



Interim Guidance for Processing of Applications for Wireless Telecommunication Facilities Modifications pursuant to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act

The purpose of this hand-out is to provide guidance to wireless service providers and the public with respect to the processing of applications for wireless telecommunication facilities pending the update of the City's Wireless Telecommunications Facilities Ordinance.

Congress passed Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 on February 22, 2012. Section 6409(a) affects how the City processes applications for modifications to wireless telecommunication facilities. The wireless service providers and the public have had a number of questions regarding the City's processing of applications pursuant to Section 6409(a) and this memo is intended to provide clarification until the Wireless Telecommunications Facilities Ordinance is updated.

Section 6409(a) applies to all "wireless" facilities licensed or authorized by the FCC (e.g., cellular, Wi-Fi, satellite, microwave backhaul, etc.). As further detailed in the summary below, Section 6409(a) generally requires that a State and local government "may not deny, and shall approve" certain applications to collocate, remove or replace transmission equipment at an existing wireless tower or base station (see definitions). Federal Communication Commission regulations interpret this statute, and those regulations also create procedural rules for local review that generally preempt subjective land-use regulations, limit permit application content requirements, and provide applicants 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).

SECTION 6409(A) SUMMARY

Section 6409(a) applies to any request for modification of an existing wireless 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.

- (a) For towers on private property, a substantial change occurs when:
- (1) the proposed collocation or modification increases the overall height more than ten percent (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.
- (b) For all base stations, a substantial change occurs when:
- (1) the proposed collocation or modification increases the overall height more than ten percent (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 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.
- (c) In addition, for all towers and base stations wherever located, a substantial change occurs when:
- (1) the proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the Director; or
 - (2) 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 failure to meet any one or more of the applicable thresholds listed above means that a substantial change would occur and a Minor Use Permit is required. The thresholds for height increases are cumulative limits. For base stations, the cumulative limit is measured from the originally-permitted support structures without regard to any increases in size due to wireless equipment not included in the original design. For sites with towers, 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).

DEFINITIONS

"Eligible support structure" means 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.

"Base station" means 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 or any equipment associated with a tower (see definition below). 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 without limitation so-called distributed antenna systems and small cell installations). 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 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.

"Collocation" means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC's definition effectively means "to add" and does not necessarily refer to more than one wireless facility installed at a single site.

"Existing" means 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.

"Tower" means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. Examples include, but are not limited to, monopoles, mono-trees and lattice towers.

"Transmission equipment" means 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.

INTERIM REVIEW PROCESS

If a wireless telecommunications services provider is proposing to modify an existing wireless telecommunications facility on private property, a review of the proposal by the City is required prior to application in order to determine if the modification qualifies for processing under Section 6409(a):

Required Presubmittal Application:

1. The applicant shall submit a presubmittal application (attached) which lists those modification standards that constitute a substantial change in the existing facility.
2. The applicant should review the list and provide documentary evidence to the City that the proposal complies with the provisions of Section 6409(a), including evidence that the existing facility was properly permitted by the City. A pre-submittal meeting with staff should be scheduled by the applicant to submit and review the material. An appointment may be scheduled by calling (310) 458-8341.
3. The City will determine within 30 days of receipt of the application whether the proposed modification is consistent with the provisions of Section 6409 (a).
4. The Zoning Administrator will review the information submitted by the applicant for compliance with Section 6409(a). The Zoning Administrator will issue a determination upon review.

After Zoning Administrator Determination:

If the Zoning Administrator determines that the proposal is consistent with the provisions of Section 6409(a), the project may proceed directly to design review (if applicable) or plan check.

If the proposal is deemed not consistent with Section 6409(a), a Minor Use Permit is required. The application fee is \$6,851.58 and the application form can be found here: <http://www.smgov.net/uploadedFiles/Departments/PCD/Applications-Forms/Antenna-Application.pdf>. In addition, Architectural Review Board approval may be required for the screening or camouflaging of proposed equipment.