

**ORDINANCE NO. 2019-06**

**AN ORDINANCE OF THE CITY OF NEVADA CITY AMENDING  
CHAPTER 17.150 TO THE MUNICIPAL CODE, AND RENAMING IT  
“WIRELESS TELECOMMUNICATION FACILITIES IN THE CITY”**

**WHEREAS**, Section 7901 of the California Public Utilities Code (“section 7901”) authorizes telephone and wireless corporations to construct telephone or wireless telecommunication lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers, or abatements for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters; and

**WHEREAS**, Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner, and may involve the imposition of fees. Specifically, it has been determined by the courts that a municipality has authority to regulate the placement and appearance of telecommunications equipment installed on its public rights-of-way, and that a municipality need not grant wireless providers blanket permission to install their equipment throughout a municipality, but may require wireless providers to go through a site-specific permitting process provided it is not so burdensome that it runs afoul of section 7901; and

**WHEREAS**, Section 1455 of Title 47 of the United States Code mandates approval by local agencies of certain eligible facilities requests for modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such wireless tower or base station; and

**WHEREAS**, on October 10, 2018, the City Council adopted an interim ordinance, and on November 14, 2018, the City Council extended that ordinance through October 9, 2019;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF NEVADA CITY DOES  
ORDAIN AS FOLLOWS:**

SECTION 1: Chapter 17.150 of the Municipal Code Amended and Renamed. Chapter 17.150 is hereby renamed to be, “Wireless Telecommunications Facilities” and is amended as follows:

**17.150.010 Purpose and Policy.**

The purpose and intent of this chapter is to provide a uniform and comprehensive set of zoning regulations and standards for the permitting, development, siting, installation, modification, design, operation and maintenance of wireless telecommunications facilities in the city. 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 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, and (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.

This chapter is intended solely as a zoning regulation. These requirements are in addition to any other applicable law, such as the requirement to obtain an encroachment permit, and any required authorization from a third party, such as an electric utility.

### **17.150.020 Definitions.**

**“Accessory Facility or Structure”** means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunication Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.

**“Accessory equipment”** means any equipment associated with the installation of a wireless telecommunications facility, including but not limited to cabling, generators, fans, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers.

**“Applicant”** means any Wireless service provider submitting an application for a special use permit for Wireless telecommunications facilities.

**“Application”** means all necessary and required documentation that an Applicant submits in order to receive a special use permit or a building permit for Wireless telecommunications facilities.

**“Antenna”** means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals, electromagnetic waves, or other wireless signals.

**“Base station”** shall have the same meaning as set forth in 47 C.F.R. 1.6100 (b)(1), as may be amended.

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

**“Code”** means the Nevada City Municipal Code.

**“Collocation”** or **“Co-location”** has the same meaning as set forth in 47 C.F.R. §1.40001(b)(2), as may be amended.

**“Commercial Impracticability”** or **“Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and which jeopardizes the financial efficacy of the project.

**“Complete Application”** means an application that contains all necessary and required information and/or data necessary to enable an informed decision to be made with respect to an application and that all information is true, accurate and correct.

**“Concealment”** shall have the same meaning as Stealth below.

**“DAS”** or **“Distributive Access System”** means a network of antennas and related fiber optic nodes which provide access and signal transfer for Wireless Telecommunication Service providers. DAS also includes antenna combining technology allowing for multiple carriers or Wireless Service Providers to use the same set of antennas, cabling or fiber optics.

**“CUP”** shall mean conditional use permit.

**“Director”** means the director of planning, or his or her designee.

**Eligible Facility** means an existing Wireless tower or base station that involves collocation of new transmission equipment or the replacement of transmission equipment that does not constitute a substantial modification.

**“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.

**“Facility(ies)”** means wireless telecommunications facility(ies).

**“FCC”** means the Federal Communications Commission, or its duly designated and authorized successor agency.

**“Ground-Mounted”** means mounted to the ground, or installed in or under the ground.

**“Located within 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 public right-of-way.

**“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 a change to the existing facility involving any of the following: a change or addition of equipment, collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation.

**“Monopole”** means a structure composed of a hollow non-wooden pole or telecommunications tower used to support antennas or related equipment. A monopole also includes any disguised monopole, including but not limited to trees or other object.

**“Mounted”** means attached or supported.

**“Necessary”** or **“Necessity”** or **“Need”** means what is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in prohibiting the provision of service in violation of applicable law. Necessary or Need does not mean what may be desired, preferred or the most cost-efficient approach and is not related to an Applicant’s specific chosen design standards. Any situation involving a choice between or among alternatives or options is not a Need or a Necessity.

**“Personal wireless service(s)”** shall have the same meaning as set forth in 47 U.S.C. § 332(c)(7)(C), as it may be amended.

**“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.

**“Small wireless facility”** or **“Small cell”** means a facility as defined in 47 CFR 1.6002(l) as it may be amended from time to time.

**“Stealth”** or **“Stealth Siting Technique”** means a design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which means the least visually and physically intrusive Facility, so as to make it substantially invisible, and that is not technologically or commercially impracticable under the facts and circumstances. Stealth technique includes such techniques as i) DAS or its functional equivalent; or ii) camouflage where the Facility is disguised to make it less visually obtrusive and not recognizable to the average person as a Wireless Facility.

**“Substantial Modification”** has the same meaning as provided in 47 C.F.R § 1.40001(b)(7), as may be amended, which defines that term differently based on the particular Facility type and location. For clarity, the definition in this section organizes the FCC’s criteria and thresholds for a substantial change according to the Facility type and location.

1. For Towers outside the public rights-of-way, a substantial change occurs when:
  - a. The proposed co-location or modification increases the overall height more than ten percent (10%) or the height of one additional antenna array not to exceed twenty (20) feet (whichever is greater); or
  - b. The proposed co-location or modification increases the width more than twenty (20) feet from the edge of the Wireless Tower or the width of the Wireless Tower at the level of the appurtenance (whichever is greater); or

- c. The proposed co-location or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four (4); or
  - d. The proposed co-location or modification involves excavation outside the current boundaries of the leased or owned property surrounding the Wireless Tower, including any access or utility easements currently related to the site.
2. For Towers in the public rights-of-way and for all base stations, a substantial change occurs when:
- a. The proposed co-location or modification increases that overall height more than ten percent (10%) or ten (10) feet (whichever is greater); or
  - b. The proposed co-location or modification increases the width more than six (6) feet from the edge of the Wireless Tower or base station; or
  - c. The proposed co-location or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
  - d. The proposed co-location or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted cabinets; or
  - e. The proposed co-location or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
3. In addition, for all Towers and base stations wherever located, a substantial change occurs when:
- a. The proposed co-location or modification would defeat the existing concealment elements of the support structure as determined by the City; or
  - b. The proposed co-location or modification violates a prior condition of approval as regards to height, width, number and size of equipment cabinets or any excavation that is inconsistent with the thresholds for a substantial change described in this section.
4. As to all measurements set forth herein, the following principles shall govern:
- a. Any threshold or limit of height increases are cumulative or collective.
  - b. For sites with horizontally separated deployments, the cumulative limit is measured from the originally permitted support structure without regard to any increases in size due to Wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012, the date of passage of the Middle Class Tax Relief and Job Creation Act of 2012, Section 6409(a).

**“Telecommunication tower”** means a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and primarily used to support wireless telecommunications facility antennas.

**“Tower”** shall have the same meaning as set forth in 47 C.F.R. 1.40001(b)(9), as may be amended.

**“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.

**“Wireless telecommunications services”** means the provision of services using a wireless telecommunications facility or a wireless telecommunications collocation facility, and shall include, but not limited to, the following services: personal wireless services, cellular service, personal communication service, and/or data radio telecommunications.

**“Wireless telecommunications facility”** or **“facilities”** mean any facility that transmits and/or receives electromagnetic waves for commercial purposes. It includes, but is not limited to, antennas and/or other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting such equipment, related accessory equipment, equipment buildings, parking areas, and other accessory development. This definition includes DAS systems owned or operated by a commercial carrier and are part of a commercial wireless system, or are able to be used by the general public, regardless of the location or whether the facility or any of its components is located inside or outside a structure or building.

Exceptions: The term “wireless telecommunications facility” does not apply to the following:

- (a) A telecommunications facility that is both owned and operated by a governmental entity where the director determines enforcing the requirements of this Chapter are against the public interest.
- (b) Mobile services providing public information coverage of news events of a temporary nature.
- (d) Any wireless telecommunications facilities exempted from this Code by federal law or state law.

### **17.150.030 Applicability**

A. Applicability. This chapter applies to the siting, construction or modification of any and all wireless telecommunications facilities proposed to be located in any portion of the City as follows:

1. All facilities, notwithstanding the date approved or the location installed, shall be subject immediately to the provisions of this chapter provided, however, if a condition of approval conflicts with a provision of this chapter, the condition of approval shall control until the permit is amended or revoked.

2. Any wireless telecommunication facility that was lawfully constructed prior to the adoption of this Ordinance that does not comply with the standards, regulations and/or requirements of this chapter, shall be allowed to continue as it presently exists, provided that i) it exists and is operating as originally permitted; and ii) any modification of the Facility has been

properly permitted.

3. Any modification not properly permitted under a previously-existing ordinance must be permitted under this Ordinance.

4. Any modification of a Facility or its equipment subsequent to the adoption of this Ordinance, must be permitted under this Ordinance and will require the entire Facility and any new or modified installation to comply with this Ordinance, except that any Tower or other support structure properly permitted prior to the adoption of this Ordinance may remain at the originally permitted height.

5. Any repair and maintenance of a Wireless Facility that does not i) increase the height of the structure, ii) alter the profile, iii) change the RF emissions levels, iv) increase the footprint of the Facility, v) increase the structural loading on the support structure; or vi) otherwise exceed the conditions of the permit, does not require an application for a new permit, but may require a building permit, electrical permit or other authorizing permit. In no instance shall any additional construction or modification be considered to be repair or maintenance.

B. Exclusions. This chapter does not apply to any entity legally entitled to an exemption from these zoning requirements pursuant to state or federal law.

#### **17.150.040 Wireless Telecommunications Facility Permit Requirements.**

##### A. General Rule: Conditional Use Permit Required

1. Unless otherwise provided herein, all wireless facilities or collocations or modifications to existing wireless facilities shall require a Conditional Use Permit. See section 17.150.060, below for review procedures.
2. The Planning Commission may refer a conditional use permit to the City Council for approval.
3. A facility that obtains an administrative permit need not obtain a conditional use permit.

##### B. Administrative Permit.

The Director shall approve an administrative permit if all of the following apply:

1. The application is for i) a Small Wireless Facility, or ii) a collocation or modification of wireless telecommunication equipment on an Eligible Facility which does not create a Substantial Modification.
2. The facility will comply with all applicable laws including, but not limited to:
  - a. The Americans with Disabilities Act;

b. All building and safety requirements, including those within the California Building Standards Code, as amended by the city and the latest version of TIA ANSI 222, to the extent that such standards are more restrictive than the otherwise applicable requirements.

c. All applicable requirements of the FCC and OSHA (Occupational Safety and Health Administration), including requirements relating to radio-frequency (RF) emissions and limits on interference.

d. The requirements of this Chapter 17.150.

3. The proposed facility complies with the City's published wireless design guidelines.

4. The proposed facility will be installed on either:

a. An existing support structure that meets all of the following requirements:

i. The facility will match the design of the pole; and

ii. If feasible, all equipment installed on the pole will be the same color as the pole; or

b. A new light pole that meets all of the following requirements:

i. The pole is at least ninety (90) feet away from any existing light pole; and

ii. Unless requested otherwise by the City in writing, the light on the pole will be illuminated, operated, and maintained consistent with the operation of the other light poles in the City, and the full costs of illumination shall be fully borne by the applicant.

5. Either the City has issued all required encroachment permits and entered into any required franchise agreement(s); or it is a condition of the issuance of the permit that no installation begin in reliance on the permit until the City has issued all required encroachment permits and entered into any required franchise agreement(s).

#### C. Master Deployment Plan Permit

1. Excepting batched applications for Small Wireless Facilities, any applicant that seeks approval of five (5) or more wireless telecommunications facilities may elect to submit an application for a Master Development Plan Permit. The proposed Master Deployment Plan shall be conceptual in nature and approval thereof shall not be deemed approval of any given Facility

or specific address or location. The proposed facilities in a Master Development Plan shall be reviewed together at the same time and subject to the same requirements and procedures applicable to a Major Wireless Telecommunications Facility Permit.

2. A Master Development Plan Permit shall not be deemed approval for all wireless telecommunications facilities within the plan; provided, however, that an encroachment permit shall be required.

3. After the approval of a Master Development Plan Permit, an individual wireless telecommunications facility shall require either a CUP or an Administrative Permit, as applicable.

D. Batched Application: An Applicant, or its agent of record, may submit Applications for multiple small wireless facilities or locations with the following conditions that are intended in order to assure compliance with the FCC's 'Shot Clock' requirements:

1. No single batched submittal shall contain more than five (5) Applications;

2. There must be a minimum of seven days between submittals of batched Applications;

3. No more than 4 batched Applications shall be accepted in any thirty (30) consecutive day period

E. 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 permits or other approvals from other city departments, state or federal agencies.

F. Eligible Applicants. Only applicants who have been granted the right to enter the public right-of-way pursuant to state or federal law, or who have entered into a franchise agreement with the city permitting them to use the public right-of-way, or who are acting at the behest and direction of one of the foregoing shall be eligible for a permit to install or modify a wireless telecommunications facility or a wireless telecommunication collocation facility in the public right-of-way.

G. Speculative Equipment Prohibited. The city shall not approve any equipment or other improvements in connection with a Wireless Telecommunications Facility Permit when the applicant does not actually and presently intend to install such equipment or construct such improvements within one-hundred-eighty (180) days.

#### **17.150.050 Application for Wireless Telecommunications Facility Permit**

A) General Application Requirements: The following items are considered general application requirements and shall be included in all applications:

- 1) Any items that are asserted not to be applicable to the instant Application(s) shall be clearly identified in the front of the Application.
- 2) Identification of the specific applicable federal and State law and rule, including the specific section and subsection, regarding Wireless facilities under which the Application is filed.
- 3) The name, address, phone number and e-mail address of the person preparing the application
- 4) The name, address, and phone number of the property owner and the Applicant, including the legal name of the Applicant. If the owner of the structure is different than the Applicant, the name and all necessary contact information for each shall be provided.
- 5) The postal address and tax map parcel number of the subject property, or when application is for installation in the public right of way real, for the real property closest to proposed installation.
- 6) The zoning district or designation in which the property is situated.
- 7) For all new Facilities, a list of the specific frequency bands to be initially activated immediately upon completion of construction.
- 8) For all new Facilities, a separate list of all frequencies licensed to the carrier not intended to be initially activated.
- 9) A copy of the FCC licenses applicable for all the frequency bands licensed to the carrier to provide service in the City.
- 10) All Applications shall include signed written commitment statements that:
  - a) the Applicant's Facility shall at all times without exception be maintained in a safe manner, and in compliance with all conditions of the Special Use Permit, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable City, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Council in writing;
  - b) the construction of the Facility is legally permissible, including, but not limited to the fact that the Applicant is licensed to do business in the State.
  - c) the Applicant commits to fully and completely indemnify the City for any use of the City's Right-of-Way by Applicant, its employees, and agents.
- 11) Certified detailed construction drawings, including but not limited to the following information:

- a) the size of the property footprint on which the structure to be built or attached to is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines and rights-of-way.
  - b) location of the nearest residential or habitable structure.
  - c) the location, size and height of all existing and proposed structures on the property.
  - d) enclosures and cabinets on the property on which the structure is located that are related to the subject of the application.
  - e) a site plan to-scale showing the footprint of the support structure and the type, location and dimensions of boundaries, access drives, landscaping and buffers, fencing, underground utilities of any kind and any easements.
  - f) elevation drawings showing the profile and the vertical rendition of the Facility and, where appropriate, its support Structure and identifying all existing and proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the existing grade, materials, colors and lighting.
  - g) proposed electrical and grounding plans for the Facility.
- 12) The azimuth, size, top of antenna height, locations of all proposed and existing antennas on the support structure, and the height of the tip of any lightning arrestor.
- 13) Copies of the cut sheets for all antennas.
- 14) The type and manufacturer of the Tower or other support Structure and a rigorous structural analysis and report for such, including the calculations, certified by a Professional Engineer licensed in the State and proving the structure's capability to safely accommodate the facilities of the Applicant.
- 15) An ANSI/TIA-222 Maintenance and Conditions Assessment report regarding the physical condition of the Facility and its components, using the most recently adopted version of ANSI/TIA-222, or a functional equivalent report for any support structure that is not a Tower. If applicable, the report shall identify and contain allowable tolerances including but not limited to guy tensions, plumb, twist, slip splices, and take-up devices. No Conditional Use Permit or Administrative Permit or any authorization for anything other than remediation work shall be issued for any Wireless Facility or related equipment where the structure being attached to is in need of safety-related remediation to comply with the requirements of this Ordinance and other applicable adopted standards of the City, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the City.

- 16) For telecommunications Towers, but only Towers, taller than thirty-three feet (33') in height, a completed and signed checklist for categorical exclusion of radio frequency electromagnetic emissions. If the modification, co-location or construction of a new Wireless Facility is not categorically excluded based on the Federal Communications Commission's rules and regulations, the Applicant shall provide a compliance letter to the City committing to remain in full compliance with all requirements set forth by the latest edition of the Federal Communications Commission (FCC) OET Bulletin 65 or its functional equivalent.
- 17) In certain instances, the City may deem it appropriate to have an on-site RF survey of the Facility done after the construction or modification of the Facility. Such survey shall be done under the observation and direction of the City or its designee, and an un-redacted copy of the survey results along with all calculations provided, prior to the issuance of a Certificate of Compliance.
- 18) A signed statement that the Applicant will expeditiously remedy any physical or RF interference with other Wireless devices or services.
- 19) Cut Sheets or specifications for all equipment to be installed/mounted on the structure including a photograph and model name/number for each piece of equipment included.
- 20) No applicant seeking to install wireless antennas shall seek an encroachment permit for fiber or coaxial cable only. Applicants shall simultaneously request fiber installation or other cable installation when seeking to install antennas in the right-of-way.
- 21) If the applicant requests an exception to the requirements of this chapter (in accordance with section 17.150.180), the applicant shall provide all information and studies necessary for the city to evaluate that request.
- 22) An application fee and a deposit for a consultant's review as set forth herein; in an amount set by resolution by the city council. Failing to submit the correct Application fee shall make the Application incomplete on its face
- 23) Proof that a temporary mock-up of the facility and sign has been installed at the proposed location for a period of at least thirty (30) calendar days.
  - a) Applicant shall obtain an encroachment permit before installing the temporary mock-up, and must remove the temporary mock-up within five (5) calendar days of receiving a written notice to remove from the director.
  - b) When seeking the encroachment permit, the applicant shall provide proof of written notice mailed to all property owners within 500 feet of the proposed installation. The applicant shall mail a notice regarding installation of the mock-up at least five (5) business days prior to the installation.

- c) The mock-up shall demonstrate the height and mass of the facility, including all interconnecting cables. The applicant shall not be entitled to install the facility it intends to install permanently. The mock-up may consist of story poles or the like.
- d) The mock-up shall include a sign that displays photo simulations depicting before and after images, including any accessory equipment cabinet, and the telephone number of the Public Works Department.
- e) The applicant shall be required to follow any other city practices or processes relevant to the installation of a mock-up as may be provided in a publicly accessible form or document.
- f) After installation of the mock-up, the applicant shall certify that the mock-up accurately represents the height and width of the proposed installation and has been installed consistent with this Code.

B) Co-location Application Requirements: In addition to the requirements set forth in Subsection A, the following items shall be included in the application for co-locations on existing structures:

- 1) A copy of the lease with the owner of the structure, and with the landowner if different than the structure owner, and if applicable a signed letter of agency granting authorization to represent and commit for the party represented. If the Applicant owns the site, a copy of proof of ownership is required.
- 2) The frequency, modulation and class of service of radio or other transmitting equipment.
- 3) Transmission and maximum effective radiated power of the antenna(s).
- 4) Direction of maximum lobes and associated radiation of the antenna(s).
- 5) If requested, to-scale photographic simulations of the Facility “before and after construction” from key viewpoints inside of the City as deemed appropriate and/or as designated and accompanied by i) a map showing the locations of where the photographs were taken; and ii) the distance(s) of each location from the proposed structure. Guidance will be provided concerning the appropriate key viewpoints on an individual Application basis.
- 6) A copy of the Applicant’s Certificate of Liability Insurance.

C) New Wireless Structures and Substantial Modification Requirements: In addition to the preceding requirements, the following shall be included in the application for a new Wireless Support Structures and Substantial Modifications of support structures:

- 1) The Applicant for a new Tower or Substantial Modification shall submit clear and convincing technical evidence, done by the Wireless service provider associated with the Application, justifying the technical Need for the proposed height of the Facility and the Need for such, to the exclusion of all reasonable less intrusive alternatives. Evidence in the form of propagation studies must include the modeling data and assumptions used to produce the studies on a form to be provided by the City.
- 2) The Applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the Applicant to share space on the new Tower or support structure.
- 3) If a Modification of a Facility is needed whereby the height, profile or size of the Facility is increased, or if construction is needed outside the permitted compound or property, a detailed narrative explaining what changes are needed and why they are needed.
- 4) The type of support structure, the number of antenna arrays proposed to be accommodated and a Certified structural report, including all calculations, demonstrating the Facility's capacity to accommodate the required number of antenna arrays and associated equipment for which the structure must be designed.
- 5) A copy of the foundation design, including a geotechnical sub-surface soils investigation report and foundation design recommendation for the Tower or other structure. Such shall be Certified by a licensed Professional Engineer licensed in the State that is experienced in the structural design of Wireless support structures.
- 6) A written copy of an analysis completed by a qualified individual or organization to determine if the proposed Wireless telecommunications Facility is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. Unless already lighted, this requirement shall also be for any Facility where there is a proposed increase in the height of the Facility. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.
- 7) A narrative description of the specifically what will be done to minimize the visual impact. The City expressly reserves the right to require the use of stealth or camouflage techniques.
- 8) For a new support structure, or for a Substantial Modification, the Applicant shall be required to submit clear and convincing evidence that a new Tower or support structure or the Substantial Modification is the only option within one-half (1/2) mile of the proposed new Tower or support structure that will enable the provision of Wireless services substantially within the intended service area.

- 9) In order to better inform the public, in the case of a new Tower or support structure, the Applicant shall hold a "balloon test" or erect a story pole, i.e. a temporary mast, prior to the initial public hearing on the application. The choice of the use of a balloon test or story pole shall be that of the City based upon the facts and circumstances involved.
- a) The Applicant shall arrange to fly, or raise upon story pole, a minimum of a three (3) foot in diameter, brightly colored balloon at the maximum height of the proposed new Tower. To reasonably assure control and the stability of the balloon in winds, a spherical balloon shall not be used.
  - b) At least fourteen (14) days prior to the conduct of the balloon test, a sign shall be erected so as to be clearly visible from the road nearest the proposed site and shall be removed no later than fourteen (14) days after the conduct of the balloon test. The sign shall be at least four feet (4') by eight feet (8') in size and shall be legible from the road by a person with 20/20 corrected vision. The sign shall be placed off, but as near to, the public right-of-way as is possible and shall show the times and date(s) of the balloon test and City contact information.
  - c) The dates (including a second date, in case of poor visibility or wind in excess of 15 mph on the initial date), times and location of the balloon test shall be advertised by the Applicant, in a newspaper with a general circulation in the City and as agreed to by the City, fourteen (14) and seven (7) days in advance of the first test date. The Applicant shall inform the City in writing of the dates and times of the test, at least fourteen (14) days in advance.
  - d) The balloon shall be flown for at least four (4) consecutive hours between 10:00 am and 4:00 p.m. on the dates chosen. The primary date shall be on a week-end, but the second date, in case of poor visibility on the initial date, may be on a week day. A report with photos from various locations of the balloon, and to-scale superimposed photo simulations of the Facility when completed, shall be provided with the application.
  - e) The Applicant shall notify all property owners and residents located within one-thousand five hundred (1,500) feet of the nearest property line of the subject property of the proposed construction of the Tower or other support structure and the Wireless Facility, and of the date(s) and time(s) of the balloon test. Such notice shall be provided at least fourteen (14) days prior to the conduct of the balloon test and shall be delivered by first-class mail. The Applicant shall bear all costs associated with said notification.
- 10) The owner of a new Tower or other support structure, and his/her successors in interest, shall negotiate in good faith for the shared use of the Facility by other Wireless service providers, and shall:

- a) Respond within 60 days to a request for information from a potential shared-use Applicant;
  - b) Negotiate in good faith concerning future requests for shared use of the new Wireless telecommunications Facility by other telecommunications providers.
  - c) Allow shared use of the new Wireless telecommunications Facility if another telecommunications provider agrees in writing to pay reasonable charges.
  - d) Understand that failure to abide by the conditions outlined above may be grounds for denial or revocation of the Special Use Permit.
- 11) The Applicant shall provide a written description and a visual rendering demonstrating how it shall effectively screen from view the Facility and all related equipment and structures associated with the Facility. The buffer, which may be located within the required setback area, shall consist of a landscape strip, at least five (5) feet in depth, located outside the security fence. The landscape strip should be planted with a combination of trees and/or shrubs which are capable of attaining the required minimum height at maturity and which will enhance and, at minimum, partially screen the outward appearance of the security fence. For Towers located within 1,000 feet of a residential area, the City may require wider landscape buffers and other items such as decay resistant, solid wood fences, earth berms, and brick or masonry walls in addition to the security fence. All fencing, walls, and landscaping shall be kept in good condition and repair and maintained in a neat manner by the owner of the Tower.
- 12) Co-location Not Reasonably Feasible: Co-location on an existing structure is not reasonably feasible if the co-location is Technically or Commercially Impracticable or the owner of the structure is unwilling to enter into a contract for its use. Written clear and convincing evidence to support such claims must be submitted with an application.
- 13) Spec Support Structures Prohibited: A building permit shall not be issued for construction of a new Tower or other support structure until there is an application filed for or by a specific carrier that documents that the Facility is Necessary for that carrier to provide service in the intended service area for service primarily within the City and that a less visually intrusive option or co-location on an existing structure is not Technologically Impracticable.

D. Small Cell Facilities Requirements. In addition to the preceding requirements, the following shall include in the application for a small cell facility a general description of the proposed scope of work and the specific purpose(s) of the small Wireless Facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with emphasis on those matters likely to be affected or impacted by the work proposed. The description shall include at a minimum the type of equipment, number of antennas, height to top of antenna(s), statement of compliance with FCC requirements, and

description and/or depiction of concealment elements.

E. Effect of State or Federal Law Change. If a subsequent state or federal law prohibits the collection of any information authorized by section 17.150.050, the director may omit, modify or add to that request from the city's application form with the written approval of the city attorney, which approval shall be a public record.

F. Independent Expert. The director is authorized to retain on behalf of the city an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility. The review is intended to be a review of all aspects of the proposed wireless telecommunications facility and shall address any or all of the following:

1. Compliance with applicable radio frequency emission standards;
2. Compliance with applicable building standards (e.g. the latest version of TIA-ANSI 222 regarding the structural adequacy of the support structure to the extent that such standards are more stringent than otherwise applicable standards);
3. Whether a denial of the application would be an "effective prohibition" in violation of applicable law;
4. The accuracy and completeness of submissions;
5. Technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;
6. The applicability of analysis techniques and methodologies;
7. The validity of conclusions reached or claims made by applicant;
8. The viability of alternative sites and alternative designs; and
9. Any other specific technical issues identified by the consultant or designated by the city.

The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule which may be adopted by resolution. No permit shall be issued to any applicant which has not fully reimbursed the city for the cost of a consultant's review, even if the cost exceeds the initial amount of the deposit. Such amount shall be paid to the City prior to the issuance of the applicable permit or Certificate of Completion, whichever is procedurally needed next. Upon written request after the issuance of the Certificate of Completion and the payment of all expert assistance invoices, the City shall promptly refund any unexpended amount of the deposit. The payment of the deposit shall precede any work being done that is related to the intended Application or lease.

#### **17.150.060 Review Procedure**

A. Pre-submittal Conference. Prior to application submittal, the city strongly encourages all applicants to schedule and attend a pre-submittal conference with designated City staff/departments and or consultants to receive informal feedback on the proposed location, design and application materials. The pre-submittal conference is intended to identify potential concerns and streamline the formal application review process after submittal. Staff will endeavor to provide applicants with a reasonable time and date mutually agreed upon. As the pre-submittal conference is not mandatory and is for the benefit of the applicant, it shall not precipitate the start of the FCC's applicable shot clock deadlines.

B. Application Submittal Appointment. All applications must be submitted to the city -or its designated consultant for completeness and review.

C. Notice; Decisions. The provisions in this section describe the procedures for approval and any required notice for an application.

1. *Planning Commission Hearings*. Any permit application under this chapter subject to planning commission approval (directly, or via appeal) shall require notice and a public hearing. The planning commission may approve, or conditionally approve, an application only after it makes the findings required in section 17.150.080.

2. *Decision by Planning Commission*. The Planning Commission may approve, or conditionally approve, an application only after it makes the findings required in section 17.150.080. Within ten days after the Planning Commission approves or conditionally approves an application under this chapter, the director shall issue a notice of the decision and any applicable conditions of approval shall be provided to the applicant at the contact information provided on the application.

3. *Written Decision Required*. All final decisions made pursuant to this chapter shall be in writing and based on substantial evidence in the written administrative record. The written decision shall include the reasons for the decision.

D. Appeals. Appeals shall be subject to the requirements of Chapter 17.88.

E. Review of Applications.

1. *Engineer's Certification*. Where a certification of any technical or engineering is called for in an application, such certification shall bear the signature and seal of a Professional Engineer licensed in the State.

2. *Leases Do Not Extinguish City Priorities*. The existence of a lease or an option to lease shall not be deemed justification for not complying with the city's siting priorities. An Applicant may not bypass sites of higher priority solely because the site proposed is under lease or an option to lease exists. If a site other than the number 1 priority is proposed, the applicant must explain to the reasonable satisfaction of the City why colocation is technically or commercially impracticable. Build-to-Suit agreements between carriers and a proposed tower

owner shall not be a valid basis for any claim of exemption, exception or waiver from compliance with this Section.

3. *Verifiable Information.* Any technical information must be provided in such a manner, form and with such content that it is able to be verified by a third party using the information used and provided by the applicant.

### **17.150.070 Requirements for Facilities**

A. Design, Development, and Construction Standards. All wireless telecommunications facilities 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:

1. *General Guidelines:*

a. The applicant shall employ screening, undergrounding (where not prohibited by federal or state law) and camouflage design techniques in the design and placement of wireless telecommunications facilities to ensure that the facility is as visually screened as feasible, to prevent the facility from dominating the surrounding area and to minimize significant view impacts from surrounding properties all in a manner that achieves compatibility and does not result in visual disharmony with the community, and in compliance with section 17.400.175 of this Code.

b. 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.

c. Facilities shall be located such that the primary view from each residential structure is not significantly impaired.

2. *Traffic Safety.* All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.

3. *Blending Methods.* All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area and structures.

4. *Equipment.* The applicant shall use the least visible equipment possible. Antenna elements shall be flush mounted, symmetrical to the top of the pole, and no more than four (4) inches wider in diameter than the existing pole, to the extent not technically impracticable. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless otherwise provided in this section, antennas shall be the minimum height above ground technically Needed to achieve the intended purpose. When part of small cell or DAS, antenna and equipment attached to and directly associated with the

antenna, excluding cabling, shall cumulatively not exceed 3 cubic feet in volume, nor be larger than two feet (2') in height.

5. *Poles.*

a. Facilities shall be located consistent with section 17.150.190.

b. Only pole-mounted antennas or strand mounted antennas (within 10 feet of pole) shall be permitted in the right-of-way. All other telecommunications towers are prohibited and no new poles are permitted that are not replacing an existing pole.

c. *Utility Poles.* If the proposed facility is to be located upon a utility pole, the maximum height of any antenna shall not exceed the lesser of forty-eight (48) inches or ten percent (10%) above the existing height of the utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than twenty-four (24) feet above any drivable road surface or 16-and-one-half feet (16.5') above any sidewalk or driveway surface. All installations on utility poles shall fully comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as may be revised or superseded.

d. *Light Poles.* If the proposed facility is to be located upon a light pole, the maximum height of any antenna shall not exceed the lesser of forty-eight (48) inches or ten percent (10%) above the existing height of the light pole, nor shall any portion of the antenna or equipment mounted on a pole be less than ten (10) feet above the ground and no less than twenty-four (24) feet above any drivable road surface or more than sixteen and a half (16.5) feet above any sidewalk or driveway surface.

e. *New or Replacement Poles.* Primarily but not exclusively for aesthetic reasons, the City reserves the right, at Applicant's cost, to require a new pole, or a replacement pole if such is needed to accommodate Wireless Equipment. If an applicant proposes to replace a pole in order to accommodate a proposed facility, the pole shall either be (i) designed to resemble as closely as is reasonably possible the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials and style to the maximum extent feasible; or (ii) designed consistent with adopted wireless design guidelines. The new or replacement pole shall also be a hollow metal or non-corrodable functionally equivalent structure.

f. A pole mounted equipment and enclosure, exclusive of antennas, shall not exceed four (4) cubic feet in total volume.

g. No utility or light pole shall ever exceed the lesser of fifty feet (50') or the maximum permitted height for the zoning district in which it is located.

6. *Space.* Each facility to be located within the right of way shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.

7. *Wind Loads.* 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, where such modification is proposed.

8. *Obstructions.* Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, incommode the public's use of the right-of-way, or safety hazards to pedestrians and motorists.

9. *Public Facilities.* No equipment or facility shall be located and no work associated thereto shall interfere with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, utility or any other public health or safety facility or the public right-of-way.

10. *Screening and Aesthetics.*

a. All ground-mounted facility, pole-mounted equipment, or walls, fences, landscaping or other screening methods shall be installed at least eighteen (18) inches from the curb and gutter flow line.

b. If permitted to be mounted externally, no Wireless Antenna or other pole-mounted equipment shall extend laterally beyond the diameter of the structure as measured at the point of attachment.

c. If permitted to be mounted externally, the point of attachment of any antennas shall not be more than three inches (3") from the pole or other support structure, and the space between the structure and the attachment point of the antenna shall be concealed with a weather-proof material the same color as the structure or the antenna.

d. Antennas shall be of a color that, as closely as is reasonably possible, matches that of the support structure.

e. Except in such circumstances where federal or state law preempts this requirement, all antenna, cabling, electronic and accessory equipment not attached to the antenna(s) and transmission and distribution cable or fiber shall be placed underground in a weather-proof vault or contained inside the new support Structure; and when federal or state law or justifiable circumstance preempt or prohibit this requirement, the same shall be mounted so as to be the least visually intrusive given the facts and circumstances.

f. A Small Wireless Facility shall not be easily recognizable as a wireless facility by a layperson.

g. All small cell or DAS Antennas shall not be larger than two feet (2') in height.

11. *Accessory Equipment.* Not including the electric meter, all accessory equipment shall be located underground, except as provided below:

a. If the proposed facility is in the right-of-way, unless city staff determines that there is no room in the public right-of-way for undergrounding, that undergrounding is not feasible, or federal or state law or regulation prohibit the City from requiring undergrounding, an exception shall be required in order to place accessory equipment above-ground and concealed with natural or manmade features to the maximum extent possible.

b. When above-ground is the only feasible location for a particular type of accessory equipment and will be ground-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of three feet (3') and a total of twenty-eight (28) cubic feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be screened and/or camouflaged. Also, while pole-mounted equipment is generally the least favored installation, should pole-mounted equipment be sought, it shall be installed as required in this Chapter.

c. In locations where homes are only along one side of a street, above-ground accessory equipment shall not be installed directly in front of a residence. Such above-ground accessory equipment shall be installed along the side of street with no homes.

d. When otherwise preempted by federal or state law or regulation.

12. *Landscaping.* Where appropriate, each facility shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs. Additional landscaping shall be planted, irrigated and maintained by applicant where such landscaping is deemed necessary by the city to provide screening or to conceal the facility.

13. *Signage.* No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the city.

14. *Lighting.*

a. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency.

b. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as telecommunications towers, lattice towers and monopoles.

c. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhoods.

d. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The City may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need.

e. The applicant shall submit a lighting study which shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties. Should no lighting be proposed, no lighting study shall be required.

15. *Noise.*

a. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 PM and 7:00 AM.

b. At no time shall equipment noise from any facility exceed an exterior noise level of fifty-five (55) dBA three (3) feet from the source of the noise if the facility is located in the public right-of-way adjacent to a business, commercial, manufacturing, utility or school zone; provided, however, that for any such facility located within five hundred (500) feet of any property zoned residential or improved with a residential use, such equipment noise shall not exceed forty-five (45) dBA three (3) feet from the sources of the noise.

16. *Security.* Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight or attractive nuisances. The director may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of its location and/or accessibility, a facility has the potential to become an attractive nuisance. Additionally, no dangerous or potentially lethal devices or elements shall be installed as a security device.

17. *Modification.* Consistent with current state and federal laws and, if permissible under the same, at the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.

18. *Expiration.* The installation and construction approved by a wireless telecommunications facility permit shall begin within one (1) year after its approval or it will expire without further action by the city.

19. *Construction.* All construction and maintenance shall at all times comply with all applicable portions of all federal, State and local safety and safety related codes.

B. Conditions of Approval. In addition to compliance with the design and development standards outlined in this section, all facilities shall be subject to the following conditions of approval (approval may be by operation of law), as well as any modification of these conditions or additional conditions of approval deemed necessary by the director:

1. *As built drawings.* The permittee shall submit an as-built drawing within thirty (30) days after installation of the facility. As-builts shall be in an electronic format acceptable to the city which can be linked to the city's GIS.

2. *Contact information.* The permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the city. The permittee shall notify the city of any changes to the information submitted within thirty (30) days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:

a. Identity, including the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator, and the agent or person responsible for the maintenance of the facility.

b. The legal status of the owner of the wireless telecommunications facility.

3. *Assignment.* The permittee shall notify the city in writing at least ninety (90) days prior to any proposed transfer or assignment of the permit. The written notice required in this section must include: (1) the transferee's legal name; (2) the transferee's full contact information, including a primary contact person, mailing address, telephone number and email address; and (3) a statement signed by the transferee that the transferee shall accept all permit terms and conditions. The director may require the transferor and/or the transferee to submit any materials or documentation necessary to determine that the proposed transfer complies with the existing permit and all its conditions of approval, if any. Such materials or documentation may include, but shall not be limited to: federal, state and/or local approvals, licenses, certificates or franchise agreements; statements; photographs; site plans and/or as-built drawings; and/or an analysis by a qualified radio frequency engineer demonstrating compliance with all applicable regulations and standards of the Federal Communications Commission. Noncompliance with the permit and all its conditions of approval, if any, or failure to submit the materials required by the director shall be a cause for the city to revoke the applicable permits pursuant to and following the procedure set on in section 17.150.170.

4. *Signs.* At all times, all required notices and/or signs shall be posted on the site as required by the Federal Communications Commission, California Public Utilities Commission, any applicable licenses or laws, and as approved by the city. The location and dimensions of a sign bearing the emergency contact name and telephone number shall be posted pursuant to the approved plans.

5. *Security.* For a CUP or a Master Deployment Plan Permit, permittee shall pay for and provide a performance bond or other form of security approved by the city attorney's office, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and this code. The security instrument coverage shall include, but not be limited to, removal of the facility. (The amount of the security instrument shall be calculated by the applicant in its submittal documents in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.) Before issuance of any building permit, permittee must submit said security instrument.

6. *Noise.* If a nearby property owner registers a noise complaint, the city shall forward

the same to the permittee. Said complaint shall be reviewed and evaluated by the applicant. The permittee shall have ten (10) business days to file a written response regarding the complaint which shall include any applicable remedial measures. If the city determines the complaint is valid and the applicant has not taken any steps to minimize the noise, the city may hire a consultant to study, examine and evaluate the noise complaint and the permittee shall pay the fee for the consultant if the site is found in violation of this chapter. The matter shall be reviewed by the director. If the director determines sound proofing or other sound attenuation measures should be required to bring the project into compliance with the Code, the director may impose conditions on the project to achieve said objective.

7. *Permit Expiration.* A condition setting forth the permit expiration date in accordance with section 17.150.150 shall be included in the conditions of approval.

8. *Additional conditions.* The wireless telecommunications facility shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the director for the purpose of: (a) protecting the public health, safety, and welfare; (b) preventing interference with pedestrian and vehicular traffic; and/or (c) preventing damage to the public right-of-way or any adjacent property. The city may modify the permit to reflect such conditions, changes or limitations by following the same notice and public hearing procedures as are applicable to the underlying permit for similarly located facilities, except the permittee shall be given notice by personal service or by registered or certified mail at the last address provided to the city by the permittee.

9. *Permit Transfer.* The permittee shall not transfer the permit to any person prior to the completion of the construction of the facility covered by the permit, unless and until the transferee of the permit has submitted the security instrument required by section 17.150.070(B)(5).

10. *Property Rights.* 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 wireless telecommunications facility 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 an encroachment permit issued for any facility within the public right-of-way, 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 public right-of-way to be affected by applicant's facilities.

11. *Liability.* The permittee shall assume full liability for damage or injury caused to any property or person by the facility.

12. *Repair Obligations.* The permittee shall repair, at its sole cost and expense, any damage including, but not limited to 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, or sewer systems and sewer lines that result from any activities performed in connection with the installation and/or maintenance of a wireless telecommunications facility in the public right-of-way. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. Such time period for correction shall be based on the facts and circumstances, danger to the community and severity of the disrepair. Should the permittee not make said correction within the time period allotted the city engineer shall cause such repair to be completed at permittee's sole cost and expense.

13. *Drip Line.* No facility shall be permitted to be installed in the drip line of any tree in the right-of-way.

14. *Insurance.* The permittee shall obtain, pay for and maintain, in full force and effect until the facility approved by the permit is removed in its entirety from the public right-of-way, an insurance policy or policies meeting the City of Nevada City's insurance requirements for contractors to perform work with public right-of-way.

15. *Indemnification.* Permittee shall defend, indemnify, protect and hold harmless city, its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers from and against any and all claims, actions, or proceeding against the city, and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers to attack, set aside, void or annul, an approval of the city, planning commission or city council concerning this permit and the project. Such indemnification shall include damages of any type, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The city shall promptly notify the permittee of any claim, action, or proceeding. Nothing contained herein shall prohibit city from participating in a defense of any claim, action or proceeding. The city shall have the option of coordinating the defense, including, but not limited to, choosing counsel after consulting with permittee and at permittee's expense.

16. *Hold Harmless.* Additionally, to the fullest extent permitted by law, the permittee, and every permittee and person in a shared permit, jointly and severally, shall defend, indemnify, protect and hold the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers harmless from and against all claims, suits, demands, actions, losses, liabilities, judgments, settlements, costs (including, but not limited to, attorney's fees, interest and expert witness fees), or damages claimed by third parties against the city for any injury claim, and for property damage sustained by any person, arising out of, resulting from, or are in any way related to the wireless telecommunications facility, or to any work done by or use of the public right-of-way by the permittee, owner or operator of the wireless telecommunications facility, or their agents, excepting only liability arising out of the sole negligence or willful misconduct of the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers.

17. *Cabinet Removal.* Should the utility company servicing the facility with electrical service that does not require the use of an above ground meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet and any related foundation within ninety (90) days of such service being offered and reasonably restore the area to its prior condition. An extension may be granted if circumstances arise outside of the control of the permittee.

18. *Relocation.* The permittee shall modify, remove, or relocate its facility, or portion thereof, without cost or expense to city, if and when made necessary by (i) any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or above ground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by city or any other public agency, (ii) any abandonment of any street, sidewalk or other public facility, (iii) any change of grade, alignment or width of any street, sidewalk or other public facility, or (iv) a determination by the director that the wireless telecommunications facility has become incompatible with public health, safety or welfare or the public's use of the public right-of-way. Such modification, removal, or relocation of the facility shall be completed within ninety (90) days of notification by city unless exigencies dictate a shorter period for removal or relocation. Modification or relocation of the facility shall require submittal, review and approval of a modified permit pursuant to the Code including applicable notice and hearing procedures. The permittee shall be entitled, on permittee's election, to either a pro-rata refund of fees paid for the original permit or to a new permit, without additional fee, at a location as close to the original location as the standards set forth in the Code allow. In the event the facility is not modified, removed, or relocated within said period of time, city may cause the same to be done at the sole cost and expense of permittee. Further, due to exigent circumstances including those of immediate or imminent threat to the public's health and safety, the city may modify, remove, or relocate wireless telecommunications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.

19. *Conditions.* Permittee shall agree in writing that the permittee is aware of, and agrees to abide by, all conditions of approval imposed by the wireless telecommunications facility permit within thirty (30) days of permit issuance. The permit shall be void and of no force or effect unless such written consent is received by the city within said thirty (30) day period.

20. *Right of Way Agreement.* Prior to the issuance of any encroachment permit, permittee shall be required to enter into a right-of-way agreement with the city in accordance with the City's past practice.

#### **17.150.080 Findings.**

No CUP shall be granted for a wireless telecommunications facility unless the approving party makes all of the following findings:

- A. All notices required for the proposed installation have been timely given.
- B. The proposed facility has been designed and located in compliance with all applicable laws, including the requirements of this Chapter 17.150.

C. The applicant has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has otherwise obtained a legal authorization to use the public right-of-way.

D. The facility is designed in a manner consistent with the architectural requirements applicable to the zone, if any.

E. The applicant has shown that no other feasible design would be less intrusive upon the values intended to be protected by Chapter 17.150.

F. There is no known feasible alternate location which is available to the applicant at rates that are not commercially impracticable and that would be less intrusive upon the values intended to be protected by Chapter 17.150, and which location would allow the applicant to meet its reasonable wireless coverage objectives.

#### **17.150.090 Planning Commission.**

The Planning Commission will review and approve, conditionally approve, or deny CUP and Master Deployment Plan Permits.

#### **17.150.100 Nonexclusive Grant**

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 any warranty of title.

#### **17.150.110 Emergency Deployment.**

A COW shall be permitted for the duration of an emergency declared by the city or at the discretion of the director. "COW" means a "cell on wheels," which is a wireless telecommunications facility temporarily rolled in or temporarily installed. Notwithstanding the foregoing, other than in extreme emergency situations as determined by the City, COWs shall not be permitted in the right-of-way.

#### **17.150.120 Operation and Maintenance Standards.**

All wireless telecommunications facilities must comply at all times with the following operation and maintenance standards.

A. Unless otherwise provided herein, all necessary repairs and restoration shall be completed by the permittee, owner, operator or any designated maintenance agent within forty-eight (48) hours:

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.

B. Each permittee of a wireless telecommunications facility shall provide the director with the name, address and 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 (7) days of any change.

C. 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 and safe condition, including compliance with the applicable portions of the most current version of TIA-ANSI 222, including but not limited to ensuring the facilities are free of:

1. Unreasonable amount of General dirt and grease;
2. Chipped, faded, peeling, and cracked paint;
3. Rust and corrosion;
4. Cracks, dents, and discoloration;
5. Missing, discolored or damaged artificial foliage or other camouflage;
6. Graffiti, bills, stickers, advertisements, litter and debris;
7. Loose or unsecured fittings
8. Broken and misshapen structural parts; and
9. Any damage from any cause.

D. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in 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 director.

E. 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.

F. Each facility shall be operated and maintained to comply with all conditions of approval. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the same and the standards set forth in this chapter.

### **17.150.130 Certificate of Completion for New Work**

A. No work shall be allowed to be done at or on any wireless facility, excepting normal repair and maintenance work, for which the owner cannot produce a certificate of completion for the most recent previous work, until a final inspection has been conducted and a certificate of completion has been issued. The owner of the wireless facility, telecommunications tower, or other support structure shall pay for any inspection(s) prior to the inspection(s) being conducted. A passing final inspection is required prior to the issuance of a certificate of completion.

B. Operation of a facility without a certificate of completion is prohibited and may be enforced either pursuant to Chapter 1.12 or 1.22 of this Code.

**17.150.140 No Dangerous Condition or Obstructions Allowed.**

No person shall install, use or maintain any facility, 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 impairs or impedes the flow of pedestrian, bicycle, 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 said location. A facility, an equipment enclosure, and ancillary equipment must be designed and located in a manner that does not materially obstruct the roadway views of vehicles, bicycles, and pedestrians traveling within the public right-of-way, and does not obstruct the visibility of signs located within the right-of-way.

**17.150.150 Permit Expiration.**

A. Unless Government Code section 65964, as may be amended, authorizes the city to issue a permit with a shorter term, a permit for any wireless 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 one hundred and eighty (180) days prior to expiration. Said application and proposal shall comply with the city's current code requirements for wireless telecommunications facilities.

**17.150.160 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 (2) 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 city in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten (10) days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the director of any discontinuation of operations of thirty (30) days or more.

C. Failure to inform the 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.

**17.150.170 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 permit or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to its natural condition 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. The facility shall be removed from the property, 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 permit, 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 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.

C. *Summary Removal.* In the event the 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"), the 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 (5) 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 sixty (60) days, the facility shall be treated as abandoned property.

D. *Removal of Facilities by City.* In the event the city removes a 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 removed by the city due to exigent circumstances.

#### **17.150.180 Exceptions.**

A. Effective Prohibition. In the event that any applicant asserts that strict compliance with any provisions in this chapter, as applied to a specific proposed wireless services facility, would effectively prohibit the provision of wireless services, the Planning Commission may grant a limited, one-time exemption from strict compliance subject to the provisions in this section.

B. Required Findings. The Planning Commission shall not grant any exception unless the applicant demonstrates with clear and convincing evidence all the following:

1. The applicant has provided the city with a clearly defined technical service objective and a clearly defined potential site search area;

3. The applicant has provided the city with a meaningful comparative analysis that includes the factual reasons why any alternative location(s) or design(s) suggested by the city of otherwise identified in the administrative record, including but not limited to potential alternatives identified at any public meeting or hearing, are not technically feasible or potentially available; and

4. The applicant has provided the city with a meaningful comparative analysis that includes the factual reasons why the proposed location and design deviates is the least noncompliant location and design necessary to reasonably achieve the applicant's reasonable technical service objectives.

C. Scope. The Planning Commission shall limit its exemption to the extent to which the applicant demonstrates such exemption in Necessary to reasonably achieve its reasonable technical service Needs. The Planning Commission may adopt conditions of approval as reasonably necessary to promote the purposes in this chapter and protect the public health, safety and welfare.

#### **17.150.190 Location Prohibitions and Preferences**

- A. Prohibited. Unless otherwise required by law, no wireless facility in the right of way may be located in any area the City Engineer determines is inconsistent with existing or planned or expected uses of the right of way.
- B. Especially Discouraged. Unless authorized by CUP or otherwise allowed by law, telecommunications facilities shall not be allowed within those portions of the right of way which are in the 7-Hills Business District, any residential zone or in the Historical Combining District.
- C. Discouraged. Wireless telecommunication facilities are discouraged from being in the Scenic Corridor Combining District. A facility in the scenic corridor combining district must either obtain a CUP or administrative permit where required by federal or state law and this ordinance.
- D. Encouraged. Wireless telecommunication facilities are encouraged to be in industrial and commercial zones.

#### **17.150.200 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.

**17.150.210 State or Federal Law.**

A. In the event it is determined by the city attorney that state or federal law prohibits certain discretionary permitting requirements for certain wireless telecommunications facilities, such requirement shall be deemed severable and all remaining regulations shall remain in full force and effect. For those facilities, in lieu of a CUP required by section 17.150.040, an administrative permit shall be required, and all provisions of that section shall be required except to the extent determined by the city attorney to be prohibited by law. Any conditions of approval set forth in this provision or deemed necessary by the director shall be imposed and administered as reasonable time, place and manner rules.

B. If subsequent to the issuance of the city attorney's opinion pursuant to (A) above, the city attorney determines that the law has changed and that such discretionary permitting is permissible, the city attorney shall inform appropriate city staff and all discretionary permitting requirements shall be reinstated.

**17.150.220 Nonconforming Wireless Telecommunications Facilities in the Right-of-Way.**

A. Nonconforming wireless telecommunications facilities are those facilities that do not conform to this chapter.

B. Nonconforming wireless telecommunications facilities shall be brought into conformity with all requirements of this article upon the first modification or upgrade of the Facility or Equipment following adoption of this ordinance; 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 director made pursuant to this section. In the event of an appeal alleging that the ten (10) 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 2. CEQA. This Ordinance is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15061 because CEQA only applies to projects which have the potential to have a significant impact on the environment and because the environmental impact of each individual project will be analyzed at the time that the project is submitted. There are no impacts of this ordinance which have the potential to cumulatively cause a significant effect on the environment because the city is so small, and it is not anticipated that there will be enough facilities to cause such an impact.

SECTION 3. Moratorium Terminated. Upon the effective date of this ordinance, the interim ordinance, originally adopted on October 10, 2018, and extended on November 14, 2018 is repealed.

SECTION 4. Effective Date. This ordinance shall become effective on the 31st day after adoption.

SECTION 5. Severability. If any portion of this ordinance is found to be unenforceable, each such provision shall be severed, and all remaining portions of this ordinance shall be enforced to the maximum extent legally permissible.

SECTION 6. Certification. The City Clerk shall certify to the passage and adoption of this ordinance as required by law.

**PASSED AND ADOPTED** at the regularly scheduled meeting of the Nevada City Council held on the 25<sup>th</sup> day of September, 2019 by the following vote:

**AYES: PARKER, MINETT, STRAWSER, MOBERG**

**NOES:**

**ABSENT:**

**ABSTAIN: SENUM**

**ATTEST:**

  
**Reinette Senum, Mayor**

  
**Niel Locke, City Clerk**