicable development standards described in Title 9, or qualifies for a limited modification pursuant to Title 9, Section 9-52;

(3) The Applicant demonstrated that its proposed wireless Facility will be in full compliance with all applicable FCC rules and regulations for human exposure to RF emissions;

(4) The Applicant demonstrated a good-faith effort to identify and evaluate alternate locations and potentially less-intrusive designs;

(5) The Applicant provided the approval authority with a meaningful comparative analysis that attempts to provide a Least Intrusive design by showing that all less-intrusive alternative locations and designs identified in the administrative record are either technically infeasible or not potentially available;

(6) "Slim Jim" monopoles and J-pole antennas consist of a single element are defined as an end-fed vertical folded dipole (consists of two identical conductive elements such as metal wires or rods), new standard monopoles, or lattice towers shall only be permitted when they are determined to be the only necessary means available to provide service, and based upon findings consistent with subsections (d)(3) and (4) below;

(7) Lack of such a Facility would result in a Significant Gap of coverage; and

(8) To help ensure that the City does not enforce regulations that prohibit or would have the effect of prohibiting the provision of Telecom Facilities or SCWFs or other wireless services ("Non-compliant Facility") and to accommodate any request for a waiver from strict compliance with the SVMC, the Reviewing Authority may, but is not required to, approve an application that does not strictly comply with the SVMC if findings are made as follows:

(a) the Applicant has provided the Reviewing Authority with a reasonable and clearly defined technical service objective to be achieved by a proposed Non-compliant Facility;

(b) the Applicant has provided the Reviewing Authority with a written statement that contains a detailed and fact-specific explanation as to why the proposed Non-compliant Facility cannot be deployed in compliance with the applicable provisions of this chapter and the SVMC;

(c) the Applicant has provided the Reviewing Authority with a meaningful comparative analysis with the factual reasons why all alternative locations and/or designs in the administrative record (whether suggested by the Applicant, the City, public comments or any other source) are not technically feasible or potentially available to reasonably achieve the Applicant's reasonable and clearly defined technical service objective to be achieved by the proposed Non-compliant Facility; and

(d) the Applicant has demonstrated that the proposed location and design is the least non-compliant configuration that shall reasonably achieve the Applicant's reasonable and clearly defined technical service objective to be achieved by the proposed Non-compliant Facility, which includes without limitation an meaningful comparative analysis into multiple smaller or less intrusive Facilities, SCWFs or other wireless services dispersed throughout the intended service area.

(h) *Other Regulations.* All Telecom Facilities and SCWFs are subject to the provisions of this chapter and the following other requirements:

(1) Conditions in any permit or license issued by a local, state, or federal agency, which has jurisdiction over the Telecom Facility or SCWF;

(2) Rules, regulations, and standards of the FCC and the CPUC; easements, covenants, conditions, or restrictions on the underlying real property;

(3) The California Building Code, California Fire Code and portions of the Uniform Fire Code, California Mechanical Code, and California Electrical Code, as amended by state or local law or regulation.

(i) *Regulations not in conflict or preempted.* All Telecom Facilities within the City shall comply with all applicable Design Standards, with the General Plan, with any applicable Specific Plan, and with the SVMC, unless specifically exempted by the provisions of this chapter.

(j) *Setbacks and Minimum Traversable Paths.* Setbacks shall be measured from the part of the Telecom Facility closest to the applicable lot line or structure. The setbacks and minimum traversable path requirements applicable in the Public ROW shall be determined by the Public Works Director based upon the safety needs of the location in order to assure Americans with Disabilities Act (ADA) access, traffic sight distance and related considerations.

(k) *Maintenance.* The Telecom Operator shall maintain the Telecom Facility in a manner consistent with the original approval of the Facility.

(l) *Non-conformities.* A proposed Telecom Facility shall not create any new or increased non-conformities as defined in the Simi Valley Municipal Code, such as, but not limited to, a reduction in and/or elimination of, parking, setbacks, landscaping or loading zones.

(m) *Technical consultants.* At its discretion, the City may engage outside technical consultants to evaluate and/or verify the information used to support the applicant's showing(s) in its application or with testimony in City proceedings, and where applicable pursuant to this section. The reasonable cost for the consultants shall be borne by the applicant. An advance deposit for the estimated cost of the fees for the outside consultants shall be promptly paid to the City by the applicant upon request by the City. Failure to pay such deposit shall render any pending application incomplete until paid. After the consultants work has been completed, if the amount of the deposit was insufficient to cover the cost of the consultants' fees the applicant shall immediately reimburse the City for any shortfall. If the cost of the work is less than the estimate the amount over shall promptly be repaid to the applicant at the conclusion of the application proceedings.

5-35.05 - Height, location, available technology and colocation.

(a) Height.

(1) *Maximum height.* The maximum height for Telecom Facilities and Small Cell Wireless Facilities is as follows:

(i) Telecom Facilities (Other than SCWFs). Except at water tank sites, thirty-five (35′) feet for antennas on streetlights, traffic control standards, utility distribution poles, or other similar structures within the Public ROW (total height including pole and antenna). Antennas exceeding thirty-five (35′) feet in height at water tank sites may be approved by the Planning Commission provided they are found to be Camouflaged, or otherwise screened from view. Antennas may be placed on existing utility poles that exceed thirty-five (35′) feet, where the purpose of the existing utility pole is only to carry electricity, provided that the top of the antenna shall not exceed six (6′) feet above the top of the pole, and shall not exceed the height of the pole where primary or secondary electrical lines are attached to the pole. For existing legal nonconforming structures that exceed maximum building heights, Telecom Facilities may be installed so long as the addition does not increase the overall height and the project complies with this chapter in all other respects. For all other Telecom Facilities, the maximum height of antennas shall be the upper maximum building height allowed in the Simi Valley Municipal Code.

(ii) Small Cell Wireless Facilities. SCWFs must meet the following mounting conditions:

a. Are mounted on structures 50 feet or less in height including their antennas; or
b. Are mounted on structures no more than 10 percent taller than other adjacent structures; or
c. Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.

(2) *Over-height antennas.* The Reviewing Authority may approve antennas up to fifteen (15') feet above the preceding maximum building height limitations provided that it makes findings i, ii, iii, and iv that are required for Special Approvals pursuant to subsection (b)(3) of this section.

(3) "*Camouflaged*" telecommunication installations within structures. Camouflaged facilities may be installed within structures that are permitted to exceed the above stated height limits by a Conditional Use Permit.

(b) Location (except for b(1) through b(3), which do not apply to SCWFs).

(1) Location or design categories and location priorities. When reviewing proposed locations for Telecom Facilities the Reviewing Authority shall utilize the following priority order:

(i) VCWWD water tank sites;
(ii) Wall, roof, or existing colocation structure or site;
(iii) Existing pole, light standard, or utility tower;
(iv) Proposed pole, light standard, or utility tower;
(v) Commercial sign or architectural feature;
(vi) New or existing Camouflaged structure other than a false tree;
(vii) New false tree;
(viii) New "Slim Jim" monopole (i.e., a vertical antenna with no antenna elements other than the pole itself);
(ix) New standard monopole with attached antenna elements;
(x) New lattice tower.

(2) *Locations requiring special approval.* Telecom facilities are prohibited in the following locations unless given special approval ("Special Approval") by the Reviewing Authority under the provisions of this chapter, after making all of the findings contained in subsection (b)(3) below:

(i) On common area lots, other non-residential lots, and Public ROW within residential districts;
(ii) Within any required setback established in the Simi Valley Municipal Code;

(iii) On multifamily structures;
(iv) On Public ROW where any portion of the proposed Telecom Facility lies adjacent to the property line or within 250 feet of a residential structure.

(3) *Special Approval findings.* In making the following Special Approval findings the Reviewing Authority shall determine that the applicant has demonstrated that:

(i) There are no other feasible locations that meet the coverage or data capacity needs of the applicant;
(ii) Establishment of the facility at the requested location is necessary to provide service;
(iii) Lack of such a facility would result in a Significant Gap of coverage or data capacity; and
(iv) The proposed site is the Least Intrusive location which can close that Gap.
(v) If within 250 feet of a residential structure, the wireless facility is as far as possible from the residential structure.

(4) *Prohibited locations.* Telecom Facilities are prohibited on undeveloped residential lots or residential lots containing single-family residences.

(c) *Available technology.* All Telecom Facilities approved under this chapter shall utilize the most efficient and diminutive available technology in order to minimize the number of facilities and reduce their visual impact.

(d) *Colocation requirements.*

(1) *Colocation required.* To limit the adverse visual effects of a proliferation of telecom sites in the City, a new Telecom Facility proposed within one thousand (1,000′) feet of an existing Facility shall be required to collocate on the same site as the existing Facility unless the Reviewing Authority determines, based on evidence submitted by the applicant, that such colocation is not feasible. For SCWFs, the relevant collocation distance to be utilized is 250 feet.

(2) *Collocation limitations.* Except at water tank sites, no more than three (3) Telecom Facilities may collocate at a single site unless the Reviewing Authority finds that:

(i) The net visual effect of locating an additional Facility at a collocation site will be less than establishing a new location; or

(ii) Based on evidence submitted by the applicant, there is no available feasible alternate location for a proposed new Facility.

(3) *Future collocation.* In approving a Telecom Facility, the Reviewing Authority may impose a Condition of Approval allowing future collocation of Telecom Facilities by other carriers at the same site, subject to numerical limits it deems to be appropriate that are necessary in order to be consistent with the required finding that the design be the Least Intrusive.

(4) *Least intrusive location standard.* The Reviewing Authority must find that the proposed site is the Least Intrusive location which can close a Significant Gap in coverage.

5-35.06 - Design standards.

(a) *General criteria.* In addition to the other design standards of this chapter (including, if applicable, Section 5-35.07 for Small Cell Wireless Facilities), all of the following criteria shall be applied by the Reviewing Authority in connection with the processing of any Telecommunication Permit.

(1) Roof-mounted antennas shall be screened from view from adjacent properties and the Public ROW. The screening may include parapets, walls, or similar architectural elements provided that they are designed, colored and texturized to integrate with the existing architecture of the building.

(2) When located on a building facade, building-mounted antennas shall be recessed and covered with an RF-transparent and visually opaque material of a color and texture to match the existing building, or effectively disguised as may be reasonably determined by the Reviewing Authority.

(3) Telecom Facilities and SCWFs and associated equipment located within the W or WP (Water Storage Facilities) zone districts shall either be located immediately adjacent to a water tank, or if located apart from a water tank, shall use a design that conceals the Telecom Facility and/or SCWF and associated equipment, to minimize the visual impact of the structures on the immediate natural environment.

(4) For Telecom Facilities and SCWFs located away from water tanks in the W or WP zone districts, the following standards shall apply:

(i) No more than one antenna panel shall be installed per supporting pole, and no pole shall exceed a four (4") inch diameter, except where required to internally contain all coaxial and other cables or as required for structural integrity as contained in a report from a Structural Engineer.

(ii) For all poles and antennas that do not qualify as small cell wireless facilities (see Section 5-35.07), maximum overall height of the antenna and the supporting pole shall be ten (10′) feet, measured from the lowest adjacent grade. The maximum width of antenna panels shall be twelve (12″) inches.

(iii) Antenna structures (antenna panel and supporting pole) shall be painted camouflage, consistent with the vegetation or structure immediately surrounding each antenna structure.

(iv) For antennas that do not qualify as SCWFs (see Section 5-35.07), a maximum of twenty-four (24) antenna structures shall be approved with the initial Telecommunication Permit to install antenna structures on a site zoned WP, and no more than twelve (12) antenna structures shall be approved with each subsequent request to modify the initial Telecommunication Permit, up to a maximum of sixty (60) antenna structures on any single site zoned WP. Antenna structures shall be located in groups of four (4) or fewer, with a minimum of twenty-five (25′) feet of open space between antenna structure groups, unless the Reviewing Authority determines, based on evidence submitted by the applicant, that such spacing is not feasible.

(5) The use of compatible materials such as wood, brick, or stucco shall be required for accessory equipment structures/buildings, which shall be designed to architecturally blend with the exterior of structures within the area.

(6) For ground-mounted installations, support equipment may be required to be screened in a security enclosure approved by the Reviewing Authority. Such screened security enclosures may use bricks or masonry or may consist of an alternate enclosure design approved by the Reviewing Authority. In general, the screening enclosure shall be architecturally compatible with surrounding materials and colors. Chain link, barbed wire and razor wire fencing shall be prohibited. Buffer landscaping may also be required if the Reviewing Authority determines that additional screening is necessary due to the location of the site and that irrigation water is available.

(7) Telecom Facilities and or support equipment proposed to be located in the Public ROW shall comply with the provisions of the Simi Valley Municipal Code. Small Cell Wireless Facilities shall also comply with standards in Section 5-35.07 below. Telecommunications support equipment located in the way Public ROW shall be placed within flush-to-grade enclosures utilizing flush-to-grade venting systems except in those cases where the Reviewing Authority determines that it is not technically feasible to do so, in which case proper screening, as approved by the Reviewing Authority, shall be required. In addition, ground-mounted equipment in the Public

ROW shall comply with all requirements of the Americans with Disabilities Act (ADA).

(8) Telecom Facilities, including, but not limited to, antennas, support structures, equipment structures, and related structures and equipment shall be designed, constructed, and maintained in accordance with the Uniform Building, Mechanical, Electrical, and other applicable codes, laws, and regulations, as enforced by the Division of Building and Safety, to assure that all such facilities will maintain their structural integrity despite the effects of the elements.

(b) *Night lighting.* Telecom Facilities shall not be lighted except:

(1) For City-approved security lighting at the lowest intensity necessary for that purpose; and

(2) As necessary for the illumination of the flag of the United States, the flag of the State of California, or other similar flags, when such flag(s) are attached to the telecom facility. Such lighting shall be shielded so that direct illumination does not shine on nearby properties. The Reviewing Authority shall consult with the Police Department regarding proposed security lighting for telecom facilities on a case-by-case basis.

(c) *Signs and advertising.* No advertising signage or identifying logos shall be displayed on any Telecom Facility except for small identification, address, warning, and similar information plates approved by the Reviewing Authority.

(d) *Noise.* Telecom Facilities and all accessory equipment and transmission equipment must comply with all noise regulations, and shall not exceed, either individually or cumulatively, the applicable ambient noise limit in the subject zoning district. The Reviewing Authority may require the Applicant to incorporate appropriate noise-baffling materials and/or strategies whenever necessary to avoid any ambient noise from equipment reasonably likely to exceed the applicable limit.

(e) *Site Security Measures.* Telecom 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 a decorative masonry wall rather than within a fence. The Reviewing Authority may require additional concealment elements as the Reviewing Authority finds necessary to blend the security measures and other improvements into the natural and/or built environment. The Reviewing Authority shall not approve barbed wire, razor wire, electrified fences or any similar security measures visible to the public.

(f) *Backup Power Sources.* The Reviewing Authority may approve permanent backup power sources and/or generators on a case-by-case basis. The City strongly discourages backup power sources mounted on the ground or on poles within the Public ROW. The Reviewing Authority shall not approve any diesel generators or other similarly noisy or noxious generators, in or within 250 feet from any residence; except for permanently installed back-up generators only used during area-wide loss of power and routine testing, and when found to be in compliance with the City's Noise Ordinances and General Plan Noise Element objectives, ; at which a smaller setback may be established; and provided, however, the Reviewing Authority may approve sockets or other connections used for temporary backup generators.

(g) *Collocation.* All new Telecom Operators shall collocate with other existing and/or planned Telecom Facilities whenever feasible. Operators are encouraged to collocate with other existing facilities such as water tanks, light standards (SCWFs) and other utility structures where the collocation is found to minimize the overall visual impact of the new Facility. Collocation of SCWFs on light standards/poles, traffic lights, or other structures located within the Public ROW shall be subject to the requirements of Section 5-35.07.

5-35.07 – Small Cell Wireless Facilities or SCWFs.

This section establishes procedural requirements and standards to regulate the streamlined review of small wireless communications facilities ("SCWFs") within the Public ROW or on public and private property to minimize the potential safety and aesthetic impacts on neighboring property owners and the community, and to comply with applicable state and federal laws.

(a) A SCWF as defined by the FCC shall meet the following requirements:

(1) Meet the following mounting conditions:

a. Are mounted on structures 50 feet or less in height including their antennas or
b. Are mounted on structures no more than 10 percent taller than other adjacent structures, or
c. Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.

(b) SCWFs shall be processed in the following manner:

(1) Review authority in the Public ROW:

(i) Encroachment Telecommunications Permit approved by the Public Works Director

(2) Review authority on private or public property, or water tank sites:

(i) Administrative Telecommunications Permit approved by the Environmental Services Director

(3) Application submittal requirements for SCWFs shall be the same as required for other Telecom Facilities.

(c) Requirements for batched permits:

(1) Simultaneous submittal of no more than five (5) applications for SCWFs; or

(2) A single consolidated application covering no more than five (5) SCWF locations, provided that the proposed Facilities include the following:

(i) Are on the same type of structure;
(ii) Are within the same linear alignment; and
(ii) Use the same equipment and are of similar design.

(d) Design Review Requirements. There are preferred Design Standards, below in subsections (d)(1) and (d)(2), for SCWFs, and SCWFs shall also comply with the Design Standards in SVMC Section 5-35.06. In addition, the Environmental Services Director and/or Public Works Director may approve and promulgate additional and further SCWFs Design Standards in a separate document from time to time, as regulatory, technological and aesthetic best practices may allow. Once any particular SCWF Design Standards by the Environmental Services Director is approved by said Director, the City will publish such SCWF Design Standards and make them available to the public and any Applicant, without further approval from the City Council. Additional designs proposed by Applicants may be approved by the Public Works Director (public property) or Environmental Services Director (private property) on a case by case basis, provided all SVMC procedures as outlined in this chapter have been followed.

(1) Collocation on an existing structure is encouraged if in compliance with all aesthetic and structural requirements;

(2) Installation on street lights, traffic signals, or other utility poles within the ROW:

(i) Installation on an existing or new pole shall consist of antenna and radio relay units (rru) only.

(ii) Antennas may be concealed in a canister located on top of the streetlight pole, traffic signal pole, utility pole, or new monopole if the following design criteria are met:

a. The canister shall not exceed the width or diameter of the existing pole by more than 6 inches.
b. Antennas shall be water-tight, and shall not alter the wind loading on the pole.
c. Associated cables and wires shall be concealed and flush-mounted to the pole. All equipment on each pole shall be housed in a suitable enclosure to conceal components and cabling from public view. The enclosure shall be coated in a material and color matching that of the pole.
d. Other associated equipment shall be installed underground, unless not technically feasible.

(iii) Street light poles that support SCWFs shall be designed per the City's SCWF Design Standards to seamlessly fit with the existing lighting system.

a. A plan for a new or replacement pole shall be submitted for review and approval that shows the existing and proposed streetlight and electrical infrastructure and designed in such a manner that a uniform light distribution is provided in the subject area.
b. Once approved and installed, new streetlight poles and other associated SCWF infrastructure will be the property of the City, unless rejected by the City.
c. All electrical costs associated with a SCWF on a street light pole or new pole shall be borne by the applicant.

(iv) SCWFs located on private property on buildings, rooftops, and other areas and shall be camouflaged in same manner as required for other wireless facilities and shall comply with the design standards in Section 5-35.06.

5-35.08 – Distributed antenna system (DAS).

A distributed antenna system, or DAS, is a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure. A distributed antenna system may be

deployed indoors (an iDAS) or outdoors (an oDAS). Applications for DAS Telecom Facilities shall be submitted as a single application and will have a single master license agreement if located on public property or in the ROW. Each individual location within the system shall be processed and considered for approval separately. Permitting fees will be applied to each site. Each location will be evaluated and must comply with the installation Design Standards for the type of site as defined by this chapter.

5-35.09 – Temporary Telecom Facilities.

(a) General Requirements for Temporary Telecom Facilities.

(1) Applications. All applications for a Temporary Telecom Facility (or "TTF") Permit shall be accompanied by the minimum documentation required by Section 5-35.10 below.

(2) Administrative Review for TTFs. After the Environmental Services Director receives a duly filed application for a TTF Permit, the Director shall review the application for completeness. After the Director deems the application complete, within 30-days the Director shall review the application for conformance with the required findings in subsection (3) of this section 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 TTFs. The Environmental Services Director may approve or conditionally approve a TTF Permit only when the Director finds:

(i) The proposed TTF will not exceed 50 feet in overall height aboveground level;

(ii) The proposed TTF complies with all setback requirements applicable to the proposed location;

(iii) The proposed TTF will not involve any excavation or ground disturbance;

(iv) The proposed TTF will be compliant with all generally applicable public health and safety laws and regulations, which include without limitation maximum permissible exposure limits for human exposure to RF emissions established by the FCC;

(v) The proposed TTF will not violate any noise limits applicable to the proposed location;

(vi) The proposed TTF 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;

(vii) The proposed TTF will be removed within 30 days after the Director grants the TTF Permit, or such longer time as the Director finds reasonably related to the applicant's need or purpose for the TTF;

the Director may require an appropriate bond to ensure removal, to the extent allowed by law;

(viii) The applicant has not been denied an approval for any permanent Telecom Facility in substantially the same location within the previous 365 days.

5-35.10 – Wireless Telecom Facilities application submittal requirements.

(a) *Submission requirements.* Applications for Telecom Facilities shall be accompanied by the following documentation as deemed necessary and in such form as required by the Environmental Services Director and Public Works Director and as may described in the Wireless Telecommunications Permit Application Packet:

(1) Project Description Summary
(2) Project Characteristics

(i) Project/Site Operational Characteristics and Features
(ii) Certificate of Public Convenience and Need
(iii) FCC License/FAA Compliance/RF Safety Disclosure Information
(iv) Project Purpose
(v) Build-Out Requirements
(vi) Radio Frequency (RF) Coverage Maps
(vii) Project Photographs and Photosimulations
(viii) Alternative Candidate Sites
(ix) Structural Safety
(x) Additional Supporting Information from the Applicant
(xi) Draft Telecommunications Permit Review Findings
(xii) Existing Physical Features and Development on and Surrounding the Project Site
(xiii) Cultural Resources
(xiv) Biological Resources
(xv) Mature/Protected Trees
(xvi) Restrictions/Covenants
(xvii) Water Supply
(xviii) Sewage Disposal
(xix) Floodplain Management
(xx) Geotechnical/Grading
(xxi) Drainage/Water Quality
(xxii) Hazardous Materials/Waste and Fire Protection
(xxiii) Utilities and Screening
(xxiv) Lighting
(xxv) For proposed antenna installations on new monopoles, utility poles or other structures subject to meaningful or significant wind loads, Wind Load calculations.

(b) The decision-making and appeal process for Telecom Permit applications shall be as follows:

Type of Approval	Review Authority			
	Public Works Director	Environmental Services Director	Planning Commission	City Council
Encroachment Permit	Decision (1)		Appeal	Appeal
Administrative Telecom Permit		Decision (1)	Appeal	Appeal
Planning Commission Telecom Permit			Decision	Appeal
Temporary Wireless Telecom Permit		Decision	Appeal	Appeal

(1) Public Works Director and Environmental Services Director decisions on Small Cell Wireless Facilities and Telecom Facilities subject to Section 6409(a) (see SVMC Section 5-35.12) are not appealable to the Planning Commission or City Council, per federal law.

(c) Telecom Permits shall follow procedures contained within Chapter 50 of Title 9 of the SVMC "Application Filing and Processing" Sections 9-50.040, 9-50-050, 9-50.060, and 9-50.070.

5-35.11 - Radio frequency compliance and RF emissions safety report; post-installation certification.

The City shall only approve Telecom Facilities, SCWFs and Eligible Facilities Request that are compliant in all respects with the latest updated safety requirements for RF emissions to the maximum extent allowed under federal law, state law, FCC regulations and CPUC regulations. In addition to the RF safety information and analysis required in an application for a Telecom Permit set forth in SVMC Section 5-35.10(a)(2), at its discretion, the City may request an updated diagram in a format acceptable to the Environmental Services Director or Public Works Director of any Telecom Facility, SCWF or equipment related to an EFR located in the City and/or may request a certified report be provided or the City may engage an outside technical consultant to evaluate and/or verify compliance with FCC radio frequency (RF) and radiation emissions requirements. Fees for the outside consultant shall be promptly paid or reimbursed by the Applicant or Operator.

Post-Installation Certification. Within 30 days of commencing operation of a Telecom Facility, SCWF or Eligible Facilities Request, the Applicant shall provide to the Reviewing Authority a post-installation certification confirming, under penalty of perjury, that the actual RF emissions from the installed equipment do not exceed that previously

disclosed to the City in the application process. Further, every five (5) years thereafter, a report describing the equipment and measured RF emissions shall be submitted to the Reviewing Authority.

5-35.12 – Section 6409(a) eligible Telecom Facilities (Collocation, etc.).

(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. Section 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 calendar 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. Section 332, applies to only "personal wireless service facilities" (e.g., cellular telephone towers and equipment), Section 6409 applies to all "wireless" facilities licensed or authorized by the FCC (e.g., cellular, Wi-Fi, satellite, microwave backhaul, etc.).

(b) *Definitions.* The following abbreviations, phrases, terms, and words used in this section are relevant to Section 6409(a) Facilities in addition to the definitions in SVMC Section 5-35.02 above:

(1) *"Base Station"* means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(1), 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. Section 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. Sections 1.40001(b)(1)(i) and (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.

(2) *"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 Section 1001 *et seq*.

(3) *"CPUC"* means the California Public Utilities Commission established in the California Constitution, Article XII, Section 5, or its duly appointed successor agency.

(4) "*Eligible Facilities Request*" or "*EFR* "means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(3), 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: (1) Collocation of new Transmission Equipment; (2) removal of Transmission Equipment; or (3) replacement of Transmission Equipment.

(5) "*Eligible Support Structure*" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b) (4), 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 definition.

(6) "*Existing"* means the same as defined by the FCC in 47 C.F.R. Section 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.

(7) "*Site*" is defined in SVMC Section 5-35.02.

(8) "*Substantial Change*" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(7), which defines that term differently based on the particular wireless facility type (Tower or Base Station) and location (in or outside the Public ROW). For clarity, this definition organizes the FCC's criteria and thresholds for a substantial change according to the wireless facility type and location.

(i) For towers outside the Public ROW, a substantial change occurs when:

a. The proposed collocation or modification increases the overall height more than 10 percent 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 Tower or the width of the 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 Tower, including any access or utility easements currently related to the site.

(ii) For towers in the Public ROW and for all Base Stations, a substantial change occurs when:

a. The proposed collocation or modification increases the overall height more than 10 percent or 10 feet (whichever is greater); or

b. The proposed collocation or modification increases the width more than six feet from the edge of the 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 10 percent 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.

(iii) 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 Reviewing Authority, or

b. The proposed collocation or modification violates a prior condition of approval; provided however, that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a Substantial Change described in this definition.

(9) "Tower" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(9), 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, monotrees and Lattice Towers.

(10) "Transmission Equipment" means the same as defined by the FCC in 47 C.F.R. Section 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.

(c) *Applicability*. This chapter applies to all requests for approval to collocate, replace or remove Transmission Equipment at an existing Tower or Base Station submitted pursuant to Section 6409(a).

(d) *Application Review*. Under federal law, the City must approve or deny an application for an Eligible Facilities Request, together with any other City permits required for a proposed wireless facility modification, within sixty (60) days after the applicant submits the application for a wireless facility minor modification permit, unless tolled due to issuance of any notice of incomplete filing or by mutual agreement between the City and the applicant. Under federal law, failure to act on a wireless facility minor modification permit application within the sixty (60) day review period, excluding tolling period, will result in the permit being deemed granted by operation of law.

(e) *Prior Permit Approvals.* The following prior permit approvals are required prior to qualifying for approval of an Eligible Facilities Request under Section 6409:

(1) Section 6409 Approval. Any request to collocate replace or remove Transmission Equipment at an Existing Tower or Base Station submitted with a written request for approval under Section 6409 shall require an

amendment to the underlying Telecom Permit for the Tower or Base Station subject to the Reviewing Authority's approval, conditional approval or denial without prejudice.

(2) Other Permits and Regulatory Approvals. No collocation or modification approved pursuant to this chapter 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 include without limitation building permits, encroachment permits, electrical permits and any other permits and/or regulatory approvals issued by other departments or divisions within the City. Furthermore, any Section 6409 approval granted under this chapter shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or regulatory approvals.

(f) *Required Findings for Approval.* The Reviewing Authority may approve or conditionally approve any application for a 6409 EFR subject to the following findings:

(1) Involves collocation, removal or replacement of Transmission Equipment on an Existing Tower or Base Station; and

(2) Does not substantially change the physical dimensions of the Existing Tower or Base Station.

(g) *Criteria for Denial Without Prejudice.* The Reviewing Authority may deny without prejudice any application for a Section 6409 EFR approval if the Reviewing Authority finds that the proposed project:

(1) Does not meet the finding required in subsection (e) of this section;

(2) Involves replacement for the entire support structure; or

(3) Violates any legally enforceable law, regulation, rule, standard or permit condition reasonably related to public health and safety, which includes without limitation laws, regulations, rules, standards or permit conditions related to building and electric codes, aviation safety and flood control.

5-35.13 – Fees.

The City may continue to charge the reasonable and necessary cost-based fees, or in the case of City Property, market-based or other basis fees or rent related thereto, that the City has previously adopted and collected at the time of adoption of this chapter, to the extent permitted by law. The City Council at any time may approve by resolution additions or changes to the municipal fee schedule that establishes cost-based fees for permits, consulting costs, inspections, enforcement, appeals, amendments, noticing, informational materials, penalties, copies and other such costs, undertakings and items

as required by this chapter. Notwithstanding any existing cost-based fee study, if no other City fee or cost recovery method is applicable, the City may charge any minimum fees established and allowed by state or federal law or regulation.

For City Property, the City reserves the right, on an equal and non-discriminatory basis or otherwise as permitted by law, to either provide or not provide access to such City Property for Applicants, and to charge any fee that is permitted by state or federal law at market-based rates or on any other basis that should be determined by the City at the City's sole discretion. The City is under no obligation to grant a request for a permit involving City Property for which the Applicant has not reached a voluntary agreement with the City for the use of such City Property.

5-35.14 - Right to review or revoke permit; changes in law.

(a) *Changed circumstance.* Any Telecommunication Permit approved pursuant to this chapter shall be granted by the City with the reservation of the right and jurisdiction to review and modify the Telecom Permit (including the conditions of approval) based on changed circumstances. Changed circumstances include, the following in relation to the Telecom Facility and its specifications in the approved application and/or conditions of approval:

(1) An increase in the height or size of any part of the facility;

(2) Additional impairment of the views from surrounding properties;

(3) Increase in size or change in the shape of the antenna or supporting structure;

(4) A change in the facility's color or materials;

(5) A substantial change in location on the site;

(6) An effective increase in signal output above the Uncontrolled/General Population Maximum Permissible Exposure (MPE) limits imposed by the radio frequency emissions guidelines of the FCC.

The Operator shall notify the Environmental Services Director or Public Works Director of any proposal to cause one or more of the changed circumstances shown in subsections (a)(1) through (6) above. Any changed circumstance shall require the operator to apply for a modification of the original Telecommunication Permit. Before implementing any changed circumstance, the operator must obtain a modified Telecommunication Permit and any related building or other permits required by the City.

(b) *Additional right to revoke or modify permit.* The reservation of right to review any Telecommunication Permit granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit.

After due notice to the telecom operator and the telecom operator's failure to cure the violations after thirty (30) days have expired, the original Reviewing Authority may revoke any telecom permit upon finding that the facility or the operator has violated any law regulating the telecom facility or has failed to comply with the requirements of this chapter, the Telecommunication Permit, any applicable agreement, or any condition of approval. Upon such revocation, the Reviewing Authority may require removal of the facility at the permittee's sole expense.

(c) *Changes in law.* At the time of the adoption of this ordinance, several legal challenges to current law and regulations ("Current Laws"), including but not limited to challenges to the FCC's recent "Declaratory Ruling and Third Report and Order," regarding SCWFs which was published on September 27, 2018 (FCC No. 18-133), are taking place. Should any challenge or update to Current Laws alter those laws in favor of the City's ability to regulate Telecom Facilities or SCWFs, or collect fees, or otherwise alter the City's legal right to regulate any part of the subject matter of this chapter, those Current Laws no longer in force and effect will not be enforced by City at the City's discretion, and any Telecom Permit that was granted under any invalid law may be amended to conform to the then-current law, at the City's discretion. To the extent an SCWF becomes further reviewable by City as a Planning Commission Telecom Permit, the City may enforce those provisions of this chapter which are no longer prohibited because of a successful challenge or update to Current Laws. Any such change to the Telecommunications procedures required by this chapter as a result of changes in law will be promulgated and published by the appropriate Reviewing Authority, in consultation with the City Attorney, and further re-codified by ordinance in this chapter as practicable.

5-35.15 - Appeals.

Decisions of any Reviewing Authority made pursuant to this chapter may be appealed to the next highest Reviewing Authority (i.e., Environmental Services Director or Public Works Director decisions may be appealed to the Planning Commission, and Planning Commission decisions may be appealed to the City Council.) Appeals shall be processed in accordance with the procedures contained in Chapter 9-76 of Title 9 of this Code, except that Appeals on Telecom Permits must be filed within 7 days. Per federal law, decisions regarding SCWF Permits and Eligible Facilities Requests under Section 6409 (under SVMC Section 5-35.12) may not be appealed but are final once they have been decided by the appropriate Director.

5-35.16 - Emergency phone list.

In regard to each permit issued, operator/permittee shall provide the Environmental Services Director and Public Works Director with emergency contact information to include the name and phone number of the twenty-four (24) hour emergency contact.

5-35.17 – Removal of telecom facilities or SCWFs.

(a) *Discontinued use.* Any operator who intends to abandon or discontinue use of a Telecom Facility or SCWF, whether located on public property, private property or the Public ROW must notify the Environmental Services Director or Public Works Director by certified mail no less than thirty (30) days prior to such action. The operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable time as may be approved by the Environmental Services Director or Public Works Director, within which to complete one of the following actions:

(1) Reactivate use of the Telecom Facility or SCWF;

(2) Transfer the rights to use the Telecom Facility or SCWF to another operator and the operator immediately commences use; or

(3) Remove the Telecom Facility or SCWF and restore the site at the permittee's sole expense.

(b) *Abandonment.* Any Telecom Facility or SCWF that is not operated for a continuous period of 180 days or whose Operator did not remove the Telecom Facility or SCWF in accordance with subsection (a) shall be deemed abandoned. Upon a finding of abandonment, the City shall provide notice to the telecom carrier last known to use such facility and, if applicable, the owner of the affected real property, providing thirty (30) days from the date of the notice within which to complete one of the following actions:

(1) Reactivate use of the Telecom Facility or SCWF;

(2) Transfer the rights to use the Telecom Facility or SCWF to another operator; or

(3) Remove the Telecom Facility or SCWF and restore the site at the permittee's sole expense.

(c) *Removal by City.*

(1) The City may remove an abandoned facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.

(2) If the City removes the Telecom Facility or SCWF, the City may, but shall not be required to, store the removed facility or any part thereof. The owner of the premises upon which the abandoned facility was located and all prior operators of the facility shall be jointly and severally liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefor is made. In addition, the City Council, at its option, may utilize any financial security required in

conjunction with granting the Telecommunication Permit as reimbursement for such costs. Also, in lieu of storing the removed facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

(d) *City lien on property.* Until the cost of removal, repair, restoration and storage is paid in full, a lien shall be placed on the abandoned personal property and any real property on which the facility was located for the full amount of the cost of removal, repair, restoration and storage. The City shall cause the lien to be recorded with the Ventura County Clerk Recorder.

5-35.18 - Exemption for City facilities.

Facilities installed by or operated for the City at the direction of the City or its contractor shall be exempt from this chapter.

5-35.19 – Penalties.

It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. Any person, firm, partnership, or corporation violating any provision of this chapter or failing to comply with any of its requirements will be deemed guilty of a misdemeanor or infraction at the discretion of the City Attorney and upon conviction thereof will be punished by fine not exceeding $1,000 Dollars or by imprisonment not exceeding six (6) months, or by both such fine and imprisonment. Each such person, firm, partnership, or corporation will be deemed guilty of a separate offense for each and every day or any portion thereof during which any violation of any of the provisions of this chapter is committed, continued or permitted by such person, firm, partnership, or corporation, and will be deemed punishable therefor as provided in this chapter.