Ordinance amending the Public Works Code to modify certain of the requirements for obtaining Personal Wireless Service Facility Site Permits, including the requirements for public notice and adjustment of permit fees; and affirming the Planning Department's determination under the California Environmental Quality Act.

NOTE: Unchanged Code text and uncodified text are in plain Arial font. Additions to Codes are in *single-underline italics* Times New Roman font. Deletions to Codes are in *strikethrough italics* Times New Roman font. Board amendment additions are in double-underlined Arial font. Board amendment deletions are in strikethrough Arial font. Asterisks (* * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 190598 and is incorporated herein by reference.

Section 2. Article 25 of the Public Works Code is hereby amended by revising Sections 1500, 1501, 1502, 1506, 1507, 1508, 1509, 1510, 1511, 1514, 1521, 1522, and 1527, and deleting sections 1512 and 1513, to read as follows:

SEC. 1500. PERSONAL WIRELESS SERVICE FACILITY SITE PERMIT.

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(a) **Personal Wireless Service Facility Site Permit Required.** The Department shall require any Person seeking to construct, install, or maintain a Personal Wireless Service Facility in the Public Rights-of-Way to obtain a Personal Wireless Service Facility Site Permit.

(b) **Minimum Permit Requirements.**

(1) The Department shall not issue a Personal Wireless Service Facility Site Permit if the Application for a Personal Wireless Service Facility Site Permit does not comply with all of the requirements of this Article 25.

(2) The Department shall require an Applicant for a Personal Wireless Service Facility Site Permit to demonstrate to the satisfaction of the Department that:

   (A) The Department has issued the Applicant a Utility Conditions Permit as required by San Francisco Administrative Code Section 11.9;

   (B) The pole owner has authorized the Applicant to use or replace the Utility or Street Light Pole identified in the Application; and

   (C) The Applicant has obtained any approvals that may be required under the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) to construct, install, and maintain the proposed Personal Wireless Service Facility.

(c) **Permit Prohibited.** The Department shall not issue a Personal Wireless Service Facility Site Permit if the Applicant seeks to:

(1) Install a new Utility, Transit, or Street Light Pole on a Public Right-of-Way where there presently are no overhead utility facilities; or

(2) Add a Personal Wireless Service Facility on a Utility or Street Light Pole for which a Personal Wireless Service Facility Site Permit has already been approved.
(d) **Permit Conditions.** The Department may include in a Personal Wireless Service Facility Site Permit such conditions, in addition to those already set forth in this Article 25 and other Applicable Law, as may be required to govern the construction, installation, or maintenance of Personal Wireless Service Facilities in the Public Rights-of-Way, and to protect and benefit the public health, safety, welfare, and convenience, provided that no such conditions may concern the particular technology used for a Personal Wireless Service Facility.

(e) **Installation of Cabinets or Vaults in the Public Rights-of-Way.** The Department shall not include in a Personal Wireless Service Facility Site Permit an authorization for the Permittee to install a surface-mounted equipment cabinet or underground equipment vault in the Public Rights-of-Way. In order to install such an equipment cabinet or vault in the Public Rights-of-Way for use with a Personal Wireless Service Facility, a Permittee must fully comply with any other City permitting requirements related to the installation of such facilities.

(f) **Other Provisions Inapplicable.** Notwithstanding the requirements of San Francisco Business and Tax Code Sections 5, 6, and 26(a), the provisions of this Article 25 shall govern all actions taken by the City with respect to the approval or denial of an Application for a Personal Wireless Service Facility Site Permit under this Article 25.

**SEC. 1501. DEPARTMENT ORDERS AND REGULATIONS.**

(a) The Department may adopt such orders or regulations as it deems necessary to implement the requirements of this Article 25, or to otherwise preserve and maintain the public health, safety, welfare, and convenience, as are consistent with this requirements of this Article 25 and Applicable Law.

(b) The Department shall work with the Planning Department and Recreation and Park Department to adopt regulations or orders establishing initial Objective Standards for the Department.
to use to determine whether a proposed Personal Wireless Service Facility satisfies the applicable Tier A, B, or C Compatibility Standard. The Department may by order or regulation modify the initial Objective Standards when necessary to, among other things, approve additional or different equipment, designs, or configurations that the Department determines also satisfy the applicable Tier A, B, or C Compatibility Standards.

SEC. 1502. DEFINITIONS.

For purposes of this Article 25, the following terms, phrases, words, abbreviations, their derivations, and other similar terms, when capitalized, shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number.

“Adjacent” means:

(a) On the same side of the street and in front of the building or the next building on either side, when used in connection with a national historic landmark, California landmark, San Francisco landmark, structure of merit, architecturally significant building, or locally significant building; and

(b) On front of and on the same side of the street, when used in connection with a City park or open space.

“Applicable Law” means all applicable federal, state, and City laws, ordinances, codes, rules, regulations, and orders, as the same may be amended or adopted from time to time.

“Applicant” means any Person submitting an Application for a Personal Wireless Service Facility Site Permit or Modification Permit under this Article 25.

“Application” means an application for a Personal Wireless Service Facility Site Permit or Modification Permit under this Article 25.
“Base Station” shall have the meaning determined by the Department in an order or regulation, provided that the Department’s definition shall be consistent with the definition of that term: (a) as it is used in Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. § 1455(a) as may be amended from time to time; and (b) as it is defined by the FCC in any decision addressing that section or any regulation implementing that section.

“City” means the City and County of San Francisco.

“Conditions” means any additional requirements that a City department reviewing an Application for a Personal Wireless Service Facility Site Permit determined are necessary for the Application to meet those requirements of this Article 25 that are within that department’s purview.

“Department” means the Department of Public Works.

“Director” means the Director of Public Works.

“Disfavored Design” means any design for a Personal Wireless Service Facility that is identified in the Objective Standards as disfavored.

“Eligible Facilities Request” shall have the meaning determined by the Department in an order or regulation, provided that the Department’s definition shall be consistent with the definition of that term: (a) as it is used in Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. § 1455(a) as may be amended from time to time; and (b) as it is defined by the FCC in any decision addressing that section or any regulation implementing that section.

“FCC” means the Federal Communications Commission.

“Immediate Vicinity” means:

(a) Within one (1) block in any direction from the boundary of a Planning Protected Location that is a national historic landmark district, listed or eligible national register historic

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district, listed or eligible California register historic district, San Francisco landmark district, local
historic or conservation district, or locally significant district;

(b) Within twenty-five (25) feet of the property lines from the properties that are Adjacent
to a Planning Protected Location that is a national historic landmark, California landmark, San
Francisco landmark, structure of merit, architecturally significant building, or locally significant
building, or across the street from the above boundary lines;

(c) Within one (1) block in any direction from the boundary of a Zoning Protected
Location; and

(d) Within one (1) block in any direction from the boundary of a Park Protected Location.

“Modification Permit” means a Permit issued by the Department pursuant to Section
1522 below, authorizing a Permittee to modify equipment installed on a Utility, Transit, or
Street Light Pole by the Permittee pursuant to a Personal Wireless Service Facility Site
Permit.

“Objective Standards” means standards to determine whether a proposed Personal Wireless
Service Facility satisfies the applicable Tier A, B, or C Compatibility Standard based on factors that
are quantifiable, measurable, and verifiable.

“Park Protected Location” means a proposed location for a Personal Wireless Service
Facility in the Public Rights-of-Way that is Adjacent to a City park or open space.

“Park Protected Location Compatibility Standard” means whether a Personal Wireless
Service Facility that is proposed to be located in a Park Protected Location would
significantly impair the views of a City park or open space or significantly degrade or detract
from the aesthetic or natural attributes that define the City park or open space.

“Permittee” means a Person issued a Personal Wireless Service Facility Site Permit.
“Person” means any individual, group, company, partnership, association, joint stock company, trust, corporation, society, syndicate, club, business, or governmental entity.

“Person” shall not include the City.

“Personal Wireless Service” means commercial mobile services provided under a license issued by the FCC.

“Personal Wireless Service Facility” or “Facility” means antennas and related facilities used to provide or facilitate the provision of Personal Wireless Service.

“Personal Wireless Service Facility Site Permit” or “Permit” means a permit issued by the Department pursuant to this Article 25 authorizing a Permittee to construct, install, and maintain a Personal Wireless Service Facility.

“Planning Protected Location” means any of the following proposed locations for a Personal Wireless Service Facility:

(a) On an historic, historically or architecturally significant, decorative, or specially designed Street Light Utility Pole located in the Public Rights-of-Way;

(b) On a Utility, Transit, or Street Light Pole that is on a Public Right-of-Way that is within a national historic landmark district, listed or eligible national register historic district, listed or eligible California register historic district, San Francisco landmark district, local historic or conservation district, or locally significant district, as more specifically described and cataloged in materials prepared and maintained by the Planning Department;

(c) On a Utility, Transit, or Street Light Pole that is on a Public Right-of-Way that is Adjacent to a national historic landmark, California landmark, San Francisco landmark, structure of merit, architecturally significant building, or locally significant building, as more specifically described and cataloged in materials prepared and maintained by the Planning Department;
(d) On a Utility, Transit, or Street Light Pole that is on a Public Right-of-Way that the General Plan has designated as being most significant to City pattern, defining City form, or having an important street view for orientation; or

(e) On a Utility, Transit, or Street Light Pole that is on a Public Right-of-Way that the General Plan has designated as having views that are rated “excellent” or “good.”

“Planning Protected Location Compatibility Standard” means whether an Applicant for a Personal Wireless Service Facility Site Permit demonstrates that a proposed Personal Wireless Service Facility would be compatible with any of the Planning Protected Locations:

(a) For a historic, historically or architecturally significant, decorative, or specially designed Street Light Utility Pole, the applicable standard is whether a proposed Personal Wireless Service Facility would significantly degrade or detract from the aesthetic attributes that distinguish the Street Light Utility Pole as historic, historically significant, architecturally significant, decorative, or specially designed.

(b) For a Public Right-of-Way that is within a national historic landmark district, listed or eligible national register historic district, listed or eligible California register historic district, San Francisco landmark district, local historic or conservation district, or locally significant district, the applicable standard is whether a proposed Personal Wireless Service Facility would significantly degrade or detract from the aesthetic attributes that were the basis for the special designation of the district.

(c) For a Utility, Transit, or Street Light Pole that is Adjacent to a national historic landmark, California landmark, San Francisco landmark, structure of merit, architecturally significant building, or locally significant building, the applicable standard is whether a proposed Personal Wireless Service Facility would significantly degrade or detract from the aesthetic attributes that were the basis for the special designation of the building.
(d) For a Public Right-of-Way that the General Plan has designated as being most significant to City pattern, defining City form, or having an important street view for orientation, the applicable standard is whether a proposed Personal Wireless Service Facility would significantly degrade or detract from the aesthetic attributes that were the basis for the designation of the street for special protection under the General Plan.

(e) For a Public Right-of-Way that the General Plan has designated as having views that are rated "excellent" or "good," the applicable standard is whether a proposed Personal Wireless Service Facility would significantly impair the views of any of the important buildings, landmarks, open spaces, or parks that were the basis for the designation of the street as a view street.

"Public Health Compliance Standard" means whether: (a) any potential human exposure to radio frequency emissions from a proposed Personal Wireless Service Facility described in an Application is within the FCC guidelines; and (b) noise at any time of the day or night from the proposed Personal Wireless Service Facility described in an Application is not greater than forty-five (45) dBA as measured at a distance three (3) feet from any residential building facade.

"Public Rights-of-Way" means the area in, on, upon, above, beneath, within, along, across, under, and over the public streets, sidewalks, roads, lanes, courts, ways, alleys, spaces, and boulevards within the geographic area of the City in which the City now or hereafter holds any property interest, which is dedicated to public use and which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining Personal Wireless Service Facilities to provide Personal Wireless Service to customers.
"Replace" means to remove previously permitted equipment and install new equipment at a permitted Personal Wireless Service Facility that is identical in size or smaller than the previously permitted equipment.

"Street Light Pole" means a pole used solely for street lighting and which is located in the Public Right-of-Way.

"Substantially Change the Physical Dimensions" shall have the meaning determined by the Department in an order or regulation, provided that the Department’s definition shall be consistent with the definition of that term: (a) as it is used in Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. § 1455(a) as may be amended from time to time; and (b) as it is defined by the FCC in any decision addressing that section or any regulation implementing that section.

"Tier A Compatibility Standard" means that an Applicant for a Personal Wireless Service Facility on a Public Right-of-Way that is within an Unprotected Location has demonstrated that the proposed Personal Wireless Service Facility would not significantly detract from any of the defining characteristics of the neighborhood.

"Tier A Personal Wireless Service Facility" means a Personal Wireless Service Facility where the proposed location for the facility is in an Unprotected Location.

"Tier B Compatibility Standard" means that an Applicant for a Personal Wireless Service Facility on a Public Right-of-Way that is either within or Adjacent to a Planning Protected Location or Zoning Protected Location has demonstrated that the proposed Personal Wireless Service Facility would not significantly detract from any of the defining characteristics of the applicable Planning Protected Location Compatibility Standard or Zoning Protected Location Compatibility Standard.
“Tier B Personal Wireless Service Facility” means a Personal Wireless Service Facility where the proposed location for the facility is in a Planning Protected Location or Zoning Protected Location.

“Tier C Compatibility Standard” means that an Applicant for a Personal Wireless Service Facility on a Public Right-of-Way that is either within or Adjacent to a Park Protected Location has demonstrated that the proposed Personal Wireless Service Facility satisfies the applicable would not significantly detract from any of the defining characteristics of the Park Protected Location Compatibility Standard.

“Tier C Personal Wireless Service Facility” means a Personal Wireless Service Facility where the proposed location for the facility is in a Park Protected Location.

“Transit Pole” means a pole used to support Municipal Transportation Agency transit overhead traction power cables and which is located in the Public Rights-of-Way.

“Transmission Equipment” shall have the meaning determined by the Department in an order or regulation, provided that the Department’s definition shall be consistent with the definition of that term: (a) as it is used in Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. § 1455(a) as may be amended from time to time; and (b) as it is defined by the FCC in any decision addressing that section or any regulation implementing that section.

“Unprotected Location” means a proposed location for a Personal Wireless Service Facility that is neither a Planning Protected Location, Zoning Protected Location, nor a Park Protected Location.

“Utility Pole” means a power pole, telephone pole, or other similar pole subject to California Public Utilities Commission General Order 95, and located within the Public Rights-of-Way.
“Zoning Protected Location” means on a Utility, Transit, or Street Light Pole that is on a Public Right-of-Way that is within a Residential or Neighborhood Commercial zoning district under the Planning Code.

“Zoning Protected Location Compatibility Standard” means that an Applicant for a Personal Wireless Service Facility Site Permit on a Public Right-of-Way that is within a Zoning Protected Location has demonstrated that the proposed Personal Wireless Service Facility would not significantly detract from any of the defining characteristics of the Residential or Neighborhood Commercial zoning district.

SEC. 1506. STREET TREE.

(a) **Condition of Approval.** When reviewing an application for a Personal Wireless Service Facility Site Permit, the Department, the Planning Department, and/or Recreation and Park Department (as appropriate) may require as a Condition of approval that the Permittee plant and maintain an appropriate street tree adjacent to the Utility, Transit, or Street Light Pole so as to provide a screen for a permitted Personal Wireless Service Facility Site Permit.

(b) **Implementation of Street Tree Requirement.** When installation of a street tree is required by the Department, the Planning Department, and/or Recreation and Park Department, the Department shall implement the requirement as follows:

1. The Department shall require the Permittee to install a street tree that is a minimum of twenty-four (24)-inch box size. The Department’s Bureau of Urban Forestry shall work with the Permittee to select the appropriate species and location for the required tree.

2. In any instance in which the Department cannot require the Permittee to install a street tree, on the basis of inadequate sidewalk width, interference with utilities, or
other reasons regarding the public health, safety, or welfare, the Department shall instead require the Permittee to make an “in-lieu” payment into the Department's “Adopt-A-Tree” fund. This payment shall be in the amount specified in Public Works Code Section 807(f), and shall be payable prior to the Department’s issuance of the Personal Wireless Service Facility Site Permit.

(c) Care and Maintenance of Street Trees. The Permittee shall be responsible for the care and maintenance of any street tree required to be installed in the Public Rights-of-Way under this Section 1506. In this regard, the Permittee shall assume the duty of a “property owner” as set forth in Public Works Code Section 805.

SEC. 1507. DEPARTMENT OF PUBLIC HEALTH REVIEW.

(a) Department of Public Health Referral. The Department shall refer every Application for a Personal Wireless Service Facility Site Permit to the Department of Public Health for review of the proposed Personal Wireless Service Facility under the Public Health Compliance Standard.

(b) Department of Public Health Determination. The Department of Public Health shall make a determination whether the Application satisfies the Public Health Compliance Standard. The determination of the Department of Public Health shall be in writing and shall set forth the reasons therefor. The Department of Public Health shall transmit its determination to the Department within twenty (20) business days of receipt of the Application from the Department. With the concurrence of the Applicant, the Department of Public Health may extend this review period beyond twenty (20) business days.

(c) Affirmative Determination Required. The Department shall not approve an Application for a Personal Wireless Service Facility Site Permit unless the Department of Public Health makes a determination that the Application satisfies the Public Health Compliance Standard.
SEC. 1508. DEPARTMENT REVIEW OF A PERSONAL WIRELESS SERVICE FACILITY SITE PERMIT APPLICATION.

The Department shall review an Application for a Personal Wireless Service Facility Site Permit to determine whether the Application:

(a) Receives an affirmative determination from the Department of Public Health under the Public Health Compliance Standard; and

(b) Meets an affirmative determination from the Planning Department or the Recreation and Park Department (or both if required) under the applicable Tier A, Tier B, or Tier C Compatibility Standard based on the Department's application of the Objective Standard; or

(c) Must be referred to the Planning Department and/or the Recreation and Park Department for additional review because: (1) the Objective Standards have not been adopted; (2) the proposed Personal Wireless Service Facility is a Disfavored Design; or (3) the Application did not meet the applicable Tier A, Tier B, or Tier C Compatibility Standard based on the Department's application of the Objective Standards, but the Application may still comply with the applicable Tier A, Tier B, or Tier C Compatibility Standard.

SEC. 1509. PLANNING DEPARTMENT REVIEW OF A TIER A OR TIER B PERSONAL WIRELESS SERVICE FACILITY SITE PERMIT APPLICATION.

(a) Referral to Planning Department.

(1) Until such time as the Department has adopted Objective Standards, the Department shall refer an Application for a Tier A or Tier B Personal Wireless Service Facility Site Permit to the Planning Department for a review of the proposed Personal Wireless Service Facility under the applicable Tier A or Tier B Compatibility Standard.

(2) After the Department has adopted Objective Standards, the Department shall refer an Application for a Tier A or Tier B Personal Wireless Service Facility Site Permit to the Planning Department for additional review under the applicable Tier A or Tier B Compatibility...
Standard if: (A) the proposed Personal Wireless Service Facility does not meet the Tier A or Tier B Compatibility Standard based on the Department’s application of the Objective Standards; or (B) the proposed Personal Wireless Service Facility is a Disfavored Design.

(b) Planning Department Determination.

(1) If the Department has referred an Application for a Tier A or Tier B Personal Wireless Service Facility Site Permit to the Planning Department, the Planning Department shall make a determination whether the Application for a Tier A or Tier B Personal Wireless Service Facility Site Permit satisfies the applicable Tier A or Tier B Compatibility Standard. The Planning Department’s determination shall be in writing and shall set forth the reasons therefor. The Planning Department shall transmit its determination to the Department within 10 business days of receipt of the Application from the Department. With the concurrence of the Applicant, the Planning Department may extend this review period beyond 10 business days.

(2) The Planning Department’s determination that an Application for a Tier B Personal Wireless Service Facility Site Permit satisfies the Tier B Compatibility Standard for a Zoning Protected Location may include a Condition that the Personal Wireless Service Facility not obstruct the view from or the light into any adjacent residential window.

(c) Affirmative Determination Required. The Department shall not approve an Application for a Tier A or Tier B Personal Wireless Service Facility Site Permit that has been referred to the Planning Department unless the Planning Department makes a determination that the Application satisfies the applicable Tier A or Tier B Compatibility Standard.

SEC. 1510. RECREATION AND PARK DEPARTMENT REVIEW OF A TIER C PERSONAL WIRELESS SERVICE FACILITY SITE PERMIT APPLICATION.

(a) Referral to Recreation and Park Department Required.
(1) Until such time as the Department has adopted Objective Standards, the Department shall refer an Application for a Tier C Personal Wireless Service Facility Site Permit to the Recreation and Park Department for a review of the proposed Personal Wireless Service Facility under the Tier C Compatibility Standard.

(2) After the Department has adopted Objective Standards, the Department shall refer an Application for a Tier C Personal Wireless Service Facility Site Permit to the Recreation and Park Department for additional review under the Tier C Compatibility Standard if: (A) the proposed Personal Wireless Service Facility does not meet the Tier C Compatibility Standard based on the Department’s application of the Objective Standards; or (B) the proposed Personal Wireless Service Facility is a Disfavored Design.

(b) Recreation and Park Department Determination. If the Department has referred an Application for a Tier C Personal Wireless Service Facility Site Permit to the Recreation and Park Department, the Recreation and Park Department shall make a determination whether the Application for a Tier C Personal Wireless Service Facility Site Permit satisfies the Tier C Compatibility Standard. The Recreation and Park Department’s determination shall be in writing and shall set forth the reasons therefor. The Recreation and Park Department shall transmit its determination to the Department within 10 twenty (20) business days of receipt of the Application from the Department. With the concurrence of the Applicant, the Recreation and Park Department may extend this review period beyond 10 twenty (20) business days.

(c) Affirmative Determination Required. The Department shall not approve an Application for a Tier C Personal Wireless Service Facility Site Permit that has been referred to the Recreation and Park Department unless the Recreation and Park Department makes a determination that the Application satisfies the Tier C Compatibility Standard.

SEC. 1511. DEPARTMENT FINAL DETERMINATION.

(a) Determination in Writing.
(1) Tentative Approval. A Department tentative approval of an Application for a
Personal Wireless Service Facility Site Permit shall be in writing and shall set forth the reasons
therefor. If a Department tentative approval contains any Conditions, the Conditions shall also be in
writing.

(2) Final Determination. A The Department’s final determination to approve
or deny an Application for a Personal Wireless Service Facility Site Permit shall be in writing
and shall set forth the reasons therefor. If a the Department’s final determination to approve
an Application contains any Conditions imposed by any City department that reviewed the
Application, the Conditions shall also be in writing.

(b) Denial. The Department shall issue a final determination denying an
Application for a Personal Wireless Service Facility Site Permit within three (3) business days
of any of the following events:

(1) The Department’s receipt of a determination from the Department of
Public Health that the Application does not comply with satisfy the Public Health Compliance
Standard;

(2) (A) The Department’s receipt of a determination from the Planning
Department or the Recreation and Park Department (or both if required) that the Application does
not meet the applicable Tier A, B, or C Compatibility Standard based on the Department’s
application of the Objective Standards; or (B) where applicable, the Department’s receipt of a
determination from the Planning Department or the Recreation and Park Department that the
Application does not meet the applicable Tier A, B, or C Compatibility Standard; or

(3) If any City department reviewing the Application adds any Conditions to
its approval of the Application, the Department’s receipt of a notice from the Applicant that it
rejects any of those Conditions.

(c) Approval Without Conditions:
(1) Tentative Approval. If no City department reviewing an Application for a Personal Wireless Service Facility Site Permit adds any Conditions to its approval of the Application, the Department shall issue a tentative approval of an Application for a Personal Wireless Service Facility Site Permit without Conditions within three (3) business days of the occurrence of the last of the following events:

(A) The Department's receipt of a determination from the Department of Public Health that the Application complies with the Public Health Compliance Standard; and

(B) The Department's receipt of a determination from the Planning Department or the Recreation and Park Department (or both if required) that the Application meets the applicable Compatibility Standard.

(2) Final Approval. Following the Department's tentative approval of an Application for a Personal Wireless Service Facility Site Permit without any Conditions, the Department shall issue a final determination as follows:

(A) The Department shall require the Applicant to give notice of the tentative approval as required by Section 1512 below; and

(B) If no protest is timely submitted, the Department shall issue a final determination approving the Application within a reasonable time after the time to file a protest has expired; or

(C) If a protest is timely submitted, the Department shall issue a final determination approving or denying the Application within a reasonable time after the Director issues a decision under Section 1513(g) below.

(c) Approval with Conditions.

(1) Tentative Approval. If any City department reviewing an Application for a Personal Wireless Service Facility Site Permit adds any Conditions to its approval of the Application, the The
Department shall issue a tentative final approval of the Application with Conditions within three (3) business days of the occurrence of the last of the following events:

- (A) The Department's receipt of a determination from the Department of Public Health that the Application complies with the Public Health Compliance Standard;
- (B) The Department's receipt of a determination from the Planning Department or the Recreation and Park Department (or both if required) that the Application meets the applicable Tier A, B, or C Compatibility Standard based on the Department's application of the Objective Standards; or (B) where applicable, the Department's receipt of a determination from the Planning Department or the Recreation and Park Department that the Application meets the applicable Tier A, B, or C Compatibility Standard; or and
- (C) If applicable, the Department's receipt of a notice from the Applicant that it accepts all of those any Conditions imposed by any City department that reviewed the Application.

(2) Final Approval. Following the Department's tentative approval of an Application for a Personal Wireless Service Facility Site Permit with Conditions, the Department shall issue a final determination as follows:

- (A) The Department shall require the Applicant to give notice of the tentative approval as required by Section 1512 below; and
- (B) If no protest is timely submitted, the Department shall issue a final determination approving the Application within a reasonable time after the time to file a protest has expired; or
- (C) If a protest is timely submitted, the Department shall issue a final determination approving or denying the Application within a reasonable time after the Director issues a decision under Section 1513(g) below.
SEC. 1512.—NOTICE OF TENTATIVE APPROVAL OF A PERSONAL WIRELESS SERVICE FACILITY SITE PERMIT APPLICATION.

(a) — Notice Required. The Department shall require an Applicant for a Wireless Service Facility Site Permit to notify the public of a tentative approval of the Application under Sections 1511(c)(1) or 1511(d)(1) above, and to provide the Department with evidence, as the Department may require, of compliance with this requirement.

(b) — Types of Notice Required.

(1) — Notice by Mail. The Applicant shall mail a copy of the notice to:

(A) — Any person owning property or residing within one hundred and fifty (150) feet of the proposed location of the Personal Wireless Service Facility; and

(B) — Any neighborhood association identified by the Planning Department for any neighborhood within three hundred (300) feet of the proposed Personal Wireless Service Facility.

(2) — Notice by Posting. The Applicant shall post a copy of the notice in conspicuous places throughout the block face where the proposed Personal Wireless Service Facility is to be located.

(c) — Contents and Form of Notice. The notice shall contain such information, and be in such form, as the Department reasonably requires in order to inform the general public as to the nature of the Application for a Personal Wireless Service Facility Site Permit. At a minimum, the notice shall:

(1) — Provide a description and a photo-simulation of the proposed Personal Wireless Service Facility;

(2) — Summarize the determinations of any City departments that were necessary for the tentative approval of the Application;
(3) Identify any conditions added by any City departments that have been accepted by the Applicant and are now part of the Application.

(4) State that any person seeking to protest the Application must submit a protest to the Department within twenty (20) days of the date the notice was mailed and posted.

(5) Describe the procedure for submitting a timely protest.

(6) Specify the applicable grounds for protesting the Application under this Article.

(7) Explain how any interested person may obtain additional information and documents related to the Application, and

(8) State whether the Applicant intends to file an Application for a Modification Permit at any time during the term of the Personal Wireless Service Facility Site Permit and, if so, identify—(A) the timeframe the Applicant anticipates applying for a Modification Permit; and (B) the nature of any modifications the Applicant anticipates including in the Application for a Modification Permit.

**SEC. 1513. PROTEST OF A PERSONAL WIRELESS FACILITY SITE PERMIT.**

(a) Protest Allowed. Any person may protest a tentative approval of an Application for a Personal Wireless Service Facility Site Permit. A protest must be in writing and must be submitted to the Department within twenty (20) days of the date the notice was mailed and posted as required under Section 1512 above.

(b) Hearing Required. If a protest is timely submitted, the Department shall hold a hearing. The Department shall set a date for the hearing that is at least fifteen (15) days, but no more than forty-five (45) days, after the Department's receipt of the protest, unless the Applicant and any person submitting a protest agree to a later hearing date.

(c) Notice of Hearing Date. At least ten (10) days before the hearing, the Department shall notify in writing any person submitting a protest, the Applicant, and any City department that
reviewed the Application of the date set for the hearing. The Department shall follow its regular procedures for notifying the general public of the hearing.

(d) Hearing Officer. The Department shall appoint an impartial hearing officer to conduct a public hearing on a protest.

(e) Hearing Record. The hearing record shall include:

(1) The Application and the Department's tentative approval of the Application;

(2) Any written determination from the Department, the Planning Department, the Recreation and Park Department, and the Department of Public Health (as applicable);

(3) Any further written evidence from any City departments submitted either prior to or during the hearing;

(4) Any written submissions from the Applicant, any Person submitting a protest, or any other interested Person submitted either prior to or during the hearing; and

(5) Any oral testimony from any City departments, the Applicant, any Person submitting a protest, or any interested Person taken during the hearing.

(f) Hearing Officer's Report. The hearing officer shall issue a written report and recommendation within ten (10) days of the close of evidence. The hearing officer shall include in the report a summary of the evidence and a recommendation to the Director to either grant or deny the protest of an Application.

(g) Director's Decision. The Director shall issue a written decision adopting, modifying, or rejecting the hearing officer's written report and recommendation within seven (7) days of receipt of the report.

(h) Grounds for Granting a Protest. The Director may grant a protest of a tentative approval of Application for a Personal Wireless Service Facility Site Permit only if the Director finds that the evidence at the hearing supports any one of the following findings:
(1) — The Department of Public Health incorrectly determined that the Application complies with the Public Health Compliance Standard;

(2) — In the case of an Application for a Tier A or Tier B Personal Wireless Service Facility Site Permit, the Planning Department incorrectly determined that the Application meets the applicable Tier A or Tier B Compatibility Standard;

(3) — In the case of an Application for a Tier C Personal Wireless Service Facility Site Permit, the Recreation and Park Department incorrectly determined that the Application meets the Tier C Compatibility Standard;

(4) — The Application does not comply with any other requirement for obtaining a Personal Wireless Service Facility Site Permit; or

(5) — The evidence shows that the Applicant intends to apply for a Modification Permit after the Permit is issued and that the proposed modification(s) would not comply with any applicable Compatibility Standard.

SEC. 1514. NOTICE OF FINAL DETERMINATION OF A PERSONAL WIRELESS SERVICE FACILITY SITE PERMIT APPLICATION.

(a) Notice of Approval. The Applicant Department shall provide notice to the general public of a final determination to approve an Application for a Personal Wireless Service Facility Site Permit.

(1) Types of Notice Required.

(A) The Department shall promptly mail a notice of final determination to approve an Application for a Personal Wireless Service Facility Site Permit to both the Applicant and to any neighborhood association identified by the Planning Department for any neighborhood within three hundred (300) feet of the approved Personal Wireless Service Facility. The Applicant shall promptly mail a copy of the Department’s final determination to approve an Application for a Personal Wireless Service Facility Site Permit to: (i) any Person who owns property that is within 300
(ii) any Person who is a tenant in any residential property that is within 300 feet of the approved location for the Personal Wireless Service Facility; (iii) any neighborhood association identified by the Planning Department for any neighborhood that is within 600 feet of the approved location for the Personal Wireless Service Facility; and (iv) the member of the Board of Supervisors who represents the district in which the approved Personal Wireless Service Facility would be located.

(B) If a hearing was held, the Department shall promptly mail a notice of final determination to approve an Application for a Personal Wireless Service Facility Site Permit to any Person who either filed a protest, submitted evidence, or appeared at the hearing, and whose name and address are known to the Department.

(C)(B) The Department shall require an Applicant shall for a Personal Wireless Service Facility Site Permit to promptly post notice of the Department’s final determination to approve an Application for a Personal Wireless Service Facility Site Permit on the Utility Pole to be used for the proposed Personal Wireless Service Facility and in on a minimum of four other Utility Poles, other poles, or other conspicuous places throughout the block face located within 300 feet of the approved location for the Personal Wireless Service Facility. The Applicant shall is to be located and to provide the Department with such evidence, as the Department may require; of compliance with this requirement, as the Department may require.

(2) Contents and Form of Notice. A notice of final determination to approve an Application for a Personal Wireless Service Facility Site Permit shall contain such information, and be in such form, as the Department reasonably requires in order to inform the general public of the approved Application. At a minimum, the notice of final determination shall:
(A) Provide a description and a photo-simulation of the approved Personal Wireless Service Facility;

(B) Summarize the determinations of the City departments that were necessary for the approval of the Application, including any Conditions added by any City departments that were accepted by the Applicant;

(C) State that any Person may file an appeal of the approval of the Application with the Board of Appeals within fifteen (15) days after the date that all notices required by Section 1514(a) above have been provided;

(D) Describe the procedure for submitting a timely appeal;

(E) Specify the applicable grounds for appealing the approval of the Application under this Article 25 set forth in Section 1530 below; and

(F) Explain how any interested Person may obtain additional information and documents related to the Application Permit; and

(G) State whether the Applicant intends to submit an Application for a Modification Permit during the term of the Permit and, if so, identify: (i) the timeframe the Applicant anticipates applying for a Modification Permit; and (ii) the nature of any modifications the Applicant anticipates including in the Application for a Modification Permit.

(b) Notice of Denial. The Department shall provide notice of a final determination to deny an Application for a Personal Wireless Service Facilities Site Permit.

(1) Type of Notice Required. The Department shall promptly mail a notice of final determination to deny an Application for a Personal Wireless Service Facility Site Permit to the Applicant.

(2) Contents of Notice. A notice of final determination to deny an Application for a Personal Wireless Service Facility Site Permit shall at a minimum:
(A) Summarize the determinations of any City departments that were necessary for the denial of the Application, including any Conditions added by any City departments that were rejected by the Applicant.

(B) State that the Applicant may file an appeal of the denial of the Application with the Board of Appeals within fifteen (15) days of the Department’s mailing of the notice.

(C) Describe the procedure for submitting a timely appeal; and

(D) Specify the applicable grounds for appealing the denial of the Application under this Article 25 set forth in Section 1530 below.

SEC. 1521. REPLACEMENT OR REMOVAL OF EQUIPMENT.

(a) Replacement. During the term of a Personal Wireless Service Facility Site Permit, a Permittee may Replace equipment that is part of a permitted Personal Wireless Service Facility without obtaining a Modification Permit.

(b) Removal. During the term of a Personal Wireless Service Facility Site Permit, a Permittee may remove equipment that is part of a permitted Personal Wireless Service Facility without obtaining a Modification Permit.

(c) Department Procedures.

(1) Permittee’s Notification. A Permittee shall notify the Department in writing that it intends to Replace or remove equipment at a permitted Personal Wireless Service Facility as permitted by this Section 1521. In the notice, the Permittee shall at a minimum:

(A) Identify the use and size of each piece of equipment that the Permittee is seeking to remove from the Utility, Transit, or Street Light Pole;
(B) Identify the use and size of the equipment that the Permittee is seeking to install on the Utility, Transit, or Street Light Pole to Replace existing equipment; and

(C) If any new equipment will Replace existing equipment, provide drawings and photo-simulations of the existing and new equipment the Permittee is seeking to install on the Utility, Transit, or Street Light Pole.

(2) Department Notification. Within five (5) business days of receipt of the Permittee's request to Replace or remove equipment as described above, the Department shall notify the Permittee in writing whether the Department has determined that the request complies with the requirements of this Section 1521.

(3) Permittee Replacement or Removal. Upon receipt of a Department notice that the request complies with this Section 1521, the Permittee may Replace or remove the equipment identified in the request.

(4) Compliance with Other Requirements. Nothing in this Section 1521 shall be construed to relieve the Permittee of its duty to comply with any City regulations or permitting requirements when removing equipment from or Replacing Equipment on a Utility, Transit, or Street Light Pole.

SEC. 1522. MODIFICATION PERMIT.

(a) Modification Permit Required. A Permittee seeking to add equipment to a permitted Personal Wireless Service Facility that does not comply with the requirements of Section 1521 above, because the replacement equipment is not is identical in size or smaller than the previously permitted equipment, must obtain a Modification Permit.

(b) Department Procedures.

(1) Application. In an Application for a Modification Permit, the Applicant shall at a minimum:
(A) State whether the permitted Personal Wireless Service Facility is a Base Station;

(B) Identify the use and size of any piece of equipment that the Applicant is seeking to remove from the Utility, Transit, or Street Light Pole;

(C) Identify the use and size of any equipment that the Applicant is seeking to add to the Utility, Transit, or Street Light Pole;

(D) State whether any piece of equipment the Applicant is seeking to add to the Utility, Transit, or Street Light Pole is Transmission Equipment and, if so, explain why it meets the definition of Transmission Equipment;

(E) Provide drawings and photo-simulations of the existing and new equipment the Permittee is seeking to install on the Utility, Transit, or Street Light Pole; and

(F) State whether the proposed modification will result in a Substantial Change to the Physical Dimensions of the Utility, Transit, or Street Light Pole.

(2) Time for Department Determination. The Department shall by order or regulation establish the appropriate time frame for the Department to review an Application for a Modification Permit that is consistent with the requirements of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. § 1455(a), as may be amended from time to time, and with any FCC decision addressing that section or any FCC regulation implementing that section.

(c) Approval of Modification Permits at Base Stations.

(1) No Substantial Change to the Physical Dimension. The Department shall approve an Eligible Facilities Request for a Modification Permit if the installation of the modified Transmission Equipment would not Substantially Change the Physical Dimensions of the Utility, Transit, or Street Light Pole where the permitted Base Station equipment has been installed.
(2) **Substantial Change to the Physical Dimensions.** The Department may approve an Eligible Facilities Request for a Modification Permit if the installation of the modified Transmission Equipment would Substantially Change the Physical Dimensions of the Utility, Transit, or Street Light Pole where the permitted Base Station equipment has been installed, provided the Application complies with the requirements of Section 1522(e)(2) below.

(3) **Equipment Other than Transmission Equipment.** The Department may approve an Application for a Modification Permit at a Personal Wireless Service Facility that is a Base Station if the Application seeks to modify equipment other than Transmission Equipment, provided the Application complies with the requirements of Section 1522(e)(2) below.

(d) **Approval of Modification Permits at Other Types of Facilities.** The Department may approve an Application for a Modification Permit at a Personal Wireless Service Facility that is not a Base Station, provided the Application complies with the requirements of Section 1522(e)(2) below.

(e) **Applicability of Other Provisions of this Article.**

(1) **No Substantial Change to the Physical Dimension.** The other provisions of this Article 25 related to approval of an Application for a Personal Wireless Service Facility Site Permit shall not apply to the Department's review of an Application for a Modification Permit that complies with the requirements of Section 1522(c)(1) above. These provisions include, but are not limited to, Notice of Final Determination (Section 1514 above) and Appeals (Section 1515 above).

(2) **Other Types of Modifications.** Before approving an Application for a Modification Permit under Sections 1522(c)(2), (c)(3), and (d) above, the Department shall refer the Application to: (A) the Department of Public Health to determine compliance with the
Public Health Compliance Standard; and (B) the Planning Department and/or Recreation and Park Department to determine compliance with any applicable Compatibility Standards. The Department may not approve the Modification Permit if any City department determines the Application does not comply with the appropriate standard. In addition, the Department may determine that compliance with other provisions of this Article 25, including Notice of Final Determination (Section 1514 above) and Appeals (Section 1515 above), shall be required.

(f) **Generally Applicable Laws.** Nothing in this Section 1522 shall prohibit the Department from denying an Application for a Modification Permit (even where the Application consists of an Eligible Facilities Request) where the Department determines that the proposed modified Personal Wireless Service Facility would violate any generally applicable building, structural, electrical, or safety code provision, or any Applicable Law codifying objective standards reasonably related to health and safety.

**SEC. 1527. FEES AND COSTS.**

(a) **Application Fees.** City departments shall impose fees for review of an Application for a Personal Wireless Service Facility Site Permit. The purpose of these fees is to enable City departments to recover their costs related to reviewing an Application for a Personal Wireless Service Facility Site Permit.

(1) **Department Application Fee.** Each Applicant for a Personal Wireless Service Facility Site Permit shall pay to the Department a non-refundable Application fee of four hundred fifty dollars ($450.00) for each application for a Personal Wireless Service Facility Site Permit proposed in the Application.

(2) **Other City Department Application Fees.** Where, as required under this Article 25, the Department has referred an Application for a Personal Wireless Service Facility Site Permit to the Planning Department, the Recreation and Park Department, or the Department of Public Health, an Applicant shall pay the following additional fees for each

(A) A Planning Department non-refundable Application fee of one hundred ninety dollars ($190.00) plus time and materials for any review that takes more than thirty (30) minutes.

(B) A Recreation and Park Department non-refundable Application fee of one hundred twenty-five dollars ($125.00) plus time and materials for any review that takes more than thirty (30) minutes.

(C) A Department of Public Health non-refundable Application fee of one hundred eighty-one dollars ($181.00) plus time and materials for any review that takes more than sixty (60) minutes.

(b) Hearing Fees. If a hearing is required following a protest of a tentative approval of an Application for a Personal Wireless Service Facility Site Permit or Modification Permit, the Applicant shall pay the Department a non-refundable hearing fee of three hundred sixty dollars ($360.00) for the first protest and seventy-five dollars ($75.00) for each additional protest.

(e)/(b) Renewal Fees. A Permittee seeking to renew a Personal Wireless Service Facility Site Permit shall pay to: (1) the Department a non-refundable fee of two hundred twenty-five dollars ($225.00); and (2) the Department of Public Health the fees set forth in Section 1527(a)(2)(C) above.

(d)/(c) Modification Permit Fees. Each Applicant for a Modification Permit shall pay to: (1) the Department a non-refundable fee of three hundred thirty-eight dollars ($338.00); and (2) any the Department of Public Health other City department reviewing the Application the fees set forth in Section 1527(a)(2) above.

(e)/(d) Inspection Fees. The Department and the Department of Public Health shall impose fees for the inspection of a permitted Personal Wireless Service Facility. The purpose
of these fees is to enable these City departments to recover their costs related to inspecting a permitted Personal Wireless Service Facility.

(1) Department Inspection Fee. Each Permittee shall pay the Department a non-refundable time and materials inspection fee not to exceed \textdollar 150 to inspect a permitted Personal Wireless Service Facility as required under Section 1516(b) above.

(2) Department of Public Health Inspection Fee. Each Permittee shall pay the Department of Public Health a non-refundable time and materials inspection fee to inspect a permitted Personal Wireless Service Facility where such inspection is required or requested under Section 1516(b) above.

(\textit{f})(e) Adjustment of Fees for CPI.

(1) CPI Adjustments. Beginning with fiscal year 2011-2012, the fees established herein may be adjusted each year, without further action by the Board of Supervisors, to reflect changes in the relevant Consumer Price Index ("CPI") (as determined by the Controller). No later than April 15th of each year, the Director shall submit the current fee schedule to the Controller, who shall apply the CPI adjustment to produce a new fee schedule for the following year. No later than May 15th of each year, the Controller shall file a report with the Board of Supervisors reporting the new fee and certifying that the fees produce sufficient revenue to support the costs of providing the services for which the Permit fee is charged, and that the fees do not produce revenue that exceeds the costs of providing the services for which each Permit fee is charged. \textit{The operation of this subsection (e)(1) shall terminate after the CPI adjustment for fiscal year 2019-2020.}

(2) Controller Adjustments. Beginning with fiscal year 2020-2021, the fees established herein, including as adjusted through fiscal year 2019-2020 under Section 1527(e)(1) above, may be adjusted each year on July 1 without further action by the Board of Supervisors, to
reflect changes in City department costs to provide the services required herein. Not later than April 1 of each year the Controller will determine whether the current fees have produced or are projected to produce revenues sufficient to enable City departments to recover the costs of the permitting services required by this Article 25, and that the fees will not produce revenue that is significantly more than the costs of providing such services. If necessary, the Controller will adjust the fees upward or downward for the upcoming fiscal year as appropriate to ensure that City departments recover their costs without producing revenue that is significantly more than such costs. The adjusted fees shall become operative on July 1.

(g) Discretion to Require Additional Fees. In instances where the review of an Application for a Personal Wireless Service Facility Site Permit is or will be unusually costly to the Department or to other City departments, the Director, in his or her discretion, may, after consulting with other applicable City departments, agencies, boards, or commissions, require an Applicant for a Personal Wireless Service Facility Site Permit to pay a sum in excess of the amounts charged pursuant to this Section 1527. This additional sum shall be sufficient to recover actual costs incurred by the Department and/or other City departments, agencies, boards, or commissions, in connection with an Application for a Personal Wireless Service Facility Site Permit and shall be charged on a time and materials basis. Whenever additional fees are charged, the Director, upon request, shall provide in writing the basis for the additional fees and an estimate of the additional fees.

(h) Deposit of Fees. All fees paid to the Department for Personal Wireless Service Facility Site Permits shall be deposited in the Public Works Excavation Fund established by Administrative Code Section 10.100-230. All other fees shall go directly to the appropriate City department.

(i) Reimbursement of City Costs. A City department may determine that it requires the services of an expert in order to evaluate an Application for a Personal Wireless
Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: WILLIAM K. SANDERS
Deputy City Attorney
File Number: 190598  Date Passed: July 30, 2019

Ordinance amending the Public Works Code to modify certain of the requirements for obtaining Personal Wireless Service Facility Site Permits, including the requirements for public notice and adjustment of permit fees; and affirming the Planning Department's determination under the California Environmental Quality Act.

July 15, 2019 Land Use and Transportation Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

July 15, 2019 Land Use and Transportation Committee - RECOMMENDED AS AMENDED

July 23, 2019 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Brown, Fewer, Haney, Mandelman, Mar, Peskin, Ronen, Safai, Stefani, Walton and Yee

July 30, 2019 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Brown, Fewer, Haney, Mandelman, Mar, Peskin, Ronen, Safai, Stefani and Yee

Excused: 1 - Walton

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 7/30/2019 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

Date Approved: 8.9.19