

CITY OF ALAMEDA ORDINANCE NO. \_\_\_\_\_

New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY: (1) ADDING NEW SECTION 23-9 (PERSONAL WIRELESS SERVICE FACILITIES IN THE PUBLIC RIGHT-OF-WAY); (2) AMENDING SECTION 2-59.3 (LIMITATION AND POWER TO MAKE CONTRACTS) TO EXEMPT MASTER LICENSE AGREEMENTS FOR USE OF PUBLIC ASSETS FOR PERSONAL WIRELESS SERVICE FACILITY INSTALLATION

WHEREAS, the Telecommunications Act of 1996 (TCA) recognized that cities have authority to regulate personal wireless service facilities, but limited the scope of such regulation; and

WHEREAS, the TCA prevents cities from prohibiting or effectively prohibiting these facilities and requires cities to act on applications for these facilities within a reasonable timeframe; and

WHEREAS, Congress passed Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 on February 22, 2012, generally requires that a state and local government “may not deny, and shall approve” certain applications for substantial changes to existing sites that modify transmission equipment at an existing wireless tower or base station; and

WHEREAS, in 2014 the Federal Communications Commission (FCC) adopted regulations interpreting Section 6409(a) that established an expedited timeframe for the review of proposed modifications and defined key terms in the statute that control whether the local agency may deem that a modification causes a substantial change; and

WHEREAS, new regulations issued by the FCC in 2018 that apply to “small wireless facilities” generally preempt subjective land-use regulations, preempt local regulations that prohibit or effectively prohibit the provision of wireless services, and impose expedited review timeframes to provide applicants with a judicial remedy when the State or local government fails to approve or deny the request within the timeframes established by the FCC; and

WHEREAS, California Public Utilities Code sections 7901 and 7901.1 grant telephone corporations a limited right to use the public rights-of-way for facilities, which includes personal wireless service facilities, necessary to provide telephone services, as long as such installations do not “incommode” or interfere with public use of the public right-of-way and are subject to the City’s aesthetic regulations and reasonable controls imposed by the City as to time, place, and manner in which the public right-of-way is accessed; and

WHEREAS, the City's existing regulations and licensing arrangements, which are applicable to any installations in the public right-of-way, are either obsolete or not most protective of the City's authority and must be updated to comply with current federal and state laws; and

WHEREAS, the City Council desires to protect and promote public health, safety, and welfare, and also balance the benefits that flow from robust, advanced wireless services with the City's local values, which include, without limitation, the public's use of the City's rights-of-way, the aesthetic character of the City, its various neighborhoods and community without (1) prohibiting or effectively prohibiting any personal wireless service provider's ability to provide personal wireless services; (2) prohibiting or effectively prohibiting any personal wireless service provider's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulations; (3) unreasonably discriminating among providers of functionally equivalent services; (4) denying any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions; (5) prohibiting any collocation or modification that the City may not deny under federal or state law; or (6) otherwise authorizing the City to preempt any applicable federal or state law or regulation; and

WHEREAS, the adoption of this ordinance is necessary to ensure that the City's regulation of personal wireless facilities in the public right-of-way is consistent with federal and state laws, does not unreasonably interfere with public use of the public right-of-way, and preserves public peace, health, and safety, to the extent allowed under federal and state laws.

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

Section 1: SECTION 23-9 (PERSONAL WIRELESS SERVICE FACILITIES IN THE PUBLIC RIGHT-OF-WAY) of Chapter XXIII (PARKS, RECREATION AREAS AND PUBLIC PROPERTY) of the Alameda Municipal Code, is hereby added as a new section and shall read as follows:

## **CHAPTER XXIII PARKS, RECREATION AREAS AND PUBLIC PROPERTY**

### **23-9 – PERSONAL WIRELESS SERVICE FACILITIES IN THE PUBLIC RIGHT-OF-WAY**

#### **23-9.010 – Purpose**

- A. The purpose of this Chapter is to establish reasonable and uniform standards and procedures for personal wireless service facilities deployment, construction, installation, collocation, modification, operation, relocation, and removal within the

public right-of-way, consistent with and to the extent permitted under federal and California state law. The regulations set forth in this Chapter are intended and shall be applied to protect and promote public health, safety, and welfare; retain the aesthetic character of the City; and ensure that residents, visitors, businesses, and government services in the City have reliable access to the state-of-the-art wireless telecommunications networks.

B. 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 personal wireless service provider's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulations;
3. unreasonably discriminate among providers of functionally equivalent services;
4. deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions;
5. prohibit any collocation or modification that the City may not deny under federal Or California state law; or
6. otherwise authorize the City to preempt any applicable federal or California state law or regulation.

### **23-9.015 – Definitions**

The abbreviations, phrases, terms, and words shall have the meanings assigned to them in this Section. Undefined phrases, terms or words in this policy will have their ordinary meanings. If any definition assigned to any phrase, term, or word in this Section conflicts with any federal or state-mandated definition, the federal or state-mandated definition shall control.

*Accessory Equipment.* The same meaning as the term "antenna equipment" as defined in 47 CFR Section 1.6002(c), as may be amended or superseded. As an illustration, this equipment may include, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, wires, conduits, equipment buildings, cabinets, storage sheds, shelters, vaults, or other structures.

*Antenna.* The same meaning as it is defined in 47 CFR Section 1.6002(b), as may be amended or superseded. As used in this Chapter, this definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

*Applicant.* The same meaning as it is defined in 47 CFR Section 1.6002(e), as may be amended or superseded.

*Base Station.* The same meaning as it is defined in 47 CFR Section 1.6100(b)(1), as may be amended or superseded.

*City Engineer.* The City Engineer of the City of Alameda or his/her designee.

*Code.* Alameda Municipal Code.

*Collocation or Collocate.* The same meaning as it is defined by the FCC in 47 CFR Section 1.6002(g), as may be amended or superseded. This definition shall not apply to a Section 6409(a) “collocation”, which shall be subject to the standards and procedures for eligible facilities requests as provided in this Chapter and 47 CFR Sections 1.6100 *et seq.*, as may be amended or superseded.

*Day.* Unless specifically set out in this Chapter, a “day” shall mean one calendar day, excluding holidays.

*Existing.* The same meaning as it is defined in 47 CFR Section 1.6100(b)(5), as may be amended or superseded.

*Eligible Facilities Request.* The same meaning as it is defined in 47 CFR Section 1.6100(b)(3), as may be amended or superseded.

*FCC.* Federal Communications Commission.

*Laws.* Any and all applicable federal, state and local ordinances, resolutions, regulations, administrative orders, or other legal requirements.

*Permittee.* The owner of a personal wireless service facility that has obtained permission through issuance of a Wireless Facility Encroachment Permit or 6409(a) Permit to construct, install, modify, collocate, relocate, or otherwise deploy personal wireless service facilities in the public right-of-way. Said owner shall possess the appropriate legal authority to construct, install, modify, collocate, relocate, or otherwise deploy personal wireless service facilities in the public right-of-way.

*Personal Wireless Services.* The same meaning as it is defined in 47 USC Section 332(c)(7)(C)(i), as may be amended or superseded.

*Personal Wireless Service Facilities.* The same meaning as it is defined in 47 USC Section 332(c)(7)(C)(ii), as may be amended or superseded.

*Public Right-of-Way.* Any public street, alley, sidewalk, or parkway, and the space on, above, or below it, that is owned or granted by easement, operated, or controlled by the City.

*Public Works Director.* The Public Works Director of the City of Alameda or his/her designee.

*Section 6409(a).* Section 6409(a) of the Middle Class Tax Relief and Job Creation Act, Pub. L. No. 112-96, 126 Stat. 156 (Feb. 22, 2012), codified as 47 USC Section 1455(a) and implemented pursuant to 47 CFR Section 1.6100.

*Site.* The same meaning as it is defined in 47 CFR Section 1.6100(b)(6), as may be amended or superseded.

*Substantial Change.* The same meaning as it is defined in 47 CFR Section 1.6100(b)(7), as may be amended or superseded.

*Tower.* The same meaning as it is defined in 47 CFR Section 1.6100(b)(9), as may be amended or superseded.

*Transmission Equipment.* The same meaning as it is defined in 47 CFR Section 1.6100(b)(8), as may be amended or superseded.

*Unlicensed Wireless Service.* The same meaning as it is defined in 47 USC Section 332(c)(7)(C)(iii), as may be amended or superseded.

## **23-9.020 – Applicability**

This Chapter applies to all personal wireless service facilities as follows:

- A. All facilities for which applications were not submitted prior to the effective date of this Chapter shall be subject to and comply with all provisions of this Chapter; and
- B. All facilities, notwithstanding the date submitted or approved, shall be subject immediately to:
  - 1. 23-9.045 Fees
  - 2. 23-9.070 Radio Frequency Exposure Monitoring Requirements;
  - 3. 23-9.075 Operation and Maintenance Standards;
  - 4. 23-9.080 Termination for Public Benefit

5. 23-9.085 Revocation or Modification

6. 23-9.100 Abandonment;

7. 23-9.105 Preservation of City Rights

8. 23-9.110 Removal and Restoration;

9. 23-9.120 Insurance and Bond; and

10. 23-9.125 Indemnity.

C. Exempt Facilities. Notwithstanding Sections 23-9.020.A. and 23-9.020.B., the provisions in this Chapter shall not be applicable to:

1. Personal wireless service facilities or equipment owned and operated by Alameda Municipal Power for use in connection with electrical power generation, transmission, and distribution facilities;

2. Personal wireless service facilities that are constructed for City use or by the City to exclusively provide unlicensed wireless services, such as Wi-Fi;

3. Facilities that are for the purpose of wireless-based reading of water, gas, street lighting or electric meters;

4. Facilities or other transmission equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power generation, transmission and distribution facilities subject to CPUC General Order 131-D;

5. Amateur radio facilities;

6. Over the Air Reception Devices ("OTARD") antennas; and

7. Any entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement.

### **23-9.025 – Departmental Standards, Forms, and Other Regulations**

The City Council authorizes the Public Works Director to develop and publish a Public Wireless Communication Facilities Design Guidelines document to supplement the regulations set forth in this Chapter. In addition, the City Council authorizes the Public Works Director to develop and publish permit application forms, checklists, informational handouts, and other related materials for this Chapter. Without further authorization from the City Council, the Public Works Director may from time-to-time update and alter the

Public Right-of-Way Wireless Service Facility Standards and Regulations, including standard permit conditions, permit application forms, checklists, informational handouts, and other related materials as the Public Works Director deems necessary or appropriate. The City Council further authorizes the Public Works Director to establish other reasonable rules and regulations, which may include without limitation regular hours for appointments with applicants and inspection procedures, as the Public Works Director deems necessary or appropriate to organize, document, and manage the application, permitting, construction, and other processes related to personal wireless service facilities. All such rules and regulations must be in written form and shall be effective immediately upon publication, which may include, without limitation, posting at the Public Works' offices or on the City's website.

### **23-9.030 – Permits Required**

- A. **Wireless Facility Encroachment Permit.** A Wireless Facility Encroachment Permit is required to construct, install, modify, collocate, relocate, or otherwise deploy a personal wireless service facility in the public right-of-way. Notwithstanding the foregoing, a Wireless Facility Encroachment Permit is not required for eligible facilities requests, which shall be regulated pursuant to Section 23-9.030.B.
- B. **6409(a) Permit.** A 6409(a) Permit is required for all eligible facilities requests filed with a written request for approval pursuant to Section 6409(a).
- C. **Other Permits and Regulatory Approvals.** In addition to any permit required under this Chapter, the applicant must obtain and comply with all other required authorizations and permits and all other regulatory approvals from all City departments, and state and federal agencies.
- D. **Proprietary Approvals.** Nothing in this Chapter shall be deemed to waive any required pole license, attachment agreement or proprietary approvals for siting of personal wireless service facilities on privately or publicly owned property or improvements.
- E. **Non-Exclusive Grant.** No permit or 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 City for any purpose whatsoever. Further, no approval shall be construed as any warranty of title.

### **23-9.035 – Permit Applications**

- A. **Application Requirement.** Except as provided in subsection C. herein, the City shall not approve or deny any personal wireless service facility subject to this Chapter 23 except upon a duly filed application pursuant to this Chapter and the Public Right-of-Way Personal Wireless Service Facility Standards and Regulations.

- B. **Procedures for a Duly Filed Application.** The applicant shall file an application in accordance with the provisions in this Section.
- C. **Application Form.** The Public Works Director shall develop and from time-to-time revise the application form in the manner described in Section 23-9.025.
- D. **Wireless Facility Encroachment Permit Applications.** An application for a Wireless Facility Encroachment Permit shall comply with the procedures stated in this Section and any guidance or regulation deemed necessary and appropriate by the Public Works Director, per Section 23-9.025, including without limitation, the Wireless Communication Facilities Design Guidelines, checklists, informational handouts, and other related materials. Applications may be presented in person at any time that the City Permit Center is open to the public. Applications may not be submitted in any other manner unless authorized by the Public Works Director in duly adopted regulations pursuant to Section 23-9.025.

#### **23-9.040 – Applications Deemed Withdrawn**

If an application is deemed incomplete, the Public Works Director shall notify the applicant as to what information is needed in order to deem the application complete. The applicant must provide all requested information within sixty (60) days of being notified by the Public Works Director that the application is incomplete or the application shall be deemed withdrawn without prejudice by the applicant. If the applicant delivers to the Public Works Director a written request prior to the sixtieth (60th) day to extend the response time, the Public Works Director may grant a written extension where the applicant provides good cause to grant the extension. The extension, if granted, may be for up to an additional thirty (30) calendar days. No additional extensions shall be granted.

#### **23-9.045 – Fees**

The City Council may approve by resolution a Municipal Fee Schedule that establishes cost based fees for permits, consulting costs, inspections, enforcement, appeals, amendments, noticing, informational materials, penalties, copies, and other such items as required by this Chapter. These fees may be amended by the City Council.

#### **23-9.050 – Wireless Facility Encroachment Permit Applications**

- A. **Decision Notices.** Within five (5) days after the Public Works Director approves, conditionally approves, or denies a Wireless Facility Encroachment Permit Application, the Public Works Director shall transmit a written determination to the applicant at the email address provided on the application. For any denial notice, the Public Works Director shall include the reasons for the denial either in the notice or as a separate written document issued contemporaneously with the denial notice, and shall also place a copy of the denial notice and the reasons for denial in the written administrative record for the project.



**B. Required Findings for Approval.** The Public Works Director shall only approve or conditionally approve a duly filed application for a Wireless Facility Encroachment Permit if the Public Works Director determines that the project, as submitted or modified, conforms to all the following criteria.

1. The proposed personal wireless service facility complies with all applicable requirements described in this Chapter 23-9 and in the Wireless Communication Facilities Design Guidelines;
2. The proposed personal wireless service facility complies with all other laws, including without limitation state and federal law.
3. The inability to make one or more of the findings required in this Chapter is grounds for denial of an application.

**C. Conditional Approvals.** The Public Works Director may impose any reasonable condition or conditions on any Wireless Facility Encroachment Permit, related and proportionate to the subject matter in the application, as the Public Works Director deems necessary or appropriate for compliance with this Chapter or for the preservation of public health and safety.

#### **23-9.055 – 6409(a) Permit Applications**

**A. Decision Notices.** Within five (5) days after the Public Works Director approves, conditionally approves, or denies a 6409(a) Permit for an eligible facilities request filed pursuant to Section 6409(a), the Public Works Director shall transmit a written determination to the applicant at the email address provided on the application. For any denial notice, the Public Works Director shall include the reasons for the denial either in the notice or as a separate written document issued with the denial notice, and shall also place a copy of the denial notice and the reasons for denial in the written administrative record for the project.

**B. Required Findings for Approval.** The Public Works Director shall only approve or conditionally approve a duly filed application for a 6409(a) Permit if the Public Works Director determines that the project, as submitted or modified, conforms to all the following criteria.

1. The proposed personal wireless service facility complies with all applicable requirements described in this Chapter 23-9 and in the Wireless Communication Facilities Design Guidelines;
2. The proposed personal wireless service facility complies with all other applicable and legally enforceable laws, including without limitation state and federal law, regulations, rules, standards or permit conditions reasonably related to public health or safety;

3. The 6409(a) Permit Application constitutes an eligible facilities request; and
4. The 6409(a) Permit Application does not constitute a substantial change.
5. The inability to make one or more of the findings required in this Chapter is grounds for denial of an application.

C. **Conditional Approvals.** As permitted by law, the Public Works Director may impose conditions on any 6409(a) Permit for the preservation of public health and safety.

### **23-9.060 – Limited Exception for Wireless Facility Encroachment Permits Applications**

The Public Works Director shall not grant any limited exception for a Wireless Facility Encroachment Permit Application pursuant to this Section 23-9.060 unless the Public Works Director finds all the following:

- A. The proposed facility qualifies as a “personal wireless service facility” as defined in 47 USC Section 332(c)(7)(C)(ii);
- B. The applicant has provided the Public Works Director with a reasonable and clearly defined technical service objective to be achieved by the proposed facility;
- C. The applicant has provided the Public Works Director with a written statement that contains a detailed and fact-specific explanation as to why the proposed facility cannot be deployed in compliance with the applicable provisions in this Chapter and the Code, including the Public Right-of-Way Personal Wireless Service Facility Standards and Regulations;
- D. The applicant has provided the Public Works Director with a meaningful comparative analysis with the factual reasons why all alternative locations and/or designs identified in the administrative record (whether suggested by the applicant, the City, or any other source) are not technically feasible or potentially available to reasonably achieve the applicant’s reasonable and clearly defined technical service objective to be achieved by the proposed facility; and
- E. The applicant has demonstrated that the proposed location and design is the least noncompliant configuration that shall reasonably achieve the applicant’s reasonable and clearly defined technical service objective to be achieved by the proposed facility, which includes without limitation a meaningful comparative analysis into multiple smaller or less intrusive facilities dispersed throughout the intended service area.

## **23-9.065 – Permit Expiration and Deadlines**

### **A. Wireless Facility Encroachment Permits and 6409(a) Permits**

1. **Expiration.** Unless a shorter period is permitted or preempted by law, once any personal service wireless facility is demonstrated to the City to be constructed, per an approved Wireless Facility Encroachment Permit or 6409(a) Permit for any personal wireless service facility, the term of said Wireless Facility Encroachment permit shall be valid for a period of ten (10) years from the date the City receives proof of all required approved, final inspections, unless such permit is terminated pursuant to Section 23-9.080, or revoked pursuant to Section 23-9.085. At the end of ten (10) years from the date of demonstration, such permit shall automatically expire.
2. **Permit Renewal.** A permittee may apply for a new Wireless Facility Encroachment Permit or 6409(a) Permit no earlier than eighteen (18) months nor later than six (6) months prior to expiration of the expiring permit. Said application and proposal shall comply with the City's code and application requirements in effect at the time of said application.

### **B. Construction of Wireless Facilities in Public Right of Way**

1. **Time to Complete Work.** For any Wireless Facility Encroachment Permit granted under this Chapter, the permittee shall complete construction within three hundred and sixty five (365) days from the date of issuance of this permit.
2. **Extensions.** The Public Works Director may grant up to a maximum of two (2) written extensions of time from the stated period in Section 23-9.065.B.1 where the permittee provides good cause to grant the extension. An extension, if granted, may be for up to an additional forty-five (45) days.
3. **Expiration.** Where a permittee of a Wireless Facility Encroachment Permit fails to comply with this Section 23-9.065, the permit shall automatically expire.
4. **Permit Renewal.** Before any work authorized under an expired Wireless Facility Encroachment Permit can be recommenced, the permittee shall file an application for a permit renewal pursuant to the Small Cell Wireless Facilities in the Public Right of Way, Guidelines for Permit Submittal. Renewal permits shall be subject to a permit renewal fee and Small Cell Wireless Facilities in the Public Right of Way, Guidelines for Permit Submittal in effect at the time of filing for permit renewal.

### **23-9.070 – Radio Frequency Exposure Monitoring Requirements**

- A. **FCC Compliance.** The City shall not approve any permit that does not demonstrate planned compliance with the FCC's regulations concerning radio frequency exposure.
- B. **Pre-Installation Reporting.** As part of any application required under this Chapter, the applicant shall provide to the City a radio frequency electromagnetic energy report pursuant to the requirements set forth in the Small Cell Wireless Facilities in the Public Right of Way, Guidelines for Permit Submittal.

### **23-9.075 – Operation and Maintenance Standards**

All personal wireless service facilities must comply at all times with the following operation and maintenance standards:

- A. All personal wireless service facilities shall be maintained in good condition, including ensuring the facilities are reasonably free of:
  - 1. General dirt and grease;
  - 2. Chipped, faded, peeling, and cracked paint;
  - 3. Rust and corrosion;
  - 4. Cracks, dents, and discoloration;
  - 5. Missing, discolored, or damaged camouflage;
  - 6. Graffiti, bills, stickers, advertisements, litter, and debris;
  - 7. Broken and misshapen structural parts; and
  - 8. Any damage from any cause.
- B. Each personal wireless service facility shall be operated and maintained at all times in compliance with all laws;
- C. Within thirty (30) days of the anniversary date of the permit, each owner of a personal wireless service facility shall routinely inspect each site to ensure compliance with the standards set forth in this Section and all conditions of approval.

### **23-9.080 – Termination for Public Benefit**

Every permit granted under this Chapter may be terminated upon twelve (12) months' prior written notice to the permittee, or less time if in response to an urgent or emergency situation as determined by the City, if the personal wireless service facility interferes or will interfere with any public work of improvement that impacts the public right-of-way. If a permit granted until this Chapter is terminated pursuant to this Section, any Wireless Facility Encroachment Permit Application for a new personal wireless service facility within 500 feet of the terminated Wireless Facility Encroachment Permit that will act as a replacement for the terminated Wireless Facility Encroachment Permit shall not be subject to site justification pursuant to Section 23-9.135.B.

### **23-9.085 – Revocation or Modification**

Any permit granted under this Chapter may be revoked or modified for cause in accordance with the provisions of this Section.

- A. **Initiation.** Revocation or modification proceedings may be initiated by the Public Works Director.
- B. **Notification of Hearing.** The permittee shall be notified by the Public Works Director of the basis for the proposed revocation or modification and be provided a date and time during which a hearing will be held not less than fourteen (14) days in advance of said hearing.
- C. **Required Findings for Revocation or Modification.** The Public Works Director may revoke or modify the permit if he or she makes any of the following findings:
  - 1. The applicant obtained the approval by means of fraud or misrepresentation of a material fact;
  - 2. The applicant has failed to construct, or has expanded or altered the permitted facility in manner that inconsistent with that set forth in the permit;
  - 3. The personal wireless service facility is deemed abandoned because it has not been operated for any continuous period of six (6) months or more;
  - 4. Failure to comply with any condition of a permit issued;
  - 5. Failure to comply with any provision in this Chapter;
  - 6. A substantive change of state or federal law or regulations materially affecting a permittee's authority to occupy or use the public right-of-way or the City's ability to impose regulations relating to such occupation or use; and

7. A personal wireless service facility is located on a utility pole or structure subject to removal pursuant to a lawfully approved utility undergrounding district or other rule or regulation.

D. **Notice of Action.** A written determination of revocation that contains the reasons for the revocation shall be sent via USPS Certified Mail to the permittee within five (5) days of such determination.

### **23-9.090 – Expert Assistance**

Where the City determines that it requires the services of a consultant for expert assistance in implementing this Chapter or processing any application received thereunder, and subject to applicable laws, the applicant shall deposit a fee equal to the estimated cost of the consultant's services to the City. In the event that the actual fees exceed the deposited fees, the applicant shall pay the difference to the City. In the event that the actual fees are less than the deposited fees, the applicant shall be refunded for the difference from the City. No permit for an approved project shall be issued if the applicant owes the City funds to fully reimburse the City for its actual costs to process the application, including without limitation, reimbursement for the City's consultant costs.

### **23-9.095 – Deemed Approved**

In the event that an application is deemed approved by any rule of law or regulation, all applicable requirements of this Chapter, including those requirements set forth in the Public Right-of-Way Personal Wireless Service Facility Standards and Regulations in effect at the time of the deemed approval, and any other applicable laws, including, without limitation, standard conditions of approval, shall automatically attach and apply as permit conditions.

### **23-9.100 – Abandonment**

A personal wireless service facility that is considered abandoned pursuant to Section 23-9.085.C.3 shall be promptly removed and, as applicable, the area restored to its prior condition at the permittee's sole cost and expense within sixty (60) days after abandonment. If there are two (2) or more users of a single facility, then this provision shall not become effective until all users cease using the facility. The owner of a facility shall notify the City in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within thirty (30) days of ceasing or abandoning use. Failure to inform the Public Works Director of cessation of operations or abandonment of any personal wireless service facility as required by this Section shall constitute a violation of any approvals and be grounds for:

- A. Revocation or modification of the permit;
- B. Acting on any bond or other assurance required by this article or conditions of approval of the permit;

- C. Removal of the facilities by the City at the owner's expense; and/or
- D. Any other remedies permitted under this Code or by law.

### **23-9.105 – Preservation of City Rights**

- A. **Overview.** The City at all times reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the public right-of-way. Such actions may temporarily or permanently interfere with the personal wireless service facility. The City shall in all cases, other than emergencies, give the applicant written notification of such planned, non-emergency actions no fewer than fourteen (14) days prior to such actions.
- B. **Summary Removal.** In the event the Public Works Director determines that the condition or placement of a personal wireless service 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 Public Works Director may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five (5) 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 sixty (60) days, the facility shall be treated as abandoned property subject to any disposal or reuse in the City's sole discretion.
- C. **Non-Liability for Removal.** In the event the City removes a personal wireless service facility pursuant to Section 23-9.105.B., any such removal shall be without any liability to the City for any damage to such facility that may result from reasonable efforts of removal. The City has no obligation to restore such facility. The permittee shall not have any claim if the City removes a personal wireless service facility pursuant to Section 23-9.105.B.

### **23-9.110 – Removal and Restoration**

- A. **General Provisions.** Upon the expiration date of the permit, earlier termination or revocation of the permit or abandonment of the facility, the permittee shall remove its personal wireless service facility and restore the site to its natural condition except for any improvements to be retained by the City at its discretion. Any such retained improvements shall be purchased from the permittee for one dollar, and the parties will cooperate to effectuate this provision. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the City. The facility shall be removed from the property, at no cost or expense to the City. Failure of the permittee, owner, or operator to promptly

remove its facility and restore the property within sixty (60) days after expiration, earlier termination or revocation of the permit, or abandonment of the facility, shall be a violation of this Chapter. Upon a showing of good cause, an extension may be granted by the Public Works Director where circumstances are beyond the control of the permittee after expiration, earlier termination or revocation of the permit, or abandonment of the facility. Further failure to abide by the timeline provided in this Section shall be grounds for:

1. Acting on any security instrument required by this Chapter or conditions of approval of permit;
2. Removal of the facilities by the City at the owner's expense; and/or
3. Any other remedies permitted under this Code or under state or federal law.

### **23-9.115 – Notice of Shot Clock Expiration**

The applicant is required to provide the Public Works Director with written notice of the expiration of any timeframe for review, which the applicant shall ensure is received by the City (e.g., via Certified Mail, Registered Mail, national carrier, any of which shall require a receipt signature) no earlier than thirty (30) nor later than twenty (20) days prior to expiration of the shot clock.

### **23-9.120 – Insurance and Bond**

- A. **Insurance.** The permittee, including its agents and contractors, shall procure and maintain in full force and effect as a condition of any permit granted under this Chapter 23-9 insurance pursuant to the requirements of the City's Risk Manager.
- B. **Bond.** Permittee shall pay for and provide a performance bond or other form of security approved by the City Attorney's Office, which shall be in effect until the personal wireless service facility is fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under this Chapter. The security instrument coverage shall include removal of the facility and site restoration in compliance with applicable laws. The amount of the security instrument shall be calculated by the applicant in its submittal documents in an amount rationally related to the obligations covered by the bond and pursuant to the requirements set forth in the Public Right-of-Way Personal Wireless Service Facility Standards and Regulations. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject facility in accordance with this provision.

### **23-9.125 – Indemnity**

The permittee shall defend, indemnify and hold harmless the City, 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 City or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the City's approval of any permit or regulatory approval authorized by City under this Chapter; 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 the permit or the facility; provided, however, the permittee shall not be required to defend, indemnify, or hold harmless the City, agents, officers, officials, employees and volunteers due to the negligence, gross negligence, or willful misconduct of the City, agents, officers, officials, employees, and volunteers. In the event the City becomes aware any Claims, the City shall use best efforts to promptly notify the permittee and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.

### **23-9.130 – Emergency Deployment**

In the event of an officially-declared federal, state, or local emergency, or when otherwise warranted by conditions that the City deems to constitute an emergency, the Public Works Director, City Manager, or their designees may approve the installation and operation of a temporary personal wireless service facility (e.g., a cell on wheels, or "COW"), which is subject to such reasonable conditions that the City deems necessary.

### **23-9.135 – Location and Deployment Preferences**

- A. **New Poles.** New poles in the public right-of-way detract from the aesthetics of the City. New poles in the public right-of-way to accommodate a personal wireless service facility that are not replacing an existing pole are permitted only through the exception process pursuant Section 23-9.060.
- B. **Site Justification.** For Wireless Facility Encroachment Permit Applications, the applicant shall provide to the City a site justification report pursuant to the requirements set forth in the Wireless Communication Facilities Design Guidelines and Small Cell Wireless Facilities in the Public Right of Way, Guidelines for Permit Submittal.
- C. **Historic-themed light poles.** No personal wireless service facilities or accessory equipment shall be permitted on designated historic light poles in the City of Alameda.

## **23-9.140 – Effect on Other Ordinances**

Compliance with the provisions of this Chapter shall not relieve a person from complying with any other applicable provision of this Code. In the event of a conflict between any provision of this Chapter and other sections of this Code, this Chapter shall control.

Section 2: SECTION 2-59.3 (LIMITATION AND POWER ON POWER TO MAKE CONTRACTS) of Chapter II (ADMINISTRATION) of the Alameda Municipal Code, is hereby amended to add a new subsection (d), which shall read as follows:

### **2-59.3 - Limitation and Power to Make Contracts.**

- (a) Except as otherwise provided in the Charter or this Code, no employee of the City shall make any contract, obligating the City, or any department of the City, to make or receive payments of money or other valuable consideration for a period longer than five (5) years, unless such contract shall have been first approved by the Council.
- (b) For the purpose of this section, a contract obligating the City, or any operational department of the City, to make or receive payments or other valuable consideration for a period longer than five (5) years, shall include a contract which contains a provision, such as, but not limited to, an option clause, which allows for a cumulative period longer than five (5) years, said period calculated as of the date of execution of the contract.
- (c) Contracts for personal or professional services involving specialized knowledge, including, without limitation, architects, engineers, or accountants, in the amount of seventy-five thousand dollars (\$75,000.00) or more must be approved by Council.
- (d) Agreements for use and installation of personal wireless service facilities, permitted pursuant to Section 23-9 (Personal Wireless Service Facilities in the Public Right-Of-Way) of the Alameda Municipal Code, shall be exempt from the requirements of subsection (a) above.

### **Section 3: IMPLIED REPEAL**

Any provision of the Alameda Municipal Code inconsistent with this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to effectuate this Ordinance.

### **Section 4: CEQA DETERMINATION**

The proposed amendments to the Alameda Municipal Code (AMC) are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15301 (exemption for minor alteration to existing facilities) and Section 15303 (exemption

for new construction or conversion of small structures), and none of the exceptions to the exemptions in CEQA Guidelines Section 15300.2 are triggered.

Section 5: SEVERABILITY

If any provision of this Ordinance is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this Ordinance that can be given effect without the invalid provision and therefore the provisions of this Ordinance are severable. The City Council declares that it would have enacted each section, subsection, paragraph, subparagraph and sentence notwithstanding the invalidity of any other section, subsection, paragraph, subparagraph or sentence.

Section 6: EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

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Presiding Officer of the City Council

Attest:

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Lara Weisiger, City Clerk

\* \* \* \* \*

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the \_\_\_ day of \_\_\_\_\_ 2020, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

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Lara Weisiger, City Clerk  
City of Alameda

Approved as to form:

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Yibin Shen, City Attorney  
City of Alameda