



Planning and Building  
Department

---

# ZONING CODE BULLETIN

---

**DATE EFFECTIVE:** August 4, 2023 (original issue date: April 23, 2013, prior revision April 8, 2015)

**ZONING TOPICS:** Exclusions from the Telecommunications Regulations (Chapter 17.128) for minor modifications to existing telecommunications facilities and Applications for Joint Utility Pole Mounted Telecommunications Facilities

**PERTINENT CODE SECTION:** 17.128.020 Telecommunications Regulations/Exclusions,

**QUESTION:**

(1) How does the Planning and Zoning Division interpret and process applications for proposed modifications subject to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. 1455) (“Section 6409(a)”) as implemented by 47 C.F.R. 1.40001 (“FCC Regulations”); this relates to what constitutes a “minor modification” to an existing telecommunications facility for purposes of exclusion from zoning approvals under Section 17.128.020 of the Planning Code; and

**QUESTION 1) Section 6409(a)**

Section 6409(a) and recently adopted FCC Regulations that implement Section 6409(a) mandate approval of requests for specified modifications to existing telecommunications facilities that do not “substantially change” the physical dimensions of the telecommunication facilities. Requests for such modifications are quite routine, and typically involve replacements of antennas, equipment cabinets, and other related equipment. Section 17.128.020 of the Planning Code exempts “minor modifications of existing wireless communications facilities” from the City’s Telecommunications Regulations. The purpose of this Zoning Code Bulletin is to clarify that “minor modifications” to existing telecommunications facilities shall be those modifications that fall within the scope of Section 6409(a) and the FCC Regulations, to describe the City’s interpretation of Section 6409(a) and the FCC Regulations, and to update applicable timelines for processing of such applications. *Projects subject to Section 6409 have been subject to a Small Project Design Review (“DS-1”), generally decided by staff at the Zoning Counter; under updated regulations mandated by the FCC, a wider range of projects will now be subject to a DS-1 Zoning Permit procedure (See Sections C1-3 & D1-4, below).*

A. Overview. To the extent expressly required by Section 6409(a) and the FCC Regulations, previously approved telecommunications facilities may be modified in a manner that does not substantially change the physical dimensions of the telecommunications facility’s Tower or Base Station as set forth in sections (C) and (D) below.

B. Definitions. Terms used in this Zoning Code Bulletin have the following meanings:

1. “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, including (a) 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 and (b) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks). Base Station does not include Tower. Under the Oakland Planning Code, “Base Stations” are commonly defined as Micro Telecommunications Facilities (OPC Section 17.10.870), Mini Telecommunications Facilities (OPC Section 17.10.880) or Macro Telecommunications Facilities (OPC Section 17.10.890) depending on the criteria as found in the aforementioned Oakland Planning Code sections.

2. “Collocation” means the mounting or installation of transmission equipment on the Base Station or Tower of an existing telecommunication facility for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

3. “Site” means (a) for Towers other than Towers in the public rights-of-way (ROW), the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the Site, and, (b) for all other Towers or Base Stations, further restricted to that area in proximity to the Tower or Base Station and to other Transmission Equipment already deployed on the ground.

4. “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.

5. “Tower” means any structure built for the sole or primary purpose of supporting any Commission-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. Under the Oakland Planning Code, “Base Stations” are commonly defined as Monopole Telecommunications Facilities (OPC Section 17.10.900) or Tower Telecommunications Facilities (OPC Section 17.10.910) depending on the criteria as found in the aforementioned Oakland Planning Code sections.

C. Facilities Outside of the ROW. Any request to modify a Tower or Base Station located outside of the public rights-of-way for the Collocation, removal or replacement of Transmission Equipment shall be approved pursuant to section (E) (those that do not qualify for section (E) are reviewed under section (F)) unless it meets any of the following criteria:

1. It increases the height of the Tower by more than ten percent (10%) or by the height of one (1) additional antenna array with separation from the nearest existing antenna

not to exceed twenty (20) feet, whichever is greater, or It increases the height of the structure of a Base Station by more than ten percent (10%) or more than ten (10) feet, whichever is greater;

2. It involves adding an appurtenance to the body of the Tower that would protrude from the edge of the Tower more than twenty (20) feet, or more than the width of the Tower structure at the level of the appurtenance, whichever is greater; or it involves adding an appurtenance to the body of the Base Station that would protrude from the edge of the structure by more than six (6) feet;

3. It involves installation of more than the standard number of new equipment cabinets for the technology involved;

4. It entails any excavation or deployment outside the Site;

5. It would defeat the concealment elements of the Tower or Base Station;

6. It does not comply with existing conditions of approval for the Tower provided that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in this subsection; or

7. It does not comply with applicable building codes or other applicable health and safety standards.

D. Facilities in the ROW. Any request to modify a Base Station or a Tower located within the public right of way for the Collocation, removal or replacement of Transmission Equipment shall be approved pursuant to the processes outlined in the “Small Cell Design Standards (7-7-20)” with the exception that those standards shall not preclude the further expansion of an existing small cell facility to the Base Station standards set forth in (C) above.

E. Process Approval.

1. Any applicant requesting review pursuant to Section 6409(a) and/or the FCC Regulations shall do so at the time the initial application is filed with the City and shall submit a photo-simulation of the proposed modification and a RF (Radio Frequency) emissions report, prepared by a licensed professional engineer or other expert, indicating that the proposed site will operate within the current acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards. However, projects involving accessory equipment only and not antennas and/or equipment cabinets need not submit photo-simulations and RF Reports, unless specifically requested for due cause on a case-by-case basis. Moreover, the Planning and Building Director shall accept such application upon payment of the applicable fee. Except as otherwise provided, the application shall be considered a “minor modification” under Section 17.128.020 of the Planning Code and shall be processed as a Small Project Design Review under Section 17.136.030 of the Planning Code.

2. Upon application submittal, the Planning and Building Director shall review the application to determine if it meets the requirements of section (C) or (D). The Planning and Building Director may require additional information from the applicant as necessary to make this determination. Subject to section (F), the Planning and Building Director shall approve a request that meets the criteria of section (C) or (D). However, the Planning and Building Director may condition the approval on compliance with applicable building codes or reasonable health and safety standards.

3. The timeline (“shot clock”) for the Planning and Building Department to review applications for compliance with Section 6409(a) is 60 days from the date the application is filed and accepted by the City, and the shot clock is tolled or paused if an application is deemed incomplete. The City must send written notice of incompleteness specifically identifying all missing documents and information within 30 days of receipt, and must send written notice of incompleteness no later than 10 days following a supplemental submission to notify the applicant if the supplemental submission did not provide information identified in the prior notice. Alternatively, the applicant and the Planning and Building Director may agree to extend or toll the shot clock.

F. Other Revisions to Telecommunications Facilities. Projects that do not meet the criteria outlined in section (C) and are located outside of the ROW shall be subject to a revision of the original development permit through normal zoning entitlement review and as governed by relevant FCC timelines.

G. Effect of Changes to Federal Law. This section does not and shall not be construed to grant any rights beyond those granted by Section 6409(a) as implemented by the FCC Regulations. In the event Section 6409(a) or the FCC Regulations are stayed, amended, revised or otherwise not in effect, no modifications to a telecommunications facility shall be approved under section (E).

**REVIEWED AND APPROVED BY:**



---

**Robert D. Merkamp**  
**ZONING MANAGER**

**Date Issued: August 4, 2023**

**REFERENCES**

- Planning Code Chapters 17.10, 17.128