

Chapter 12.14 Telecommunications Facilities

Article I. General Provisions

12.14.010 Purposes.

A. The purposes of this chapter include: promoting the health, safety and general welfare of the residents and visitors of the City of Sacramento; establishing reasonable and uniform standards and procedures for the deployment, construction, installation, collocation, modification, operation, relocation, and removal within the public right-of-way, of personal wireless service facilities, consistent with and to the extent permitted under Federal and California State law; retaining the aesthetic character of the City; and ensuring that residents, visitors, businesses, and government services in the City have reliable access to state-of-the-art wireless telecommunications networks.

B. This chapter is not intended to, and shall not be interpreted to:

1. Prohibit or effectively prohibit any telecommunications provider's ability to provide personal wireless services;
2. Prohibit or effectively prohibit any telecommunications 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 based on environmental or health effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions;
5. Prohibit any co-location or modification that the City does not have discretion to deny under federal or state law; or
6. Otherwise conflict with any applicable federal or state law or regulation

12.14.020 Definitions.

As used in this chapter, the following terms, phrases, and words have the following meanings:

"Accessory Equipment" means equipment serving or being used in conjunction with antennas that have been established for the purpose of providing personal wireless services up to the point of connection with a larger fiber optic or power network. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, wires, conduits, equipment buildings, cabinets, storage sheds, shelters, vaults, or other structures.

"Antenna" means a device used to transmit or receive radio or electromagnetic waves for the provision of personal wireless services and does not include broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or

household purposes.

“Applicant” means an entity that possesses the appropriate legal authority to construct, install, modify, collocate, relocate, or otherwise deploy personal wireless service facilities in the public right-of-way.

“Base Station” has the same meaning as it is defined in 47 CFR section 1.40001(b)(1).

“City-owned property” means real property owned, rented or leased by the city, or property the city has the right to use or occupy by virtue of an easement, right-of-way, or other similar interest in property, including improvements, personal property, fixtures, or equipment thereon; provided, however, that the provisions of this section do not apply to the public right-of-way as defined below. City-owned property also includes city lighting or other poles or similar equipment, outside the public right-of-way.

“Co-location” means the location by the same or different telecommunication providers of telecommunication facilities together in the same location or on the same tower, pole, or other structure.

“Macro-cell” means equipment for sending or receiving radio signals over a longer-range, including telecommunications towers, transmitters, distributed-antenna systems or other communications equipment.

“Personal wireless services” has the same meaning as it is defined in 47 U.S. Code 332(c)(7)(C).

“Public right-of-way” means any public street, alley, sidewalk, or parkway, and the space on, above, or below it, that is owned or granted by easement, operated, or controlled by the City, including improvements, fixtures, or equipment thereon, such as city lighting or other poles or similar equipment.

“Public works director” means the public works director or designee.

“Section 6409(a)” means section 6409(a) of the Middle-Class Tax Relief and Job Creation Act, Pub. L. No. 112- 96, 126 Stat. 156 (Feb. 22, 2012), codified as 47 USC section 1455(a) and implemented pursuant to 47 CFR section 1.40001.

“Site” has the same meaning as it is defined in 47 CFR section 1.40001(b)(6).

“Small cell” means the low-powered cellular equipment for sending or receiving signals over a shorter range, including antennas and other communications equipment to support those antennas, installed on city-owned property.

“Standards and guidelines” means the Small Cell Design and Deployment Standards adopted by the public works director and published on the city’s website. The standards and guidelines may include any necessary applications or other forms.

“Substantial change” has the same meaning as it is defined in 47 CFR section

1.40001(b)(7).

“Telecommunications facilities” means macro-cell facilities and small cell facilities designed for the provision of cellular telephone facilities and other wireless services, including, but not limited to, transmitters, towers and other communications equipment, including equipment that operates on unlicensed frequencies and FCC-approved frequencies in the bands authorized for commercial wireless communication services by the Federal Communications Commission (FCC) pursuant to an FCC license.

“Telecommunications provider” means a provider of cellular telephone or other personal wireless services.

“Tower” has the same meaning as it is defined in 47 CFR section 1.40001(b)(9).

“Transmission equipment” has the same meaning as it is defined in 47 CFR section 1.40001(b)(8).

“Unlicensed wireless service” has the same meaning as it is defined in 47 USC section 332(c)(7)(C)(iii).

“Utility relocation” means any required move or relocation of an existing installation or equipment owned by any provider of utility or utility-related services, whether such provider is a private or public entity, including, but not limited to, the city, where such move or relocation is necessitated by installation, improvement, renovation or repair of telecommunications facilities installed on city-owned property.

“Utility relocation costs” means any actually incurred cost or expense associated with a utility relocation.

12.14.030 Applicability.

A. This chapter applies to all telecommunications facilities as follows:

1. All telecommunications facilities for which applications are approved after the effective date of this chapter are subject to and shall comply with all provisions of this Chapter.
2. All telecommunications facilities, notwithstanding the date approved, are immediately subject to:
 - a. Section 12.14.300 Radio frequency exposure monitoring requirements;
 - b. Section 12.14.310 Operation and maintenance standards;
 - c. Section 12.14.470 Abandonment;
 - d. Section 12.14.480 Removal and restoration;
 - f. Section 12.14.320 Insurance; and
 - f. Section 12.14.330 Indemnity.

B. Exempt facilities.

1. This chapter is not applicable to:
 - a. Personal wireless service facilities or equipment owned and operated by

California Public Utilities Commission-regulated electric companies for use in connection with electrical power generation, transmission, and distribution facilities subject to California Public Utilities Commission General Order 131-D;

- b. Personal wireless service facilities that are constructed for city use or by the city to exclusively provide wireless services, such as wi-fi;
- c. Facilities that are for the purpose of wireless-based meter(?) reading of water, gas, or electric meters;
- d. Amateur radio facilities;
- e. Over the Air Reception Devices (“OTARD”) antennas; and
- f. Any entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement.

2. Telecommunications facilities exempt from this chapter remain subject to applicable state and federal law, as well as applicable requirements of the city code, including chapter 12.12.

12.14.040 Standards and guidelines

The public works director is hereby authorized and directed to develop and publish, on the city’s website, standards and guidelines for wireless telecommunications facilities. In addition, the public works director may, from time to time, update and alter such standards and guidelines as necessary. The purpose of these standards and guidelines is set forth in section 12.14.510.

Article II. Permits and Agreements

12.14.100 Permits and Agreements required

A. Macro-cell facilities

- 1. To locate a macro-cell facility on city-owned property, any applicant must request the following permit and agreement from the director of public works through the real estate services division supervisor on forms prescribed by the public works director:
 - a. Preliminary Right of Entry;
 - b. Lease agreement; and
 - c. Construction encroachment permit issued pursuant to chapter 12.12.

B. Small cell facilities

- 1. To locate a small cell facility in the public right-of-way or on city-owned property, or to locate any other telecommunications facility in the public right-of-way, an applicant must request the following permits and agreements from the director of public works through the development engineering division on forms prescribed by the public works director:

- a. Revocable permit issued pursuant to chapter 3.76;
 - b. Master license agreement and site-specific agreement, as set forth in section 12.14.140; and
 - c. Construction encroachment permit issued pursuant to chapter 12.12.
- C. Facility modifications eligible under section 6409(a)
- 1. To modify an existing wireless tower or base station pursuant to section 6409, any applicant must request the following permits from the director of public works through the real estate services division supervisor on forms prescribed by the public works director:
 - a. Section 6409(a) permit from the director of public works.
 - b. Construction encroachment permit issued pursuant to chapter 12.12.
- D. Other Permits and Regulatory Approvals. In addition to any permit and agreement required under this chapter, any applicant must obtain and comply with all other required authorizations and permits and all other regulatory approvals from all city departments, and state and federal agencies.
- E. Proprietary Approvals. Nothing in this chapter shall be deemed to waive any required proprietary approvals for siting of telecommunications facilities on privately or publicly owned property or improvements.
- F. Non-Exclusive Grant. No permit or approval granted under this chapter confers any exclusive right, privilege, license or franchise to occupy or use the public right-of-way for any purpose whatsoever. Further, no approval shall be construed as any warranty of title.

12.14.110 Permit application requirements

- A. Applications for any permit required under this chapter shall clearly describe the telecommunications facilities proposed to be installed or modifications to be made, and the exact proposed location for the facilities, including such specifications, drawings, maps and other illustrations as are required by the director of public works.
- B. No application is complete unless it is accompanied by the necessary permit application fees. The applicant shall also deposit sufficient funds in a draw-down account held by the City to cover all city costs in processing the construction encroachment permit. The City shall provide a final billing statement for each application reflecting the amount charged.
- C. The permit applications required by this chapter may be filed by an applicant while land use and other applications are pending. However, no permit shall be issued unless and until all other required city, state or federal permits have been obtained by the applicant, and all other state, federal and city requirements have been met.

12.14.120 Timeline for permit application process

The permit application process shall be administered by the city in a nondiscriminatory manner, using standardized procedures, and according to the following timelines:

- A. No later than 30 days from the date of receipt of the necessary permit applications, the city will determine whether the applications are complete in all respects, and whether the applicant has applied for all other required land use entitlements and other required state, federal or city permits or licenses. If no such determination is made within the 30 day period, the applications shall be deemed complete. If an application is incomplete, the applicant shall be notified in writing of the nature and extent of the deficiencies.
- B. If an application is complete, or upon expiration of the 30 day period for making that determination, the city shall process the application, and meet with the applicant as required, in order to determine whether an application should be granted or denied. An application may be denied for good cause, may be conditionally approved, or may be approved.
- C. If an application is denied, the applicant shall be notified in writing of the denial, with a written statement of the reasons for the denial. Notice shall be sent by United States mail to the address listed on the application.
- D. An applicant may appeal the denial to the city manager pursuant to section 12.14.410.

12.14.130 Notice that time for review is expiring

The applicant shall provide the city with written notice of the pending expiration of any timeframe for review. Such notice shall be sent to the city in a manner that ensures its receipt (e.g., certified mail, registered mail, or national carrier, any of which shall require a receipt signature) no later than 10 days prior to expiration of the timeframe for review.

12.14.140 Master license agreement and site-specific agreements

- A. Master license agreement. The city council shall, by resolution, adopt a form agreement that shall be utilized for all applicants seeking a permit for a small cell facility. Prior to the approval of any permit application for a small cell facility, the applicant shall sign a master license agreement with the City. The master license agreement shall apply to all small cell facilities owned by the applicant.
- B. Site-specific agreements. Prior to the approval of any permit application, the applicant shall sign a site-specific agreement. The site-specific agreement shall set forth the term of the license for that location and the compensation to be paid to the city, including, but not limited to the fair market rent, any in-kind services to be provided to the City, as set forth in subsection E of this section, and any provisions for fee escalation. To protect and preserve the integrity of the public right-of-way and city-owned property, minimize traffic and other disruptions, and lower costs, the City will evaluate opportunities to coordinate construction with telecommunications and other utility providers.
- C. Relocation. Where utility relocation is required due to a subsequent public project, the utility relocation costs shall be paid by the telecommunication facility permit holder.

D. Co-Location. Where the director of public works determines that it is appropriate and feasible, telecommunication facilities located on city-owned property or in the public right-of-way shall be co-located.

E. In lieu of requiring payment of fair market rent, or any portion thereof, the city shall have the discretion to value and accept in-kind services as compensation, provided that the total of such services and any other rent payment is of equal value to the fair market rent.

12.14.150 Section 6409(a) permit applications.

A. Any written request to co-locate, replace, or remove transmission equipment at an existing wireless tower or base station shall be processed administratively pursuant to the standards and guidelines. The request for a section 6409(a) permit shall not be granted unless the public works director determines:

1. The application constitutes an eligible facilities request; and
2. The application does not constitute a substantial change.

B. The inability to make one or more of the findings required in this chapter is grounds for denial of an application.

C. Conditional Approvals. As permitted by law, the public works director may impose conditions on any section 6409(a) permit to accomplish the purposes of this chapter.

12.14.160 Fees.

A. The following fee is hereby established and imposed:

1. Small cell facility reservation fee.

B. The amount of the fee described in subsection A shall be established by resolution of the City Council.

12.14.170 Permit determinations

A. Decision Notices. Within five days after the city approves, conditionally approves, or denies any of the permits required under this chapter, the city shall transmit a written determination to the applicant at the email address provided on the application. The city may also post the written determination on its website. For any denial notice, the reasons for the denial shall be included in the notice or in a separate written document, and a copy of the denial notice will be included in the written administrative record for the project.

1. Requirements for approval. The city shall only approve or conditionally approve a duly filed application if the proposed telecommunication facility, as submitted or modified, conforms to all the following criteria:

- a. It complies with all applicable requirements described in this chapter;
- b. It complies with visual, aesthetic, and safety requirements set forth in article V of this chapter and the standards and guidelines issued by the city manager;

- c. It complies with all applicable city requirements, including:
 - (1) land use regulations, including, but not limited to, city zoning regulations and guidelines and chapter 17;
 - (2) chapter 3.76 relating to revocable permits for use of the public right-of-way or easements;
 - (3) chapter 12.12, relating to excavation permits and street cuts and chapter 3.08 relating to business operations tax certificates
- a. It complies with all other laws and regulations, including, without limitation, state and federal law.
- d. It complies with the FCC's regulations concerning radio frequency exposure.

2. The inability to meet one or more of the requirements for approval is grounds for denial of an application.

3. Conditional approval. The city may impose any reasonable condition or conditions on any telecommunications facility permit, related and proportionate to the subject matter in the application, as the city deems necessary or appropriate, consistent with the purposes of this chapter.

12.14.180 Permit applications deemed withdrawn.

If the city determines that an application for any permit required under this chapter is incomplete, the City shall notify the applicant as to what information is needed to complete the application. The applicant must provide all requested information within 60 days of being notified by the City that the application is incomplete, or the application shall be deemed withdrawn without prejudice by the applicant. If the applicant delivers to the City a written request prior to the sixtieth day to extend the response time, the city may grant a written extension where the applicant provides good cause to grant the extension. The extension, if granted, may be for up to an additional thirty calendar days. No additional extensions shall be granted.

12.14.190 Exception process for permit application for personal wireless services facilities.

A. When a revocable permit or construction encroachment permit is denied or would be denied pursuant to section 12.14.170, the public works director shall consider a request for an exception for personal wireless services facility.

B. The public works director shall not grant any exception for a wireless facility pursuant to this section unless the public works director finds all the following:

- 1. The proposed facility qualifies as a personal wireless service facility;
- 2. The applicant has provided the city with a reasonable and clearly defined technical service objective to be achieved by the proposed facility;
- 3. The applicant has provided the city with a written, detailed, and fact-specific

statement demonstrating the following:

- a. That the exception will close a significant gap in the applicant's own service coverage;
 - b. That the proposed facility cannot be deployed in compliance with the applicable provisions in this chapter, the standards and guidelines, and other applicable provisions of this code;
4. The applicant has provided the city with a meaningful comparative analysis with the factual reasons why all alternative locations and/or designs identified in the administrative record (whether suggested by the applicant, the City, or any other source) are not technically feasible or potentially available to reasonably achieve the applicant's technical service objective; and
 5. 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 facility, which includes, without limitation, a meaningful comparative analysis into multiple smaller or less intrusive facilities dispersed throughout the intended service area.

12.14.200 Reservation and construction encroachment permit deadlines.

A. Reserving a location for installation of small cell facilities.

1. The city shall provide a process for applicants to reserve a location for installation of small cell facilities in the public right-of-way.
2. The applicant shall pay the small cell facility reservation fee.
3. Within 30 days of reserving a location, the applicant shall complete a field inspection and submit a field inspection report to the city for review.
4. The applicant shall submit the field inspection report with the required permit applications. Based on the field inspection report and other information submitted with the permit applications, the city shall make an initial determination that the location is suitable for installation of a small cell facility.
5. Should the city determine that the location reserved is not suitable for installation of a small cell facility, it shall notify the applicant.

B. Time to obtain construction encroachment permit. The permittee shall obtain a construction encroachment permit within one hundred eighty days of reserving the facility location. Failure to obtain a construction encroachment permit timely shall terminate the reservation.

C. Time to commence construction. For any construction encroachment permit granted under this chapter, the permittee shall commence work within sixty days from the date of issuance of the permit.

D. Time to Complete. The permittee shall complete work within sixty days of the date of commencing work pursuant to this section.

E. Extensions. The public works director may grant up to a maximum of two written extensions of time from the stated periods in in this section where the permittee provides good

cause to grant the extension. An extension, if granted, may be for up to an additional forty-five days.

F. Expiration. Where a permittee fails to meet the deadlines set forth in this section or request an extension, the permits granted by the city shall automatically and immediately expire.

G. Permit Renewal. Before any work authorized under an expired permit can be recommenced, the permittee shall file an updated permit application pursuant to the standards and guidelines. A renewed permit shall be subject to payment of the required permit fees and subject to the standards and guidelines in effect at the time of filing for permit renewal.

12.14.210 Deemed approved.

In the event that an application is deemed approved by any rule of law or regulation, all applicable requirements of this chapter, including those requirements set forth in the standards and guidelines in effect at the time the permit is deemed approved, and any other applicable laws, including, without limitation, standard conditions of approval, shall automatically attach and apply as permit conditions.

Article III. Operation of telecommunications facilities

12.14.300 Radio frequency exposure monitoring requirements.

a) Pre-installation reporting. As part of any application required under this chapter, the applicant shall provide the city a radio frequency (RF) electromagnetic energy report pursuant to the requirements set forth in the standards and guidelines.

b) Post-installation certification. Within thirty days of commencing operation of a telecommunications facility, the permittee shall provide to the city a post-installation certification prepared in accordance with the standards and guidelines confirming, under penalty of perjury, that the actual emissions from the telecommunications facility do not exceed that disclosed in the pre-installation report submitted pursuant to this section.

c) Periodic certification. The permittee shall provide to the public works director a post-installation certification confirming, under penalty of perjury, that the telecommunications facility is compliant with the FCC's regulations concerning radio frequency emissions, as required under the standards and guidelines. The permittee shall perform subsequent RF testing in the manner that may be specified by the public works director as set forth in the standards and guidelines.

12.14.310 Operation and maintenance standards.

All telecommunications facilities must comply at all times with the following operation and maintenance standards:

- A. Maintained in good condition, including ensuring the facilities are reasonably free of:
 - 1. General dirt and grease;

2. Chipped, faded, peeling, and cracked paint;
 3. Rust and corrosion;
 4. Cracks, dents, and discoloration;
 5. Missing, discolored, or damaged camouflage;
 6. Graffiti, bills, stickers, advertisements, litter, and debris;
 7. Broken and misshapen structural parts; and
 8. Any damage from any cause.
- B. Each telecommunications facility shall be operated and maintained at all times in compliance with all laws and regulations, including the standards and guidelines;
- C. Within thirty days of the anniversary date of the permit, each owner of a telecommunications facility shall routinely inspect each site to ensure compliance with the standards set forth in this section and all conditions of approval.

12.14.320 Insurance.

A. A permittee, including its agents and contractors shall maintain at all times in full force and effect at its sole expense, and as a condition of any permit granted under this chapter the following insurance:

1. General liability for bodily injury, including death, of one or more persons, property damage, and personal injury. Coverage shall include all customers and shall be at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than \$1,000,000 per occurrence.

2. Automobile liability insurance providing protection against claims of bodily injury, including death, of one or more persons, personal injury, and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and nonowned automobiles. Coverage shall be at least as broad as ISO CA 00 01 (any auto), with limits of not less than \$1,000,000 per accident.

3. Workers' compensation insurance coverage as required by California statutes with an employers' liability limit of at least \$1,000,000 per occurrence. In the event the permittee is self-insured, it shall furnish evidence of permission to self-insure in full compliance with California statutes. The workers' compensation coverage shall include a waiver of subrogation in favor of the City.

B. The city, its officials, and employees shall be covered by policy terms or endorsement as additional insureds regarding general liability and automobile liability arising out of activities performed by or on behalf of the shared-rideable operator.

C. The permittee's insurance coverage shall be primary insurance as it pertains to the city, its officials, and employees.

D. The city must be provided with 30 days prior written notice of cancellation or material change in the policy language or terms by both the shared-rideable operator and the insurer.

E. The permittee shall furnish the city with certificates and endorsements evidencing the insurance required, which must be maintained during the term of a shared-

rideable business permit. The city may suspend, modify, or revoke a shared-rideable operator's vehicle permit if current certificates of insurance and required endorsements have not been provided.

12.14.330 Indemnity.

The permittee shall defend, indemnify and hold harmless the city consistent with the terms of any permit or agreement approved by the city.

12.14.340 Emergency deployment.

In the event of an officially-declared federal, state, or local emergency, or when otherwise warranted by conditions that the city deems to constitute an emergency, the public works director or city manager may approve the installation and operation of a temporary telecommunications facility which will be subject to such reasonable conditions that the city deems necessary.

Article IV. Suspension, Revocation, and Modification of Permits

12.14.400 Grounds for suspending, revoking or modifying a permit and agreements.

A. The public works director may suspend, revoke, or modify a permit issued pursuant to this chapter on any of the following grounds:

1. The permitted telecommunications facility violates any condition of the permit or city approved application and plans.
2. The permittee violates the terms and conditions set forth in the master license agreement or site-specific agreement.
3. The permittee fails to pay any fees, penalties, or damages lawfully assessed upon it.
4. The permittee violates any provision of this chapter or any other applicable law.
5. The permittee violates any provision of the standards and guidelines.
6. The permittee obtained approval by means of fraud or misrepresentation of a material fact.
7. A substantive change of state or federal law or regulations materially affects the permittee's right to occupy or use the public right-of-way or the city's ability to impose regulations relating to such occupation or use; and
8. A personal wireless service facility is located on a utility pole or structure subject to removal pursuant to a lawfully approved utility undergrounding district or other rule or regulation
9. Circumstances exist that would have been grounds for denial of the permit application.

B. The public works director may otherwise revoke a permit and terminate any applicable agreements upon twelve months' prior written notice to the permittee, or less time if in

response to an urgent or emergency situation as determined by the city, if the facility interferes or will interfere with any public work of improvement that impacts the public right-of-way.

12.14.410 Right of appeal from denial, suspension, modification, or revocation

A. Notification of hearing. The permittee shall be notified by the public works director of the basis for the proposed denial, suspension, modification, or revocation.

B. Any permittee aggrieved by the decision of the public works director to deny, suspend, modify, or revoke a permit or impose conditions on the permit, may appeal the decision to the city manager examiner by submitting a written appeal to the city manager within 10 calendar days from the date of service of the notice of denial, suspension, modification, or revocation. The written appeal shall contain:

1. A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;
2. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside;
3. The signatures of all appellants and their official mailing addresses; and
4. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

C. The appeal hearing shall be conducted by the city manager. The city manager may designate a hearing examiner appointed pursuant to section 12.14.450.

D. Upon receipt of any appeal filed pursuant to this section, the city manager or the hearing examiner will calendar it for hearing as follows:

1. If the appeal is received by the city manager not later than 15 calendar days prior to the next regular appeal hearing, it shall be calendared for hearing at said meeting.
2. If the appeal is received by the city manager on a date fewer than 15 calendar days prior to the next appeal hearing, it shall be calendared for the next subsequent appeal hearing.

E. Written notice of the time and place of the hearing shall be given at least 10 calendar days prior to the date of the hearing to each appellant either by personal delivery or by mail, postage prepaid, addressed to the appellant at the address shown on the appeal.

F. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the notice and order, or any portion thereof.

G. Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.

H. The city manager or hearing examiner shall have the authority to issue subpoenas compelling witnesses to appear and provide testimony or subpoena duces tecum compelling witnesses to produce documents. The city manager or hearing examiner shall issue a subpoena only upon a showing of reasonable necessity by the requesting party. Failure of either party to comply with any subpoena may be considered by the city manager or hearing examiner in making a decision regarding the imposition of administrative penalties.

12.14.420 Appeal hearing – Generally.

A. At the time set for hearing, the city manager or hearing examiner shall proceed to hear the testimony of the public works director, the appellant, and other competent persons, including members of the public, respecting those matters or issues specifically listed by the appellant in the notice of appeal.

B. The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.

C. The city manager or hearing examiner may, upon request of the appellant or upon request of the public works director, grant continuances from time to time for good cause shown, or upon his or her own motion.

D. In any proceedings under this chapter, the city manager or hearing examiner has the power to administer oaths and affirmations and to certify to official acts.

4.14.430 Conduct of hearing

A. Hearings need not be conducted according to the technical rules relating to evidence and witnesses. California Government Code section 11513, subsections (a), (b) and (c) shall apply to hearings under this chapter.

B. Oral evidence shall be taken only upon oath or affirmation.

C. Irrelevant and unduly repetitious evidence shall be excluded.

D. Each party shall have these rights, among others:

1. To call and examine witnesses on any matter relevant to the issues of the hearing;

2. To introduce documentary and physical evidence;

3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;

4. To impeach any witness regardless of which party first called the witness to testify;

5. To rebut the evidence presented against the party; and

6. To represent him, her, or itself or to be represented by anyone of his, her, or its choice who is lawfully permitted to do so.

E. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the city or any of its departments.

12.14.440 Form and contents of decision – Finality of decision

A. If it is shown, by a preponderance of the evidence, that one or more bases exist to deny, suspend, modify, or revoke the permit, the city manager or hearing examiner shall affirm the public works director's decision to deny, suspend, modify, or revoke the permit. The decision of

the city manager or hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented.

B. Notice of Action. A written determination of revocation shall be sent via certified mail to the permittee within five days of such determination.

C. The decision shall inform the appellant that the decision is a final decision and that the time for judicial review is governed by California Code of Civil Procedure section 1094.6. Copies of the decision shall be delivered to the parties personally or sent by certified mail to the address shown on the appeal. The decision shall be final when signed by the city manager or hearing examiner and served as provided in this section.

12.14.450 Hearing examiner

A. In order to hear cases brought under the provisions of this chapter, the city council shall appoint a panel of hearing examiners, from which one hearing examiner on a rotating basis shall hear cases brought under this chapter. Such examiners shall serve at the pleasure of the city council.

12.14.460 Expert assistance.

Where the city determines that it requires the services of a consultant for expert assistance in implementing this chapter or processing any application received pursuant to this chapter, the applicant shall deposit a fee equal to the estimated cost of the consultant's services to the city. If the actual cost exceeds the deposited fees, the applicant shall pay the difference to the city. If the actual fees are less than the deposited fees, the applicant shall be refunded for the difference from the city. No permit shall be issued if the applicant owes the city funds to fully reimburse the city for its actual costs to process the application, including, without limitation, reimbursement for the city's consultant costs.

12.14.470 Abandonment.

A. A telecommunications facility that has not been operational for six months or more shall be deemed abandoned and shall be promptly removed and, as applicable, the area restored to its prior condition at the permittee's sole cost and expense within 60 days after abandonment. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.

B. The owner of a telecommunications facility shall notify the city in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within 30 days of ceasing or abandoning use.

C. Failure to inform the public works director of cessation of operations or abandonment of any telecommunications facility as required by this section shall constitute a violation of any approvals and be grounds for:

1. Revocation or modification of the permit;
2. Acting on any assurance required by this chapter or conditions of approval of the permit;

3. Removal of the facilities by the city at the owner's expense; and/or
4. Any other remedies permitted under this code or by law.

12.14.480 Removal and restoration.

(a) General Provisions. Upon the expiration date of the permit, or earlier revocation or abandonment, the permittee shall remove its telecommunications facility and restore the site to its natural condition except for any improvements to be retained by the city at its discretion. Any such retained improvements shall be purchased from the permittee for one dollar, and the parties will cooperate to effectuate this provision. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the city. The facility shall be removed from the property, at no cost or expense to the city.

Failure of the permittee, owner, or operator to promptly remove its facility and restore the property within 60 days after expiration, earlier termination or revocation of the permit, or abandonment of the facility, shall be a violation of this chapter. Upon a showing of good cause, an extension may be granted by the public works director where circumstances are beyond the control of the permittee after expiration, earlier termination or revocation of the permit, or abandonment of the facility. Further failure to abide by the timeline provided in this section shall be grounds for:

- 1) Acting on any conditions of approval of permit;
- 2) Removal of the facilities by the city at the owner's expense; and/or
- 3) Any other remedies permitted under this code or under state or federal law.

12.14.490 City rights

(a) Overview. The city reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the public right-of-way and city-owned property. Such actions may temporarily or permanently interfere with a telecommunications facility. The city shall in all cases, other than emergencies, give the applicant written notification of such planned, non-emergency actions no fewer than 14 days prior to such actions.

(b) Summary Removal. In the event the public works director determines that the condition or placement of a telecommunications facility located in the public right-of-way or on city-owned property constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action, the public works director may cause the facility to be removed immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five business days of removal and all property removed shall be preserved for the permittee to claim. If the permittee fails to pick-up the property within 60 days, the facility shall be treated as abandoned property subject to any disposal or reuse in the city's sole discretion.

(c) Non-liability for removal. In the event the city removes a telecommunications facility

pursuant to this section, the City shall have no liability for any damage to the facility that may result from removal. The city has no obligation to restore such facility. The permittee shall not have any claim if the city removes a telecommunications facility pursuant to this section.

Article V. Small cell facilities design and deployment standards

12.14.500 Purposes.

The city's design and deployment standards for small cell facilities, as set forth in the standards and guidelines, are intended to and should be applied to:

- A. Protect and promote public health, safety and welfare;
- B. Balance the benefits of high-quality wireless services for the City's residents, businesses, and visitors with the aesthetic character and standards of the city; and
- C. Protect the City's environmental resources.

No encroachment and construction permit shall be granted for any small cell facility that does not meet the design and deployment standards set forth in section 12.14.510, as well as the standards and guidelines, and any other provision of this code or state or federal law.

12.14.510 General Standards

- A. Small cell facilities must comply with the noise standards set forth in chapter 8 of the city code.
- B. Small cell facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area and structures, as determined by the public works director.
- C. The design of small cell facilities shall be the least intrusive design possible and occupy the least amount of space possible, consistent with the limitations set forth in this chapter and the standards and guidelines.
- D. Small cell facility equipment and installation, including wiring, and cabling, shall be consistent with the standards and guidelines, the city's standard specifications, any other provision of this code, and state and federal law.