

ORDINANCE NO. 2018-07

**REPEALING EXISTING CHAPTER 32-70 OF THE DANVILLE MUNICIPAL CODE
AND ADDING A NEW CHAPTER 32-70 TO THE DANVILLE MUNICIPAL CODE
RELATED TO THE WIRELESS COMMUNICATION FACILITIES ORDINANCE
ZTA17-0002**

The Danville Town Council does ordain as follows:

SECTION 1. REPEALING CHAPTER 32-70 OF THE DANVILLE MUNICIPAL CODE.

Chapter 32-70 of the Danville Municipal Code is hereby repealed.

**SECTION 2. ADDING A NEW CHAPTER 32-70 TO THE DANVILLE MUNICIPAL
CODE.**

A new Chapter 32-70 is hereby added to the Danville Municipal Code to read as follows:

32-70 WIRELESS COMMUNICATION FACILITIES ORDINANCE

- 32-70.1 *Title*
- 32-70.2 *Purpose and Intent*
- 32-70.3 *Definitions*
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- 32-70.13 *Special Provisions for Section 6409 Approvals*

32-70.1 Title

This chapter shall be titled the "Wireless Communication Facilities Ordinance for the Town of Danville."

32-70.2 Purpose and Intent

- a. The Town of Danville intends this chapter to establish reasonable, uniform and comprehensive standards and procedures for wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and

removal within the Town's territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this Chapter are intended to, and should be applied to, consistent with and to the extent permitted under federal and California state law, protect and promote public health, safety and welfare, and also balance the benefits that flow from robust, advanced wireless services with the Town's local values, which include without limitation the aesthetic character of the Town, its neighborhoods and community. This chapter is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interest is maintained on a case-by-case basis; (2) protecting the Town's visual character from potential adverse impacts or visual blight created or exacerbated by wireless communications infrastructure; (3) protecting and preserving the Town's environmental resources; and (4) promoting access to high-quality, advanced wireless services for the Town's residents, businesses and visitors.

- b. This chapter is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the Town may not deny under federal or California state law; (6) impose any unfair, unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the Town to preempt any applicable federal or California law.

32-70.3 Definitions

- a. *Approval authority* means the Council, Commission, Board, or official responsible for review of applications and vested with the authority to approve or deny such applications.
- b. *Base station* means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended.
- c. *CPCN* means a "Certificate of Public Convenience and Necessity" granted by the CPUC or its duly appointed successor agency pursuant to California Public Utilities Code §§ 1001 *et seq.*, as may be amended or superseded.

- d. *CPUC* means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
- e. *FCC* means the Federal Communications Commission or its duly appointed successor agency.
- f. *OTARD* means any “over-the-air reception device” subject to 47 C.F.R. §§ 1.4000 *et seq.*, as may be amended or superseded, which includes satellite television dishes not greater than one meter in diameter.
- g. *Personal wireless service facilities* mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended or superseded, which defines the term as facilities that provide personal wireless services.
- h. *Personal wireless services* mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.
- i. “*RF*” means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.
- j. *Section 6409* 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. § 1455(a), as may be amended.
- k. *Shot clock* means the presumptively reasonable time defined by the FCC in which a State or local government must act on an application or request for authorization to place, construct, or modify personal wireless service facilities.
- l. *Temporary wireless facilities* means portable wireless facilities intended or used to provide personal wireless services on a temporary or emergency basis, such as a large-scale special event in which more users than usual gather in a confined location or when a disaster disables permanent wireless facilities. Temporary wireless facilities include, without limitation, cells-on-wheels (“COWs”), sites-on-wheels (“SOWs”), cells-on-light-trucks (“COLTs”) or other similarly portable wireless facilities not permanently affixed to site on which is located.
- m. *Tower* means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(9), as may be amended or superseded.
- n. *Transmission equipment* means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(8), as may be amended or superseded.

32-70.4 Applicability and Exemptions

- a. *Applicable Wireless Facilities.* Except as expressly provided otherwise in this chapter, the provisions in this chapter shall be applicable to all existing wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate or otherwise deploy wireless facilities within the Town's jurisdictional and territorial boundaries, on private property and within the public rights-of-way.
- b. *Exemptions.* Notwithstanding section 32-70.4.a, the provisions in this chapter will not be applicable to: (1) wireless facilities owned and operated by the Town for public purposes; (2) wireless facilities installed on Town-owned support structures or other personal property in the public rights-of-way pursuant to a valid master license agreement with the Town; (3) amateur radio facilities; (4) OTARD antennas; and (5) wireless facilities or equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power generation, transmission and distribution facilities subject to CPUC General Order 131-D.
- c. *Special Provisions for Section 6409 Approvals.* Notwithstanding section 32-70.4.a, all requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409 will be reviewed under the application procedures in section 32-70.6 and the standards in section 32-70.13. A Land Use Permit under section 32-70.5 is not required for any request that qualifies for approval pursuant to Section 6409 under the standards in section 32-70.13. To the extent that the applicant's request does not qualify for approval under Section 6409, the applicant may submit the same or a substantially similar application for a Land Use Permit under the general provisions in this chapter.

32-70.5 General Permit Requirements

- a. *Land Use Permit – Administrative Review.* A Land Use Permit, subject to the Chief of Planning's prior review and approval in accordance with the procedures and design regulations in this chapter, is required for:
 - 1. any wireless facility proposed on private property in a preferred location (as specified in section 32.70.7.a) and that would be compliant with all applicable development standards in section 32-70.7; and
 - 2. any wireless facility proposed to be located in the public rights-of-way that would be compliant with all applicable development standards in section 32-70.7 b-c.

- b. *Land Use Permit – Public Hearing Review.* A Land Use Permit, subject to the Planning Commission’s prior review and approval in accordance with the procedures and design regulations in this chapter, is required for:
1. any wireless facility proposed on private property located in or within 250 feet from a residential district;
 2. any wireless facility that requires a limited exception pursuant to section 32-70.9.c;
 3. any wireless facility subject to an administrative review process but that has been referred to the Planning Commission by the Chief of Planning; and
 4. any wireless facility not identified as subject to an administrative review process in section 32-70.5.a.
- c. *Major Ridgeline and Scenic Hillside Areas.* Any wireless facility proposed within any area identified by the Town as a Major Ridgeline or Scenic Hillside shall be subject to the review provisions in the Town’s Major Ridgeline or Scenic Hillside Ordinance (Ordinance No. 29-84), as may be amended or superseded.
- d. *Architectural Review.* Any architectural addition to accommodate or conceal transmission equipment proposed within the Downtown Business District shall be subject to the architectural review provisions in the Town’s Downtown Business District Ordinance (Ordinance No. 96-08), as may be amended or superseded.
- e. *Temporary Wireless Permit.* A temporary wireless permit, subject to the Chief of Planning’s prior review and approval in accordance with the procedures and standards in section 32-70.11, is required for any temporary wireless facility, unless deployed in connection with an emergency pursuant to section 32-70.11.b.
- f. *Other Permits and Regulatory Approvals.* In addition to any permit or approval required under this chapter, the applicant must obtain all other permits and regulatory approvals (such as compliance with the California Environmental Quality Act) as may be required by any other federal, state or local government agencies, which includes without limitation other any permits and/or approvals issued by other Town departments or divisions. Furthermore, any permit or approval granted under this chapter or deemed granted or deemed approved by law shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or approvals.

32-70.6 Applications

- a. *Application Required.* The approval authority shall not approve any request to place, construct or modify any wireless facility except upon a complete and duly filed application consistent with this section 32-70.6 and any other written rules the Town or the Chief of Planning may establish from time to time in any publicly-stated format.
- b. *Application Content.* All applications for a Land Use Permit or section 6409 approval (as that term is defined in section 32-70.13) must include all the information and materials required by the Chief of Planning for the application. The Town Council authorizes the Chief of Planning to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Chief of Planning finds necessary, appropriate or useful for processing any application governed under this chapter. All applications shall, at a minimum, require the applicant to demonstrate that the proposed project will be in planned compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions. All applications for wireless facilities in the public rights-of-way shall also contain sufficient evidence (such as a valid CPCN) of the applicant's regulatory status as a telephone corporation under the California Public Utilities Code. The Town Council further authorizes the Chief of Planning to establish other reasonable rules and regulations, which may include without limitation regular hours for appointments with applicants, as the Chief of Planning deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide applicants with prior notice.
- c. *Procedures for a Duly Filed Application.* Any application for a Land Use Permit or section 6409 approval will not be considered duly filed unless submitted in accordance with the procedures in this section 32-70.6.c.
 1. *Pre-Submittal Conference.* Before either planning or building application submittal, the applicant must schedule and attend a pre-submittal conference with the Chief of Planning for all proposed projects that: (1) require Planning Commission approval; (2) involve more than five wireless facilities in the public right-of-way; (3) involve any wireless facilities proposed to be located in the public rights-of-way in or within 250 feet from a residential district; or (4) involve a Section 6409 collocation, modification or other change to an existing camouflaged or concealed facility. Pre-submittal conferences for all other proposed projects are strongly encouraged but not required. The pre-submittal

conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, any latent issues in connection with the proposed or existing wireless tower or base station, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other Town departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that Town staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The Planning Division shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the Town for its reasonable costs to provide the services rendered in the pre-submittal conference.

2. *Submittal Appointment.* All applications must be submitted to the Town at a pre-scheduled appointment with the Chief of Planning. Applicants may generally submit one application per appointment, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The Chief of Planning shall use reasonable efforts to provide the applicant with an appointment within five working days after the Chief of Planning receives a written request and, if applicable, confirms that the applicant complied with the pre-submittal conference requirement. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed unless the applicant received a written exemption from the Chief of Planning at a pre-submittal conference.
- d. *Applications Deemed Withdrawn.* To promote efficient review and timely decisions, any application governed under this chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the Planning Division within 90 calendar days after the Chief of Planning deems the application incomplete in a written notice to the applicant. The Chief of Planning may, in the Chief of Planning's discretion, grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.

- e. *Peer and Independent Consultant Review.* The Town Council authorizes the Chief of Planning to, in the Chief of Planning's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Chief of Planning in connection any permit application. The Chief of Planning may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation:
1. permit application completeness and/or accuracy
 2. pre-construction planned compliance with applicable regulations for human exposure to RF emissions
 3. post-construction actual compliance with applicable regulations for human exposure to RF emissions
 4. whether and to what extent a proposed project will address a gap in the applicant's wireless services
 5. whether and to what extent any technically feasible and/or potentially available alternative sites or concealment techniques may exist
 6. the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the Town's discretion to review
 7. any other issue identified by the Chief of Planning that requires expert or specialized knowledge.

The Chief of Planning may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with Town staff and/or the applicant. In the event that the Chief of Planning elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings. Before the independent consultant may perform any services, the applicant shall tender to the Town a deposit in an amount equal to the estimated cost for the services to be provided, as determined by the Chief of Planning. The Chief of Planning may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant's services. In the event that the

deposit exceeds the total costs for consultant's services, the Chief of Planning shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection by the Building Official or his or her designee. In the event that the reasonable costs for the independent consultant's services exceed the deposit, the Chief of Planning shall invoice the applicant for the balance. The Town shall not issue any construction or grading permit to any applicant with any unpaid deposit requests or invoices.

32-70.7 Development Standards

a. *Preferred Locations.* When evaluating an application for a Land Use Permit for compliance with this chapter, the approval authority will take into account whether any or more preferred locations are technically feasible and potentially available. Any locations within the downtown business district, within 250 feet from a residential dwelling, attached to a decorative light standard or otherwise not listed below in this section 32-70.7 shall be considered "discouraged." All applicants for a Land Use Permit must propose new wireless facilities in locations according to the following preferences, ordered from most preferred to least preferred:

1. private property and existing or replacement structures in the public rights-of-way outside the downtown business district and not within 250 feet from a residential dwelling;
2. private property and existing or replacement structures in the public rights-of-way within general open space districts and not within 250 feet from a residential dwelling;
3. private property and existing or replacement structures in the public rights-of-way within public and semi-public districts and not within 250 feet from a residential dwelling;
4. new, non-replacement structures in the public rights-of-way within general open space districts and not within 250 feet from a residential dwelling; and
5. new, non-replacement structures in the public rights-of-way within public and semi-public districts and not within 250 feet from a residential dwelling.
6. existing or replacement structures in the public rights-of-way on major arterial streets not within 125 feet of a residential dwelling;

7. new, non-replacement structures in the public rights-of-way on major arterial streets not within 125 feet of a residential dwelling.
- b. *General Development Standards.* All new wireless facilities and collocations, modifications or other changes to existing wireless facilities that require a Land Use Permit under this chapter must conform to the generally applicable development standards in this section 32-70.7.b.
1. *Concealment.* All wireless facilities must be concealed to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses. In addition, wireless facilities in the public rights-of-way may not unreasonably subject the public use, for any purpose including expressive or aesthetic purposes, to inconvenience, discomfort, trouble, annoyance, hindrance, impediment or obstruction.
 2. *Overall Height.* All wireless facilities must be compliant with the maximum height limits applicable in the subject land use district; provided, however, that (1) completely stealth wireless facilities on private property in a preferred location may exceed the maximum height limit by not more than 10 feet; (2) concealed wireless facilities in the public rights-of-way on poles with electrical lines may exceed the maximum height limit by not more than the minimum separation from electrical lines required by CPUC General Order 95, plus four feet; and (3) concealed wireless facilities in the public rights-of-way on poles without electrical lines may exceed the maximum height limit by not more than four feet.
 3. *Setbacks.* Wireless facilities on private property must be compliant with all setback requirements applicable in the subject land use district.
 4. *Noise.* Wireless facilities and all transmission equipment must comply with all noise regulations and shall not exceed, either individually or cumulatively, such regulations. The approval authority may require the applicant to incorporate appropriate noise-baffling materials and/or strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations.
 5. *Landscaping.* All wireless facilities must include landscape features and a landscape maintenance plan when proposed to be placed in a landscaped area. The approval authority may require additional landscape features to screen the wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or

otherwise enhance the concealment required under this section 32-70.7.b.10. All plants proposed or required must be native and/or drought-resistant.

6. *Site Security Measures.* Wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. All wireless facilities shall be constructed from graffiti-resistant materials. The approval authority may require additional concealment elements as the approval authority finds necessary to blend the security measures and other improvements into the natural and/or built environment. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures.
7. *Backup Power Sources.* The approval authority may not approve permanent backup power sources within the public rights-of-way that emit noise or exhaust fumes.
8. *Lights.* Wireless facilities may not include exterior lights other than as may be required under FAA, FCC, other applicable governmental regulations or applicable pole owner policies related to public or worker safety. All exterior lights permitted or required to be installed must be installed in locations and within enclosures that mitigates illumination impacts on other properties to the maximum extent feasible. Any lights associated with the electronic equipment shall be appropriately shielded from public view. The provisions in this subsection shall not be interpreted to prohibit installations on street lights or the installation of luminaires on new poles when required by the approval authority.
9. *Signage; Advertisements.* All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage or advertisements unless expressly approved by the Town, required by law or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.
10. *Future Collocations and Expansions.* To the extent feasible and aesthetically desirable, all new wireless facilities should be designed and sited in a manner that accommodates potential future collocations and equipment installations that can be integrated into the proposed wireless facility or its associated structures with no or negligible visual

changes to the outward appearance. The approval authority may waive the requirements in this section 32-70.7.b.10 when the approval authority determines future collocations at a proposed wireless facility would be aesthetically undesirable.

11. *Utilities.* All cables and connectors for telephone, primary electric and other similar utilities must be routed underground to the extent feasible in conduits large enough to accommodate future collocated wireless facilities. To the extent feasible, undergrounded cables and wires must transition directly into the pole base without any external doghouse. Meters, panels, disconnect switches and other associated improvements must be placed in inconspicuous locations to the extent possible. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost. Microwave or other wireless backhaul is discouraged when it would involve a separate and unconcealed antenna.
12. *Compliance with Laws.* All wireless facilities must be designed and sited in compliance with all applicable federal, state and local laws, regulations, rules, restrictions and conditions, which includes without limitation the California Building Standards Code, Americans with Disabilities Act, General Plan and any applicable specific plan, the Danville Municipal Code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
13. *Public Safety.* All wireless facilities shall not interfere with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure or any other public health or safety facility. No person shall install, use or maintain any facilities, which in whole or in part rest upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facilities unreasonably interfere with or unreasonably impede the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near the location where the wireless facilities are located.

- c. *Design Guidelines.* The Chief of Planning may develop, and from time to time amend, design guidelines consistent with the generally applicable design regulations to clarify the aesthetic and public safety goals and standards in this chapter for Town staff, applicants and the public. The design guidelines shall provide more detailed standards to implement the general principals articulated in this section 32-70.7, and may include specific standards for particular wireless facilities or site locations, but shall not unreasonably discriminate between functionally equivalent service providers. The design guidelines, and any subsequent amendments, shall not be effective unless approved by a resolution adopted by the Planning Commission. In the event that a conflict arises between the development standards specified in this chapter and the design guidelines adopted under this section 32-70.7.c, the development standards specified in this chapter shall control.

32-70.8 Notices

- a. *General Notice Requirements.* Except as provided in section 32-70.8.b, public notice in accordance with Danville Municipal Code § 32-4.9 shall be given for all applications for a Land Use Permit governed under this chapter.
- b. *Deemed-Approval Notice.* Not more than 30 days before the applicable shot clock expires, and in addition to any public notice required prior to a decision, an applicant for a Land Use Permit must provide a posted notice at the project site that contains (1) a statement the project will be automatically deemed approved pursuant to California Government Code § 65964.1 unless the Town approves or denies the application or the applicant voluntarily agrees to toll the timeframe for review within the next 30 days; (2) a general description for the proposed project; (3) the applicant's name and contact information as provided on the application submitted to the Town; and (4) contact information for the Planning Division. The public notice required under this section 32-70.8.c will be deemed given when the applicant delivers written notice to the Planning Division that shows the appropriate notice has been posted at the project site. Notwithstanding anything to the contrary in this chapter, the approval authority shall be permitted to act on an application for a Land Use Permit at any time so long as any applicable prior public notice in this section 32-70.8.c has occurred.
- c. *Decision Notice.* Within five calendar days after the approval authority acts on a Land Use Permit application governed under this chapter or before the shot clock expires (whichever occurs first), the approval authority or its designee shall send a written notice to the applicant. In the event that the approval authority denies the application (with or without prejudice), the written notice to the applicant must contain (1) the reasons for the decision and (2) instructions for how and when to file an appeal.

32-70.9 Decisions and Appeals

- a. *Required Findings.* The approval authority may approve or conditionally approve an application for a Land Use Permit submitted under this chapter when the approval authority finds all of the following:
1. the approval authority can make all the findings required for a Land Use Permit in accordance with Danville Municipal Code § 32-3.5;
 2. the proposed wireless facility complies with all applicable development standards in section 32-70.7 and any applicable provisions in the Town's design guidelines; and
 3. the applicant has demonstrated that its proposed wireless facility will be in compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and
 4. the applicant has proposed to place the wireless facility in the most-preferred location or, if the wireless facility is not proposed in the most-preferred location, the applicant has demonstrated a good-faith effort to identify and evaluate more-preferred alternative locations through a meaningful comparative analysis; and
 5. the applicant has provided the approval authority with a meaningful comparative analysis that shows all more-preferred alternative designs identified in the administrative record are either technically infeasible or unavailable.
- b. *Conditional Approvals; Denials without Prejudice.* Subject to any applicable federal or California laws, nothing in this chapter is intended to limit the approval authority's ability to conditionally approve or deny without prejudice any Land Use Permit application governed under this chapter as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the General Plan and any specific plan, the Danville Municipal Code and/or this chapter.
- c. *Limited Exception.* In the event that an applicant claims that strict compliance with the development standards in section 32-70.7 would effectively prohibit the applicant's ability to provide personal wireless services, the Planning Commission may grant a limited exception from such requirements in accordance with this section 32-70.c.

1. *Required Findings for a Limited Exception.* The Planning Commission shall not grant any limited exception unless the applicant shows that:
 - i. the proposed wireless facility qualifies as a “personal wireless service facility” as defined in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended or superseded;
 - ii. the applicant has provided the Planning Commission with a reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility;
 - iii. the applicant has provided the Planning Commission with a written statement that contains a detailed and fact-specific explanation as to why the proposed wireless facility cannot be deployed in compliance with the applicable provisions in this chapter;
 - iv. the applicant has provided the Planning Commission with a meaningful comparative analysis with the factual reasons why all alternative locations and/or designs identified in the administrative record (whether suggested by the applicant, the Town, public comments or any other source) are not technically feasible or potentially available to reasonably achieve the applicant’s reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility; and
 - v. the applicant has demonstrated to the Planning Commission that the proposed location and design is the least non-compliant configuration that will reasonably achieve the applicant’s reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility, which includes without limitation a meaningful comparative analysis into multiple smaller or less intrusive wireless facilities dispersed throughout the intended service area.

2. *Scope.* Any limited exception shall be narrowly tailored to ensure that any deviations from the development standards in section 32-70.7 are no greater than necessary to avoid an effective prohibition of the applicant’s personal wireless services. Limited exceptions shall be based on the facts and circumstances of the applicant, its demonstrated technical service objectives at the time the exception is granted and the proposed wireless facility, and shall not be deemed to establish any

precedent for similar deviations for the same or any other applicant, location or wireless facility.

- d. *Appeals.* Within ten (10) days after the approval authority approves or denies any application for a Land Use Permit, any interested person may file an appeal for cause in accordance with the provisions in Danville Municipal Code § 32-4.7; provided, however, that appeals from an approval shall not be permitted when based solely on the environmental effects from radio frequency emissions that are compliant with applicable FCC regulations and guidelines.

32-70.10 Standard Conditions

- a. *Conditions Adopted by Town Council Resolution.* The Town Council may, either on its own motion or upon a recommendation from the Chief of Planning, adopt by resolution standard conditions of approval for wireless facilities subject to this chapter. All wireless facilities, whether approved by the approval authority or deemed approved or deemed granted by law shall be automatically subject to all such standard conditions of approval as may be adopted in a resolution by the Town Council.
- b. *Modifications to Standard Conditions.* The approval authority (or the appellate authority) shall have discretion to modify or amend any standard conditions of approval on a case-by-case basis as may be necessary or appropriate to protect and promote the public health, safety and welfare, allow for the proper operation of the approved wireless facility, maintain compliance with applicable laws and/or to advance the goals or policies in the General Plan and any specific plan, the Danville Municipal Code and/or this chapter.

32-70.11 Temporary Wireless Facilities

- a. *Non-Emergency Temporary Wireless Facilities.* Except as provided in section 32-70.11.b, the requirements, procedures and standards in this section shall be applicable to all applications for a Temporary Use Permit for a temporary wireless facility.
 1. *Administrative Review.* A duly filed application shall be reviewed for completeness. After the Chief of Planning deems the application complete, the Chief of Planning shall review the application for conformance with the required findings and render a written decision to the applicant. Any denials must include the reasons for the denial. The review shall be administrative in nature and shall not require notice or a public hearing.

2. *Required Findings.* The Chief of Planning may approve or conditionally approve a Temporary Use Permit for a temporary wireless facility only when the Chief of Planning finds:
- i. the proposed temporary wireless facility will not exceed the overall zone height limit of the zoning district in which it is located;
 - ii. the proposed temporary wireless facility complies with all setback requirements applicable to the proposed location;
 - iii. the proposed temporary wireless facility will not involve any excavation or ground disturbance;
 - iv. the proposed temporary wireless facility will be compliant with all generally applicable public health and safety laws and regulations, which include without limitation maximum permissible exposure limits for human exposure to RF emissions established by the FCC;
 - v. the proposed temporary wireless facility will not create any nuisance or violate any noise limits applicable to the proposed location;
 - vi. the proposed temporary wireless facility will be identified with a sign that clearly identifies the (i) site operator, (ii) the operator's site identification name or number and (iii) a working telephone number answered 24 hours per day, seven days per week by a live person who can exert power-down control over the antennas;
 - vii. the proposed wireless temporary wireless facility will be removed within 30 days after the Chief of Planning grants the temporary use permit, or such longer time as the Chief of Planning finds reasonably related to the applicant's need or purpose for the temporary wireless facility (but in no case longer than one year); and
 - viii. the applicant has not been denied an approval for any permanent wireless facility in substantially the same location within the previous 365 days.

3. *Appeals.* Any applicant may appeal the Chief of Planning’s written decision to deny an application for a Temporary Use Permit for a temporary wireless facility. The written appeal together with any applicable appeal fee must be tendered to the Town within 10 days from the Chief of Planning’s written decision, and must state in plain terms the grounds for reversal and the facts that support those grounds. The Town Manager shall be the appellate authority. The Town Manager shall issue a written decision that contains the reasons for the decision, and such decision shall be final and not subject to any further administrative appeals.

b. *Emergency Temporary Wireless Facilities.* Temporary wireless facilities may be placed and operated within the Town without a Temporary Use Permit only when a duly authorized federal, state, county or Town official declares an emergency within a region that includes the Town in whole or in part. Any temporary wireless facilities placed must be removed within five days after the date the emergency is lifted. Any person or entity that places temporary wireless facilities pursuant to this section 32-70.11.b must send a written notice that identifies the site location and person responsible for its operation to the Chief of Planning as soon as reasonably practicable under the circumstances.

32-70.12 Amortization of Nonconforming Wireless Facilities

Any nonconforming wireless facilities in existence at the time this chapter becomes effective must be brought into conformance with this chapter in accordance with the amortization schedule in this section 32-70.12. As used in this section, the “fair market value” will be the construction costs listed on the building permit or application for the subject wireless facility and the “minimum years” allowed will be measured from the date on which this chapter becomes effective.

| Fair Market Value on Effective Date | Minimum Years Allowed |
|-------------------------------------|-----------------------|
| Less than \$50,000. | 5 |
| \$50,000 to \$500,000 | 10 |
| Greater than \$500,000. | 15 |

The Chief of Planning may grant a written extension to a date certain when the wireless facility owner shows (1) a good faith effort to cure non-conformance; (2) the application of this section would violate applicable laws; or (3) extreme economic hardship would result from strict compliance with the amortization schedule. Any extension must be the minimum time period necessary to avoid such extreme economic hardship. The Chief of Planning may not grant any permanent exemption from this section.

Nothing in this section is intended to limit any permit term to less than ten (10) years. In the event that the amortization required in this section would reduce the permit term to less than 10 years for any permit granted on or after January 1, 2007, then the minimum years allowed will be automatically extended by the difference between 10 years and the number of years since the Town granted such permit. Nothing in this section is intended or may be applied to prohibit any collocation or modification covered under 47 U.S.C. § 1455(a) on the basis that the subject wireless facility is a legal nonconforming wireless facility.

32-70.13 Special Provisions for Section 6409 Approvals

- a. *Applicability.* Notwithstanding anything to the contrary in this chapter, this section 32-70.13 applies to all requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409. However, the applicant may voluntarily elect to seek a Land Use Permit under section 32-70.5.
- b. *Additional Section 6409 Definitions.* In addition to the definitions in section 32-70.3, the abbreviations, phrases, terms and words used in this section 32-70.13 will have the following meanings assigned to them unless context indicates otherwise. Undefined phrases, terms or words in this section will have the meanings assigned to them in 47 U.S.C. § 153, as may be amended from time to time and, if not defined therein, will have their ordinary meanings. In the event that any definition assigned to any phrase, term or word in this section conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.
 - i. *Collocation* means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended.
 - ii. *Eligible facilities request* means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended.
 - iii. *Eligible support structure* means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended.
 - iv. *Existing* means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended.
 - v. *Site* means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be amended.
 - vi. *Substantial change* means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended.

- c. *Required Approval.* Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted with a written request for approval under Section 6409 shall require an approval in such form determined by the Chief of Planning consistent with all valid and enforceable terms and conditions of the underlying permit or other prior regulatory authorization for the tower or base station (each amendment a “section 6409 approval”). Each section 6409 approval shall be subject to the Chief of Planning’s approval, conditional approval or denial without prejudice pursuant to the standards and procedures in this section 32-70.13. However, the applicant may voluntarily elect to seek a major or minor wireless permit subject to the general standards and procedures in this chapter.
- d. *Decisions; Appeals.*
- i. *Administrative Review.* The approval authority shall review a complete and duly filed application for a section 6409 approval, and may act on such application without prior notice or a public hearing.
 - ii. *Decision Notices for Denials.* In the event that the approval authority denies the application, the written notice to the applicant must contain (1) the reasons for the decision; (2) a statement that denial will be without prejudice; and (3) instructions for how and when to file an appeal.
 - iii. *Required Findings for Approval.* The approval authority may approve or conditionally approve an application any application for a section 6409 approval when the approval authority finds that the proposed project:
 1. involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
 2. does not substantially change the physical dimensions of the existing wireless tower or base station.
 - iv. *Criteria for Denial without Prejudice.* Notwithstanding any other provision in this chapter, and consistent with all applicable federal laws and regulations, the approval authority may deny without prejudice any application for a section 6409 approval when the approval authority finds that the proposed project:
 1. does not meet the findings required in section 32-70.13.d.3;
 2. involves the replacement of the entire support structure; or

3. violates any legally enforceable law, regulation, rule, standard or permit condition reasonably related to public health or safety.
- v. *Conditional Approvals.* Subject to any applicable limitations in federal or state law, nothing in this section 32-70.13 is intended to limit the approval authority's authority to conditionally approve an application for a section 6409 approval to protect and promote the public health and safety.
- vi. *Appeals.* Any applicant may appeal the approval authority's written decision to deny without prejudice an application for section 6409 approval. The written appeal together with any applicable appeal fee must be tendered to the City Clerk within ten calendar days from the approval authority's written decision, and must state in plain terms the grounds for reversal and the facts that support those grounds. The Town Manager shall be the appellate authority for all appeals from the approval authority's written decision to deny without prejudice an application for section 6409 approval. The Town Manager shall review the application *de novo* without notice or a public hearing; provided, however, that the Town Manager's decision shall be limited to only whether the application should be approved or denied in accordance with the provisions in this section 32-70.13 and any other applicable laws. The Town Manager shall issue a written decision that contains the reasons for the decision, and such decision shall be final and not subject to any further administrative appeals.

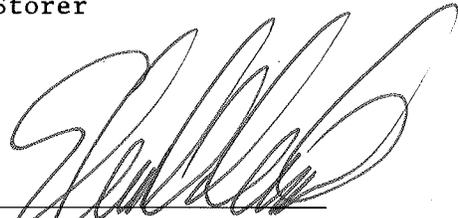
SECTION 3. CODIFICATION. Section 2 of this ordinance shall be codified in the Danville Municipal Code.

SECTION 4. PUBLICATION AND EFFECTIVE DATE. The City Clerk shall have a summary of this ordinance published twice in a newspaper of general circulation, once within five (5) days before its adoption and once within 15 (fifteen) days after adoption. This ordinance shall become effective 30 days after adoption.

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Danville Town Council hereby declares that they would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases was declared invalid.

The foregoing Ordinance was introduced on July 17, 2018 and approved and adopted by the Danville Town Council at a regular meeting held on August 21, 2018, by the following vote:

AYES: Arnerich, Blackwell, Morgan, Stepper, Storer
NOES: None
ABSTAIN: None
ABSENT: None



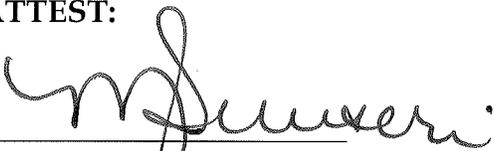
MAYOR

APPROVED AS TO FORM:



CITY ATTORNEY

ATTEST:



CITY CLERK

CLERK'S CERTIFICATE

I, Marie Sunseri, City Clerk of the Town of Danville, hereby certify that the foregoing is a true and accurate copy of Ordinance No. 2018-07 of said Town and that said ordinance was published according to law.

Dated: 8/22/18



City Clerk of the
Town of Danville