

Chapter 18.96 - WIRELESS COMMUNICATIONS FACILITIES

18.96.010 - Purpose and legislative intent.

- A. Purpose. This chapter establishes standards for the installation, modification, and operation of wireless communications facilities. These standards aim to protect public health, safety, and welfare while balancing the benefits of robust wireless services with the unique community character, aesthetics and local values of Morgan Hill.
- B. Legislative Intent. This chapter does not intend to, and shall not be interpreted or applied to:
1. Prohibit or effectively prohibit personal wireless services;
 2. Unreasonably discriminate among providers of functionally equivalent personal wireless services;
 3. Regulate the installation, operation, collocation, modification or removal of wireless facilities on the basis of the environmental effects of radio frequency (RF) emissions to the extent that such emissions comply with all applicable Federal Communications Commission (FCC) regulations;
 4. Prohibit or effectively prohibit any collocation or modification that the City may not deny under state or federal law; or
 5. Preempt any applicable state or federal law.

(Ord. No. 2277 N.S., § 5(Exh. A), 6-6-2018)

18.96.020 - Definitions.

- A. Terms Defined. Terms used in this chapter are defined as follows:

1. "Amateur radio facilities" are antennas and related equipment for the purpose of self-training, intercommunication, or technical investigations carried out by an amateur radio operator who operates without commercial interest, and who holds a written authorization from the Federal Communications Commission to operate an amateur radio facility.
2. "Antenna" means a device or system of wires, poles, rods, dishes, discs, or similar devices used to transmit and/or receive radio or electromagnetic waves.
3. "Applicable FCC decisions" means the same as defined by California Government Code Section 65964.1(d)(1), as may be amended, which defines that term as "In re Petition for Declaratory Ruling, 24 FCC Rcd. 13994 (2009) and In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Report and Order, 29 FCC Rcd. 12865 (2014)."
4. "Array" means one or more antennas mounted at approximately the same level above ground on tower or base station.
5. "Base station" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(1), as may be amended, which defines that term as a structure or equipment that enables wireless communications between user equipment and a communications network. Examples include wireless facilities mounted on a building or façade, ground-mounted equipment, facilities mounted to a utility pole or light standard, radio transceivers, antennas, coaxial or fiber-optic cable, power supplies, and comparable equipment regardless of technological configuration (including distributed antenna systems (DAS) and small-cell networks). The term does not include "towers" or tower-mounted equipment as defined below.
6. "Collocation" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(2), as may be amended, which defines that term as "[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes." As an illustration and not a limitation, the FCC's definition effectively means "to add" new equipment to an existing facility and does not necessarily refer to more than one wireless facility installed at a single site.
7. "Distributed Antenna System" or "DAS" means a network of one or more antennas and related fiber optic nodes typically mounted to or located on streetlight poles, utility poles, sporting venues,

arenas or convention centers which provide access and signal transfer for wireless service providers. A distributed antenna system also includes the equipment location, sometimes called a "hub" or "hotel" where the DAS network is interconnected with one or more wireless service provider's facilities to provide the signal transfer services.

8. "Eligible facilities request." See Section 18.96.060.B (Eligible Facilities Request Defined).
9. "Eligible support structure" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)4), as may be amended, which defines that term as "[a]ny tower or base station as defined in [47 C.F.R. Section 1.40001], provided that it is existing at the time the relevant application is filed with the state or local government under [47 C.F.R. Section 1.40001]."
10. "Existing" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)5), as may be amended, which provides that "[a] constructed tower or base station is existing for purposes of the [FCC rules implementing Section 6409 of the Spectrum Act] 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."
11. "FCC" means the Federal Communications Commission or its successor agency.
12. "Personal wireless services" has the same meaning as provided in 47 U.S.C. Section 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."
13. "Facility" means a "wireless communication facility" as defined in this chapter.
14. "Micro wireless facility" means a wireless communication facility that is no larger than twenty-four inches in length, fifteen inches in width, twelve inches in height, and that has an exterior antenna, if any, no longer than eleven inches.
15. "Monopole" means a single freestanding non-lattice, tubular tower that is not camouflaged and that is used to act as or support an antenna or antenna arrays.
16. "Radio Frequency (RF) Emissions" means electromagnetic radiation in the portion of the spectrum from three kilohertz to three hundred gigahertz.
17. "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. Section 1455(a), as may be amended.
18. "Section 6409(a) Modification" means any eligible facilities request that does not cause a substantial change and submitted for approval pursuant to Section 6409(a) and the FCC's regulations at 47 C.F.R. § 1.40001 et seq.
19. "Service provider" means a wireless communications provider, company or organization, or the agent of a company or organization that provides wireless communications services.
20. "Significant gap" is a gap in the service provider's own wireless telecommunications facilities, as defined in federal case law interpretations of the Federal Telecommunications Act of 1996.
21. "Site" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)6), as may be amended, which provides that "[f]or 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."
22. "Substantial change." See Section 18.96.060.C (Substantial Change Defined).
23. "Tower" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)9), as may be amended, which defines that term as "[a]ny structure built for the sole or primary purpose of supporting any [FCC]-licensed or authorized antennas and their associated facilities, including

structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site." Examples include, but are not limited to, monopoles, mono-trees, and lattice towers.

24. "Transmission equipment" means the same as defined by the FCC in 47 C.F.R. Section 140001(b)(8), as may be amended, which defines that term as "[e]quipment 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."
25. "Wireless" means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.
26. "Wireless communications facility" is a facility that sends and/or receives radio frequency signals, AM/FM, microwave, and/or electromagnetic waves for the purpose of providing voice, data, images or other information, including, but not limited to, cellular and/or digital telephone service, personal communications services, and paging services. Wireless communications facilities include antennas and all other types of equipment for the transmission or receipt of such signals; towers or similar structures built to support such equipment; equipment cabinets, base stations, and other accessory development; and screening and concealment elements. (Also referred to as "facility" and "wireless facility").
27. "Wireless communications provider" is any company or organization that provides or who represents a company or organization that provides wireless communications services. (Also referred to as "service provider").

B. Terms Not Defined. Terms not defined in this section shall be interpreted so as to give this chapter its most reasonable meaning and application.

(Ord. No. 2277 N.S., § 5(Exh. A), 6-6-2018)

18.96.030 - Applicability and exemptions.

- A. Applicability. This chapter applies to all new and modified wireless communication facilities unless exempted by Subsection B below.
- B. Exemptions. This chapter does not apply to:
 1. Amateur radio facilities;
 2. Direct-to-home satellite dishes, TV antennas, wireless cable antennas, and other antennas covered by the over-the-air reception devices (OTARD) rule in 47 Code of Federal Regulations (C.F.R.) Section 1.4000 et seq.;
 3. Non-commercial wireless communications facilities owned and operated by a public agency; and
 4. All antennas and wireless facilities identified by the FCC or the California Public Utilities Commission (CPUC) as exempt from local regulations.

(Ord. No. 2277 N.S., § 5(Exh. A), 6-6-2018)

18.96.040 - Required permits.

- A. Conditional Use Permit. Planning commission approval of a conditional use permit is required for all new facilities and modifications or collocation to existing facilities outside the public right-of-way, except for facilities requiring an administrative use permit or a Section 6409(a) Permit as identified below.

- B. Administrative Use Permit. Community development director approval of an administrative use permit is required for the following facilities:
 - 1. A collocation to an existing facility that is not eligible for a Section 6409(a) permit.
 - 2. A modification to an eligible support structure that is not eligible for a Section 6409(a) permit.
 - 3. Building- and facade-mounted facilities in a non-residential zoning district where the facility is completely concealed from public view and architecturally integrated into the existing support structure.
 - 4. A micro wireless facility in a non-residential zoning district-
- C. Section 6409(a) Permit. Modifications to an existing facility that do not result in a substantial change as defined by FCC regulations may be eligible for a Section 6409(a) permit. See Section 18.96.060 (Section 6409(a) Modifications).

(Ord. No. 2277 N.S., § 5(Exh. A), 6-6-2018)

18.96.050 - Application submittal and review; post-approval permit requirements.

- A. Application — General. An application for a proposed wireless communications facility shall be filed and reviewed in compliance with Chapter 18.104 (Common Permit Requirements) unless otherwise specified in this chapter.
- B. Application Contents. The application shall include the information required by the development services department with all required application fees. The project applicant may be required to submit some or all of the following information, depending on the scope of the proposed project and as determined by the development services department.
 - 1. Statement of Purpose. A written statement that includes:
 - a. A description of the technical objectives to be achieved;
 - b. An annotated topographical map that identifies the targeted service area to be benefitted;
 - c. The estimated number of potentially affected users in the targeted service area; and
 - d. A full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites.
 - e. A description of how the design may promote shared use by different carriers, if applicable.
 - f. A description of how the design may consolidate future planned facilities, if applicable.
 - 2. Site Development Plans. A fully dimensioned site plan and elevation drawings prepared by a California-licensed engineer or architect showing any existing wireless facilities with all existing transmission equipment and other improvements, the proposed facility with all proposed transmission equipment and other improvements, and the legal boundaries of the leased or owned area surrounding the proposed facility and any associated access or utility easements.
 - 3. Required Licenses or Approvals. Evidence that the applicant has all current licenses and registrations from the FCC, the California Public Utilities Commission (CPUC), and any other applicable regulatory bodies where such licenses or registrations are necessary to provide wireless communication services utilizing the proposed facility.
 - 4. Photo Simulations. Photo simulations that show the proposed facility in context of the site from reasonable line-of-sight locations from public streets or other adjacent public viewpoints, together with a map that shows the photo location of each view angle.
 - 5. Alternative Sites Analysis.

- a. The applicant must provide a list of all existing structures considered as alternatives to the proposed location, together with a general description of the site design considered at each location.
 - b. The applicant must also provide a written explanation for why the alternatives considered were unacceptable or infeasible, unavailable or not as consistent with the development standards in this chapter as the proposed location. This explanation must include a meaningful comparative analysis and such technical information and other factual justification as are necessary to document the reasons why each alternative is unacceptable, infeasible, unavailable or not as consistent with the development standards in this chapter as the proposed location.
 - c. If an existing facility is listed among the alternatives, the applicant must specifically address why the modification of such wireless communication facility is not a viable option. When an applicant proposes a site in the public right-of-way, the initial alternative sites analysis required for a complete application may evaluate other potential locations within the right-of-way.
6. RF Exposure Compliance Report. A radio frequency (RF) report acceptable to the city prepared and certified by an RF engineer that certifies that the proposed facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits.
 7. Noise Study. A noise study prepared and certified by an engineer for the proposed facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators demonstrating compliance with the city's noise regulations.
 8. Deposit for Third Party Review. A cash deposit for third party peer review determined by the community development director to be necessary to ensure compliance with the requirements of this chapter.
 9. Additional Information. Additional information determined by the development services department as necessary for processing the application for the proposed facility.
- C. Application Processing Time. The application processing time for applications subject to this chapter shall be in conformance with the time periods and procedures established by applicable FCC decisions, adjusted for any tolling due to incomplete application notices or mutually agreed upon extensions of time.
- D. Public Notice and Hearing.
1. Conditional Use Permit. The planning commission shall review and act on a conditional use permit for a proposed facility at a noticed public hearing in compliance with Chapter 18.104 (Common Permit Requirements).
 2. Administrative Use Permit. Public notice of a pending action on an administrative use permit application shall be provided in compliance with Section 18.104.090 (Notice of Pending Action). The community development director shall hold a public hearing for an administrative use permit application only upon receiving a written request for a public hearing as provided in Section 18.104.090.
- E. Basis for Approval. To approve a conditional use permit or administrative use permit for a proposed facility, the review authority must find that:
1. The facility is consistent with the requirements of this chapter;
 2. The facility is sited and located in the most preferred manner possible, as described in Section 18.96.070 (Preferred Siting and Location), while meeting the applicant's wireless service objectives; and
 3. All the findings required for the conditional use or administrative use permit as specified in Chapter 18.108 (Specific Permit Requirements) can be made for the proposed facility.

- F. Appeals.
 - 1. Community development director decisions on an administrative use permit may be appealed to the planning commission in accordance with Section 18.112 (Appeals).
 - 2. Planning commission decisions on a conditional use permit may be appealed to the planning commission in accordance with Section 18.112 (Appeals).
- G. Length of Approval.
 - 1. All approvals for wireless communication facilities are valid for an initial maximum period of ten years.
 - 2. An approval may be extended by the community development director from the initial approval date for a subsequent five years and may be extended by the director every five years thereafter upon the verification of the wireless communications provider's continued compliance with this chapter and with the findings and conditions of approval under which the application was originally approved.
- H. Permit Revocation.
 - 1. Basis for Revocation. A permit granted under this chapter may be revoked for noncompliance with any enforceable permit, permit condition or law applicable to the facility.
 - 2. Revocation Procedures.
 - a. When the community development director finds reason to believe that grounds for permit revocation exist, the director shall send written notice to the permit holder that states the nature of the violation and a means to correct the violation. The permit holder shall have a reasonable time from the date of the notice to correct the violation or show that the violation has not occurred.
 - b. If the permit holder does not correct the violation or show that the violation has not occurred, the planning commission shall conduct a noticed public hearing to consider whether to revoke the permit. The planning commission may revoke the permit upon findings that the permit holder has not complied with any enforceable permit, permit condition or law applicable to the facility.
 - c. The planning commission's decision may be appealed to the city council in accordance with Chapter 18.112 (Appeals).
- I. Cessation of Operations — New Permit Required. A new permit shall be required if a site is to be used again for the same purpose as permitted under the original permit if a consecutive period of six months have lapsed since cessation of operations.
- J. Transfer of Ownership. In the event that the original permit holder sells its interest in a wireless communication facility, the succeeding carrier shall assume all project responsibilities and shall be held responsible for maintaining consistency with all permit requirements and conditions of approval.

(Ord. No. 2277 N.S., § 5(Exh. A), 6-6-2018)

18.96.060 - Section 6409(a) modifications.

- A. Purpose. This section describes the process and requirements for the approval of an "eligible facilities request" that does not cause a "substantial change" to an existing facility as defined by FCC regulations.
- B. Eligible Facilities Request Defined. "Eligible facilities request" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(3), as may be amended, which defines that term as a request for modification of an existing tower or base station that does not substantially change the physical dimensions of the tower or base station, involving
 - 1. Collocation of new transmission equipment;

2. Removal of transmission equipment; or
 3. Replacement of transmission equipment.
- C. Substantial Change Defined. "Substantial change" means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(7), as may be amended, defined according to the facility type and location as follows:
1. Towers Outside the Public Right-of-Way. For towers outside the public right-of-way, a substantial change occurs when:
 - a. The proposed collocation or modification increases the overall height more than ten percent or the height of one additional antenna array not to exceed twenty feet (whichever is greater); or
 - b. The proposed collocation or modification increases the width more than twenty feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
 - c. The proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
 - d. The proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
 2. Monopoles in the Public Right-of-Way. For monopoles in the public rights-of-way, a substantial change occurs when:
 - a. The proposed collocation or modification increases the overall height more than ten percent or ten feet (whichever is greater); or
 - b. The proposed collocation or modification increases the width more than six feet from the edge of the wireless monopoles; or
 - c. The proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
 - d. The proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (ten percent) larger in height or volume than any existing ground-mounted equipment cabinets; or
 - e. The proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
 3. All Towers and Base Stations. In addition, for all towers and base stations wherever located, a substantial change occurs when:
 - a. The proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the community development director; or
 - b. The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.
 4. Interpretation of Thresholds.
 - a. The thresholds for a substantial change described above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur.
 - b. 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).

- D. Permit Required. Approval of an eligible facilities request as defined above requires community development director approval of a Section 6409(a) Permit.
- E. Applications. Applications for a Section 6409(a) Permit shall contain all information and materials specified in Section 18.96.050.B (Application Contents) except as follows:
 - 1. Section 6409(a) Permit applications are not required to include a statement of purpose (Section 18.96.050.B.1) or an alternative sites analysis (Section 18.96.050.B.5).
 - 2. The application must include a detailed explanation as to why the applicant believes that the application qualifies as an eligible facilities request subject to a Section 6409(a) Permit.
 - 3. For applications involving a collocation or modification to an eligible support structure, the application must be accompanied by all prior approvals for the existing facility (including but not limited to all conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment), as well as all permit applications with required application materials for each separate permit required by the city for the proposed facility, including but not limited to a building permit and an encroachment permit (if applicable).
- F. Public Notice. Before the community development director may approve a Section 6409(a) Permit application, notice of the application shall be posted on site at least ten calendar days prior to the city taking action on the application and shall contain the following information:
 - 1. A general explanation of the proposed modification or collocation;
 - 2. A general description of the location of the real property that is the subject of the application; and
 - 3. The following statement: "Federal law may require approval of this application pursuant to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. Section 1455(a)."
- G. Basis for Approval.
 - 1. This subsection shall be interpreted and applied so as to be consistent with the Telecommunications Act of 1996, Section 6409(a), and the applicable FCC and court decisions and determinations relating to the same. In the event that a court of competent jurisdiction invalidates all or any portion of Section 6409(a) or a FCC rule or regulation that interprets Section 6409(a), such that federal law would not mandate approval for any eligible facilities request, then all proposed modifications to existing facilities subject to this section must be approved by an administrative use permit, or conditional use permit, as applicable, and subject to the discretion of the community development director.
 - 2. The community development director shall approve a Section 6409(a) Permit upon finding that the proposed collocation or modification qualifies as an eligible facilities request and does not cause a substantial change as defined above.
 - 3. In addition to any other alternative recourse permitted under federal law, the community development director may deny a Section 6409(a) permit upon finding that the proposed collocation or modification:
 - a. Violates any legally enforceable standard or permit condition reasonably related to public health and safety;
 - b. Involves a structure constructed or modified without all regulatory approvals required at the time of the construction or modification;
 - c. Involves the replacement of the entire support structure; or
 - d. Does not qualify for mandatory approval under Section 6409(a) for any lawful reason.

4. A denial of a Section 6409(a) permit application shall be without prejudice to the applicant, the real property owner, or the project. Subject to the application and submittal requirements in this chapter, the applicant may immediately resubmit a permit application for either a conditional use permit, administrative use permit, or Section 6409(a) permit as appropriate.
- H. Appeals. Community development director decisions on a Section 6409(a) Permit are final and may not be appealed.
- I. No Permit Term Extension.
1. The approval of a Section 6409(a) permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station.
 2. A Section 6409(a) permit does not extend the permit term for any conditional use permit, administrative use permit, or other underlying regulatory approval and its term shall be coterminous with the underlying permit for the subject tower or base station.
- J. Applicant Notifications for Deemed Granted Remedies.
1. Under state and/or federal law, the city's failure to act on a wireless communications facility permit application within a reasonable period of time in accordance with the time periods and procedures established by applicable FCC decisions, accounting for tolling, may result in the permit being deemed granted by operation of law.
 2. To the extent federal or state law provides a "deemed granted" remedy for wireless communications facility applications not timely acted upon by the city, no such application shall be deemed granted unless and until the applicant satisfies the following requirements:
 - a. Submits a complete application package consistent with the application procedures specified in this chapter and applicable federal and state laws and regulations.
 - b. Following the date by which the city must take final action on the application (as determined in accordance with the time periods and procedures established by applicable FCC decisions and accounting for tolling), the applicant must provide notice to the city that the application is deemed granted by operation of law.
- K. Accelerated Permit Terms Due to Invalidation.
1. 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) permit, the permit or permits issued in connection with such 6409(a) modification(s) shall automatically expire one year from the effective date of the judicial order.
 2. A permit holder is not required to remove its improvements approved under the invalidated Section 6409(a) permit if the permit holder submits an application for a conditional use permit or administrative use permit for those improvements before the one-year period ends.
- L. No Waiver of Standing. The approval of a Section 6409(a) permit shall not be construed to waive any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any Section 6409(a) modification.

(Ord. No. 2277 N.S., § 5(Exh. A), 6-6-2018)

18.96.070 - Preferred siting and location.

The following siting and location preferences apply to all proposed new facilities and substantial changes to existing facilities. The community development director may require the applicant to submit an alternative sites analysis and evidence to demonstrate that a proposed facility could not be feasibly installed in a preferred site or location.

- A. Preferred Siting. To the extent possible, all proposed facilities should be sited according to the following preferences, ordered from most preferred to least preferred:

1. Collocations on existing base stations outside the rights-of-way; then
 2. Collocations on towers outside the rights-of-way; then
 3. New building-mounted facilities outside the rights-of-way; then
 4. New towers outside the rights-of-way.
- B. Preferred Locations — General. All applicants should, to the extent possible, propose new facilities and substantial changes to existing facilities in non-residential zones.
- C. Preferred Locations — Non-Residential Zones. To the extent possible, all proposed facilities in non-residential zones should be located according to the following preferences, ordered from most preferred to least preferred:
1. City owned or controlled parcels; then
 2. Parcels in the public facilities (PF) zone; then
 3. Parcels in the industrial (CI, IO, IC, IL, IG) zones; then
 4. Parcels in the commercial (CN, CG, CH, CS) zones;
 5. Parcels in the sports recreation leisure (SRL) zone.
 6. Parcels in the mixed use (MU-D, MU-N, MUF) zones.
- D. Preferred Locations -Residential and Open Space Zones. If a facility is proposed in a residential (RE, RDL, RDH, RAL, RAM, RAH)), a residential Planned Development, or open space (OS) zone, all facilities should be located according to the following preferences, ordered from most preferred to least preferred:
1. City owned or controlled parcels; then
 2. Parcels that contain non-residential uses and do not contain residential uses; then
 3. Parcels that contain non-residential conditional uses and do contain residential uses; then
 4. Parcels that do not contain single-family homes; then
 5. All other parcels.

(Ord. No. 2277 N.S., § 5(Exh. A), 6-6-2018)

18.96.080 - Development standards.

- A. General Design Standards. All facilities must conform to the following design standards.
1. Concealment. All new facilities and substantial changes to existing facilities must incorporate concealment measures and/or techniques appropriate for the proposed location and design. All ground-mounted equipment on private property must be completely concealed to the extent feasible according to the following preferences, ordered from most preferred to least preferred:
 - a. Within an existing structure including, but not limited to, an interior equipment room, mechanical penthouse or dumpster corral; then
 - b. Within a new structure designed to integrate with or mimic the adjacent existing structure; then
 - c. Within an underground equipment vault if no other feasible above-ground design that complies with subsections (a) or (b) exists.
 2. Height.
 - a. All new facilities and substantial changes to existing facilities must not exceed the height limit in the applicable zone except as allowed in Paragraph b below.

suppressors, and utility demarcation boxes) directly behind the antennas to the maximum extent feasible.

3. Ground-mounted Equipment. Ground-mounted equipment shall be concealed with opaque fences or other opaque enclosures. The city may require, as a condition of approval, design and/or landscape features in addition to other concealment when necessary to blend the equipment or enclosure into the surrounding environment.
 4. Concealment Standards for Faux Trees. All faux tree facilities shall comply with the following standards:
 - a. The canopy shall completely envelop all tower-mounted equipment and extend beyond the tower-mounted equipment at least eighteen inches.
 - b. The canopy shall be naturally tapered to mimic the particular tree species.
 - c. All tower-mounted equipment, including antennas, equipment cabinets, cables, mounts and brackets, shall be painted flat natural colors to mimic the particular tree species.
 - d. All antennas and other tower-mounted equipment cabinets shall be covered with broadleaf or pine needle "socks" to blend in with the faux foliage.
 - e. The entire vertical structure shall be covered with permanently-affixed three-dimensional faux bark cladding to mimic the particular tree species.
- C. Building and Facade Mounted Facilities.
1. General Design Preferences. To the extent feasible and appropriate for the proposed location, all new building and facade mounted facilities should be designed according to the following preferences, ordered from most preferred to least preferred:
 - a. Completely concealed and architecturally integrated facade or rooftop mounted base stations which are not visible from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials); then
 - b. Completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks); then
 - c. Facade-mounted facilities incorporated into "pop-out" screen boxes designed to be architecturally consistent with the original support structure; then
 - d. Exposed facade-mounted and rooftop antennas.
 2. Ground-mounted Equipment. Outdoor ground-mounted equipment associated with base stations must be avoided whenever feasible. In locations visible or accessible to the public, outdoor ground-mounted equipment shall be concealed with opaque fences or landscape features that mimic the adjacent structures (including, but not limited to, dumpster corrals and other accessory structures).

(Ord. No. 2277 N.S., § 5(Exh. A), 6-6-2018)

18.96.090 - Operation and maintenance requirements.

- A. Inspections and Emergencies. The city or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permit holder. The permit holder shall cooperate with all inspections. The city or its designee may enter the facility and support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.

- B. Contact Information for Responsible Parties. The permit holder shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the community development director upon the community development director's written or verbal request.
- C. General Maintenance. The site and the facility, including but not limited to all landscaping, fencing and related transmission equipment, shall be maintained in a neat and clean manner and in accordance with all approved permits and conditions of approval.
- D. Removal of Discontinued Equipment. All equipment and improvements associated with a wireless communications facility shall be removed within 30 days of the discontinuation of the use, and the site shall be restored to its original pre-construction condition. If a permit holder fails to remove a discontinued facility, the city may remove or cause to remove the facility at the permit holder's sole expense.
- E. Change in Federal or State Regulations. All facilities shall meet the current standards and regulations of the FCC, the California Public Utilities Commission, and any other agency of the federal or state government with the authority to regulate wireless communications providers. If such standards and/or regulations are changed, the wireless communications provider shall bring its facilities into compliance with such revised standards and regulations within ninety days of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal or state agency. Failure to bring wireless communications facility into compliance with revised standards and regulations shall constitute grounds for the immediate removal of the facility at the wireless communications provider's expense.
- F. RF Exposure Compliance. All facilities shall comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate radio frequency (RF) exposure standards. Under the Federal Telecommunications Act of 1996, the city may not deny an application for a wireless telecommunications facility due to perceived health risks if the proposed facility complies with Federal RF exposure standards.

(Ord. No. 2277 N.S., § 5(Exh. A), 6-6-2018)

18.96.100 - Limited waivers.

- A. Request for Exemption. An applicant may request a waiver from one or more requirements in this chapter on the basis that a permit denial would effectively prohibit personal wireless services in Morgan Hill.
- B. Basis for Approval. For the city to approve such an exemption, the applicant must demonstrate with clear and convincing evidence all of the following:
 - 1. A significant gap in the applicant's service coverage exists;
 - 2. All alternative sites identified in the application review process are either technically infeasible or not potentially available; and
 - 3. Permit denial would effectively prohibit personal wireless services in Morgan Hill.
- C. Applicant Must Demonstrate Basis for Approval. The applicant always bears the burden to demonstrate why an exemption should be granted.

(Ord. No. 2277 N.S., § 5(Exh. A), 6-6-2018)

18.96.110 - Severability.

If any section or portion of this chapter is found to be invalid by a court of competent jurisdiction, such finding shall not affect the validity of the remainder of the chapter, which shall continue in full force and effect.

(Ord. No. 2277 N.S., § 5(Exh. A), 6-6-2018)