

CITY OF YUBA CITY
STAFF REPORT

Date: July 19, 2022
To: Honorable Mayor & Members of the City Council
From: Public Works Department
Presentation By: Ben Moody, Public Works & Development Services Director

Summary

Subject: Small Wireless Telecommunications Facilities within the City's Right-of-Way
Recommendation: Adopt an Ordinance of the City Council of the City of Yuba City adding Chapter 8 Wireless Telecommunications Facilities in the Public Right of Way to Title 6 of the Yuba City Municipal Code by title only and waive the second reading
Fiscal Impact: Minimal fiscal impact is anticipated with the implementation of the ordinance. Installation of wireless facilities would be subject to permit and inspection fees to offset administrative costs with potential lease revenue in the future.

Purpose:

To provide regulatory framework and standards for permitting the installation of small wireless facilities within the City's right-of-way.

Council's Strategic Goals:

The ordinance addresses the City Council's Strategic Goals of Improving Public Safety, be Business Friendly, and regulate infrastructure in the City's Right-of-Way.

Background:

In recent years wireless telecommunication facilities have evolved into various types of facilities, two types of which are administrative wireless telecommunication facilities and major wireless telecommunication facilities. Major wireless telecommunication facilities are known as "macro-cells", while the administrative wireless telecommunication facilities are known as "small wireless facilities" (SWFs).

Wireless telecommunication carriers increasingly seek to place SWFs in the City's public right-of-way on utility poles, streetlights, and new poles. The demand for such wireless installations, particularly SWFs, is expected to grow exponentially over the next several years given the expansion of home streaming video, social media, drones, self-driving cars, and the Internet of Things (IoT) serving homes and businesses. To accommodate this expansion, the telecommunications industry seeks to implement small cell facilities by installing them onto street light poles and other utility poles in the public right-of-way that are well-suited for limited range SWFs.

The Federal Communications Commission (FCC) released a Declaratory Ruling and Third Report and Order (FCC Order) significantly limiting state and local management of SWFs in the public right-of-way. In short,

the FCC Order defines SWFs as follows:

- No more than 28 cubic feet in volume for all associated wireless equipment on one structure.
- Antennas for SWFs shall be no more than 3 cubic feet in volume.
- Total height cannot be greater than 50 feet or extend higher than 10% above the height of adjacent structures, whichever is greater.

The FCC Order also has caps for all fees that local governments can charge to the actual and reasonable cost of providing service, imposed a review timeline know as a “shot clock” of 60 days for SWFs added to existing structures or 90 days for SWFs proposing a new structure, and FCC preempts all aesthetic requirements for SWFs in the public right-of-way, unless they are feasible, no more burdensome than those applied to other types of infrastructure deployments, and published in advanced.

Analysis:

The attached ordinance provides the regulatory framework and standards for permitting the installation of SWFs within the City’s right-of-way. The proposed ordinance and corresponding design standards have been revised in response to the FCC Order. The proposed ordinance also addresses “eligible facilities requests”— a category of “by-right” installations that were established by the FCC several years ago, but never acknowledged in the City’s current version of Municipal Code. The “eligible facilities request” means any request for modification to an existing eligible support structure that does not substantially change the physical dimensions of such structure.

Permitting for macro and small wireless telecommunication facilities will require a new type of permit, titled a Wireless Telecommunication Facility (WTF) Permit. To address the difference between macro and small wireless telecommunication facilities, the WTF permit will have a supplemental application to classify the facility. The permit also requires the permittee to enter into a Master License Agreement (MLA) with the City to establish annual fees for SWF's placed in the City's Right of Way. The MLA and fee resolution will be separately presented at a subsequent meeting.

Fiscal Impact:

Minimal fiscal impact is anticipated with the implementation of the ordinance. Installation of wireless facilities would be subject to permit and inspection fees to offset administrative costs. There may also be the potential for lease revenue at some future date.

Alternatives:

Direct staff to modify the ordinance language or do not move forward with an ordinance at this time, resulting in the City of Yuba City restricting its rights to enforce standards and regulations for wireless telecommunication facilities and structures in the public right-of-way.

Recommendation:

Adopt an Ordinance of the City Council of the City of Yuba City adding Chapter 8 Wireless Telecommunications Facilities in the Public Right of Way to Title 6 of the Yuba City Municipal Code by title only and waive the second reading.

Attachments:

1. Small Wireless Telecommunications Facilities Ordinance - Final Draft 7.12.2022

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ORDINANCE NO. _____

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUBA CITY ADDING CHAPTER 8 (WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT OF WAY) TO TITLE 6 OF THE YUBA CITY MUNICIPAL CODE

WHEREAS, the City Council of Yuba City (“City”) is authorized by the California Constitution, Article XI, Section 7 to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, the City Council has adopted the Yuba City Municipal Code, which it periodically updates to protect the public health, safety, and welfare; and

WHEREAS, City Council desires to update and amend the Yuba City Municipal Code Title 6 to include Chapter 8 in a fair manner that best addresses the public health, safety, and welfare.

NOW THEREFORE, the City Council of the City of Yuba City does ordain as follows:

Section 1. The above recitals are all true and correct and are hereby adopted as findings.

Section 2. The proposed ordinance was assessed in accordance with the authority and criteria contained in CEQA, the State CEQA Guidelines (“CEQA Guidelines”), and the environmental regulations of the City. The City Council finds and determines that the proposed ordinance is not a “project” for the purposes of CEQA and consistent with CEQA Guidelines Section 15378, as it promotes environmental conditions by providing improved processes and programs for the collection and treatment of wastewater, and will not result in direct or indirect substantial, adverse physical changes in the environment as compared to the current baseline. Additionally, the City Council finds and determines for the same reasons that even if the proposed ordinance were a project for the purposes of CEQA, there is no possibility that this project may have a significant adverse effect on the environment pursuant to CEQA Guidelines, Section 15061(b)(3). Therefore, the proposed ordinance is not subject to CEQA.

Section 3. Chapter 8 (Wireless Telecommunications Facilities in the Public Right of Way) is hereby added to Title 6 of the Yuba City Municipal Code and is to read in its entirety as follows:

Chapter 8 – WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

Sec. 6-8.01 – PURPOSE.

The purpose and intent of this chapter is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the City’s public right-of-way. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This chapter provides standards necessary (1) for the preservation of the public right-of-way (“PROW”) in the City for the maximum benefit and use of the public, (2) to promote and protect public health and safety, community welfare, visual resources and the aesthetic quality of the City consistent with the goals, objectives and policies of the general plan, (3) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules and regulations,

including those regulations of the Federal Communications Commission (“FCC”) and California Public Utilities Commission (“CPUC”), and (4) to ensure that the use and enjoyment of the PROW is not inconvenienced by the use of the PROW for the placement of wireless facilities. The City recognizes the importance of wireless facilities to provide high-quality communications service to the residents and businesses within the City, and the City also recognizes its obligation to comply with applicable Federal and State laws. This chapter shall be constructed and applied in consistency with the provisions of state and federal laws, and the rules and regulations of FCC and CPUC. In the event of any inconsistency between any such laws, rules and regulations and this chapter, the laws, rules, and regulations shall control.

Sec. 6-8.02 – DEFINITIONS.

- (a) “Accessory equipment” means any and all on-site equipment, including, without limitation, back-up generators and power supply units, cabinets, coaxial and fiber optic cables, connections, equipment buildings, shelters, radio transceivers, transmitters, pedestals, splice boxes, fencing and shielding, surface location markers, meters, regular power supply units, fans, air conditioning units, cables, and wiring, to which an antenna is attached in order to facilitate the provision of wireless telecommunication services.
- (b) “Antenna” means that specific device for transmitting and/or receiving radio frequency or other signals for purposes of wireless telecommunications services. “Antenna” is specific to the antenna portion of a wireless telecommunications facility.
- (c) “Antenna array” shall mean two or more antennas having active elements extending in one or more directions, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.
- (d) “Base station” shall have the meaning as set forth in Title 47 Code of Federal Regulations (C.F.R.) Section 1.6100(b)(1), or any successor provision. This means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network (regardless of the technological configuration, and encompassing DAS and small wireless facilities). “Base station” does not encompass a tower or any equipment associated with a tower. Base station includes, without limitation:
 - (1) 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.
 - (2) 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 wireless facilities).
 - (3) Any structure other than a tower that, at the time the relevant application is filed with the City under this chapter, supports or houses equipment described in paragraphs 1 and 2 of this definition that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was

not built for the sole or primary purpose of providing that support.

- (4) “Base station” does not include any structure that, at the time the relevant application is filed under this chapter, does not support or house equipment described in paragraphs 1 and 2 of this definition. Other structures that do not host wireless telecommunications facilities are not “base stations.”

As an illustration and not a limitation, the FCC’s definition of “base station” refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles, light standards, or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

- (e) “Cellular” means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.

- (1) “City” means the City of Yuba City.

- (2) “Code” means the City of Yuba City Municipal Code.

- (3) “Collocation” bears the following meanings:

- For the purposes of any eligible facilities request, the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), as may be amended, which defines that term as “[t]hemounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.” As an illustration and not a limitation, the FCC’s definition means to add transmission equipment to an existing facility and does not necessarily refer to two or more different facility operators in the same location; and

- (f) For all other purposes, the same as defined in 47 CFR 1.6002(g)(1) and (2), as may be amended, which defines that term as (1) Mounting or installing an antenna facility on a pre-existing structure, and/or (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

- (g) “Collocation facility” means the eligible support structure on, or immediately adjacent to, which a collocation is proposed, or a wireless telecommunications facility that includes collocation facilities. (See, Gov. Code, § 65850.6(d)(1).)

- (h) “COW” means a “cell on wheels,” which is a portable, self-contained wireless telecommunications facility that can be moved to a location and set up to provide wireless telecommunication services, which facility is temporarily rolled in, or temporarily installed, at a location. Under this chapter, the maximum time a facility can be installed to be considered a COW is five (5) days. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.

- (i) “Development Services Director” means the director of the Development Services and Engineering Department or their designee.

- (j) “Distributed antenna system” or “DAS” means a network of spatially separated antennas (nodes) connected to a common source (a hub) via a transport medium (often fiber optics) that provide wireless telecommunications service within a specific geographic area or building. DAS includes the transport medium, the hub, and any other equipment to which the DAS network or its antennas or nodes are connected to provide wireless telecommunication services.
- (k) “Eligible facilities request” means any request for modification to an existing eligible support structure that does not substantially change the physical dimensions of such structure, involving:
 - (1) Collocation of new transmission equipment;
 - (2) Removal of transmission equipment;
 - (3) Replacement of transmission equipment (replacement does not include completely replacing the underlying support structure); or
 - (4) Hardening through structural enhancement where such hardening is necessary to accomplish the eligible facilities request, but does not include replacement of the underlying support structure.
- (l) “Eligible facilities request” does not include modifications or replacements when an eligible support structure was constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. “Eligible facilities request” does include collocation facilities satisfying all the requirements for a non-discretionary collocation facility pursuant to Government Code Section 65850.6.
- (m) “Eligible support structure” means any support structure located in the PROW that is existing at the time the relevant application is filed with the City under this chapter.
- (n) “Existing” means a support structure, wireless telecommunications facility, or accessory equipment that has been reviewed and approved under the City’s applicable zoning or siting process, or under another applicable state or local regulatory review process, and lawfully constructed prior to the time the relevant application is filed under this chapter. However, a support structure, wireless telecommunications facility, or accessory equipment that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is “existing” for purposes of this chapter. “Existing” does not apply to any structure that (1) was illegally constructed without all proper local agency approvals, or (2) was constructed in noncompliance with such approvals. “Existing” does not apply where an existing support structure is proposed to be replaced in furtherance of the proposed wireless telecommunications facility.
- (o) “Facility(ies)” means wireless telecommunications facility(ies).
- (p) “FCC” means the Federal Communications Commission.
- (q) “Ground-mounted” means mounted to a pole, tower or other freestanding structure which is specifically constructed for the purpose of supporting an antenna or

wireless telecommunications facility and placed directly on the ground at grade level.

- (r) "Lattice tower" means an open framework structure used to support one or more antennas, typically with three or four support legs.
- (s) "Located within (or in) the public right-of-way" includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the PROW.
- (t) "Modification" means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. "Modification" does not include repair, replacement or maintenance if those actions do not involve whatsoever any expansion, alteration, enlargement, intensification, reduction, or augmentation of an existing wireless telecommunications facility.
- (u) "Monopole" means a structure composed of a pole or tower used solely to support antennas or related equipment. A monopole also includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole (e.g. water tower).
- (v) "Mounted" means attached or supported.
- (w) "OTARD antennas" means antennas covered by the "over-the-air reception devices" rule in 47 C.F.R. sections 1.6100 et seq. as may be amended or replaced from time to time.
- (x) "Permittee" means any person or entity granted a WTFP pursuant to this chapter.
- (y) "Personal wireless services" shall have the same meaning as set forth in 47 United States Code Section 332(c)(7)(C)(i).
- (z) "Pole" means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this code.
- (aa) "Public Works Director" shall mean the Director of Public Works, or his or her designee.
- (bb) "Public right-of-way" or "PROW" means a strip of land acquired by reservation, dedication, prescription, condemnation, or easement that allows for the passage of people and goods. The PROW includes, but is not necessarily limited to, streets, curbs, gutters, sidewalks, roadway medians, and parking strips. The PROW does not include lands owned, controlled or operated by the City for uses unrelated to streets or the passage of people and goods, such as, without limitation, parks, City Hall and community center lands, City yards, and lands supporting reservoirs, water towers, police or fire facilities and non-publicly accessible utilities.
- (cc) "Replacement" refers only to replacement of transmission equipment, wireless telecommunications facilities or eligible support structures where the replacement

structure will be of like-for-like kind to resemble the appearance and dimensions of the structure or equipment replaced, including size, height, color, landscaping, materials and style.

(1) In the context of determining whether an application qualifies as an eligible facilities request, the term “replacement” relates only to the replacement of transmission equipment and does not include replacing the support structure on which the equipment is located.

(2) In the context of determining whether a SWF application qualifies as being placed upon a new eligible support structure or qualifies as a collocation, an application proposing the “replacement” of the underlying support structure qualifies as a new pole proposal.

(dd) “RF” means radio frequency.

(ee) “Spectrum Act” means Section 6409(a) of the Middle Class Tax Relief Act and Job Creation Act of 2012, 47 U.S.C. §1455(a).

(ff) “Substantial change” has the same meaning as “substantial change” as defined by the FCC at 47 C.F.R. 1.6100(b)(7). Notwithstanding the definition above, if an existing pole-mounted cabinet is proposed to be replaced with an underground cabinet at a facility where there are no pre-existing ground cabinets associated with the structure, such modification may be deemed a non-substantial change, in the discretion of the Public Works Director and based upon his/her reasonable consideration of the cabinet’s proximity to residential view sheds, interference to public views and/or degradation of concealment elements. If undergrounding the cabinet is technologically infeasible such that it is materially inhibitive to the project, the may allow for a ground mounted cabinet. A modification or collocation results is a “substantial change” to the physical dimensions of an eligible support structure if it does any of the following:

(1) It increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(2) It involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(3) It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets. However, for towers and base stations located in the public rights-of-way, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(4) It entails any excavation or deployment outside the current site. For purposes of this Subsection, excavation outside the current site occurs where excavation more than twelve feet from the eligible support structure is proposed;

- (5) It defeats the concealment or stealthing elements of the eligible support structure; or
- (6) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure, provided however 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 paragraphs 1 through 4 of this definition.
- (7) For all proposed collocations and modifications, a substantial change occurs when:
 - (gg) The proposed collocation or modification involves more than the standard number of new equipment cabinets for the technology involved, but not to exceed four equipment cabinets;
 - (hh) The proposed collocation or modification would defeat the concealment elements of the support structure; or
 - (ii) The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval that is inconsistent with the thresholds for a substantial change described in this Section.

The thresholds and conditions for a “substantial change” described in this Section are disjunctive such that the violation of any individual threshold or condition results in a substantial change. The height and width thresholds for a substantial change described in this Section are cumulative for each individual support structure. The cumulative limit is measured from the physical dimensions of the original structure for base stations, and for all other facilities sites in the PROW from the smallest physical dimensions that existed on or after February 22, 2012, inclusive of originally approved-appurtenances and any modifications that were approved prior to that date.

- (jj) “Support structure” means a tower, pole, base station or other structure used to support a wireless telecommunications facility.
- (kk) “SWF” means a “small wireless facility” as defined by the FCC in 47 C.F.R. 1.6002(l) as may be amended, which are personal wireless services facilities that meet all the following conditions that, solely for convenience, have been set forth below:
 - (1) The facility:
 - i. Is mounted on an existing or proposed structure 50 feet or less in height, including antennas, as defined in Title 47 C.F.R. Section 1.1320(d); or
 - ii. Is mounted on an existing or proposed structure no more than 10 percent taller than other adjacent structures, or
 - iii. Does not extend an existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

- (2) Each antenna associated with the deployment, excluding associated antennaequipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;
- i. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
 - ii. The facility does not require antenna structure registration under 47 C.F.R. Part 17, Section 17.4;
 - iii. The facility is not located on Tribal lands, as defined under Title 36 C.F.R. Section 800.16(x); and
 - iv. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Title 47 C.F.R. Section 1.1307(b).
- (ll) “SWF Regulations” means those regulations adopted by the City Council (City Council Policy No. 21-102) implementing the provisions of this chapter applicable to SWFs and further regulations and standards applicable to SWFs.
- (mm) “Telecommunications tower” or “tower” bears the meaning ascribed to wireless towers by the FCC in 47 C.F.R. § 1.6100(b)(9), including without limitation a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower, or other structure designed and built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.
- (nn) “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.
- (oo) “Utility pole” means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission. A telecommunications tower is not a utility pole.
- (pp) “Wireless telecommunications facility” means equipment and network components such as antennas, accessory equipment, support structures, and emergency power systems that are integral to providing wireless telecommunications services. Exceptions: The term “wireless telecommunications facility” does not apply to the following:

- (1) Government-owned and operated telecommunications facilities.
 - (2) Emergency medical care provider-owned and operated telecommunications facilities.
 - (3) Mobile services providing public information coverage of news events of a temporary nature.
 - (4) Any wireless telecommunications facilities exempted from this code by federal law or state law.
- (qq) “Wireless telecommunications services” means the provision of services using a wireless telecommunications facility or a collocation facility, and shall include, but not limited to, the following services: personal wireless services as defined in the federal Telecommunications Act of 1996 at 47 U.S.C. § 332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.
- (rr) “WTFP” means a “wireless telecommunications facility permit” required by this chapter.

Sec 6-8.03 – APPLICABILITY.

- (a) This chapter applies to the siting, construction or modification of any and all wireless telecommunications facilities proposed to be located in the public right-of-way as follows:
 - (5) Pre-existing Facilities in the ROW. Nothing in this chapter shall validate any existing illegal or unpermitted wireless facilities. All existing wireless facilities shall comply with and receive a wireless encroachment permit, when applicable, to be considered legal and conforming.
- (b) This chapter does not apply to the following:
 - (1) Amateur radio facilities;
 - (2) OTARD antennas;
 - (3) Facilities owned and operated by the City for its use or for public safety purposes;
 - (4) Any entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement;
 - (5) Installation of a COW or a similar structure for a temporary period in connection with an emergency or event at the discretion of the Public Works Director, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities;
 - (6) Facilities on private property or publicly-owned property not in the public right-of-way.

- (c) Public use. Except as otherwise provided by state or federal law, any use of the PROW authorized pursuant to this chapter will be subordinate to the City's use and use by the public.

Sec. 6-8.04 –WIRELESS TELECOMMUNICATIONS FACILITY PERMIT REQUIREMENTS.

- (a) Administration. Unless a matter is referred to the planning director as provided below, The Public Works Director is responsible for administering this chapter. As part of the administration of this chapter, the Public Works Director may:
 - (1) Interpret the provisions of this chapter;
 - (2) Develop and implement standards governing the placement and modification of wireless telecommunications facilities consistent with the requirements of this chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;
 - (3) Develop and implement acceptable design, location, and development standards for wireless telecommunications facilities in the PROW, taking into account the zoning districts bounding the PROW;
 - (4) Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this chapter;
 - (5) Collect, as a condition of the completeness of any application, any fee established by this chapter;
 - (6) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations;
 - (7) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
 - (8) Require, as part of, and as a condition of completeness of any application, that an applicant for a wireless encroachment permit send notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;
 - (9) Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and
 - (10) Take such other steps as may be required to timely act upon applications for placement of wireless telecommunications facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.
- (b) Administrative Wireless Telecommunications Facilities Permits (“Administrative WTFP”).

- (1) An Administrative WTFP, subject to the Public Works Director's approval, may be issued for wireless telecommunications facilities, collocations, modifications or replacements to an eligible support structure that meet the following criteria:
 - i. The proposal is determined to be for a SWF; or
 - ii. The proposal is determined to be an eligible facilities request; or
 - iii. Both.
 - (2) Except in the case of an eligible facilities request, the Public Works Director may refer, in his/her discretion, any application for an Administrative WTFP to the Development Services Director
- (c) Special Provisions for SWFs; SWF Regulations. Notwithstanding any other provision of this chapter as provided herein, all SWFs are subject to a permit as specified in the SWF Regulations, which is adopted and may be amended by City Council resolution. All SWFs shall comply with the SWF Regulations, as they may be amended from time to time.
- (1) The SWF Regulations are intended to be constructed in consistency with, and addition to, the terms and provisions of this chapter. To the extent general provisions of this chapter are lawfully applicable to SWFs, such terms shall apply unless in contradiction to more specific terms set forth in the SWF Regulations, in which case the more specific terms of the SWF Regulations shall control.
- (d) Other Permits Required. In addition to any permit that may be required under this chapter, the applicant must obtain all other required prior permits or other approvals from other City departments, or state or federal agencies. Any permit granted under this chapter is subject to the conditions and/or requirements of other required prior permits or other approvals from other City departments, state or federal agencies. Building and encroachment permits, and all City standards and requirements therefor, are applicable.
- (e) Eligible Applicants. Only applicants who have been granted the right to enter the PROW pursuant to state or federal law, or who have entered into a franchise agreement with the City permitting them to use the PROW, shall be eligible for a WTFP pursuant to this chapter.

Sec. 6-8.05 – APPLICATION FOR WIRELESS TELECOMMUNICATIONS FACILITY PERMITS.

- (a) Generally. Unless the SWF Regulations specifically provide otherwise, the applicant shall submit a paper copy and an electronic copy of any application, amendments, or supplements to a WTFP application, or responses to requests for information regarding an WTFP, in accordance with the provisions of this section. SWF applications shall be governed by any additional terms set forth in the SWF Regulations, and in the event of an inconsistency between the provisions of this Section and the terms of the SWF Regulations, the Regulations shall control.

- (1) All applications for WTFPs shall be initially submitted to the Public Works Director. In addition to the information required of an applicant for an encroachment permit or any other permit required by this Code, each applicant shall fully and completely submit to the City a written application on a form prepared by the Public Works and published on the City's website.

Ground mounted equipment, conduit, junction boxes and fiber and electrical connections necessary for and intended for use in the deployment shall also be specified, to the extent known regardless of whether the additional facilities are to be constructed by the applicant or leased from a third party. Where another party is responsible for installing such electric and fiber utilities, conduits, cables, and related improvements, applicant's construction drawings will include such utilities to the extent known at the time of application, but at a minimum applicant must indicate how it expects to obtain fiber and electric service to the small wireless facility. Notwithstanding the foregoing, no ground mounted equipment, conduit, junction boxes or fiber and electrical connections necessary for and intended for use in the deployment shall be installed until a WTFP has been approved or conditionally approved for the deployment.

- (b) Application Contents—Administrative WTFPs. The content of the application form for facilities subject to an Administrative WTFP shall be determined by the Public Works Director. Fees and Deposits Submitted with Application(s).
 - (1) For all WTFPs, application fee(s) and or deposit(s) shall be required to be submitted with any application, as established by City Council resolution and in accordance with California Government Code Section 50030. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a WTFP unless paid as a refundable deposit.
- (c) Costs. Reasonable costs of City staff, consultant and attorney time (including that of the City Attorney) pertaining to the review, processing, noticing and hearing procedures directly attributable to a WTFP shall be reimbursable to the City. To this end, the , as applicable, may require applicants to enter cost recovery agreement, in a form approved by the City Attorney, or other established trust/deposit accounting mechanism for purposes of obtaining an applicant deposit from which the direct costs of City processing of an application may be drawn-down.
- (d) Effect of State or Federal Law on Application Process. In the event a state or federal law prohibits the collection of any information required by the application. Public Works Director is authorized to omit, modify, or add to that request from the City's application form in consultation with the City Attorney. Requests for waivers from any application requirement of this Section shall be made in writing to the Public Works Director or designee. The Public Works Director may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the WTFP sought. All waivers approved pursuant to this Subsection shall be (1) granted only on a case-

by-case basis, and (2) narrowly-tailored to minimize deviation from the requirements of this Code.

- (e) **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 City on any application within sixty (60) calendar days after the application is deemed incomplete in a written notice to the applicant that identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information. The Public Works Director (as applicable) may, in their discretion, grant a written extension when the applicant submits a written request prior to the sixtieth (60th) day that shows good cause to grant the extension.
- (f) **Waiver of Applications Superseded by Submission of New Project.** If an applicant submits a WTFP application, but substantially revises the proposed facility during the application process prior to any City hearing or decision on such application, the substantially revised application shall be deemed a new application for all processing purposes, including federal shot clocks, and the prior submittals deemed waived and superseded by the substantially revised application. For purposes of this subparagraph, “substantially revised” means that the project as initially proposed has been alternately proposed for a location 300 feet or more from the original proposal or constitutes a substantial change in the dimensions or equipment that was proposed in the original WTFP application unless the proposed changes were as a result of City requested changes.
- (g) **Rejection for Incompleteness.** WTFPs will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is incomplete, it may be rejected by the Public Works Director by notifying the applicant in writing and specifying the material omitted from the application.

Sec. 6-8.06 – REVIEW PROCEDURE.

- (a) **Generally.** Wireless telecommunications facilities shall be installed and modified in a manner that minimizes risks to public safety and utilizes installation of new support structures or equipment cabinets in the PROW only after all existing and replacement structure options have been exhausted, and where feasible, places equipment underground, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the PROW; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the ROW, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate the PROW or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the PROW.
- (b) **Findings Required for Approval.**
 - (1) **Administrative WTFP Applications for SWFs.** For WTFP applications proposing a SWF, the Public Works Director, as the case may be, shall

approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:

- i. The facility qualifies as a SWF; and
- ii. The facility meets all standards, requirements and further findings as may be specified in the SWF Regulations; and
- iii. The facility is not detrimental to the public health, safety, and welfare; and
- iv. The facility meets applicable requirements and standards of State and Federal law.

(2) Administrative WTFP Applications for Eligible Facility Requests. For WTFP applications proposing an eligible facilities request, the Public Works Director shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:

- i. That the application qualifies as an eligible facilities request; and
- ii. That the proposed facility will comply with all generally-applicable laws.

(c) Notice; Decisions. The provisions in this Section describe the procedures for the approval process, and any required notice for a WTFP application.

(1) Administrative WTFPs: Notice of a WTFP application for a SWF shall be mailed to owners and occupants of real property surrounding the proposed SWF site in the manner specified in the SWF Regulations. Applications qualifying for eligible facilities requests shall not require notice.

(2) Written Decision Required for All WTFP Determinations. Unless otherwise specified for SWF's in the SWF Regulations, all final decisions made pursuant to this chapter, including those for administratively processed permits and eligible facilities requests, shall be in writing and based on substantial evidence in the written administrative record. Within five days after any decision to grant, approve, deny or conditionally grant a WTFP application, the Public Works Director shall provide written notice including the following:

- i. A general explanation of the decision, including the findings required for the decision, if any, and how those findings were supported or not supported by substantial evidence;
- ii. A general description of the property involved;
- iii. Information about applicable rights to appeal the decision and explanation of how that right may be exercised; and

- iv. To be given by first class mail to:
 - a. The project applicant and property owner,
 - b. Any person who submitted written comments concerning the WTFP,
 - c. Any person within who has filed a written request with the City to receive such notice, and
 - d. Adjacent property owners within 300 feet of the WTFP facility.
- (3) Once a WTFP is approved, no changes shall be made to the approved plans without review and approval in accordance with this chapter.
- (d) Appeals.
 - (1) Administrative WTFP Appeals. Any person claiming to be adversely affected by an administrative decision pursuant to this chapter may appeal such decision. The appeal will be considered by a hearing officer appointed by the City Manager. The hearing officer may decide the issues de novo and whose written decision will be the final decision of the City. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless facility. Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, appeals of the administrative decision premised on the environmental effects of radio frequency emissions will not be considered.
 - a. Where the administrative decision grants an application based on a finding that denial would result in a prohibition or effective prohibition under applicable federal law, the decision shall be automatically appealed to the hearing officer. All non-automatic appeals by third-parties must be filed within two (2) business days of the written administrative decision, unless the Public Works Director extends the time therefore, and are only appealable by persons who (a) received formal notice of the application pursuant to Section 7.28.60(c), or (b) actively participated in or commented upon the City decision-making process, or (c) otherwise demonstrate that they are directly impacted by aesthetic, safety-related or legal impacts attributable to the installation. An extension may not be granted where extension would result in approval of the application by operation of law.
 - b. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law. For SWFs, the appeal shall be conducted in accordance with any procedures adopted in the SWF Regulations.
- (e) Notice of Shot Clock Expiration. The City acknowledges there are federal and state

shot clocks which may be applicable to a proposed wireless telecommunications facility. That is, federal and state law provide time periods in which the City must approve or deny a proposed wireless telecommunications facility. As such, the applicant is required to provide the written notice, which may be by email, of the expiration of any shot clock, which the applicant shall ensure is received by the City (e.g. overnight mail) no later than 10 days prior to the expiration.

Sec. 6-8.07 – DESIGN AND DEVELOPMENT STANDARDS.

- (a) SWF Design and Development Standards. SWFs are subject to those design and development standards and conditions of approval set forth in the SWF Regulations. The City's grant of a WTFP for a SWF does not waive, and shall not be construed to waive, any standing by the City to challenge any FCC orders or rules related to small wireless facilities, or any modification to those FCC orders or rules.
- (b) Eligible Facilities Request Design and Development Standards. Approved eligible facilities requests for which the findings set forth in Section 6-8.060 have been made are subject to the following conditions, unless modified by the approving authority:
 - (1) WTFP subject to conditions of underlying permit. Any WTFP granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit and all such conditions that were applicable to the facility prior to approval of the subject eligible facility request, provided such conditions do not apply in such a manner as to prohibit the granting of the Eligible Facilities Request.
 - (2) No permit term extension. The City's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City's grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall have the same term as the underlying permit or other regulatory approval for the subject tower or base station.
 - (3) No Waiver of Standing. The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act (codified as 47 U.S.C. §1455(a)).
- (c) Other General Design Standards. Excepting applications for eligible facilities requests, all wireless telecommunications facilities that are located within the public right-of-way shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following standards. WTFP applications (excepting those eligible facilities requests) that do not meet any of the following standards are prohibited unless such standards (i) would be technically

infeasible to achieve the applicant's service objectives, as supported by clear and convincing evidence in the written record, and/or (ii) subject to an exception for State or Federal law under Section 7.28.150.

The applicant shall employ screening, undergrounding, and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is asvisually screened as technically feasible, to prevent the facility from dominating the surrounding area and to minimize significant view impacts from surrounding properties and public views, all in a manner that achieves compatibility with the community and in compliance with this code.

- (1) Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.
- (2) All facilities shall have colors and non-reflective materials that blend with the materials and colors of the surrounding area, infrastructure, and structures.
- (3) The applicant shall use the least visible equipment for the provision of wireless telecommunications services that is technically feasible.
- (4) All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the support structure and shall be camouflagedto the extent technologically feasible. For all support structures wherein interior installation is infeasible, conduit and cables attached to the exterior shall be mounted as close to the pole as technically feasible while complying with applicable electric safety codes and painted to match the structure. All cables and wires that cannot feasibly be mounted internally shall be clipped-up and/or placed in conduit the minimum size necessary to accommodate the wiring, or otherwise concealed out of public view.
- (5) No new guy wires shall be allowed unless required by other laws or regulations.
- (6) All ground-mounted facility, pole-mounted equipment, or walls, fences, landscaping or other screening methods shall be installed at least 18 inchesfrom the curb and gutter flow line.
- (7) No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the City.

Public Works Director, as applicable, may adopt conditions of approval as reasonably necessary to promote the purposes in this chapter and protect the public health, safety and welfare.

Sec. 6-8.09 – OPERATION AND MAINTENANCE STANDARDS.

All wireless telecommunications facilities must comply at all times with the following operation

and maintenance standards:

- (a) The permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules, including, without limitation, those applying to use of the PROW. The permittee shall ensure that all equipment and other improvements to be constructed and/or installed in connection with the approved WTFP are maintained in a manner that is not detrimental or injurious to the public health, safety, and general welfare and that the aesthetic appearance is continuously preserved, and substantially the same as shown in the approved plans at all times relevant to the WTFP.
- (b) Unless otherwise provided herein, all necessary repairs and restoration shall be completed by the permittee, owner, operator, or any designated maintenance agent at its sole cost within 3 business days:
 - (1) After discovery of the need by the permittee, owner, operator, or any designated maintenance agent; or
 - (2) After permittee, owner, operator, or any designated maintenance agent receives notification from the City.
- (c) Insurance. The permittee shall obtain and maintain throughout the term of the permit a type and amount of insurance as specified by City's risk management. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insured. The permittee shall use its best efforts to provide thirty (30) days prior notice to the Public Works Director the cancellation or material modification of any applicable insurance policy.
- (d) Indemnities. The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees:
 - i. From any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the City or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and
 - ii. From any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors.

In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and, if applicable, the private property owner and shall reasonably cooperate in the defense. The City shall have the right to approve, which approval shall not be unreasonably

withheld, the legal counsel providing the City's defense, and the property owner and/or Permittee (as applicable) shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of defending itself against any such actions or claims as noted herein.

- (e) Performance and Removal Bond. Prior to issuance of a wireless encroachment permit, the permittee shall file with the City, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to 100% of the cost of removal of the facility as specified in the application for the WTFP or as that amount may be modified by the Public Works Director in the permit based on the characteristics of the application as approved. The permittee shall reimburse the City for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City Council. Reimbursement shall be paid when the security is posted and during each administrative review.
- (f) Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable and technically feasible efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility. All facilities, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the use of the PROW, impede the flow of vehicular or pedestrian traffic, impair the primary use and purpose of poles/signs/traffic signals or other infrastructure, interfere with outdoor dining areas or emergency facilities, or otherwise obstruct the accessibility of the PROW.
- (g) Contact Information. Each permittee of a wireless telecommunications facility shall provide the Public Works Director with the 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility ("contact information"). Contact information shall be updated within seven days of any change.
- (h) All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:
 - (1) Subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to City streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems (water, sewer, storm drains, gas, oil, electrical, etc.) that result from any activities performed in connection with the installation and/or maintenance of a wireless facility in the PROW;
 - (2) General dirt and grease;
 - (3) Chipped, faded, peeling, and cracked paint;
 - (4) Rust and corrosion;

- (5) Cracks, dents, and discoloration;
 - (6) Missing, discolored or damaged artificial foliage or other camouflage;
 - (7) Graffiti, bills, stickers, advertisements, litter and debris. All graffiti on facilities must be removed at the sole expense of the permittee within forty eight (48) hours after notification from the City;
 - (8) Broken and misshapen structural parts; and
 - (9) Any damage from any cause.
- (i) All trees, foliage, or other landscaping elements approved as part of the facility shall be maintained in neat, safe, and good condition at all times, and the permittee, owner, and operator of the facility shall be responsible for replacing any damaged, dead, or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the Public Works Director.
 - (j) The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.
 - (k) Each facility shall be operated and maintained to comply with all conditions of approval. The permittee, when directed by the City, must perform an inspection of the facility and submit a report to the Public Works Director on the condition of the facility to include any identified concerns and corrective action taken.
 - (l) Failure to comply with the City's adopted noise standard, Section 4.12.710, *et seq.* after written notice and reasonable opportunity to cure have been given shall be grounds for the City to revoke the permit.
 - (m) Interference
 - (1) The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a wireless encroachment permit, the permittee shall provide the City with documentation establishing to the City's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the PROW or City utility easement to be affected by permittee's facilities.
 - (2) The facility shall not damage or interfere in any way with City property, the City's operations or the operations of prior-existing, third party installations. The City will reasonably cooperate with the permittee and/or carrier to carry out such activities as are necessary to correct the interference.

- i. Signal Interference. The permittee shall cure any such interference within 24 hours of written notification of the interference, or such other timeframes as may be dictated by FCC regulations, and in accordance with FCC regulations. Interference by applicant equipment impacting public safety signals shall be promptly and diligently resolved by the applicant, and may require a cease of operations of such equipment until the interference with public safety signals is fully resolved.
 - ii. Physical Interference. The City shall give the permittee thirty (30) days to correct the interference after which the City reserves the right to take any action it deems necessary, which could include revocation of the permit.
- (3) The City at all times reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the sites. Such actions may temporarily interfere with the operation of the facility. The City will in all cases, other than emergencies, give the applicant written notification of such planned, non-emergency actions, which notice shall be provided commensurate with the City's commencement of design planning or 30 prior to the non-emergency action, whichever is greater. RF Exposure Compliance. All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. Wind Load. Each facility shall be properly engineered to withstand wind loads as required by this code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.
- (n) Records. The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event the records cannot be produced by the City or the applicant, the applicant shall have the opportunity to demonstrate by other relevant evidence that the facility as-built is compliant with the applicable code and all entitlements in-place at the time of construction of the original facility and any subsequent modifications to the original facility.
- (o) Attorney's Fees. In the event it is necessary to take legal action pursuant to this chapter, all costs of such legal action, including reasonable attorney's fees, shall be paid to the prevailing party, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the parties otherwise agree to waive said fees or any part thereof.

Sec. 6-8.10 – NO DANGEROUS CONDITION OR OBSTRUCTIONS ALLOWED.

No person shall install, use or maintain any wireless telecommunications facility that in whole or in part rests 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 facility unreasonably interferes with or unreasonably impedes 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, fire station, fire escape, water valve, underground vault, valve housing structure, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety. A facility shall not be located within any portion of the public right-of-way interfering with access to a fire hydrant or any other public health or safety facility.

Sec. 6-8.11 – NONEXCLUSIVE GRANT; NO POSSESSORY INTERESTS.

- (a) No permit or approval granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the City for any purpose whatsoever. Further, no approval shall be construed as a warranty of title.
- (b) No possessory interest is created by a WTFP. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, the permittee acknowledge that the City has given to the applicant notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a WTFP may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Wireless telecommunications facility operators shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against their right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by the WTFP.
- (c) The permission granted by a WTFP shall not in any event constitute an easement on or an encumbrance against the PROW. No right, title, or interest (including franchise interest) in the PROW, or any part thereof, shall vest or accrue in permittee by reason of a wireless encroachment permit or the issuance of any other permit or exercise of any privilege given thereby.

Sec. 6-8.12 – PERMIT EXPIRATION; ABANDONMENT OF APPLICATIONS.

- (a) Permit Term. Unless Government Code Section 65964, as may be amended, or anyother law authorizes the City to issue a permit with a shorter term, a permit for anywireless telecommunications facility shall be valid for a period of ten (10) years, unless pursuant to another provision of this code it lapses sooner or is revoked. At the end of ten (10) years from the date of issuance, such permit shall automatically expire.
- (b) A permittee may apply for a new permit within 180 days prior to expiration. To the extent allowed by law, said application and proposal shall comply with the City's current code requirements for wireless telecommunications facilities.
- (c) Timing of Installation. The installation and construction authorized by a WTFP shall begin within one (1) year after its approval, or it will expire without further action by the City. The installation and construction authorized by a WTFP shall conclude, including any necessary post-installation repairs and/or restoration to thePROW,

within thirty (30) days following the day construction commenced, or at such later completion date as otherwise approved by the Director in writing based upon the City's reasonable discretion.

- (d) Commencement of Operations. The operation of the approved facility shall commence no later than ninety (90) days after the completion of installation, unless additional delay is caused by power and/or backhaul providers, or the WTFP will expire without further action by the City. The permittee shall provide the Public Works Director notice that operations have commenced by the same date.

Sec. 6-8.13 – CESSATION OF USE OR ABANDONMENT.

- (a) A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for ninety (90) or more consecutive days unless the permittee has obtained prior written approval from the director which shall not be unreasonably denied. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.
- (b) The operator of a facility shall notify the Public Works Director in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the Public Works Director of any discontinuation of operations of thirty (30) days or more.
- (c) Failure to inform the Public Works Director of cessation or discontinuation of operations of any existing facility as required by this Section shall constitute a violation of any approvals and be grounds for:
 - (1) Litigation;
 - (2) Revocation or modification of the permit;
 - (3) Acting on any bond or other assurance required by this article or conditions of approval of the permit;
 - (4) Removal of the facilities by the City in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
 - (5) Any other remedies permitted under this code or by law.

Sec. 6-8.14 – REMOVAL AND RESTORATION—PERMIT EXPIRATION, REVOCATION OR ABANDONMENT.

- (a) Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the WTFP or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to the condition it was in prior to the granting of the WTFP, except for retaining the landscaping improvements and any other improvements at the discretion of the City. Removal shall be in accordance with proper health and safety requirements

and all ordinances, rules, and regulations of the City. Expired, terminated or revoked wireless telecommunications facility equipment shall be removed from the site at no cost or expense to the City.

- (b) Failure of the permittee, owner or operator to promptly remove its facility and restore the property within ninety (90) days after expiration, earlier termination or revocation of the WTFP, or abandonment of the facility, shall be a violation of this code. Upon a showing of good cause, an extension may be granted by the Public Works Director where circumstances are beyond the control of the permittee after expiration. Further failure to abide by the timeline provided in this Section shall be grounds for:
 - (1) Prosecution;
 - (2) Acting on any security instrument required by this chapter or conditions of approval of permit;
 - (3) Removal of the facilities by the City in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
 - (4) Any other remedies permitted under this code or by law.
- (c) **Summary Removal.** In the event any City director or City engineer determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), such director or City engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within 60 days, the facility shall be treated as abandoned property.
- (d) **Removal of Facilities by City.** In the event the City removes a wireless telecommunications facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the City for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the City may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this code. Unless otherwise provided herein, the City has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the City destroys any such facility not timely removed by the permittee, owner or operator after notice, or removal by the City due to exigent circumstances.

Sec. 6-8.15 – EFFECT ON OTHER ORDINANCES.

Compliance with the provisions of this chapter shall not relieve a person from complying with any other applicable provision of this code. In the event of a conflict between any provision of this chapter and other sections of this code, this chapter shall control.

Sec. 6-8.16 – STATE OR FEDERAL LAW.

The implementation of this chapter and decisions on applications for placement of wireless telecommunications facilities in the PROW shall, at a minimum, ensure that the requirements of this chapter are satisfied, unless it is determined that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter may be waived, but only to the minimum extent required to avoid the prohibition or violation.

Sec. 6-8.17 – LEGAL NONCONFORMING WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY.

- (a) Legal nonconforming wireless telecommunications facilities are those facilities that existed but did not conform to this chapter on the date this chapter became effective.
- (b) Legal nonconforming wireless telecommunications facilities shall, within ten years from the date this chapter became effective, be brought into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this code at such time, to the extent the City can require such compliance under federal and state law.
- (c) An aggrieved person may file an appeal to the City Council of any decision of the Public Works Director or other deciding body made pursuant to this Section. In the event of an appeal alleging that the ten-year amortization period is not reasonable as applied to a particular property, the city council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property.

Section 4. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

Section 5. The City Clerk shall certify to the adoption of this Ordinance and cause it to be published, in accordance with Government Code, Section 36933, or as otherwise required by law.

Section 6. This ordinance shall take effect and be in full force and effect from and after 30 days

after its final passage and adoption.

Introduced and read at a regular meeting of the City Council of the City of Yuba City on the ____ day of _____ 2022, and passed and adopted at a regular meeting held on the ____ day of _____ 2022.

AYES:

NOES:

ABSENT:

Dave Shaw, Mayor

ATTEST:

Ciara Wakefield, Deputy City Clerk

APPROVED AS TO FORM
COUNSEL FOR YUBA CITY

SHANNON CHAFFIN, City Attorney
Aleshire & Wynder, LLP