

Chapter 18.55

WIRELESS COMMUNICATIONS FACILITIES

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18.55.010 Purpose.

The purpose and intent of this chapter is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the town. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This chapter provides standards necessary to: (1) preserve and promote harmonious land uses and the public right-of-way in the town; (2) promote and protect public health and safety, community welfare, visual resources, and the aesthetic quality of the town consistent with the goals, objectives and policies of the General Plan; (3) provide for the orderly, managed, and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules, and regulations; and (4) encourage new and more efficient technology in the provision of wireless telecommunications facilities.

This chapter is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulation for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the town may not deny under federal or state law; or (6) otherwise authorize the town to preempt any applicable federal or state law. (Ord. 692 (part), 2018).

18.55.020 Definitions.

For the purposes of this chapter, the following defined terms shall have the meaning set forth in this section unless the context clearly indicates or requires a different meaning.

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

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

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

Building-mounted means mounted to the side or façade, but not the roof, of a building or another structure such as a water tank, pump station, church steeple, freestanding sign, or similar structure.

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

Collocation means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC's definition effectively means "to add" and does not necessarily refer to more than one wireless telecommunication facility installed at a single site.

Eligible facilities request means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended, which defines that term as any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

Eligible support structure means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which defines that term as any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.

Existing means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which provides that a constructed tower or base station is existing for purposes of the FCC's Section 6409(a) regulations if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

FCC means the Federal Communications Commission or its duly appointed successor agency.

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

Monopole means a structure consisting of a single pole used to support antennas or related equipment and includes a monopine, monopalm, and similar monopoles camouflaged to resemble trees or other objects.

Personal wireless services means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

Personal wireless service facilities means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal wireless services.

Planner means the Planning and Building Director or their designee or the Planning and Building Director or their designee's designee.

Pole means a single shaft of wood, steel, concrete, or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of the Ross Municipal Code.

Public right-of-way or right-of-way means any public street, public way, public alley or public place, laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, under the jurisdiction of the town.

Reviewing authority means the person or body who has the authority to review and either grant or deny a wireless telecommunications facility permit pursuant to this chapter.

RF means radio frequency or electromagnetic waves between 30 kHz and 300 GHz in the electromagnetic spectrum range.

Roof-mounted means mounted directly on the roof of any building or structure, above the eave line of such building or structure.

Section 6409(a) means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as such law may be amended from time to time.

Section 6409(a) approval means the approval required by Section 6409(a).

Site means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be amended, which provides that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

Substantial change means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC's criteria and thresholds for a substantial change according to the wireless facility type and location.

For towers outside the public rights-of-way, a substantial change occurs when:

- (1) the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or
- (2) the proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the

appurtenance (whichever is greater); or

- (3) 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
- (4) the proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.

For towers in the public rights-of-way and for all base stations, a substantial change occurs when:

- (1) the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
- (2) the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or
- (3) 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
- (4) the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or
- (5) the proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.

In addition, for all towers and base stations wherever located, a substantial change occurs when:

- (6) the proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the planner; or
- (7) 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 section.

The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012—the date that Congress passed Section 6409(a).

Telecommunications tower or tower means a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and primarily used to support wireless telecommunications facility antennas.

Transmission equipment means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(8), as may be amended, which defines that term as equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Utility pole means a pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission.

Wireless services means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

Wireless telecommunications facility means any facility constructed, installed, or operated for wireless service. “Wireless telecommunications facility” includes, but is not limited to, antennas or other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting such equipment, related accessory equipment, equipment buildings, parking areas, and other accessory development. “Wireless telecommunications facility” does not mean any of the following:

- (8) A facility that qualifies as an amateur station as defined by the FCC, 47 C.F.R. Part 97, of the Commission’s Rules, or its successor regulation.
- (9) An antenna facility that is subject to the FCC Over-The-Air-Receiving Devices rule, 47 C.F.R. Section 1.4000, or any successor regulation, including, but not limited to, direct-to-home satellite dishes that are less than one meter in diameter, TV antennas used to receive television broadcast signals and wireless cable antennas.
- (10) Portable radios and devices including, but not limited to, hand-held, vehicular, or other portable receivers, transmitters or transceivers, cellular phones, CB radios, emergency services radio, and other similar portable devices as determined by the planner.
- (11) Telecommunications facilities owned and operated by any government agency.
- (12) Telecommunications facilities owned and operated by any emergency medical care provider.
- (13) Mobile services providing public information coverage of news events of a temporary nature.
- (14) Any wireless telecommunications facilities exempted from the Ross Municipal Code by federal law or state law. (Ord. 728 (part), 2025; Ord. 692 (part), 2018).

18.55.030 Applicability.

(A) This chapter applies to all wireless telecommunications facilities as follows:

(1) All facilities for which applications were not approved prior to the effective date of this chapter shall be subject to and comply with all provisions of this chapter;

(2) All facilities, notwithstanding the date approved, shall be subject immediately to the provisions of this chapter governing the operation and maintenance, cessation of use and abandonment, removal and restoration of wireless telecommunications facilities and wireless telecommunications collocation facilities and the prohibition of dangerous conditions or obstructions by such facilities; provided, however, that in the event a condition of approval conflicts with a provision of this chapter, the condition of approval shall control unless and until the permit is amended or revoked.

(B) Title 18, including but not limited to this chapter 18.55 shall not apply to a wireless telecommunications facility on property owned by the town. (Ord. 692 (part), 2018).

18.55.040 Wireless Telecommunications Facility Permit Required.

(A) *Permit required.* No wireless telecommunications facility shall be located or modified within the town on any property, including the public right-of-way, without the issuance of a permit as required by this chapter. Such permit shall be in addition to any other permit required pursuant to the Ross Municipal Code.

(B) *Permit required for facilities outside the public right-of-way.* Wireless telecommunications facilities located outside the public right-of-way require a permit as set forth in the following table:

	<i>R-1 District</i>	<i>C-C District</i>	<i>All other districts</i>
Roof-mounted facility, building-mounted facility, or facility mounted on an existing pole	NP	NP	UP/DR
Facility mounted on a replacement pole or new telecommunications tower	NP	NP	UP/DR
New wireless telecommunications collocation facility	NP	NP	UP/DR
Eligible facilities request ¹ or application pursuant to California Government Code Section 65850.6 ²	P	P	P
¹ See requirements of section 18.55.140. ² See requirements of section 18.55.150.			

(C) *Permit required for facilities in the public right-of-way.* Wireless telecommunications facilities located in or over the public right-of-way require a permit as set forth in the following table:

	<i>All districts</i>
Facility mounted on an existing pole or collocated with an existing facility	UP/DR
Facility mounted on a replacement pole or new telecommunications tower	UP/DR
New wireless telecommunications collocation facility	UP/DR
Eligible facilities request ¹ or application pursuant to California Government Code Section 65850.6 ²	P
¹ See requirements of section 18.55.140.	
² See requirements of section 18.55.150.	

For purposes of the above table, the location of a wireless telecommunication facility shall be determined based upon the closest district adjacent to the facility's location.

(D) *Legend and explanations.* The following legend and explanations apply to the tables in this section.

P	Permitted use subject to planner approval
UP	Use permit required
DR	Design review required
NP	Not permitted

(E) *Non-exclusive grant.* No approval granted under this chapter shall confer any exclusive right, privilege, license, or franchise to occupy or use the public right-of-way of the town for delivery of telecommunications services or any other purposes. Further, no approval shall be construed as any warranty of title. (Ord. 692 (part), 2018).

18.55.050 Application for Permit.

(A) *Application content.* All applications for a permit required by this chapter must be made in writing on such form as the planner prescribes, which shall include the following information, in addition to all other information determined necessary by the planner as well as all other information required by the town as part of an application for a use permit:

- (1) Full name and contact information for the facility owner, facility operator, agent (if any), and property owner, and related letter(s) of authorization.
- (2) The type of facility, including a full written description of the proposed facility, its purpose and specifications.
- (3) A detailed site and engineering plan of the proposed facility containing the exact proposed location of the facility, created by a qualified licensed engineer and in accordance with requirements set by the planner.
- (4) Photographs of facility equipment and an accurate visual impact analysis with photo simulations.

- (5) Completion of an RF exposure guidelines checklist, and proof of all applicable licenses or other approvals required by the FCC.
 - (6) If the application is for a facility that will be located within the public right-of-way, the applicant shall certify that it is a telephone corporation or state the basis for its claimed right to enter the right-of-way, and provide a copy of its certificate of public convenience and necessity (CPCN), if a CPCN has been issued by the California Public Utilities Commission.
 - (7) A written description identifying the geographic service area for the subject installation, accompanied by a plan and maps showing anticipated future installations and modifications for the following two years.
 - (8) A written report that analyzes acoustic levels for the proposed wireless telecommunications facility and all associated equipment including without limitation all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators in order to demonstrate compliance with chapter 9.20 (Unnecessary Noise). The acoustic analysis must be prepared and certified by an engineer and include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of a written report, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.
 - (9) If the applicant claims it requires an exception to the requirements of this chapter, all information and studies necessary for the town to evaluate that claim.
 - (10) An application and processing fee and a deposit for a consultant review as set forth in paragraph (B) of this section.
 - (11) Any other studies or information determined necessary by the planner may be required.
- (B) Independent expert.

(1) The planner is authorized to retain on behalf of the town an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility to review the technical aspects of the application, including but not limited to the following matters:

- (a) The accuracy, adequacy, and completeness of submissions,
- (b) Compliance with applicable radio frequency emission standards,
- (c) Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so,
- (d) Technical demonstration of the unavailability of alternative sites, facility designs or configurations, and coverage analysis, and

(e) The validity of conclusions reached or claims made by applicant.

(2) The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution. (Ord. 692 (part), 2018).

18.55.060 Location and Configuration Preferences.

(A) *Purpose.* The purpose of this section is to provide guidelines to applicants and the reviewing authority regarding the preferred locations and configurations for wireless telecommunication facilities in the town, provided that nothing in this section shall be construed to permit a wireless telecommunication facility in any location or configuration that it is otherwise prohibited by this chapter.

(B) *Review of Location and Configuration.* The reviewing authority shall consider the extent to which a proposed wireless telecommunication facility complies with these preferences and whether there are feasible alternative locations or configurations to the proposed facility that are more preferred under this section. If the location or configuration of a proposed facility qualifies for two or more categories of preferred locations or configurations, it shall be deemed to belong to the least preferred category.

(C) *Order of Preference - Configurations.* The order of preference for the configuration for wireless telecommunication facilities from most preferred to least preferred is:

- (1) Collocation with existing facilities,
- (2) Roof-mounted,
- (3) Building-mounted,
- (4) Mounted on an existing utility pole or a new utility pole that will replace an existing utility pole,
- (5) Mounted on a new telecommunication tower.

(D) *Order of Preference - Location.* The order of preference for the location of wireless telecommunications facilities from most preferred to least preferred is:

- (1) In the C-D district,
- (2) In the C-L district,
- (3) In the public right-of-way with the closest adjacent district being the C-D district,
- (4) In the public right-of-way with the closest adjacent district being the C-L district,
- (5) In the public right-of-way with the closest adjacent district being the C-C district,
- (6) Any public right-of-way location that abuts the property line of a structure recognized as a local, state or national historic landmark, historic district or on the

register of historic places,

(7) In the public right-of-way with the closest adjacent district being the R-1 district.

(E) *Accessory equipment.* In order of preference from most preferred to least preferred, accessory equipment for wireless telecommunication facilities and wireless telecommunications collocation facilities shall be located underground, within a building or structure, on a screened roof top area or structure, or in a rear yard if not readily visible from surrounding properties and the roadway, unless the reviewing authority finds that another location is preferable under the circumstances of the application. (Ord. 692 (part), 2018).

18.55.070 Design and Development Standards for All Facilities.

(A) *Basic requirements.* The design and development standards set forth in this section apply to all wireless telecommunications facilities no matter where they are located. Wireless telecommunications facilities shall be designed and maintained so as to minimize visual, noise, and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the design and development standards in this section.

(B) *No speculative facilities.* A wireless telecommunications facility, wireless telecommunications collocation facility, or a telecommunications tower, which is built on speculation and for which there is no wireless tenant is prohibited within the town.

(C) *General guidelines.* The applicant shall employ screening and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is as visually inconspicuous as possible, to prevent the facility from dominating the surrounding area and to hide the facility from predominant views from surrounding properties, all in a manner that achieves compatibility with the community.

(D) *Traffic safety.* All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.

(E) *Antennas.* The applicant shall use the least visible antennas possible to accomplish the coverage objectives. Antenna elements shall be flush mounted, to the extent reasonably feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Antennas shall be situated as to reduce visual impact without compromising their function. Whip antennas need not be screened.

(F) *Landscaping.* Where appropriate, facilities shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening. Additional landscaping shall be planted, irrigated, and maintained where such vegetation is deemed necessary by the town to provide screening or to block the line of sight between facilities and adjacent uses.

(G) *Signage.* Wireless telecommunications facilities and wireless telecommunications collocation facilities shall not bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the town.

(H) *Lighting.* No wireless telecommunications facility may be illuminated unless either specifically required by the Federal Aviation Administration or other government agency or in

association with the illumination of an athletic field on town or school property. Lightning arresters and beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as telecommunications towers, lattice towers, and monopoles.

(I) *Noise.*

(1) Each wireless telecommunications facility and wireless telecommunications collocation facility shall be operated in such a manner so as to minimize any possible disruption caused by noise.

(2) Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 5:00 p.m. and 7:00 a.m.

(3) At no time shall equipment noise from any facility exceed an exterior noise level of 50 dBA at the facility's property line if the facility is located in a business or commercial zone that permits those uses, provided, however, that for any such facility located within 500 feet of any property zoned residential or improved with a residential use, such equipment noise shall at no time be audible at the property line of any such residential property. For any facility located within a residential zone, such equipment noise shall at no time be audible at the property line of any residentially improved or residential zoned property.

(4) Any equipment, including but not limited to air conditioning units, that may emit noise that would be audible from beyond three feet from the facility in the case of a facility located in the right-of-way, or in the case of other facilities the facility's property line, shall be enclosed or equipped with noise attenuation devices to the extent necessary to ensure compliance with applicable noise limitations under the Ross Municipal Code.

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

(K) *Modification.* At the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise, and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities. (Ord. 692 (part), 2018).

18.55.080 Additional Design and Development Standards for Facilities Outside the Public Right-of-Way.

(A) *Basic Requirements.* Facilities located outside the public right-of-way are subject to the design and development standards set forth in this section in addition to all design and

development standards that apply to all facilities.

(B) *No parking interference.* In no event shall the installation of facilities replace or interfere with parking spaces in such a way as to reduce the total number of parking spaces below the number that is required.

(C) *Roof-mounted facilities.* Roof-mounted facilities shall be designed and constructed to be fully concealed or screened in a manner compatible with the existing architecture of the building the facility is mounted to in color, texture, and type of material. Screening shall not increase the bulk of the structure nor alter the character of the structure.

(D) *Facilities mounted to a telecommunications tower.*

(1) Facilities mounted to a telecommunications tower shall be located in close proximity to existing above-ground utilities, such as electrical towers or utility poles (which are not scheduled for removal or under grounding for at least 18 months after the date of application), light poles, trees of comparable heights, and in areas where they will not detract from the appearance of the town.

(2) Facilities mounted to a telecommunications tower, including, but not limited to, the attached antennas, shall be designed to be the minimum functional height and width required to adequately support the proposed facility and meet FCC requirements. The applicant shall provide documentation satisfactory to the planner establishing compliance with this paragraph. In any event, facilities mounted to a telecommunications tower shall not exceed the applicable height limit for structures in the applicable zoning district.

(3) All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the telecommunications tower and shall be camouflaged or hidden to the fullest extent feasible without jeopardizing the physical integrity of the tower.

(4) Monopole installations shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening.

(5) All antenna components and accessory wireless equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background or existing architectural elements so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.

(6) Monopoles and antennas and similar structures shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility. The applicant shall provide documentation satisfactory to the planner establishing compliance with this paragraph (D).

(7) If a faux tree is proposed for the monopole installation, it shall be of a type of tree compatible with those existing in the immediate areas of the installation. If no trees exist within the immediate areas, the applicant shall create a landscape setting that integrates the faux tree with added species of a similar height and type.

Additional camouflage of the faux tree may be required depending on the type and design of faux tree proposed.

(E) *Accessory equipment.* All accessory equipment associated with the operation of any wireless telecommunications facility shall be fully screened or camouflaged, and located in a manner to minimize their visibility to the greatest extent possible utilizing the following methods for the type of installation:

- (1) Accessory equipment for roof-mounted facilities shall be installed inside the building to which it is mounted or underground, if feasible. If not feasible, such accessory equipment may be located on the roof of the building that the facility is mounted on, provided that both the equipment and screening materials are painted the color of the building, roof, or surroundings. All screening materials for roof-mounted facilities shall be of a quality and design that is architecturally integrated with the design of the building or structure.
- (2) Accessory equipment for facilities mounted to a telecommunications tower shall be visually screened by locating the equipment either within a nearby building, in an underground vault (with the exception of required electrical panels) or in another type of enclosed structure, which shall comply with the development and design standards of the zoning district in which the accessory equipment is located. Such enclosed structure shall be architecturally treated and adequately screened from view by landscape plantings, decorative walls, fencing or other appropriate means, selected so that the resulting screening will be visually integrated with the architecture and landscaping of the surroundings. (Ord. 692 (part), 2018).

18.55.090 Additional Design and Development Standards for Facilities in the Public Right-of-Way.

(A) *Basic Requirements.* Facilities located in the public right-of-way are subject to the design and development standards set forth in this section in addition to all design and development standards that apply to all facilities.

(B) *Right-of-way authority.* Only applicants authorized to enter the public right-of-way pursuant to state or federal law or a franchise or other agreement with the town shall be eligible for a permit to install or modify a wireless telecommunications facility in the public right-of-way.

(C) *Antennas.*

(1) *Utility poles.* The maximum height of any antenna mounted to an existing utility pole shall not exceed 24 inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than 18 feet above any drivable road surface. All installations on utility poles shall fully comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as revised.

(2) *Street light poles.* The maximum height of any antenna mounted to a street light pole shall not exceed seven feet above the existing height of a street light pole in a location with its closest adjacent district being a C-D or a C-L district and shall not exceed three feet above the existing height of a street light pole in any other

location. Any portion of the antenna or equipment mounted on such a pole shall be no less than 18 feet above any drivable road surface.

(D) *Poles.*

(1) Only pole-mounted antennas shall be permitted in the right-of-way. All other telecommunications towers are prohibited, and no new poles are permitted that are not replacing an existing pole.

(2) Pole height and width limitations:

(a) All poles shall be designed to be the minimum functional height and width required to support the proposed antenna installation and meet FCC requirements. Poles and antennas and similar structures shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility.

(b) Notwithstanding the above, no facility shall be located on a pole that is less than 26 feet in height and no facility shall exceed 35 feet in height, including, but not limited to the pole and any antenna that protrudes above the pole.

(c) Pole mounted equipment shall not exceed six cubic feet in dimension.

(d) The applicant shall provide documentation satisfactory to the planner establishing compliance with this paragraph (D)(2).

(3) *Replacement poles.* If an applicant proposes to replace a pole in order to accommodate the facility, the pole shall match the appearance of the original pole to the extent feasible, unless another design better accomplishes the objectives of this section. Such replacement pole shall not exceed the height of the pole it is replacing by more than seven feet.

(4) If an exception is granted for placement of new poles in the right-of-way, new poles shall be designed to resemble existing poles in the right-of-way, including size, height, color, materials and style, with the exception of any existing pole designs that are scheduled to be removed and not replaced, unless another design better accomplishes the objectives of this section. Such new poles that are not replacement poles shall be located no closer than 90 feet to an existing pole.

(E) *Space occupied.* Facilities shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.

(F) *Location.*

(1) Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, inconvenience to the public's use of the right-of-way, or safety hazards to pedestrians and motorists.

(2) A facility shall not be located within any portion of the public right-of-way

interfering with access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing structures, or any other vital public health and safety facility.

(3) Facilities mounted to a telecommunications tower, above-ground accessory equipment, or walls, fences, landscaping or other screening methods shall be setback a minimum of 18 inches from the front of a curb.

(4) All cables, including, but not limited to, electrical and utility cables, between the pole and any accessory equipment shall be placed underground, if feasible.

(G) *Americans with Disabilities Act Compliance.* All facilities shall be built in compliance with the Americans with Disabilities Act (ADA).

(H) *Accessory equipment.* With the exception of the electric meter, which shall be pole-mounted to the extent feasible, all accessory equipment shall be located underground to the extent feasible. When above-ground is the only feasible location for a particular type of accessory equipment and when such accessory equipment cannot be pole-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five feet and a total footprint of 15 square feet, and shall be screened and camouflaged to the fullest extent possible, including the use of landscaping or alternate screening. Required electrical meter cabinets shall be adequately screened and camouflaged. (Ord. 692 (part), 2018).

18.55.100 Conditions of Approval for All Facilities.

(A) In addition to compliance with the requirements of this chapter, upon approval all facilities shall be subject to each of the following conditions of approval, as well as any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:

(1) Before the permittee submits any application for a building permit or other permits required by the Ross Municipal Code, the permittee must incorporate the wireless telecommunication facility permit granted under this chapter, all conditions associated with the wireless telecommunications facility permit and the approved plans and any photo simulations (the "Approved Plans") into the project plans. The permittee must construct, install and operate the wireless telecommunications facility in strict compliance with the Approved Plans. The permittee shall submit an as built drawing within 90 days after installation of the facility.

(2) Where feasible, as new technology becomes available, the permittee shall:

(a) place above-ground wireless telecommunications facilities below ground, including, but not limited to, accessory equipment that has been mounted to a telecommunications tower or mounted on the ground; and

(b) replace larger, more visually intrusive facilities with smaller, less visually intrusive facilities, after receiving all necessary permits and approvals required pursuant to the Ross Municipal Code.

(3) The permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the town. The permittee shall notify the town of any changes to the information submitted within seven days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:

(a) Identity, including the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator, and the agent or person responsible for the maintenance of the facility.

(b) The legal status of the owner of the wireless telecommunications facility, including official identification numbers and FCC certification.

(c) Name, address, and telephone number of the property owner if different than the permittee.

(4) The permittee shall not place any facilities that will deny access to, or otherwise interfere with, any public utility, easement, or right-of-way located on the site. The permittee shall allow the town reasonable access to, and maintenance of, all utilities and existing public improvements within or adjacent to the site, including, but not limited to, pavement, trees, public utilities, lighting and public signage.

(5) At all times, all required notices and signs shall be posted on the site as required by the FCC and California Public Utilities Commission, and as approved by the town. The location and dimensions of a sign bearing the emergency contact name and telephone number shall be posted pursuant to the approved plans.

(6) At all times, the permittee shall ensure that the facility complies with the most current regulatory and operational standards including, but not limited to, radio frequency emissions standards adopted by the FCC and antenna height standards adopted by the Federal Aviation Administration.

(7) If the planner determines there is good cause to believe that the facility may emit radio frequency emissions that are likely to exceed FCC standards, the planner may require the permittee to submit a technically sufficient written report certified by a qualified radio frequency emissions engineer, certifying that the facility is in compliance with such FCC standards.

(8) Permittee shall pay for and provide a performance bond, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and the town of Ross Municipal Code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping obligations. The amount of the performance bond shall be set by the planner in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.

(9) Permittee shall defend, indemnify, protect and hold harmless town, its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers from and against any and all claims,

actions, or proceeding against the town and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers to attack, set aside, void or annul, an approval of the town, Planning Commission or town council concerning this permit and the project. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The town shall promptly notify the permittee of any claim, action, or proceeding. Nothing contained herein shall prohibit town from participating in a defense of any claim, action or proceeding. The town shall have the option of coordinating the defense, including, but not limited to, choosing counsel for the defense at permittee's expense.

(10) All conditions of approval shall be binding as to the applicant and all successors in interest to permittee.

(11) A condition setting forth the permit expiration date in accordance with section 18.55.200 shall be included in the conditions of approval. (Ord. 692 (part), 2018).

18.55.110 Additional Conditions of Approval for Facilities in the Public Right-of-Way.

(A) In addition to compliance with the requirements of this chapter, upon approval all facilities in the public right-of-way shall be subject to each of the conditions of approval set forth in section 18.55.100, each of the following conditions of approval, and any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:

(1) The wireless telecommunications facility shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the town engineer for the purpose of: (a) protecting the public health, safety, and welfare, (b) preventing interference with pedestrian and vehicular traffic, and (c) preventing damage to the public right-of-way or any property adjacent to it. The town may modify the permit to reflect such conditions, changes or limitations by following the same notice and public hearing procedures as are applicable to the grant of a wireless telecommunications facility permit for similarly located facilities, except the permittee shall be given notice by personal service or by registered or certified mail at the last address provided to the town by the permittee.

(2) The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement or property without the prior consent of the owner of that structure, improvement or property. No structure, improvement or property owned by the town shall be moved to accommodate a wireless telecommunications facility unless the town determines that such movement will not adversely affect the town or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the town's structure, improvement or property. Prior to commencement of any work pursuant to an encroachment permit issued for any facility within the public right-of-way, the permittee shall provide the town with documentation establishing to the town's satisfaction that the permittee has the legal right to use or interfere

with any other structure, improvement or property within the public right-of-way to be affected by applicant's facilities.

(3) The permittee shall assume full liability for damage or injury caused to any property or person by the facility.

(4) The permittee shall repair, at its sole cost and expense, any damage including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to town streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation or maintenance of a wireless telecommunications facility in the public right-of-way. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the planner, the planner shall cause such repair to be completed at permittee's sole cost and expense.

(5) Prior to issuance of a building permit, the applicant shall obtain the planner's approval of a tree protection plan prepared by a certified arborist if the installation of the wireless telecommunication facility will be located within the canopy of a street tree, or a protected tree on private property, or within a ten-foot radius of the base of such a tree. Depending on site specific criteria (e.g., location of tree, size, and type of tree, etc.), a radius greater than ten feet may be required by the planner.

(6) Should any utility company offer electrical service that does not require the use of a meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet and any related foundation within 30 days of such service being offered and reasonably restore the area to its prior condition.

(7) The permittee shall modify, remove, or relocate its facility, or portion thereof, without cost or expense to town, if and when made necessary by:

(a) Any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or aboveground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by town or any other public agency;

(b) Any abandonment of any street, sidewalk, or other public facility;

(c) Any change of grade, alignment or width of any street, sidewalk or other public facility; or

(d) A determination by the planner that the wireless telecommunications facility has become incompatible with public health, safety or welfare or the public's use of the public right-of-way.

(8) Any modification, removal, or relocation of the facility shall be completed

within 90 days of written notification by town unless exigencies dictate a shorter period for removal or relocation. Modification or relocation of the facility shall require submittal, review and approval of a permit amendment pursuant to the Ross Municipal Code. The permittee shall be entitled, on permittee's election, to either a pro-rata refund of fees paid for the original permit or to a new permit, without additional fee, at a location as close to the original location as the standards set forth in the Ross Municipal Code allow. In the event the facility is not modified, removed, or relocated within said period of time, the town may cause the same to be done at the sole cost and expense of permittee. Further, due to exigent circumstances as provided in the Ross Municipal Code, the town may modify, remove, or relocate wireless telecommunications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter. (Ord. 692 (part), 2018).

18.55.120 Findings.

(A) Where a wireless telecommunication facility requires a use permit under this chapter, the reviewing authority shall not approve any application unless, in addition to the findings generally applicable to all use permits, all of the following additional findings are made:

- (1) The proposed facility complies with all applicable provisions of this chapter.
- (2) The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.
- (3) The applicant has submitted a statement of its willingness to allow other carriers to collocate on the proposed wireless telecommunications facility wherever technically and economically feasible and where collocation would not harm community compatibility.
- (4) Noise generated by equipment will not be excessive, annoying nor be detrimental to the public health, safety, and welfare and will not exceed the standards set forth in this chapter.

(B) In addition to the findings in paragraph (A) above, approval of a wireless telecommunications facility permit for a facility that will be located in the public right-of-way may be granted only if the following findings are made by the reviewing authority:

- (1) The applicant has provided substantial written evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise or other agreement with the town permitting them to use the public right-of-way.
- (2) The applicant has demonstrated that the facility will not interfere with the use of the public right-of-way, existing subterranean infrastructure, or the town's plans for modification or use of such location and infrastructure. (Ord. 692 (part), 2018).

18.55.130 Exceptions.

(A) Exceptions pertaining to any provision of this chapter, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the reviewing authority if the reviewing authority makes the finding that:

(1) Denial of the facility as proposed would violate federal law, state law, or both; or

(2) A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.

(B) An applicant may only request an exception at the time of applying for a wireless telecommunications facility permit. The request must include both the specific provision(s) of this chapter from which the exception is sought and the basis of the request. Any request for an exception after the town has deemed an application complete shall be treated as a new application.

(C) Notwithstanding any other provision of this chapter, a use permit shall be required for a facility when an exception is requested.

(D) The applicant shall have the burden of proving that denial of the facility as proposed would violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both, using the evidentiary standards required by that law at issue. The town shall have the right to hire an independent consultant, at the applicant's expense, to evaluate the issues raised by the exception request and shall have the right to submit rebuttal evidence to refute the applicant's claim. (Ord. 692 (part), 2018).

18.55.140 Wireless Telecommunications Facilities Covered under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012.

(A) *Purpose.* Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified in 47 U.S.C. § 1455(a), 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 regulations interpret this statute and create 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 sixty (60) days after submittal (accounting for any tolling periods). Moreover, whereas Section 704 of the Telecommunications Act of 1996, Pub. L. 104-104, codified in 47 U.S.C. § 332, applies to only "personal wireless service facilities" (e.g., cellular telephone towers and equipment), Section 6409(a) applies to all "wireless" facilities licensed or authorized by the FCC (e.g., cellular, Wi-Fi, satellite, microwave backhaul, etc.).

The overlap between wireless deployments covered under Section 6409(a) and other wireless deployments, combined with the different substantive and procedural rules applicable to such deployments, creates a potential for confusion that harms the public interest in both efficient wireless facilities deployment and carefully planned community development in accordance with local values. A separate permit application and review process specifically designed for compliance with Section 6409(a) contained in a section devoted to Section 6409(a) will mitigate

such potential confusion, streamline local review and preserve the town's land-use authority to maximum extent possible.

(B) *Applicability.* This Section applies to all collocations or modifications to an existing wireless tower or base station submitted with a written request for approval pursuant to Section 6409(a).

(C) *Approval Required.* Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted with a written request for a 6409(a) approval shall be subject to the planner's approval, conditional approval or denial without prejudice pursuant to the standards and procedures contained in this chapter.

(D) *Other Regulatory Approvals.* No collocation or modification approved under any section 6409(a) approval may occur unless the applicant also obtains all other applicable permits or regulatory approvals from the town and state or federal agencies. Furthermore, any section 6409(a) approval granted under this chapter shall remain subject to any and all lawful conditions or requirements associated with such other permits or regulatory approvals from the town and state or federal agencies.

(E) *Application Requirement.* The town shall not approve any wireless facility subject to this chapter except upon a duly filed application consistent with this Section and any other written rules the town or the planner may establish from time to time. An application must include the information required by Section 18.55.050 and the following additional information:

(1) A title report prepared within the six months prior to the application filing date in order for the town verify the property owner's identity. If the applicant does not own the subject property, the application must include a written authorization signed by the property owner that empowers the applicant to file the application and perform all wireless facility construction, installation, operation and maintenance to the extent described in the application.

(2) A written statement that explains in plain factual detail whether and why Section 6409(a) and the related FCC regulations at 47 C.F.R. § 1.40001 et seq. require approval for the specific project. A complete written narrative analysis will state the applicable standard and all the facts that allow the town to conclude the standard has been met. Bare conclusions not factually supported do not constitute a complete written analysis. As part of this written statement the applicant must also include (i) whether and why the support structure qualifies as an existing tower or existing base station; and (ii) whether and why the proposed collocation or modification does not cause a substantial change in height, width, excavation, equipment cabinets, concealment or permit compliance.

(F) *Procedures for a Duly Filed Application.* The town shall not review any application unless duly filed in accordance with this Section, as follows:

(1) *Pre-Submittal Conference.* Before application submittal, applicants must schedule and attend a pre-application meeting with the planner for all proposed modifications submitted for approval pursuant to Section 6409(a). The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification, including whether the project qualifies for Section 6409(a); any latent issues in

connection with the existing tower or base station; potential concealment issues (if applicable); coordination with other town departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that town staff may provide informal feedback about whether such applications or other materials may be incomplete or unacceptable. The planner may, in the planner's discretion, grant a written exemption to the submittal appointment under Section 18.92.050(c)(2) or for a specific requirement for a complete application to any applicant who (i) schedules, attends and fully participates in any pre-submittal conference and (ii) shows to the planner's satisfaction that such specific requirement duplicates information already provided in other materials to be submitted or is otherwise unnecessary to the town's review under facts and circumstances in that particular case. Any written exemption will be limited to the project discussed at the pre-submittal conference and will not be extended to any other project.

(2) *Submittal Appointment.* All applications must be filed with the town at a pre-scheduled appointment. Applicants may generally submit one application per appointment, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. Any application received without an appointment, whether delivered in-person or through any other means, will not be considered duly filed unless the applicant received a written exemption from the planner at a pre-submittal conference.

(3) *Appointment Scheduling Procedures.* For any event in the submittal process that requires an appointment, applicants must submit a written request to the planner. The planner shall endeavor to provide applicants with an appointment as soon as reasonably feasible and within five business days after a written request is received.

(4) *Applications Deemed Withdrawn.* To promote efficient review and timely decisions, an application will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the town within 90 calendar days after the town deems the application incomplete in a written notice to the applicant. The planner may, in the planner's discretion, grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.

(5) *Departmental Forms, Rules and Other Regulations.* The town council authorizes the planner to develop and publish permit application forms, checklists, informational handouts and other related materials that the planner finds necessary, appropriate or useful for processing requests for section 6409(a) approvals. Without further authorization from the town council, the planner may from time-to-time update and alter any such permit application forms, checklists, informational handouts and other related materials as the planner deems necessary, appropriate or useful to respond to regulatory, technological or other changes related to this chapter. The town council authorizes the planner to establish other reasonable rules and regulations, which may include without limitation regular hours for

appointments with applicants, as the planner deems necessary or appropriate to organize, document and manage the application intake process.

(G) *Administrative Review; Decision Notices.* The planner shall administratively review an application for a section 6409(a) approval and act on such an application without prior notice or a public hearing. Within five working days after the planner conditionally approves or denies an application submitted for Section 6409(a) approval or before the FCC timeframe for review expires (whichever occurs first), the planner shall send a written notice to the applicant. In the event that the planner determines that an application submitted for approval pursuant to Section 6409(a) does not qualify for approval, the planner will send written notice to the applicant that includes the reasons to support the review authority's decision and states that the application will be automatically denied without prejudice on the 60th day after the date the application was filed unless the applicant withdraws the application.

(H) *Required Findings for 6409(a) Approval.* The planner may approve or conditionally approve an application submitted for Section 6409(a) approval when the planner finds that the proposed project:

- (1) Involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
- (2) Does not substantially change the physical dimensions of the existing wireless tower or base station.

(I) *Criteria for Denial Without Prejudice.* Notwithstanding any other provisions in this chapter, and consistent with all applicable federal laws and regulations, the planner may deny without prejudice an application submitted for approval pursuant to Section 6409(a) when it finds that the proposed project:

- (1) Does not satisfy the criteria for approval;
- (2) Violates any legally enforceable standard or permit condition reasonably related to public health and safety then in effect; or
- (3) Involves the replacement of the entire support structure.

(J) *Conditional 6409(a) Approvals.* Subject to any applicable limitations in federal or state law, nothing in this chapter is intended to limit the town's authority to conditionally approve an application for a section 6409(a) approval to protect and promote the public health, safety and welfare.

(K) *Appeals.* Notwithstanding any provision of the Ross Municipal Code to the contrary, including but not limited to Section 18.60.040, an applicant may appeal a decision by the planner to deny without prejudice a Section 6409(a) application. The appeal must be filed within 10 days from the planner's decision. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The town manager shall serve as the appellate authority for all appeals of all actions of the planner taken pursuant to this section. The town shall provide notice for an administrative hearing by the town manager. The town manager shall limit its review to whether the project should be approved or denied in accordance with the provisions in paragraphs (H) and (I) of this section. The decision of the town manager shall be final and not subject to any further administrative appeals.

(L) *Standard Conditions of Approval.* In addition to all other conditions adopted by the planner, all Section 6409(a) approvals, whether approved by the planner or deemed approved by the operation of law, shall be automatically subject to the following conditions in this Section; provided, however, that the planner shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances:

(1) *Approved Plans.* Before the permittee submits any application for a building permit or other permits required by the Ross Municipal Code, the permittee must incorporate the wireless telecommunications facility permit granted under this section, all conditions associated with the wireless telecommunications facility permit and the approved plans and any photo simulations (the “Approved Plans”) into the project plans. The permittee must construct, install and operate the wireless telecommunications facility in strict compliance with the Approved Plans. The permittee shall submit an as built drawing within 90 days after installation of the facility.

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

(3) *Accelerated Permit Terms Due to Invalidity.* In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Section 6409(a) approval, such 6409(a) approvals shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved section 6409(a) approvals or the planner grants an extension upon written request from the permittee that shows good cause for the extension, which includes without limitation extreme financial hardship. Notwithstanding anything in the previous sentence to the contrary, the planner may not grant a permanent exemption or indefinite extension. A permittee shall not be required to remove its improvements approved under the invalidated section 6409(a) approval when it has submitted an application for a use permit for those improvements before the one-year period ends.

(4) *No Waiver of Standing.* The town's grant or grant by operation of law of a Section 6409(a) approval does not waive, and shall not be construed to waive, any standing by the town to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any section 6409(a) approval.

(5) *Build-out Period.* The section 6409(a) approval will automatically expire one year from the issuance date unless the permittee obtains all other permits and approvals required to install, construct and operate the approved wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property,

the wireless facility or its use. The planner may grant one written extension to a date certain when the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition. Any further extensions may be granted by the town council pursuant to Section 18.60.060.

(6) *Maintenance Obligations; Vandalism.* The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the Approved Plans and all conditions in this section 6409(a) approval. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the town, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

(7) *Compliance with Laws.* The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("Laws") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this section 6409(a) approval. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws.

(8) *Adverse Impacts on Other Properties.* The permittee shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's construction, installation, operation, modification, maintenance, repair, removal or other activities at the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines on any day and at any time prohibited under the Ross Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the town. The planner may issue a stop work order for any work that violates this condition.

(9) *Noise Complaints.* The permittee shall conduct all activities on the site in compliance with the noise standards in the Ross Municipal Code. In the event that any person files a noise complaint and the town verifies that such complaint is valid, the permittee must remedy the violation within 10 days after notice from the town, which may include a demonstration that the permittee has amended its operational guidelines in situations where the violation arises from the permittee's personnel rather than the permittee's equipment.

(10) *Inspections; Emergencies.* The permittee expressly acknowledges and agrees that the town or its designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the town or its designee may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or

equipment threatens actual, imminent harm to property or persons. The permittee will be permitted to supervise the town or its designee while such inspection or emergency access occurs.

(11) *Contact Information.* The permittee shall furnish the town with accurate and up-to-date contact information for a person responsible for the wireless facility, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times.

(12) *Indemnification.* The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the town, its agents, officers, officials, employees and volunteers from any and all (1) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("Claims") brought against the town or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the town's approval of this section 6409(a) approval, and (2) other Claims any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this section 6409(a) approval or the wireless facility. In the event the town becomes aware any Claims, the town will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the town shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the town's defense, and the property owner or permittee (as applicable) shall promptly reimburse town for any costs and expenses directly and necessarily incurred by the town in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the town to approve this section 6409(a) approval, and that such indemnification obligations will survive the expiration or revocation of this section 6409(a) approval.

(13) *Performance Bond.* Before the town issues any construction permit in connection with the wireless facility, the permittee shall post a performance bond from a surety and in a form acceptable to the town manager in an amount equal to or greater than a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the town manager shall take into consideration information provided by the permittee regarding the cost to remove the wireless facility.

(14) *Record Retention.* The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the

wireless facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.

(15) *Compliance Obligations.* An applicant or permittee will not be relieved of its obligation to comply with every applicable provision in the Ross Municipal Code, any permit, any permit condition or any applicable law or regulation by reason of any failure by the town to timely notice, prompt or enforce compliance by the applicant or permittee. (Ord. 692 (part), 2018).

18.55.150 Wireless Telecommunications Collocation Facilities Covered under California Government Code Section 65850.6.

(A) *Purpose.* The purpose of this section is to comply with an application for a Wireless Telecommunications Collocation Facility under California Government Code Section 65850.6, for which a 6509(a) approval is not being requested. This section provides the requirements, standards and regulations for a wireless telecommunications collocation facility for which subsequent collocation is a permitted use pursuant to California law. Only those facilities that fully comply with the eligibility requirements set forth in California Government Code Section 65850.6, or its successor provision, and which strictly adhere to the requirements and regulations set forth in this section shall qualify as a wireless telecommunications collocation facility.

(B) *Definitions.* For the purposes of this section, the following terms are defined as follows:

(1) **Collocation facility** means the placement or installation of wireless facilities, including antennas, and related equipment, on, or immediately adjacent to, a wireless telecommunications collocation facility.

(2) **Wireless telecommunications facility** means equipment and network components such as towers, utility poles, transmitters, base stations, and emergency power systems that are integral to providing wireless telecommunications services.

(3) **Wireless telecommunications collocation facility** means a wireless telecommunications facility that includes collocation facilities.

(C) *Procedures.* An application for a Wireless Telecommunications Collocation Facility under California Government Code Section 65850.6 shall be processed in the same manner as an application for 6409(a) approval is processed, except that where the process requires justification for the 6409(a) approval, the applicant shall instead provide the justification for a Wireless Telecommunications Collocation Facility under California Government Code Section 65850.6.

(D) *Requirements.* All requirements, regulations, and standards set forth in this chapter for a wireless telecommunications facility shall apply to a wireless telecommunications collocation facility; provided, however, the following shall also apply to a wireless telecommunications collocation facility:

(1) The applicant for a wireless telecommunications collocation facility permit shall describe or depict:

(a) The wireless telecommunications collocation facility as it will be initially built; and

(b) All collocations at full build-out, including, but not limited to, all antennas, antenna support structures, and accessory equipment.

(2) Any collocation shall use screening methods substantially similar to those used on the existing wireless telecommunications facilities unless other optional screening methods are specified in the conditions of approval.

(3) A wireless telecommunications collocation facility permit shall not be approved unless an environmental impact report, negative declaration, or mitigated negative declaration was prepared and approved for the wireless telecommunications collocation facility.

(E) *Permitted Use.* Notwithstanding any other provision of this chapter, a subsequent collocation on a wireless telecommunications collocation facility shall be a permitted use only if all of the following requirements are satisfied:

(1) The wireless telecommunications collocation facility:

(a) Was approved after January 1, 2007, by discretionary permit;

(b) Was approved subject to an environmental impact report, negative declaration, or mitigated negative declaration; and

(c) Otherwise complies with the requirements of California Government Code Section 65850.6(b), or its successor provision, for addition of a collocation facility to a wireless telecommunications collocation facility, including, but not limited to, compliance with all performance and maintenance requirements, regulations and standards in this chapter and the conditions of approval in the wireless telecommunications collocation facility permit; and

(2) The collocations were specifically considered when the relevant environmental document was prepared for the wireless telecommunications collocation facility.

(3) Before collocation, the applicant seeking collocation shall obtain all other applicable non-discretionary permits, as required pursuant to the Ross Municipal Code.

(F) *New or Amended Permit.* Except as otherwise provided above, approval of a new or amended permit shall be required when the facility is modified other than by collocation in accordance with this section, or the proposed collocation:

(1) Increases the height of the existing permitted telecommunications tower or otherwise changes the bulk, size, location, or any other physical attributes of the

existing permitted wireless telecommunications collocation facility unless specifically permitted under the conditions of approval applicable to such wireless telecommunications collocation facility; or

- (2) Adds any microwave dish or other antenna not expressly permitted to be included in a collocation facility by the conditions of approval.

(G) *Appeals.* Notwithstanding any provision of the Ross Municipal Code to the contrary, including but not limited to Section 18.60.040, any applicant may appeal a decision by the planner. The appeal must be filed within 10 days from the planner's decision. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The town manager shall serve as the appellate authority for all appeals of all actions of the planner taken pursuant to this section. The town shall provide notice for an administrative hearing by the town manager. The town manager shall limit its review to whether the project should be approved or denied in accordance with the provisions in this section. The decision of the town manager shall be final and not subject to any further administrative appeals. (Ord. 692 (part), 2018).

18.55.160 Business License.

A permit issued pursuant to this chapter shall not be a substitute for any business license otherwise required under the Ross Municipal Code. (Ord. 692 (part), 2018).

18.55.170 Emergency Deployment.

In the event of a declared federal, state, or local emergency, or when otherwise warranted by conditions that the planner deems to constitute an emergency, the planner may approve the installation and operation of a temporary wireless telecommunications facility (e.g., a cell on wheels or "COW"), which is subject to such reasonable conditions that the planner deems necessary. (Ord. 692 (part), 2018).

18.55.180 Operation and Maintenance Standards.

(A) All wireless telecommunications facilities must comply at all times with the following operation and maintenance standards. All necessary repairs and restoration shall be completed by the permittee, owner, or operator within 48 hours:

- (1) After discovery of the need by the permittee, owner, operator or any designated maintenance agent; or
- (2) After permittee, owner, operator, or any designated maintenance agent receives notification from a resident or the planner.

(B) All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:

- (a) General dirt and grease;
- (b) Chipped, faded, peeling, and cracked paint;

- (c) Rust and corrosion;
 - (d) Cracks, dents, and discoloration;
 - (e) Missing, discolored, or damaged artificial foliage or other camouflage;
 - (f) Graffiti, bills, stickers, advertisements, litter and debris;
 - (g) Broken and misshapen structural parts; and
 - (h) Any damage from any cause.
- (3) All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the planner.
 - (4) The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.
 - (5) Each facility shall be operated and maintained at all times in compliance with applicable federal regulations, including FCC radio frequency emissions standards.
 - (6) Each facility shall be operated and maintained to comply at all times with the noise regulations of this chapter and shall be operated and maintained in a manner that will minimize noise impacts to surrounding residents. Except for emergency repairs, any testing and maintenance activities that will be audible beyond the property line shall only occur between the hours of 7:00 a.m. and 5:00 p.m. on Monday through Friday, excluding holidays, unless alternative hours are approved by the planner. Backup generators, if permitted, shall only be operated during periods of power outages or for testing.
 - (7) If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall be flown and shall be properly maintained at all times.
 - (8) Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the standards set forth in this section and the conditions of approval. (Ord. 692 (part), 2018).

18.55.190 No Dangerous Conditions or Obstructions Allowed.

No person shall install, use or maintain any wireless telecommunications facility which in whole or in part rests upon, in or over any public sidewalk or parkway, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals,

hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location. (Ord. 692 (part), 2018).

18.55.200 Permit Expiration.

(A) A permit for any wireless telecommunications facility shall be valid for a period of 10 years, unless the town council authorizes a longer period or pursuant to another provision of the Ross Municipal Code the permit lapses sooner or is revoked. At the end of such period, the permit shall expire.

(B) A permittee may apply for extensions of its permit in increments of no more than ten years and no sooner than twelve months prior to expiration of the permit.

(C) If a permit has not expired at the time an application is made for an extension, the planner may administratively extend the term of the permit for subsequent ten-year terms upon verification of continued compliance with the findings and conditions of approval under which the application was originally approved, as well as any other applicable provisions of the Ross Municipal Code that are in effect at the time the permit extension is granted.

(1) At the planner's discretion, additional studies and information may be required of the applicant.

(2) If the planner determines that the facility is nonconforming or that additional conditions of approval are necessary to bring the facility into compliance with the provisions of the Ross Municipal Code that are then in effect at the time of permit expiration, the planner shall refer the extension request to the town council.

(D) The request for an extension shall be decided by the town council if the permit expired before the application is made for an extension or if the planner refers the matter to the town council. After notice and a public hearing, the town council may approve, conditionally approve, or deny the extension. (Ord. 692 (part), 2018).

18.55.210 Cessation of Use or Abandonment.

(A) A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for 90 or more consecutive days. 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 operator of a facility shall notify the town in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the planner of any discontinuation of operations of 30 days or more.

(C) Failure to inform the planner of cessation or discontinuation of operations of any existing facility as required by this section shall constitute a violation of any approvals and be grounds for:

(1) Prosecution;

- (2) Revocation or modification of the permit;
- (3) Calling of any bond or other assurance required by this chapter or conditions of approval of the permit;
- (4) Removal of the facilities by the town in accordance with the procedures established under the Ross Municipal Code for abatement of a public nuisance at the owner's expense; and
- (5) Any other remedies permitted under the Ross Municipal Code. (Ord. 692 (part), 2018).

18.55.220 Removal and Restoration, Permit Expiration, Revocation or Abandonment.

(A) *Permittee's removal obligation.* Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the permit or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the town. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the town. The facility shall be removed from the property within 30 days, at no cost or expense to the town. If the facility is located on private property, the private property owner shall also be independently responsible for the expense of timely removal and restoration.

(B) *Failure to remove.* Failure of the permittee, owner, or operator to promptly remove its facility and restore the property within 30 days after expiration, earlier termination, or revocation of the permit, or abandonment of the facility, shall be a violation of the Ross Municipal Code, and be grounds for:

- (1) Prosecution;
- (2) Calling of any bond or other assurance required by this chapter or conditions of approval of permit;
- (3) Removal of the facilities by the town in accordance with the procedures established under the Ross Municipal Code for abatement of a public nuisance at the owner's expense; or
- (4) Any other remedies permitted under the Ross Municipal Code.

(C) *Summary removal.* In the event the planner determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way 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 (collectively, "exigent circumstances"), the planner may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall be served upon the person who owns the facility within five business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within 60 days, the facility shall be treated as abandoned property.

(D) *Removal of facilities by town.* In the event the town removes a facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be

without any liability to the town for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the town may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with the Ross Municipal Code. Unless otherwise provided herein, the town has no obligation to store such facility. Neither the permittee nor the owner nor operator shall have any claim if the town destroys any such facility not timely removed by the permittee, owner, or operator after notice, or removed by the town due to exigent circumstances. (Ord. 692 (part), 2018).

18.55.230 Effect on Other Ordinances.

Compliance with the provisions of this chapter shall not relieve a person from complying with any other applicable provision of the Ross Municipal Code, including but not limited to obtaining any necessary encroachment or building permits. In the event of a conflict between any provision of this chapter and other provisions of the Ross Municipal Code, this chapter shall control. (Ord. 692 (part), 2018).

18.55.240 Effect of State or Federal Law.

In the event that state or federal law prohibits discretionary permitting requirements for certain wireless telecommunications facilities, the permits required by this chapter for those facilities shall be deemed to be ministerial permits. For those facilities, in lieu of a use permit, a ministerial permit shall be required prior to installation or modification of a wireless telecommunications facility and all provisions of this chapter shall be applicable to any such facility with the exception that the required permit shall be reviewed and administered as a ministerial permit by the planner rather than as a discretionary permit. Any conditions of approval set forth in this chapter or deemed necessary by the planner shall be imposed and administered as reasonable time, place and manner rules. (Ord. 692 (part), 2018).