



## REPORT TO THE CITY COUNCIL

**Approved by:**

Gary Conte, Planning Manager

Arnoldo Rodriguez, City Manager

**Council Meeting of:** September 21, 2022

**Agenda Number:** C-1

**SUBJECT:**

Madera Municipal Code (MMC) Ordinance Text Amendment relating to Wireless Facilities on Private Property and a Small Wireless Facilities in the Public Rights-of-Way Policy

**RECOMMENDATION:**

Conduct a public hearing and introduce for first reading by title only and waive the full reading of:

1. A Regulatory Ordinance Adding Chapter 9 to Title X of the Madera Municipal Code Relating to Wireless Facilities on Private Property
2. Adoption of City Council Resolution adopting a Small Wireless Facilities Policy in the Public Rights-of-Way
3. Adoption of a Categorical Exemption pursuant to Section 15061(b)(3) of the California Environmental Quality Act.

**BACKGROUND:**

At its July 26, 2022 meeting the City's Planning Commission (Commission) voted unanimously by a 6-0 (1 absent) vote to:

- Recommend OTA 2020-02 to Council;
- Adopted Resolution No. 1930 to recommend the Ordinance and that the Council also adopt a Small Wireless Facilities policy in the Public Rights-of-Way; and
- That the Council adopt a Categorical Exemption pursuant to Section 15061(3)(b) the General Rule Exemption of the California Environmental Quality Act.

<b>Table 1: Project Overview</b>	
<i>Project:</i>	OTA No. 2020-02
<i>Location:</i>	Citywide
<i>Project Area:</i>	Citywide
<i>Zoning District:</i>	The project potentially affects all zoning districts in the City

## **SUMMARY:**

Since the 1990s the advent of wireless communications has exploded and has created a steady stream of locational issues for both wireless companies and municipal governments. The wireless companies are constantly seeking to better service coverage and seeking to upgrade technology. This results in a constant stream of land use entitlement issues for the City. Currently wireless projects are reviewed under Chapter 3 Section 10-03.419 of the Madera Municipal Code (MMC) which has not been amended in many years and new and/or amended regulations are needed to be consistent with Federal and State telecommunications law. In 2021, the City retained Telecom Law Firm PC to develop regulations that would be consistent with Federal and State Law and assist with its large volume of wireless projects.

The City has a high level of wireless project applications and is trying to regulate them with an outdated ordinance. Staff, in conjunction with the Telecom Law Firm PC, have drafted Ordinance and Public Rights-of-Way Policy that will make Madera's Wireless Facilities standards consistent with the most recent Federal and State Case Law and provide more defensible regulations to staff to regulate Wireless Facilities (refer to Attachments 2 and 3, respectively).

### *Federal and State Case Law*

On September 26, 2018, the Federal Communications Commission (FCC) adopted new rules (Small Cell Order) that preempted certain zoning and land-use regulations over "small wireless facilities" (or small cells) as defined by the FCC. These rules, which became fully effective on April 15, 2019, are part of larger rulemaking that aims to reinterpret provisions in the Federal Telecommunications Act of 1996, related to actual and effective prohibitions on wireless and other telecommunications infrastructure deployments. The Small Cell Order implements industry demands for the purpose of accelerating the deployment of small wireless facilities, and to remove alleged barriers posed by local fees and zoning requirements.

In October 2018, coalitions of local governments and municipal organizations from across the country filed challenges against the Small Cell Order. These petitions for judicial review have been consolidated in the Ninth Circuit Court of Appeals, but the rules remain in effect unless the Ninth Circuit vacates all or certain portions of the Small Cell Order.

The following is an overview of the applicable state and federal limits of the City's authority to regulate wireless facilities, followed by a more thorough explanation of each:

1. The Federal Telecommunications Act of 1996

2. The FCC Small Cell Order
3. Applicable California Law
4. Current Wireless Regulatory Codes in Madera

## **1. THE FEDERAL TELECOMMUNICATIONS ACT OF 1996**

In 1996, Congress adopted the Federal Telecommunications Act to, among other things, preserve state and local government land use authority, while encouraging and facilitating the deployment of small wireless service facilities. Local governments retain all traditional zoning authority, except that local regulations cannot:

- A. Prohibit or effectively prohibit personal wireless services;
- B. Unreasonably discriminate among functionally equivalent services; or
- C. Regulate based on environmental impacts from radiofrequency (RF) emissions.

In addition, local decisions must be made within a reasonable time, and any denial requires a written decision based on substantial evidence in the written record.

More recently, in 2009, the FCC defined a “presumptively reasonable” time for application review as 90 days for collocations and 150 days for non-collocations, after which time the applicant may seek expedited judicial review. The FCC recently adopted new rules with respect to small wireless facilities that dramatically shorten the applicable time limits, called “shot clocks,” and impose new limitations on local regulations:

- 60 days for collocations and
- 90 days for non-collocations.

## **2. THE FCC SMALL CELL ORDER**

On September 26, 2018, the FCC adopted the Small Cell Order, which further limits local government authority to regulate small wireless facilities as defined by the FCC. The rules require the City review applications for small cells faster and in a manner consistent with the FCC’s national standard for an effective prohibition of personal wireless services.

As a general rule, a local regulation constitutes an effective prohibition if it materially inhibits or limits the ability of a competitor or potential competitor to compete in a fair and balanced legal and regulatory environment. In the context of aesthetic regulations, the FCC further provides that a local small-cell regulation causes an effective prohibition, unless the regulation is:

- A. Reasonable;
- B. No more burdensome than regulations imposed on other infrastructure deployments;
- C. Objective; and
- D. Published in advance.

Reasonable regulations are those that are technically feasible and reasonably directing to avoid or remedy the “intangible public harm” (as described by the FCC) of unsightly or out-of-character deployments. Although the FCC declared the minimum spacing or undergrounding requirements would potentially violate the new criteria, it provided little guidance as to the scope of specific local regulations that would likely be considered to be preempted. The regulations mean that the City may not prohibit placement of small cells within the public right-of-way or on publicly owned and operated utility poles, but can prescribe reasonable standards for their placement and design.

The FCC also imposed limits on local fees for permit applications and small cell attachments on municipal owned infrastructure. The Small Cell Order requires all local fees to be a reasonable approximation of the City’s objectively reasonable costs, and such fees are charged to similarly situated competitors in similar situations. The FCC established presumptively reasonable “safe harbor” fee amounts that would be safe from challenge. For one-time permit fees, the amount is equal to \$100 per site for attachments to existing structures and \$1,000 per site for attachments to new structures. For annual recurring license fees for small cell attachments to City-owned poles, the FCC provides a presumptively reasonable fee of \$270. A city that charges more than safe harbor amounts would have the burden of justifying that its fee is cost-based under the standard described above.

The 60 and 90 day time limits for small wireless facilities require local governments to do more in less time than previously allowed prior to the Small Cell Order. The time limits now expressly encompass all siting authorizations necessary for the deployment, including the pole licensing process, all permits required for the applicant to construct the facility, and any administrative appeals. Failing to act within the applicable time limits establishes a presumption that the City intended to effectively prohibit the provision of services, the remedy for which would be an injunction to issue shovel-ready permits.

### **3. APPLICABLE CALIFORNIA LAW**

With respect to the public right-of-way, California law grants telephone corporations registered with the California Public Utilities Commission (CPUC) a limited right to use public roads in a manner that does not inconvenience the public use of the right-of-way. This right to use the public right-of-way is subject to local governments reasonable time, place and manner regulations. Both federal and state courts hold that California preserves local authority to regulate against both physical obstructions and aesthetic impacts. Although state law generally preserves local aesthetic authority, municipalities must reconcile their authority within the limitations of the Small Cell Order.

### **4. CURRENT WIRELESS REGULATORY CODES IN MADERA**

Current wireless projects are regulated under Chapter 3 Section 10-3-419 of the MMC. This Section is no longer responsive to the above-mentioned regulations and are proposed to be replaced with the staff recommended actions.

## **PROPOSED AMENDMENTS:**

Changes to the MMC and adoption of a policy by resolution are proposed. The proposed changes consist of adding the following chapter and policy:

- Title X, Chapter 9 (Wireless Facilities)
- Small Wireless Facilities in Public Rights-of-Way Policy

The following provides a summary of the proposed amendments.

### **1. Regulatory Ordinance (Chapter 9 of Title X)**

The proposed ordinance will regulate wireless facilities on private property. The ordinance outlines and codifies the process for obtaining a permit to locate and operate a wireless facility. While the ordinance provides exhaustive details, a summary is as follows:

#### **Preferred locations**

All applicants must to the extent technically feasible and potentially available, propose new facilities in a preferred location. No alternative sites analysis is required for new stealth facilities proposed in a preferred location. For all other new facilities, the approval authority shall consider whether any more preferred locations would be technically feasible or potentially available. The following locations are all “preferred” and ordered from most preferred to least preferred:

- A) Industrial zones;
- B) Commercial zones;
- C) Other non-residential zones;
- D) Public Facilities zone when not directly adjacent to residentially zoned parcels;

#### **Discouraged Locations**

Applicants shall not propose to install wireless facilities in a discouraged location unless no alternative site in a preferred location would be technically feasible. If all preferred locations are technically infeasible, the applicant shall use the least-discouraged location. The following locations are discouraged and ordered from most discouraged to least discouraged:

- A) Historic resource zones and/or properties;
- B) Residential zones;
- C) Public Facilities Zones adjacent to residential zones.

### **2. Small Wireless Facilities in the Public Rights-of-Way**

As previously discussed, federal and state case law has necessitated the need for a small wireless facilities public rights-of-way policy. The reason for the policy is that Federal and state wireless

case law updates are so frequent it makes sense to have a policy that can be updated more easily than an ordinance.

Like the ordinance a key part of the right-of-way policy is the locational standards as follows:

### **Location Standards**

(A) Locations – to assist applicants, staff and the approval authority understand and respond to the community’s aesthetic preferences and values, this section describes preferred and discouraged locations for small wireless facilities in the public rights-of-way.

(1) **Preferred Locations:** The city requires small wireless facilities in the public rights-of-way to be installed at locations, ordered from most preferred to least preferred, as follows:

- (a) Industrial zones along any road classification (arterial, collector, local/branch collector, local street);
- (b) Commercial zones along any road classification (arterial, collector, local/branch collector, local street);
- (c) Other non-residential zones along arterials or collectors;
- (d) Other non-residential zones along local/branch collector or local streets;
- (e) Public Facilities zone not directly adjacent to any residential zones;

(2) **Discouraged Locations:** Applicants shall not propose to install small wireless facilities in a discouraged location unless no alternative site in a preferred location would be technically feasible. If all preferred locations are technically infeasible, the applicant shall use the least discouraged location. The following locations are discouraged and ordered from most discouraged to least discouraged:

- (a) Any location within 100 feet of a historically designated property or resource;
- (b) Residential zones on local streets;
- (c) Residential zones along local/branch collectors;
- (d) Residential zones along collectors;
- (e) Residential zones along arterials;
- (f) Public Facilities zone located directly adjacent to residential zones;

### **Placements**

- (A) be placed as close as possible to alignment with the property line that’s divides two parcels abutting the public rights-of-way;
- (B) not be placed directly in front of any ground-level door;
- (C) not be directly placed in any first or multi-story window;
- (D) not be placed within any clear zone at any intersections;

- (E) not be placed in any location that obstructs view lines for traveling vehicles bicycles and pedestrians
- (F) not be placed in any location that obstructs views of any traffic signs or signals;
- (G) not be placed in any location that obstructs illumination patterns for existing streetlights;
- (H) For new non-replacement structures, be placed at least 50 feet from any streetlight utility pole or other similar support structure.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT:**

Staff performed a preliminary environmental assessment and determined that the project is exempt pursuant to Section 15061(b)(3) the General Rule of Exception of the California Environmental Quality Act (CEQA). Further, none of the exceptions under Section 15300.2 of the CEQA Guidelines are applicable to this project.

**FINANCIAL IMPACT:**

Cost associated with the telecommunications ordinance includes the following:

- Contract with Telecom Law Firm, PC totaling \$42,700
- Various staff time and City Attorney fees

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

While not specifically addressed, the requested action is consistent with the Vision Madera 2025 Plan; Effective Government Strategy 115 – Ensure sufficient economic resources provide adequate City services and prepare for future growth.

**ALTERNATIVES:**

The Council may direct staff to return with additional information.

**ATTACHMENTS:**

1. City Council Ordinance
2. City Resolution Adopting Small Wireless Facilities in the Public Rights-of-Way Policy  
Exhibit A: City Council Policy on Small Wireless Facilities in the Public Rights-of-Way
3. Planning Commission Resolution No. 1930  
Exhibit A: Draft Ordinance of City Council  
Exhibit B: Draft Rights of Way Policy

**ATTACHMENT 1**  
**ORDINANCE OF THE CITY COUNCIL OF THE MADERA**  
**ADDING CHAPTER 9 TO TITLE X OF THE MADERA MUNICIPAL CODE**  
**RELATING TO WIRELESS FACILITIES**



**ORDINANCE NO. 2022-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA ADDING CHAPTER 9  
TO TITLE X OF THE MADERA MUNICIPAL CODE RELATING TO WIRELESS FACILITIES**

**WHEREAS**, pursuant to the California Constitution, Article XI, section 7; California Government Code Section 37100 and other applicable law, the City Council of the City of Madera ("City Council") may make and enforce within its limits all local, police, sanitary and other ordinances, resolutions and other regulations not in conflict with general laws; and

**WHEREAS**, the federal Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B), preserves local government zoning authority as it relates to location and siting of wireless communication facilities, but limits local regulations in three key ways: (1) a local ordinance may not unreasonably discriminate among providers of functionally equivalent services; (2) a local ordinance may not prohibit or effectively prohibit service; and (3) a local ordinance may not regulate based on environmental impacts from radio frequency emissions; and

**WHEREAS**, the federal Telecommunications Act of 1996, 47 U.S.C. § 253 prohibits state and local requirements that prohibit or effectively prohibit any entity's ability to provide any telecommunication service but preserves the authority of state and local governments to manage the public right-of-way on a nondiscriminatory basis; and

**WHEREAS**, Section 7901 of the California Public Utilities Code grants telephone corporations the limited right to use the public right-of-way to the extent necessary to provide services to their customers in a manner that does not incommode the public's use of the public right-of-way; and

**WHEREAS**, Section 7901.1 of the California Public Utilities Code bolsters the rights reserved to California local governments under Section 7901 and affirms local authority to manage, on a nondiscriminatory basis, the time, place and manner in which telephone corporations access the public right-of-way and deploy their facilities; and

**WHEREAS**, the City Council finds this ordinance will, to the extent permitted by federal and California state law, protect and promote public health, safety, and welfare, and also balance the benefits that flow from robust, advanced wireless services within the City's local values, which includes without limitation the aesthetic character of the City, its neighborhoods, and community; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing to consider this ordinance on July 26, 2022, at which time all interested parties had the opportunity to be heard, and after said public hearing, the Planning Commission adopted Resolution No. 1930, recommending that the City Council adopt this ordinance; and

**WHEREAS**, on August 17, 2022, the City Council held a duly noticed public hearing to consider the adoption of this ordinance.

THE CITY COUNCIL OF THE CITY OF MADERA DOES ORDAIN AS FOLLOWS:

**SECTION 1.** CHAPTER 9 is added to Title X of the Madera Municipal Code to read as follows:

## **CHAPTER 9: WIRELESS FACILITIES**

10-9.01 Purpose and Intent.

10-9.02 Definitions.

10-9.03 Applicability.

10-9.04 Required Permits and Approvals.

10-9.05 Administrative Orders and Regulations.

10-9.06 Permit Applications.

10-9.07 Public Notice.

10-9.08 Approvals, Denials, and Appeals.

10-9.09 Location Standards.

10-9.10 Design Standards.

10-9.11 Standard Conditions of Approval.

10-9.12 Amortization.

10-9.13 Exceptions.

10-9.14 Peer and Independent Consultant Review.

10-9.15 Violations.

### **Section 10-9.01 PURPOSE AND INTENT.**

- (A) The city of Madera (the “city”) intends this chapter to establish reasonable, uniform and comprehensive standards and procedures for wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the city’s territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this chapter are intended to, and should be applied to, consistent with federal and state law, protect and promote public health, safety and welfare, and also balance the benefits that flow from robust, advanced wireless services with the city’s local values, which include without limitation the aesthetic character of the city, its neighborhoods and community. This chapter is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interest is maintained on a case-by-case basis; (2) protecting the city’s visual character from potential adverse impacts or visual blight created or exacerbated by wireless communications infrastructure; (3) protecting and preserving the city’s environmental resources; and (4) promoting access to high-quality, advanced wireless services for the city’s residents, businesses and visitors.
- (B) This chapter is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider’s ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity’s ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC’s regulations concerning such emissions; (5) prohibit any collocation or modification that the city may not deny under federal or California state law; (6) impose any

unfair, unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the city to preempt any applicable federal or California law.

## **Section 10-9.02 DEFINITIONS.**

All references to codified statutes, regulations or other rules shall be deemed to refer to such statutes, regulations or other rules as they may be amended or superseded.

- (A) **“AMATEUR STATION”** means the same as defined by the FCC in 47 C.F.R. § 97.3, which defines the term as “a station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications.” This term includes amateur radio antennas and related facilities used for amateur radio services.
- (B) **“APPROVAL AUTHORITY”** means the city official or body responsible for application review and vested with authority to approve or deny such applications. The approval authority for a conditional use permit shall be the Planning Commission. The approval authority for a site plan review shall be the Director.
- (C) **“CPUC”** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
- (D) **“DIRECTOR”** means the Community Development Director of the city of Madera or the Director’s designee.
- (E) **“ELIGIBLE FACILITIES REQUEST”** means the same as defined in 47 U.S.C. § 1455(a)(2), and as interpreted by the FCC in 47 C.F.R. § 1.6100(b)(3).
- (F) **“FCC”** means the Federal Communications Commission, as constituted by the Communications Act of 1934, Pub. L: 73-416, 48 Stat. 1064, codified as 47 U.S.C. §§ 151 *et seq.* or its duly appointed successor agency.
- (G) **“HISTORIC RESOURCE”** means any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places, the California Register of Historical Resources or any “historic resource” as listed in Table HC-A of the General Plan. The term includes artifacts, records and remains related to or located within such properties. The term also includes properties with traditional religious and/or cultural importance to any Native American tribe.
- (H) **“OTARD”** means any “over-the-air reception device” subject to 47 C.F.R. §§ 1.4000 *et seq.*, which generally includes satellite television dishes and certain fixed wireless antennas not greater than one meter in diameter.
- (I) **“PERSONAL WIRELESS SERVICE FACILITIES”** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii), which defines the term as facilities that provide personal wireless services.
- (J) **“PERSONAL WIRELESS SERVICES”** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), which

defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

- (K) **“PLANNING COMMISSION”** means the Planning Commission of the city of Madera as established by the Madera Municipal Code.
- (L) **“RF”** means radio frequency.
- (M) **“SECTION 6409”** means Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a).
- (N) **“SHOT CLOCK”** means the presumptively reasonable time defined by the FCC in which a state or local government must act on an application or request for authorization to place, construct or modify personal wireless service facilities.
- (O) **“SNALL WIRELESS FACILITY”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(l).
- (P) **“STEALTH”** means concealment techniques that make a wireless facility look like something other than a wireless facility. Stealth concealment techniques include, without limitation: (1) transmission equipment placed completely within existing or replacement architectural features such that the installation causes no visible change in the underlying support structure and (2) new architectural features that mimic or blend with the underlying or surrounding structures in style, proportion and construction quality.
- (Q) **“WIRELESS FACILITY”** means a personal wireless service facility.

#### **Section 10-9.03 APPLICABILITY.**

- (A) *General.* This chapter applies to all requests for the city’s regulatory authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy wireless facilities on private property (whether owned by a private party or public entity) within the city’s territorial and jurisdictional boundaries, unless expressly exempted pursuant to this section.
- (B) *Wireless Facilities on City Property.* This chapter applies to permit applications for wireless facilities on property or structures owned or controlled by the city; provided, however, that this chapter does not govern whether or under what terms and conditions the city would lease, license or otherwise allow a wireless facility on such property or structures.
- (C) *Small Wireless Facilities.* Notwithstanding anything in this chapter to the contrary, all small wireless facilities are subject to a permit as specified in a City Council policy, which may be adopted, amended and/or repealed by a resolution of the City Council. All small wireless facilities shall comply with the City Council’s policy. If the City Council policy is repealed and not replaced, an application for a small wireless facility shall be processed pursuant to this chapter.
- (D) *Eligible Facilities Requests.* Notwithstanding anything in this chapter to the contrary, all eligible facilities requests and other applications submitted for approval pursuant to Section 6409 are subject to a City Council policy, which may be adopted, amended and/or repealed by a resolution

of the City Council. All eligible facilities requests and other applications submitted for approval pursuant to Section 6409 shall comply with the City Council's policy. If the City Council policy is repealed and not replaced, all eligible facilities requests and other applications submitted for approval pursuant to Section 6409 shall be processed pursuant to this chapter.

- (E) *Other Exemptions.* Notwithstanding anything in this chapter to the contrary, this chapter shall not be applicable to the following:
- (1) Wireless facilities operated by the city for public purposes;
  - (2) Wireless facilities installed completely indoors or within venues and used to extend personal wireless services into a business or the subscriber's private residence, such as a femto cell or indoor distributed antenna system;
  - (3) OTARD antennas;
  - (4) Antennas and related transmission equipment used in connection with a duly authorized amateur station; or
  - (5) Wireless facilities or other transmission equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power, generation, transmission and distribution facilities subject to CPUC General Order 131-D.

#### **Section 10-9.04 REQUIRED PERMITS AND APPROVALS.**

- (A) *Site Plan Review.* A site plan review, subject to the Director's prior review and approval, is required for all wireless facilities that are located in preferred locations as described in § 10-9.09 and compliant with all applicable design standards in § 10-9.10.
- (B) *Conditional Use Permit.* A conditional use permit, subject to the Planning Commission's prior review and approval, is required for all wireless facilities on private property that are located in discouraged locations as described in § 10-9.09, and do not qualify for site plan review, or require an exception under § 10-9.13.
- (C) *Other Permits and Regulatory Approvals.* In addition to any permit or approval required under this chapter, the applicant must obtain all other permits and regulatory approvals (such as compliance with the California Environmental Quality Act or Madera County Airport Land Use Commission requirements) as may be required by any other federal, state or local government agencies, which includes without limitation any other permits and/or approvals issued by other city departments or divisions. Any permit or approval granted under this chapter or deemed granted or deemed approved by law shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or approvals. Furthermore, and to avoid potential confusion, an exemption from the permit requirement under § 10-9.03(E) does not exempt the same wireless facilities from any other permits or approvals required, which includes without limitation any ministerial permits from the city.

#### **Section 10-9.05 ADMINISTRATIVE ORDERS AND REGULATIONS.**

In addition to the requirements in this chapter, the Director may adopt such orders or regulations as the Director deems necessary or appropriate to protect and maintain public health, safety, welfare and/or convenience. All wireless facilities must conform to all applicable orders and regulations issued by the Director, unless the Director, in the Director's discretion, grants a prior written waiver to deviate, in whole or in part, any such order or regulation. The Director shall develop and publish guidelines to implement the waivers authorized by this section.

#### **Section 10-9.06 PERMIT APPLICATIONS.**

- (A) *Application Required.* The approval authority shall not approve any requests for authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy wireless facilities except upon a complete and duly filed application consistent with this section and any other written rules or requirements the city or the Director may establish from time to time in any publicly stated format.
- (B) *Application Fee.* The applicant shall submit the applicable permit application fee adopted by City Council resolution. If no permit application fee has been adopted, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to submit a deposit estimated by the Director to reimburse the City for its reasonable costs incurred in connection with the application. Should the deposit be inadequate an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be returned to the applicant.
- (C) *Application Content.* All applications for a permit must include all the information and materials required by the Director for the application. The City Council authorizes the Director to develop, publish and from time-to-time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this chapter. All such requirements must be in written form and publicly stated to provide applicants with prior notice. Notwithstanding anything in this chapter to the contrary, all applications shall, at a minimum, require the applicant to demonstrate that the proposed project will be in planned compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions.
- (D) *Application Submittal.* Unless the Director establishes an alternative submittal procedure pursuant to § 10-9.05, all applications must be submitted to the city at a pre-scheduled appointment with the department. Applicants may generally submit one application per appointment but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The department shall use reasonable efforts to provide the applicant with an appointment within five working days after the department receives a written request and, if applicable, confirms that the applicant complied with the pre-submittal conference requirement. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed.

- (E) *Optional Pre-Submittal Conference.* The city shall provide prospective applicants with the opportunity to schedule and attend a pre-submittal conference with city staff. The city encourages pre-submittal conferences for all proposed projects that require a conditional use permit. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, any latent issues in connection with the proposed or existing wireless facility, such as compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other city departments and/or divisions responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that city staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The city shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the city for its reasonable costs to provide the services rendered in the pre-submittal conference.
- (F) *Optional Community Meetings.* The city encourages, but does not require, applicants to schedule, notice, arrange, and attend a voluntary pre-submittal community meeting with all interested members of the public for applications that require a conditional use permit. This voluntary community meeting does not cause the shot clock to begin and is intended to give applicants the opportunity to hear from members of the public regarding the proposed deployment. Applicants should schedule any voluntary community meetings at times and in locations that are conducive to maximizing public participation. Applicants are encouraged (but not required) to bring any draft applications, plans, maps, presentations or other materials to facilitate the public's understanding of the applicant's proposal. Applicants are also encouraged (but not required) to maintain minutes or a comment log of the community meeting. The City seeks to encourage dialogue that may allow applicants to address areas of concern. Community meetings may be conducted before or after submittal.
- (G) *Applications Deemed Withdrawn.* To promote efficient review and timely decisions, any application governed under this chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the department within 90 calendar days after the department deems the application incomplete in a written notice to the applicant. The Director, in the Director's discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control.

#### **Section 10-9.07 PUBLIC NOTICE.**

- (A) *Public Hearing Notice.* Notice of public hearing shall be given in accordance with § 10-3.1306 of this chapter for any conditional use permit application.
- (B) *Decision Notices.* Within five calendar days after the approval authority acts on an application governed under this chapter or before the shot clock expires (whichever occurs first), the Director shall send a written notice to the applicant. If the approval authority denies the application (with or without prejudice), the written notice to the applicant must contain the reasons for the denial.

All decision notices shall include instructions for how and when to file an appeal.

**Section 10-9.08 APPROVALS, DENIALS AND APPEALS.**

- (A) *Required Findings.* The approval authority may approve wireless facility applications only when the approval authority makes all the following findings:
- (1) the proposed wireless facility is in a preferred location; or the proposed wireless facility is in a discouraged location and the applicant has demonstrated through a meaningful comparative analysis that no more preferred location or support structure would be technically feasible and potentially available;
  - (2) the proposed wireless facility complies with all applicable development standards in this chapter and any other applicable findings required for the approval, such as § 10-3.1307(B) of this chapter (conditional use permits) or § 10-3.4.0106 of this chapter (site plan review);
  - (3) the applicant has provided a signed statement that indicates its willingness to allow other carriers and site operators to collocate transmission equipment with the proposed wireless facility whenever technically feasible and aesthetically desirable in accordance with applicable provisions in this chapter; and
  - (4) the applicant has demonstrated that the proposed wireless facility will comply with all applicable FCC regulations and guidelines for human exposure to RF emissions and will not, either individually or cumulatively with other transmitters in the vicinity, result in RF exposures that exceed the FCC's maximum permissible exposure level for the general population.
- (B) *Conditional Approvals; Denials without Prejudice.* Subject to any applicable federal or state laws, nothing in this chapter is intended to limit the approval authority's ability to conditionally approve or deny without prejudice any application governed under this chapter as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the general plan and any applicable specific plan, the Madera Municipal Code, or this chapter.
- (C) *Appeals.* Within 10 days after the approval authority approves or denies any application under this chapter, any interested person may file an appeal in accordance with the provisions in § 10-3.1309 of this chapter for use permits or §§ 10-3.4.0116 and 10-3.4.0117 of this chapter for site plan review; provided, however, that (1) the notice provisions in this chapter shall control over those in § 10-3.1309 of this chapter and (2) appeals from an approval shall not be permitted when based solely on the environmental effects from RF emissions that are compliant with applicable FCC regulations and guidelines.

**Section 10-9.09 LOCATION STANDARDS.**

- (A) *Locations.* To assist applicants, staff and the approval authority understand and respond to the community's aesthetic preferences and values, this subsection describes preferred and discouraged locations for wireless facilities.



- (1) *Preferred Locations.* All applicants must, to the extent technically feasible and potentially available, propose new facilities in a preferred location. No alternative sites analysis is required for new stealth facilities proposed in any preferred location. For all other new facilities, the approval authority shall consider whether any more preferred location would be technically feasible or potentially available. The following locations are all “preferred” and ordered from most preferred to least preferred:
  - (a) industrial zones;
  - (b) commercial zones;
  - (c) other non-residential zones;
  - (d) Public Facilities zone when not directly adjacent to residentially zoned parcels.
- (2) *Discouraged Locations.* Applicants shall not propose to install wireless facilities in a discouraged location unless no alternative site in a preferred location would be technically feasible. If all preferred locations are technically infeasible, the applicant shall use the least-discouraged location. The following locations are discouraged, and ordered from most discouraged to least discouraged:
  - (a) historic resource zones and properties;
  - (b) Public Facilities zone when directly adjacent to residentially zoned parcels;
  - (c) residential zones.
- (B) *Support Structures.* To assist applicants, staff and the approval authority understand and respond to the community’s aesthetic preferences and values, and to mitigate the impact of wireless infrastructure deployment, the city requires wireless facilities to be installed on support structures, ordered from most preferred to least preferred, as follows:
  - (1) existing structures with existing wireless facilities;
  - (2) existing rooftops;
  - (3) existing building façades, signs, water tank/towers, field lights, or other non-tower structures;
  - (4) new freestanding structures outside the public rights-of-way.

To the extent that a proposed support structure is not included in this list, the Director may, in the Director’s discretion, determine the level of preference for such structure consistent with the goals and purpose of this subsection.

#### **Section 10-9.10 DESIGN STANDARDS.**

- (A) *Concealment.* All wireless facilities must be concealed to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses.

- (B) *Overall Height.* All wireless facilities must be compliant with maximum overall height limits applicable to structures on the underlying parcel; provided, however, that a stealth wireless facility may exceed the applicable height limit by not more than 10 feet.
- (C) *Setbacks.* All wireless facilities must be compliant with all setback requirements applicable to structures on the underlying parcel.
- (D) *Fall Zone.* All freestanding towers outside the public rights-of-way must be setback from habitable structures approved for residential occupancy by a distance equal to the tower height. The approval authority may waive the setback requirement for freestanding towers that meet Class 3 structural standards for critical infrastructure as defined in the most current revision of the ANSI/TIA-222 Structural Standard for Antenna Supporting Structures, Antennas and Small Wind Turbine Support Structures.
- (E) *Noise.* All wireless facilities must be compliant with all applicable noise regulations, which includes, without limitation, any noise regulations in the Madera Municipal Code. The approval authority may require the applicant to incorporate appropriate noise-baffling materials and/or noise-mitigation strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations.
- (F) *Landscaping.* All wireless facilities proposed to be placed in a landscaped area must include landscape features (which may include, without limitation, trees, shrubs and ground cover) and a landscape maintenance plan. The approval authority may require additional landscape features to screen the wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the concealment required under this section. All plants proposed or required must be native and/or drought resistant.
- (G) *Security Measures.* To prevent unauthorized access, theft, vandalism, attractive nuisance or other hazards, reasonable and appropriate security measures, such as fences, walls and anti-climbing devices, may be approved. Security measures shall be designed and implemented in a manner that enhances or contributes to the overall concealment, and the approval authority may condition approval on additional concealment elements to mitigate any aesthetic impacts, which may include, without limitation, additional landscape features. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures.
- (H) *Secondary Power Sources.* The approval authority may approve secondary or backup power sources and/or generators on a case-by-case basis. The approval authority shall not approve any permanent diesel generators or other similarly noisy or noxious generators in or within 200 feet from any residence; provided, however, the approval authority may approve sockets or other connections used for temporary backup generators.
- (I) *Lights.* Wireless facilities may not include exterior lights other than as may be required under Federal Aviation Administration, FCC, other applicable federal or state governmental regulations. All exterior lights permitted or required to be installed must be installed in locations and within enclosures that mitigates illumination impacts on other properties to the maximum extent feasible. Any lights associated with the electronic equipment shall be appropriately shielded from

public view. Any light beacons or lightning arresters shall be included in the overall height calculation.

- (J) *Signage; Decals; Advertisements.* All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage, decals or advertisements unless expressly approved by the approval authority, required by law or recommended under FCC or other federal governmental agencies for compliance with RF emissions regulations.
- (K) *Future Expansion.* To the extent feasible and aesthetically desirable, all new wireless facilities should be designed and sited in a manner that accommodates potential future collocations and other expansions that can be integrated into the proposed wireless facility or its associated structures with no or negligible visual changes to the outward appearance. The approval authority may waive the requirements in this subsection when the approval authority determines future expansions at a proposed wireless facility would be aesthetically undesirable.
- (L) *Utilities.* All cables and connectors for telephone, primary electric and other similar utilities must be routed underground to the extent feasible in conduits large enough to accommodate future collocated wireless facilities. To the extent feasible, undergrounded cables and wires must transition directly into the pole base without any external doghouse. Meters, panels, disconnect switches and other associated improvements must be placed in inconspicuous locations to the extent possible. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost. Microwave or other wireless backhaul is discouraged when it would involve a separate and unconcealed antenna.
- (M) *Parking; Access.* Any equipment or improvements constructed or installed in connection with any wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, wireless facilities should use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements should be the minimum size necessary to reasonably accommodate the proposed use.
- (N) *Compliance with Laws.* All wireless facilities must be designed and sited in compliance with all applicable federal, state and local laws, regulations, rules, restrictions and conditions, which includes without limitation the California Building Standards Code, Americans with Disabilities Act, City of Madera General Plan and any applicable specific plan, the Madera Municipal Code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
- (O) *Towers and Freestanding Wireless Facilities.* In addition to all other design requirements in this section, the following provisions shall be applied to an application for a tower or other freestanding wireless facility:
  - (1) *Tower-Mounted Equipment.* All tower-mounted equipment must be mounted as close to the vertical support structure as possible to reduce its overall visual profile. Applicants must

mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors and utility demarcation boxes) directly behind the antennas to the maximum extent feasible. All tower-mounted equipment, cables and hardware must be painted with flat/neutral colors subject to the approval authority's prior approval.

- (2) *Ground-Mounted Equipment.* All ground-mounted equipment must either be concealed underground, or concealed within an existing or new structure, or other enclosure(s) subject to the approval authority's prior approval. The approval authority may require additional concealment elements as the approval authority finds necessary or appropriate to blend the ground-mounted equipment, enclosure and/or other improvements into the natural and/or built environment.
- (3) *Monopines.* In addition to all other design requirements in this section, the following provisions shall be applied to an application for a monopine:
  - (a) *Shape and Branching.* Monopines shall be gradually tapered from bottom to top to resemble the natural conical pine-tree shape, with shorter branches at the top and wider branches at the bottom. All monopines shall include a "crown" or "topper" installed above the monopole to create a natural point at the top. Branches shall begin at no greater than 15 feet above ground level and maintain at least 3.5 branches per vertical foot when averaged between the bottom-most branch and the highest point on the monopole (excluding any "crown" or "topper" installed above the monopole).
  - (b) *Overall Height.* To maintain a natural appearance, a monopine may not exceed more than 10 feet above the average height of mature natural trees within the vicinity. If the applicant plants new natural trees around the proposed monopine, the approval authority shall consider the future mature height of such trees when evaluating compliance with this standard.
  - (c) *Bark Cladding.* The entire tower above any fence line shall be fitted with faux-pine bark cladding, painted or colored with browns or other appropriate earth tones to mimic natural pine bark.
  - (d) *Equipment Concealment.* All antennas, accessory equipment, cross arms, hardware, cables and other attachments to the monopine must be painted or colored with flat greens, browns or other appropriate earth tones to blend into the faux pine branches. All antennas, remote radio units, tower-mounted amplifiers and other similar equipment larger than one cubic foot shall be fitted with a faux-pine "sock" with faux-pine needles. No tower-mounted equipment shall be permitted to protrude beyond the branch canopy such that it would materially alter the tapered pine shape.
  - (e) *Material Selection and Approval.* All materials and finishes used to conceal the monopine shall be subject to prior approval by the department. Applicants shall use only high-quality materials to conceal the wireless facility. The applicant shall use color-extruded plastics for elements such as the faux-pine needles and faux-bark cladding to prolong the like-new appearance and reduce fading caused by exposure to the sun and other weather conditions.

(P) *Building-Mounted Wireless Facilities.* In addition to all other design requirements in this section, the following provisions shall be applied to an application for a wireless facility installed on a building rooftop or facade:

- (1) *Architectural Integration.* All applicants should, to the extent feasible, propose new non-tower wireless facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, when integration with existing building features is not feasible, the applicant should propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks). Facilities must be located behind existing parapet walls or other existing screening elements to the maximum extent feasible.
- (2) *Rooftop Wireless Facilities.* All rooftop-mounted equipment must be screened from public view with concealment measures that match the underlying structure in proportion, quality, architectural style and finish. The approval authority may approve unscreened rooftop equipment only when it expressly finds that such equipment is effectively concealed due to its low height and/or setback from the roofline.
- (3) *Facade-Mounted Wireless Facilities.* When wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the approval authority may approve facade-mounted equipment in accordance with this subsection. All facade-mounted equipment must be concealed behind screen walls and mounted as flush to the facade as practicable. The approval authority may not approve "pop-out" screen boxes unless the design is architecturally consistent with the original building or support structure. Except in industrial districts, the approval authority may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade. To the extent feasible, facade-mounted equipment must be installed on the facade(s) along the building frontage that is the least prominent or publicly visible.

(Q) *Administrative Design Guidelines.* The Director may develop, and from time to time amend, design guidelines consistent with the generally applicable design regulations to clarify the aesthetic and public safety goals and standards in this chapter for city staff, applicants and the public. The design guidelines shall provide more detailed standards to implement the general principals articulated in this chapter and may include specific standards for particular wireless facilities or site locations but shall not unreasonably discriminate between functionally equivalent service providers. The design guidelines, and any subsequent amendments, shall not be effective unless approved by a resolution adopted by the City Council. If a conflict arises between the development standards specified in this chapter and the design guidelines, the development standards shall control.

#### **Section 10-9.11 STANDARD CONDITIONS OF APPROVAL.**

(A) *Standard Conditions.* Except as may be authorized in subsection (B), all wireless facilities approved under this chapter or deemed approved by the operation of law shall be automatically subject to the conditions in this subsection (A) and these conditions shall be deemed to be incorporated by reference to any permit approved or deemed approved by law.

- (1) *Permit Term; Approval Applies to Land.* This permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the city to establish a shorter term for public safety or substantial land use reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law. This permit shall run with the land and shall be valid for the term specified in these conditions of approval. No change in ownership of the wireless facility, the site, or the subject property shall affect the permit term. This permit may not be transferred to another site or property.
- (2) *Permit Renewal.* The permittee may apply for permit renewal not more than one year before this permit expires. The permittee must demonstrate that the subject wireless facility complies with all the conditions of approval associated with this permit and all applicable provisions in this chapter that exist at the time the decision to renew or not renew is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with this chapter or other applicable law. Upon renewal, this permit will automatically expire 10 years and one day from its issuance.
- (3) *Approved Plans.* Any final construction plans shall incorporate the permit, together with all conditions of approval and the photo simulations associated with the permit (collectively, the “Approved Plans”). The permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, shall be subject to the Director’s prior review and approval. After the Director receives a written request to approve an alteration, modification or other change to the Approved Plans, the Director may refer the request to the approval authority if the Director finds that it substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.
- (4) *CPUC GO-159A Certification.* Within 15 business days after the city issues this permit, the permittee shall serve copies of California Public Utility Commission notification letters required by CPUC General Order No. 159A to the City Clerk, Director and City Manager.
- (5) *Build-Out Period.* This permit will automatically expire 12 months from the approval date (the “Build-Out Period”) unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, support structure or the wireless facility and/or its use. The permittee may request in writing, and the city may grant in writing, one six-month extension if the permittee submits substantial and reliable written evidence demonstrating justifiable cause for such extension. If the Build-Out Period and any extension finally expire, this permit shall be automatically void but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.

- (6) *Post-Installation Certification.* Within 60 calendar days after the permittee commences full, unattended operations of a wireless facility approved under this chapter or deemed-approved by law, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- (7) *Site Maintenance.* The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this permit. At all times, the permittee shall keep the site area free from all litter and debris. The permittee shall regularly inspect the wireless facility to determine whether any maintenance is needed. The permittee, at no cost to the city, shall remove and remediate any graffiti or other vandalism on the wireless facility within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- (8) *Compliance with Laws.* The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("Laws") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this permit, which includes without limitation any Laws applicable to human exposure to RF emissions and any standards, specifications or other requirements identified by the Director (such as, without limitation, those requirements affixed to a building permit). The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws. No failure or omission by the city to timely notice, prompt or enforce compliance with any applicable provision in the Madera Municipal Code, this chapter, any permit, any permit condition or any applicable Laws, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with same.
- (9) *Adverse Impacts on Other Properties.* The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittees or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site and/or wireless facility. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Madera Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the city or other state or federal government agency or official with authority to declare an emergency within the city. The Director may issue a stop work order for any activities that violates this condition in whole or in part. If the Director finds good cause to believe that ambient noise from the wireless facility or related equipment violates applicable provisions in the Madera Municipal Code, the Director, in addition to any other actions or remedies authorized by the permit, the Madera Municipal Code or other applicable laws, may require the permittee to commission a noise

study by a qualified professional to evaluate the wireless facility's compliance.

- (10) *Inspections; Emergencies.* The permittee expressly acknowledges and agrees that, upon reasonable prior notice to the permittee, the city's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the wireless facility and related equipment and/or improvements to ensure compliance with this permit and all associated conditions. Notwithstanding the prior sentence, the city's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the city's officers, officials, staff or other designees while any such inspection or emergency access occurs.
- (11) *Contact Information.* At all times relevant to this permit, the permittee shall keep on file with the Director basic contact and site information. This information shall include, but is not limited to, the following: (A) the name, physical address, notice address (if different), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) site operator, (ii) equipment owner, (iii) site manager and (iv) agent for service of process; (B) the wireless facility's site identification number and/or name used by the permittee and, to the extent applicable, site operator, equipment owner and site manager; and (C) a toll-free telephone number to the wireless facility's network operations center where a live person with power-down control over the wireless facility is available 24 hours-per-day, seven days-per-week. Within 10 business days after a written request by the city, the permittee shall furnish the Director with an updated form that includes all the most-current information described in this condition.
- (12) *Indemnification.* The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the city, City Council and the city's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (A) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the city's approval of this permit, and (B) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this permit or the wireless facility. In the event the city becomes aware of any claims, the city will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the city shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the city's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse the city for any costs and expenses directly and necessarily incurred by the city in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the city to approve this permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this permit.



- (13) *Removal Bond.* Before the city issues any permits required to commence construction in connection with this permit, the permittee shall post a bond issued by a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or similar infrastructure removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility in accordance with this condition.
- (14) *Permit Revocation.* Notwithstanding any revocation procedures in Title X, any permit granted under this chapter or deemed approved by the operation of law may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). A permit granted under this chapter or deemed approved by the operation of law may be revoked only by the City Council after a duly notice public hearing. Before any public hearing to revoke a permit granted under this chapter or deemed approved by the operation of law, the Director must issue a written notice to the permittee that specifies (A) the facility; (B) the violation(s) to be corrected; (C) the timeframe in which the permittee must correct such violation(s); and (D) that, in addition to all other rights and remedies the city may pursue, the city may initiate revocation proceedings for failure to correct such violation(s). The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.
- (15) *Record Retention.* Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the permit application, this permit, the Approved Plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the permit (collectively, "Records"). If the permittee does not maintain such Records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing Records will be construed against the permittee. The permittee shall protect all Records from damage from fires, floods and other hazards that may cause deterioration. The permittee may

keep Records in an electronic format; provided, however, that hard copies or electronic Records kept in the city's regular files will control over any conflicts between such city-controlled copies or Records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any Records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

- (16) *Abandoned Facilities.* The wireless facility authorized under this permit shall be deemed abandoned if not operated for any continuous 12-month period. Within 90 days after a wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Madera Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the city shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the city in connection with such removal and/or restoration activities and shall reimburse the city for all such costs 30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs.
- (17) *Landscaping.* The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the city. The permittee shall be responsible to maintain any replacement landscape features for a three-year period after such landscaping has been installed. Notwithstanding anything in this condition to the contrary, the Director may agree in a written agreement signed by the permittee to accept an annual in-lieu fee to perform the maintenance work on the permittee's behalf.
- (18) *Cost Reimbursement.* The permittee acknowledges and agrees that (A) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the city to incur costs and expenses; (B) the permittee shall be responsible to reimburse the city for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility; (C) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse the city for all such costs 30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs; and (D) the city shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the city by the permittee.

- (19) *Successors and Assigns.* The conditions, covenants, promises and terms contained in this permit will bind and inure to the benefit of the city and permittee and their respective successors and assigns.
- (20) *Truthful and Accurate Statements.* The permittee acknowledges that the city's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the city in connection with the permit or the wireless facility, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
- (21) *City's Standing Reserved.* The city's grant or grant by operation of law of a permit pursuant to this chapter does not waive, and shall not be construed to waive, any standing by the city to challenge any (A) FCC rules or regulations that interpret the Telecommunications Act and/or Section 6409 of the Spectrum Act or (B) any permit issued pursuant to this chapter.
- (22) *Severable Conditions.* If any provision in these conditions or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (A) such provision or its application to such person, entity or circumstance will be deemed severed from this permit; (B) all other provisions in this permit or their application to any person, entity or circumstance will not be affected; and (C) all other provisions in this permit or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.
- (B) *Modified Conditions.* The City Council authorizes the Director to modify, add or remove conditions to any permit as the Director deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in subsection (A) to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment needed for compliance with this chapter, generally applicable health and safety requirements and/or any other applicable laws.

#### **Section 10-9.12 AMORITIZATION.**

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

<b>Fair Market Value on Effective Date</b>	<b>Minimum Years Allowed</b>
less than \$50,000.....	5
\$50,000 to \$500,000.....	10

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

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

#### **Section 10-9.13 EXCEPTIONS.**

- (A) *Preface.* The provisions in this section establish a procedure by which the city may grant an exception to the standards in this chapter but only to the extent necessary to avoid conflict with applicable federal or state law. When the applicant requests an exception, the approval authority shall consider the findings in subsection (B) in addition to the findings required under § 10-9.08. Each exception is specific to the facts and circumstances in connection with each application. An exception granted in one instance shall not be deemed to create a presumption or expectation that an exception will be granted in any other instance.
- (B) *Findings for an Exception.* The approval authority may grant an exception to any provision or requirement in this chapter only if the approval authority finds that:
  - (1) a denial based on the application's noncompliance with a specific provision or requirement would violate federal law, state law or both; or
  - (2) a provision in this chapter, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law.
- (C) *Scope of Exception.* If the approval authority finds that an exception should be granted, the exception shall be narrowly tailored so that the exception deviates from this chapter to least extent necessary for compliance with federal or state law.
- (D) *Burden of Proof.* The applicant shall have the burden to prove to the approval authority that an exception should be granted pursuant to this section. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for an exception.

#### **Section 10-9.14 PEER AND INDIVIDUAL CONSULTANT REVIEW.**

- (A) *Authorization.* The City Council authorizes the Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection any permit application. The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation: (1) permit application completeness and/or accuracy; (2) pre-construction planned compliance with applicable regulations for human exposure to RF emissions; (3) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (4) whether and to what extent a proposed project will comply with applicable laws; (5) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the city's discretion to review; and (6) any other issue identified by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with city staff and/or the applicant.
- (B) *Cost Reimbursement.* Subject to applicable laws, the applicant shall be responsible for the reasonable costs actually incurred by the city in connection with a consultant's review, which may include, without limitation, costs incurred by the consultant to attend and participate in any meetings or hearings related to the application. Within a reasonable time after notice from the Director, the applicant shall deposit funds in an amount equal to the estimated costs for the consultant's services, as determined by the Director. The funds shall be applied to the consultant's invoices as such invoices are approved by the Director. If the deposit exceeds the total costs for the consultant's services, the Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection. If the reasonable costs for the consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The city shall not issue any building permit or other construction permit to any applicant with any unpaid invoices.

#### **Section 10-9.15 VIOLATIONS.**

Any use or condition caused or permitted to exist in violation of any provision of this chapter shall be and hereby is declared a public nuisance and may be subject to administrative citations as set forth in Title I, Chapter 9 of the Municipal Code, abatement pursuant to §§ 10-3.1601 *et seq.* of this chapter, California Code of Civil Procedure § 731, or any other remedy available to the city.

#### **Section 10-9.16 CONFLICTING PROVISIONS.**

To the extent, that any provisions in the Madera Municipal Code Section 10.3.419 are inconsistent with this chapter, this chapter shall prevail.

**SECTION 2.** *Severability.* If any section, subsection, paragraph, sentence, clause, phrase or term (each a "Provision") in this ordinance or Madera Municipal Code Title X, Chapter 9, or any Provision's application to any person or circumstance, is held illegal, invalid or unconstitutional by a court of competent jurisdiction, all other Provisions not held illegal, invalid or unconstitutional, or such Provision's application to other persons or circumstances, shall not be affected. The City Council declares that it would have

passed this ordinance and Madera Municipal Code Title X, Chapter 9, and each Provision therein, whether any one or more Provisions be declared illegal, invalid or unconstitutional.

**SECTION 3.** *CEQA.* If this ordinance qualifies as a “project” subject to California Environmental Quality Act (“CEQA”) Guidelines § 15378 and California Public Resources Code § 21065, the City Council finds that, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This ordinance adds regulations related to wireless facilities in a manner that complies with federal regulations. This ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new wireless facility or change to an existing wireless facility would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council finds that this ordinance is exempt from CEQA under the general rule.

**SECTION 4.** *Effective Date.* This ordinance shall become effective thirty days after its adoption.

**SECTION 5.** *Publication.* The City Clerk is authorized to cause this ordinance or a summary of this ordinance to be published in a newspaper of general circulation in the City of Madera, within fifteen days after its adoption. If a summary of the ordinance is published, the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted at City Hall at least five days prior to the meeting at which the ordinance is adopted and again after the meeting at which it is adopted. The ordinance shall become effective thirty days after its adoption.

\* \* \* \* \*

**ATTACHMENT 2**

**RESOLUTION OF THE CITY COUNCIL OF THE MADERA  
ADOPTING SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY POLICY**

**RESOLUTION NO. 2022-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA ADOPTING A POLICY ON  
SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY**

**WHEREAS**, pursuant to the California Constitution, Article XI, section 7; California Government Code Section 37100 and other applicable law, the City Council of the City of Madera ("City Council") may make and enforce within its limits all local, police, sanitary and other ordinances, resolutions and other regulations not in conflict with general laws; and

**WHEREAS**, the federal Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B), preserves local government zoning authority as it relates to location and siting of wireless communication facilities, but limits local regulations in three key ways: (1) a local ordinance may not unreasonably discriminate among providers of functionally equivalent services; (2) a local ordinance may not prohibit or effectively prohibit service; and (3) a local ordinance may not regulate based on environmental impacts from radio frequency emissions; and

**WHEREAS**, the federal Telecommunications Act of 1996, 47 U.S.C. § 253 prohibits state and local requirements that prohibit or effectively prohibit any entity's ability to provide any telecommunication service but preserves the authority of state and local governments to manage the public right-of-way on a nondiscriminatory basis; and

**WHEREAS**, Section 7901 of the California Public Utilities Code grants telephone corporations the limited right to use the public right-of-way to the extent necessary to provide services to their customers in a manner that does not incommode the public's use of the public right-of-way; and

**WHEREAS**, Section 7901.1 of the California Public Utilities Code bolsters the rights reserved to California local governments under Section 7901 and affirms local authority to manage, on a nondiscriminatory basis, the time, place and manner in which telephone corporations access the public right-of-way and deploy their facilities; and

**WHEREAS**, on September 27, 2018, the FCC adopted a *Declaratory Ruling and Third Report and Order*, FCC 18-133 (the "Small Cell Order"), in connection with two informal rulemaking proceedings entitled *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, and *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84. The Small Cell Order set forth limitations on state and local government regulation of small cell wireless facilities that are placed on vertical infrastructure such as utility poles and street light standards located in the public rights-of-way. The Small Cell order: (1) limited the level of local permitting and discretion; (2) established "shot clock" rules (e.g., time limits and deadlines) for processing action on local permits; and (3) limited the fees that can be charged for the facilities. The Small Cell Order further established that any aesthetic regulations and fees required for processing small wireless facilities be published in advance; and

**WHEREAS**, on \_\_\_\_\_, the City Council adopted Ordinance No. \_\_\_\_\_ adding Chapter 9 to Title X of the Madera Municipal Code relating to wireless facilities; and



**WHEREAS**, Ordinance No. \_\_\_\_\_ provides that all small wireless facilities, as defined by the FCC in 47 C.F.R. § 1.6002(l), proposed in the public rights-of-way are subject to a City Council policy adopted pursuant to a City Council resolution.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA DOES RESOLVE AS FOLLOWS:

**SECTION 1. Findings.** The City Council finds that: (a) the facts set forth in the recitals in this Resolution are true and correct and incorporated by reference; (b) the recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this Resolution; (c) the provisions in this Resolution are consistent with the General Plan, Municipal Code and applicable federal and state law; and (d) this Resolution will not be detrimental to the public interest, health, safety, convenience or welfare.

**SECTION 2. Policy Adopted.** The City Council hereby adopts the City Council Policy on Small Wireless Facilities in the Public Rights-of-Way attached hereto and incorporated herein by this reference at **Exhibit A** (the “Policy”).

**SECTION 3. Severability.** If any section, subsection, paragraph, sentence, clause, phrase or term (each a “Provision”) in this Resolution or Policy, or any Provision’s application to any person or circumstance, is held illegal, invalid or unconstitutional by a court of competent jurisdiction, all other Provisions not held illegal, invalid or unconstitutional, or such Provision’s application to other persons or circumstances, shall not be affected. The City Council declares that it would have passed this Resolution and Policy, and each Provision therein, whether any one or more Provisions be declared illegal, invalid or unconstitutional.

**SECTION 4. CEQA.** If this Resolution qualifies as a “project” subject to California Environmental Quality Act (“CEQA”) Guidelines § 15378 and California Public Resources Code § 21065, the City Council finds that, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This Resolution adopts the Policy in a manner that complies with federal regulations. This Resolution does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new wireless facility or change to an existing wireless facility would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council finds that this Resolution is exempt from CEQA under the general rule.

**SECTION 5. Effective Date.** This Resolution shall not become effective unless and until Ordinance No. \_\_\_\_\_ becomes effective.

**SECTION 6. Publication.** The City Clerk is hereby directed to cause this Resolution or summary of this Resolution to be posted and/or published in the manner required by applicable law.

**Attachments:**

**Exhibit A – City Council Policy on Small Wireless Facilities in the Public Rights-of-Way**

\* \* \* \* \*

**EXHIBIT A**

**City Council Policy on Small Wireless Facilities in the Public Rights-of-Way**

<b>CITY OF MADERA</b>	<b>POLICY NO.</b>
<b>Adopted:</b>	
<b>Small Wireless Facilities in the Public Rights-of-Way</b>	

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## **1. PURPOSE AND INTENT**

- (a) The City of Madera (the “City”) intends this policy to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the city’s territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the city’s local values, which include without limitation the aesthetic character of the city, its neighborhoods and community. This policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the city’s visual character from potential adverse impacts and/or visual blight created or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the city’s environmental resources; (4) protecting and preserving the city’s public rights-of-way and municipal infrastructure located within the city’s public rights-of-way; and (5) promoting access to high-quality, advanced wireless services for the city’s residents, businesses and visitors.
- (b) This policy is intended to establish clear procedures for application intake and completeness review. The City Council finds that chronically incomplete applications significantly contribute to unreasonable delay and create barriers to infrastructure deployment. Chronically incomplete applications unfairly prejudice other applicants who may be prepared to submit complete applications for infrastructure in the same or substantially the same location. Chronically incomplete applications also unfairly prejudice the city’s ability to act on such applications within the “presumptively reasonable” timeframes established by the FCC. The provisions in this policy afford applicants and city staff opportunities for direct, real-time communication about completeness issues to mitigate incomplete applications prior to submittal. The provisions in this policy also encourage applicants to timely respond to incomplete notices.
- (c) This policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider’s ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity’s ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent personal wireless services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC’s regulations concerning such emissions; (5) prohibit any collocation or modification that the city may not deny under federal or California state law; (6) impose any unreasonable, discriminatory or

anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the city to preempt any applicable federal or California law.

## 2. DEFINITIONS

All references to codified statutes, regulations or other rules shall be deemed to refer to such statutes, regulations or other rules as they may be amended or superseded.

- (a) **“Accessory Equipment”** means equipment other than antennas used in connection with a small wireless facility. The term includes “transmission equipment” as defined by the FCC in 47 C.F.R. § 1.6100(b)(8).
- (b) **“Amateur Station”** means the same as defined by the FCC in 47 C.F.R. § 97.3, which defines the term as “a station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications.” This term includes amateur radio antennas and related facilities used for amateur radio services.
- (c) **“Antenna”** means same as defined by the FCC in 47 C.F.R. § 1.6002(b).
- (d) **“Approval Authority”** means the city official or body responsible for application review and vested with authority to approve or deny such applications.
- (e) **“Arterial”** means a street which provides the principle network for traffic flow in the community, connecting areas of major activity to each other and to state highways and important County roads. Arterials will generally include up to four lanes (two in each direction), although total widths of six lanes may be appropriate in some locations. To reduce traffic interruptions and improve safety, direct access via driveways is generally not permitted. The term “arterial” as used in this policy is defined in the Circulation and Infrastructure Element of the General Plan at Policy CI-3. For purposes of this policy, the streets in the Madera Loop and state highways over which the city exercises jurisdiction qualify as arterials.
- (f) **“City Engineer”** means the city of Madera City Engineer or the City Engineer’s designee.
- (g) **“Collector”** means a street which provides access and movement between residential, commercial, and industrial areas. The primary function of collector streets is to collect and distribute traffic between local streets and the arterial roadway system. Collectors will generally include up to four lanes (two in each direction). To reduce traffic interruptions and improve safety, direct access via driveways is generally not permitted. The term “collector” as used in this policy is defined in the Circulation and Infrastructure Element of the General Plan at Policy CI-3.
- (h) **“Collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(g).

- (i) **"CPUC"** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
- (j) **"Decorative Pole"** means any pole that includes decorative or ornamental features, design elements and/or materials for aesthetic purposes.
- (k) **"Director"** means the Community Development Director of the city of Madera or the Director's designee.
- (l) **"Eligible Facilities Request"** means the same as defined in 47 U.S.C. § 1455(a)(2), and as interpreted by the FCC in 47 C.F.R. § 1.6100(b)(3).
- (m) **"FCC"** means the "Federal Communications Commission", as constituted by the Communications Act of 1934, Pub. L: 73-416, 48 Stat. 1064, codified as 47 U.S.C. §§ 151 *et seq.* or its duly appointed successor agency.
- (n) **"Historic Resource"** means any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places, the California Register of Historical Resources or any "historic resource" as listed in Table HC-A of the General Plan. The term includes artifacts, records and remains related to or located within such properties. The term also includes properties with traditional religious and/or cultural importance to any Native American tribe.
- (o) **"Local/Branch Collector"** means a single lane street which collects traffic from local streets and feed into the collector and arterial system. Design speeds are lower than for Collector roadways (potentially through the use of meanders, roundabouts, narrower road sections, etc.). To reduce traffic interruptions and improve safety, direct access via driveways is generally not permitted. The term "local/branch collector" as used in this policy is defined in the Circulation and Infrastructure Element of the General Plan at Policy CI-3.
- (p) **"Local Street"** means a roadway which provides access to individual homes and businesses. Local streets have one lane in each direction. Local streets are shown on the Circulation Map for informational purposes only; the General Plan does not define the desired alignments of local streets. The term "local street" as used in this policy is defined in the Circulation and Infrastructure Element of the General Plan at Policy CI-3.
- (q) **"Non-Pole Concealment Structure"** means a structure within the public rights-of-way, other than a pole, that can be adapted (either in its current form or through a replacement) to conceal antennas and/or accessory equipment for small wireless facilities. Examples may include, without limitation, monuments, kiosks, bus shelters and other street furniture.

- (r) **"OTARD"** means any "over-the-air reception device" subject to 47 C.F.R. §§ 1.4000 *et seq.*, which generally includes satellite television dishes and certain fixed wireless antennas not greater than one meter in diameter.
- (s) **"Personal Wireless Service Facilities"** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii).
- (t) **"Personal Wireless Services"** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(i).
- (u) **"Prohibited Support Structure"** means any support structure on which the city prohibits the deployment of wireless facilities, except when authorized as a pre-approved design pursuant to this policy. Prohibited support structures include decorative poles; traffic signal poles, cabinets or related structures; new, nonreplacement wood poles; and any utility pole scheduled for removal within 18 months from the time the Director acts on the application for such pole.
- (v) **"Public Right-of-Way"** or **"Public Rights-of-Way"** means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes. The term does not include private or public utility easements unless such easement is reserved for or dedicated to or open to the use by the general public for road or highway purposes.
- (w) **"RF"** means radio frequency.
- (x) **"Section 6409"** means Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a).
- (y) **"Shot Clock"** means the presumptively reasonable time defined by the FCC in which a state or local government must act on an application or request for authorization to place, construct or modify personal wireless service facilities.
- (z) **"Small Wireless Facility"** means same as defined by the FCC in 47 C.F.R. § 1.6002(l).

### 3. **APPLICABILITY**

- (a) **General.** This policy applies to all requests for the city's regulatory authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy small wireless facilities within the public rights-of-way within the city's territorial and jurisdictional boundaries, unless expressly exempted pursuant to this section 3.

- (b) **Small Wireless Facilities on City Property.** This policy applies to permit applications, submitted to the city in its regulatory capacity, for small wireless facilities on property or structures owned or controlled by the city; provided, however, that this policy does not govern whether or under what terms and conditions the city, in its proprietary capacity as the property or structure owner, would lease, license or otherwise allow a small wireless facility on such property or structures.
- (c) **Eligible Facilities Requests.** Notwithstanding anything in this policy to the contrary, this policy shall not be applicable to eligible facilities requests and/or other applications submitted for approval pursuant to Section 6409.
- (d) **Other Exemptions.** Notwithstanding anything in this policy to the contrary, this policy shall not be applicable to the following:
  - (1) wireless facilities operated by the city for public purposes;
  - (2) small wireless facilities installed completely indoors or within venues and used to extend personal wireless services into a business or subscriber's private residence, such as a femto cell or indoor DAS;
  - (3) OTARD antennas;
  - (4) antennas and related transmission equipment used in connection with a duly authorized amateur station; or
  - (5) wireless facilities or other transmission equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power, generation, transmission and distribution facilities subject to CPUC General Order 131-D.

#### **4. REQUIRED PERMITS AND APPROVALS**

- (a) **Site Plan Review.** All small wireless facilities shall require a site plan review subject to the Director's prior review and approval.
- (b) **Other Permits and Regulatory Approvals.** In addition to a site plan review, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or other approvals issued by other city departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility must contain a valid site plan approval issued by the city for the proposed small wireless facility. Any application for any ministerial permit(s) submitted without such site plan approval may be denied without prejudice. Any site plan approval granted under this policy shall remain subject to all lawful conditions and/or legal requirements associated with



such other permits or approvals. Furthermore, and to avoid potential confusion, an exemption from the site plan review requirement under section 3(d) does not exempt the same wireless facilities from any other permits or approvals required, which includes without limitation any ministerial permits from the city.

## **5. ADMINISTRATIVE ORDERS AND REGULATIONS**

In addition to the requirements in this policy, the Director may adopt such orders or regulations as the Director deems necessary or appropriate to protect and maintain public health, safety, welfare and convenience. All small wireless facilities must conform to all applicable orders and regulations issued by the Director, unless the Director, in the Director's discretion, grants a prior written waiver to deviate, in whole or in part, any such order or regulation. Waivers by the Director shall be considered and approved or denied on a competitively neutral and nondiscriminatory basis. The Director shall develop and publish guidelines to implement the waivers authorized by this section.

## **6. PERMIT APPLICATIONS**

- (a) **Application Required.** The Director shall not approve any requests for authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy small wireless facilities except upon a complete and duly filed application consistent with this section and any other written rules or requirements the city or the Director may establish from time to time in any publicly-stated format.
- (b) **Application Fee.** The applicant shall submit the applicable permit application fee adopted by City Council resolution. Batched applications must include the permit application fee for each small wireless facility in the batch. If no permit application fee has been adopted, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to submit a deposit estimated by the Director to reimburse the city for its reasonable costs incurred in connection with the application. Should the deposit be inadequate an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be returned to the applicant.
- (c) **Application Content.** All applications for a permit must include all the information and materials required by the Director for the application. The City Council authorizes the Director to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this policy. All such requirements must be in written form and publicly stated to provide applicants with prior notice. Notwithstanding anything in this policy to the contrary, all applications shall, at a minimum, require the applicant to demonstrate that the proposed project will be in planned compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions.

- (d) **Application Submittal.** Unless the Director establishes an alternative submittal procedure pursuant to section 5, all applications must be submitted to the city during at a pre-scheduled appointment. Applicants may submit one application per small wireless facility up to a maximum of five separate applications for small wireless facilities together as a batched application per appointment but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The city shall use reasonable efforts to provide the applicant with an appointment within five working days after the city receives a written request. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed.
- (e) **Optional Pre-Submittal Conference.** The city shall provide prospective applicants with the opportunity to schedule and attend a pre-submittal conference with city staff. The city encourages pre-submittal conferences for all applications. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, any latent issues in connection with the proposed or existing small wireless facility, such as compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other city departments and/or divisions responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that city staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The city shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the city for its reasonable costs to provide the services rendered in the pre-submittal conference.
- (f) **Optional Community Meetings.** The city encourages, but does not require, applicants to schedule, notice, arrange, and attend a voluntary pre-submittal community meeting with all interested members of the public. This voluntary community meeting does not cause the shot clock to begin and is intended to give applicants the opportunity to hear from members of the public regarding the proposed deployment. Applicants should schedule any voluntary community meetings at times and in locations that are conducive to maximizing public participation. Applicants are encouraged (but not required) to bring any draft applications, plans, maps, presentations or other materials to facilitate the public's understanding of the applicant's proposal. Applicants are also encouraged (but not required) to maintain minutes or a comment log of the community meeting. The city seeks to encourage dialogue that may allow applicants to address areas of concern and may lessen the likelihood of appeals of the Director's decision to the City Manager by any interested person or entity. Community meetings may be conducted before or after submittal.

- (g) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, any application governed under this policy will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the city within 90 calendar days after the city deems the application incomplete in a written notice to the applicant. The Director, in the Director's discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control.

## **7. PUBLIC NOTICE**

Within five calendar days after the Director acts on an application governed under this policy or before the shot clock expires (whichever occurs first), the Director shall send a written notice to the applicant and any interested person that requests notice of the decision. If the Director denies the application (with or without prejudice), the written notice to the applicant must contain the reasons for the denial. All decision notices shall include instructions for how and when to file an appeal.

## **8. APPROVALS; DENIALS; APPEALS**

- (a) **Initial Administrative Decision.** The Director shall approve, conditionally approve or deny a complete and duly filed permit application without a public hearing. To allow interested persons with a meaningful opportunity to appeal the Director's decision, the Director shall act within 29 shot clock days from a duly filed application.
- (b) **Required Findings for Approval.** The Director (or the City Manager on appeal) may approve or conditionally approve an application for a site plan review only when it makes all the following findings:
- (1) the proposed project qualifies as a "small wireless facility" as defined by the FCC;
  - (2) the proposed project complies with the location standards in section 9;
  - (3) the proposed project complies with the design standards in section 10;
  - (4) the proposed project meets the required findings for site plan review under Madera Municipal Code § 10-3.4.0106;
  - (5) the applicant has shown that it can obtain any wireline communications and electrical service connections necessary to operate the small wireless facility and the project plans show the proposed route for all such connections between their source and the small wireless facility;

- (6) the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and
- (7) all public notices required for the application have been given.
- (c) **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or state laws, nothing in this policy is intended to limit the Director's ability to conditionally approve or deny without prejudice any application governed under this policy as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the general plan and any applicable specific plan, the Madera Municipal Code and/or this policy.
- (d) **Appeals.** Any interested person may appeal the Director's decision to the City Manager. The appeal must be filed with the City Clerk within seven calendar days from the date of the Director's decision. The appeal must contain a short and plain statement about the basis for the appeal, which may be supplemented after the notice period has expired but before the appeal hearing. Appeals from an approval shall not be permitted when based on reasons otherwise compliant under this policy, including appeals based on duly adopted preapproved designs or the environmental effects from RF emissions that are compliant with applicable FCC regulations and guidelines. The City Manager shall hear appeals *de novo* and issue the applicant and any person entitled to notice a written decision within five calendar days after the appeal hearing. If the City Manager denies the application on appeal (whether by affirmation or reversal), the written notice shall contain the reasons for the decision. The City Manager's decision shall be final and not subject to any further appeals.

## 9. LOCATION STANDARDS

- (a) **Locations.** To assist applicants, staff and the approval authority understand and respond to the community's aesthetic preferences and values, this section describes preferred and discouraged locations for small wireless facilities in the public rights-of-way.
  - (1) **Preferred Locations.** The city requires small wireless facilities in the public rights-of-way to be installed at locations, ordered from most preferred to least preferred, as follows:
    - (A) industrial zones along any road classification (arterial, collector, local/branch collector, local street);
    - (B) commercial zones along any road classification (arterial, collector, local/branch collector, local street);
    - (C) other non-residential zones along arterials or collectors;

- (D) other non-residential zones along local/branch collector or local streets;
  - (E) Public Facilities zone not directly adjacent to any residential zones.
- (2) **Discouraged Locations.** Applicants shall not propose to install small wireless facilities in a discouraged location unless no alternative site in a preferred location would be technically feasible. If all preferred locations are technically infeasible, the applicant shall use the least-discouraged location. The following locations are discouraged, and ordered from most discouraged to least discouraged:
- (A) any location within 100 feet of a historically designated property or resource.
  - (B) any location within 100 feet of a residential zone or within 100 feet of a residence;
  - (C) residential zones along local streets;
  - (D) residential zones along local/branch collectors;
  - (E) residential zones along collectors;
  - (F) residential zones along arterials;
  - (G) Public Facilities zone located directly adjacent to residential zones.
- (3) **Additional Location Standards.** In addition to all other standards in this section 9, small wireless facilities and all associated antennas, accessory equipment or improvements shall:
- (A) be placed as close as possible to alignment with the property line that divides two parcels abutting the public rights-of-way;
  - (B) not be placed directly in front of any ground-level door;
  - (C) not be placed directly in front of any first- or multi -story window;
  - (D) not be placed within any clear zone at any intersections;
  - (E) not be placed in any location that obstructs view lines for traveling vehicles, bicycles and pedestrian;
  - (F) not be placed in any location that obstructs views of any traffic signs or signals;

- (G) not be placed in any location that obstructs illumination patterns for existing streetlights;
  - (H) for new, non-replacement support structures, be placed at least 50 feet from any streetlight, utility pole or other similar support structure.
- (b) **Support Structures.** To assist applicants, staff and the approval authority understand and respond to the community's aesthetic preferences and values, and to mitigate unnecessary obstructions in the public rights-of-way, this section 9(b) describes preferred and prohibited support structures.
- (1) **Support Structure Preferences.** The city requires small wireless facilities in the public rights-of-way to be installed on support structures, ordered from most preferred to least preferred, as follows:
- (A) existing or replacement non-pole concealment structures, such as monuments, kiosks, bus shelters and other street furniture;
  - (B) existing or replacement streetlights;
  - (C) existing or replacement utility poles;
  - (D) new, non-replacement streetlights;
  - (E) new, non-replacement non-pole concealment structures.
- (2) **Prohibited Support Structures.** Small wireless facilities shall not be installed on the following support structures:
- (A) traffic signals;
  - (B) decorative poles;
  - (C) temporary or non-replacement wood poles.
- (c) **Replacement Pole Locations.** All replacement poles must be: (1) located as close to the removed pole's location as possible; (2) aligned with the other existing poles along the public rights-of-way; and (3) compliant with all applicable standards and specifications issued by the Director, which may include, without limitation, requirements related to aesthetics, materials and safety.
- (d) **Encroachments Over Private Property.** No small wireless facility, or any antenna, accessory equipment or other improvements associated with a small wireless facility, may extend onto or over any private or public property outside the public rights-of-way without the property owner's prior written consent.

## 10. DESIGN STANDARDS

- (a) **General Design Standards.** The standards in this section 10(a) shall be applicable to all small wireless facilities in the public rights-of-way:
- (1) **Concealment.** All small wireless facilities must be stealth to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses.
  - (2) **Overall Height.** No small wireless facility may extend more than six feet above the support structure, plus any minimum separation between the antenna and other pole attachments required by applicable health and safety regulations.
  - (3) **Finishes.** All exterior surfaces shall be painted, colored and/or wrapped in flat, nonreflective hues that match the underlying support structure or blend with the surrounding environment. All surfaces shall be treated with graffiti-resistant sealant. All finishes shall be subject to the approval authority's prior approval.
  - (4) **Noise.** All small wireless facilities must be compliant with all applicable noise regulations. Equipment likely to create noise, such as cooling fans, are strongly discouraged except when placed in an underground vault. The approval authority may require the applicant to incorporate appropriate noise-baffling materials and/or noise-mitigation strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations.
  - (5) **Trees and Landscaped Plants.** Small wireless facilities shall not cause ground disturbance within any tree drip line. Small wireless facilities may not displace any existing tree or landscape features. All small wireless facilities proposed to be placed in a landscaped area in the public rights-of-way must include landscape features (which may include, without limitation, shrubs and ground cover) and a landscape maintenance plan. The approval authority may require additional landscape features for small wireless facilities proposed to be placed in a landscaped area in the public rights-of-way to screen the small wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the concealment required under this policy. All plants proposed or required must be native and/or drought-resistant and be consistent with any landscaping requirements for the underlying zone.
  - (6) **Security Measures.** To prevent unauthorized access, theft, vandalism, attractive nuisance or other hazards, reasonable and appropriate security measures, such as locks, removable climbing pegs and anti-climbing devices, may be approved. Security measures shall be designed and implemented in a manner that enhances or contributes to the overall concealment, and the approval authority may condition approval on additional concealment elements to mitigate any aesthetic impacts, which may include, without limitation,

additional landscape features. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures. Cabinets and equipment shrouds must be kept secured to prevent unauthorized access. Alarm systems shall not include any audible sirens or other sounds.

- (7) **Secondary Power Sources.** The approval authority may approve secondary or backup power sources on a case-by-case basis. The approval authority shall not approve any permanent diesel generators within the public rights-of-way or at any other location or within 200 feet from any residence; provided, however, the approval authority may approve sockets or other connections used for temporary backup generators.
- (8) **Lights.** All new or replacement street lights and street light fixtures must be aimed and shielded so that their illumination effects are directed downwards and confined within the public rights-of-way in a manner consistent with any other standards and specifications as identified or required by the approval authority. Small wireless facilities may not include exterior lights other than as may be required under Federal Aviation Administration, FCC or other applicable federal or state governmental regulations. All antennas, accessory equipment and other improvements with indicator, status or other lights must be installed in locations and within enclosures that eliminate illumination impacts visible from publicly accessible areas. Any light beacons or lightning arresters shall be included in the overall height calculation.
- (9) **Signage; Decals; Advertisements.** All small wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities may not bear any other signage, decals or advertisements unless expressly approved by the approval authority, required by law or recommended under FCC or other federal governmental agencies for compliance with RF emissions regulations.
- (10) **Parking.** Small wireless facilities and any associated accessory equipment or other improvements shall not reduce any street parking spaces within the public rights-of-way.
- (11) **Fire Safety.** All small wireless facilities shall include (1) a power shut off immediately accessible to fire service personnel, through a Knox box or similar rapid-access system approved by the fire safety authority, upon arrival at the scene of a fire and/or anticipated power surge due to power being turned off or on for any reason; (2) surge protection devices capable of mitigating a direct or partial direct lightning discharge; (3) surge protection devices capable of mitigating significant electrical disturbances that may enter the small wireless facility via conductive cables; (4) at least one-hour fire resistant interior surfaces to be used in the composition of all structures; and (5) monitored automatic fire



notification and suppression systems for all small wireless facilities as approved by the applicable fire safety authority.

- (12) **Compliance with Laws.** All small wireless facilities must be designed and sited in compliance with all applicable federal, state and local laws, regulations, rules, restrictions and conditions, which includes without limitation the California Building Standards Code, Americans with Disabilities Act, general plan and any applicable specific plan, the Madera Municipal Code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
- (b) **Antennas.** In addition to all generally applicable design standards in section 10(a), this Section 10(b) sets out specific preferences and standards for antennas.
  - (1) **Placement.** Antennas should be placed above the pole, unless the approval authority finds that an alternative placement results in an aesthetically superior design based on site-specific circumstances.
  - (2) **Stealth/Concealment.** All antennas and associated cables, jumpers, wires, mounts, masts, brackets and other connectors and hardware must be installed within a unified shroud or “radome” to the extent technically feasible. Antenna shrouds must be visually consistent with the underlying pole’s design, color and scale. Antenna shrouds placed above a pole must taper down to the point where the shroud and pole connect to conceal the cables below the antennas and create a smooth transition into the pole. All antenna mounting posts shall be trimmed so that the post does not extend above the antenna. For antennas approved to be affixed to the side of the pole within a shroud, all cables must be concealed within the shroud and extension arm to create a smooth transition into the pole, to the maximum extent feasible, or back into the external conduit on the pole, if any.
  - (3) **Volume.** Any individual antenna (including its concealment) shall not exceed three cubic feet in volume. The cumulative limit for all antenna (including their concealment) on a single small wireless facility shall not exceed: (A) three cubic feet for small wireless facilities within 250 feet from a residential dwelling; or (B) six cubic feet for small wireless facilities in all other locations.
- (c) **Accessory Equipment.** In addition to all generally applicable design standards in Section 10(a), this Section 10(c) sets out specific preferences and standards for accessory equipment.
  - (1) **Placement Preferences.** This subsection describes the city’s general preferences for accessory equipment placement and configuration on or around the pole. Applicants shall propose small wireless facilities in compliance with these preferences to the maximum extent feasible. The approval authority may approve a lesser-preferred configuration for the accessory equipment

when the applicant demonstrates that more-preferred configurations are technically infeasible, or the approval authority finds that a lesser-preferred configuration is more consistent with existing poles and the surrounding environment. The city generally prefers accessory equipment to be placed, ordered from most preferred to least preferred, as follows:

- (A) within an environmentally controlled underground equipment vault;
  - (B) within an architecturally integrated enclosure at the base of the pole;
  - (C) within a shroud mounted above ground level on the pole;
  - (D) within a separate surface-mounted equipment cabinet.
- (2) **Volume.** The cumulative limit for all accessory equipment (including their concealment) on a single small wireless facility shall not exceed: (A) 10 cubic feet for small wireless facilities within 250 feet from a residential dwelling; or (B) 17 cubic feet for small wireless facilities in all other locations. These limits shall not be applicable to undergrounded accessory equipment.
- (3) **Undergrounded Equipment.** Consistent with CPUC and local policies, the city strongly prefers undergrounded accessory equipment whenever possible because it mitigates unnecessary physical obstructions and aesthetic harm caused by unsightly infrastructure in the public rights-of-way. This section 10(c)(3) sets out specific preferences and standards for undergrounded accessory equipment.
- (A) **When Required.** Accessory equipment (other than any electric meter (where permitted) and an emergency disconnect switch) shall be placed underground when proposed in any (i) underground utility district; (ii) any area where all existing utilities are substantially undergrounded; or (iii) any location where the approval authority finds substantial evidence that the additional above-ground accessory equipment would incommode the public's uses in the public rights-of-way.
  - (B) **Equipment Vaults.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the city's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover and properly secured to prevent unauthorized access. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Vault lids may contain manufacturer and site operator information but shall not exhibit commercial advertisements.

- (4) **Base-Mounted Accessory Equipment.** This section 10(c)(4) sets out specific preferences and standards for base-mounted accessory equipment.
- (A) **Concealment.** Base-mounted accessory equipment enclosures must be architecturally integrated with the pole and surrounding environment. For poles that already include a larger or decorative base, the base-mounted accessory equipment enclosure should mimic the existing design and/or decorative features. Base-mounted accessory equipment enclosures should include a tapered or decorative transition between the enclosure and the pole, unless (i) the proposed facility is a pre-approved design that does not include such a transition or (ii) the approval authority finds that such a transition would be less aesthetically desirable considering the pole and surrounding environment.
  - (B) **Maximum Dimensions.** Any base-mounted accessory equipment enclosure integrated into the pole shall not exceed the following dimensions: (i) 48 inches in height, measured from grade level to the highest point on the enclosure, but excluding any decorative design elements that transition the wider base into the narrower pole; and (ii) 26 inches in length or width on any rectangular enclosure or 28 inches in diameter for any round, hexagonal, octagonal or similarly shaped enclosure.
  - (C) **Graffiti and Litter Prevention.** Base-mounted accessory equipment enclosures must be coated with anti-graffiti finishes. To prevent litter and other objects placed on such equipment, base-mounted accessory equipment enclosures should not have any flat horizontal surfaces greater than 1.5 square inches.
- (5) **Pole-Mounted Accessory Equipment.** This section 10(c)(5) sets out specific preferences and standards for pole-mounted accessory equipment.
- (A) **Concealment.** Applicants should propose to place any pole-mounted accessory equipment in the least conspicuous position under the circumstances presented by the proposed pole and location. Pole-mounted accessory equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. Unless placed behind a street sign or some other concealment that dictates the equipment orientation on the pole, all pole-mounted accessory equipment should be oriented away from prominent views. In general, the proper orientation will likely be toward the street to reduce the overall profile when viewed from the nearest abutting properties. If orientation toward the street is not feasible, then the proper orientation will most likely be away from oncoming traffic. If more than one orientation would be technically feasible, the Director may select the most appropriate orientation.

- (B) **Minimum Ground Clearance.** The lowest point on any pole-mounted accessory equipment shall be at least 8 feet above ground level adjacent to the pole. If applicable laws require any pole-mounted accessory equipment component to be placed less than 8 feet above ground level, the clearance from ground level shall be no less than required for compliance with such laws.
  - (C) **Horizontal Extensions.** Pole-mounted accessory equipment should be as close to flush with the pole as technically feasible and shall not extend over any roadway for vehicular travel or any abutting private property. If applicable laws preclude flush-mounted accessory equipment, the separation gap between the pole and the accessory equipment shall be no greater than required for compliance with such laws and concealed by opaque material (such as cabinet “flaps” or “wings”).
- (6) **Surface-Mounted Equipment Cabinets.** This section 10(c)(6) sets out specific preferences and standards for surface-mounted accessory equipment.
- (A) **Concealment.** Concealment for surface-mounted equipment cabinets will be assessed on a site-specific basis and consider the location and existing uses and aesthetic elements in the vicinity. In general, the city prefers surface-mounted accessory equipment to be concealed as follows: (i) within a landscaped parkway, median or similar location, behind or among new/existing landscape features and painted or wrapped in flat natural colors to blend with the landscape features; (ii) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks; and (iii) if neither landscaping concealment or street furniture is available, accessory equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing surface-mounted accessory equipment cabinets in the vicinity.
  - (B) **Public Safety.** To promote and protect public health and safety and prevent potential hazards hidden behind large equipment cabinets, individual surface-mounted accessory equipment cabinet may not exceed four feet in height or four feet in width. Surface-mounted accessory equipment enclosures must be coated with anti-graffiti finishes. To prevent litter and other objects placed on such equipment, surface-mounted accessory equipment enclosures should not have any flat horizontal surfaces greater than 1.5 square inches.
- (d) **Utilities.** The provisions in this section 10(d) are applicable to all utilities and other related improvements that serve small wireless facilities.

- (1) **Overhead Lines.** The approval authority shall not approve any new overhead utility lines in underground utility districts. In areas with existing overhead lines, new communication lines shall be “overlashed” with existing communication lines to the extent feasible, but service conduits shall be placed underground. No new overhead utility service drops shall be permitted to traverse any roadway used for vehicular transit.
  - (2) **Vertical Cable Risers.** All cables, wires and other connectors must be routed through conduits within the pole or other support structure, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, such as with wood utility poles, applicants shall route them through external conduits or shrouds that have been finished to match the underlying pole. The applicant shall minimize the number and size of external conduits to the extent technically feasible.
  - (3) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds
  - (4) **Electric Meters.** Small wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a separate meter pedestal per city standards. If the proposed project involves a surface-mounted equipment cabinet, an electric meter may be integrated with the cabinet, but the approval authority shall not approve a separate surface-mounted electric meter pedestal. In no case shall permittee be permitted to use electricity/power provided by a city-owned streetlight or city-owned circuit without separate written authorization from the city.
  - (5) **Existing Underground Conduits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants are encouraged to use existing conduits whenever available and technically feasible. Access to any conduit owned by the city shall be subject to a separate written agreement and the Director’s prior written approval, which the Director may withhold or condition as the Director deems necessary or appropriate to protect the city’s infrastructure, prevent interference with the city’s municipal functions and public health and safety.
- (e) **Historic Resources.** This policy shall not be construed or applied to limit the city’s authority to enforce other laws or regulations intended to protect or preserve historic resources. Any small wireless facility that adversely impacts any historic resource shall not be approved without an exception pursuant to section 13.

## 11. PRE-APPROVED DESIGNS

- (a) **Preface.** To expedite the review process and encourage collaborative designs among applicants and the city, the City Council authorizes the Director to designate one or more pre-approved designs for small wireless facilities. This section sets out the process to establish or repeal a pre-approved design and the expedited review procedures and findings applicable to these applications.
- (b) **Adoption.** The Director, in the Director's discretion, may establish a pre-approved design when the Director finds that a proposed pre-approved design would be (i) in substantial conformance with the applicable design requirements in section 10 and (ii) architecturally compatible with the areas in which the pre-approved design would be available. The Director shall post a public notice at City Hall and on the city's website. The notice must generally describe the pre-approved design, include a photograph or photo simulation, specify whether the pre-approved design would be limited or restricted in any areas. The pre-approved design shall become effective 15 days from the notice required in this section. A decision by the Director not to adopt a proposed pre-approved design or the Director's failure to act on a request for a proposed pre-approved design is not appealable.
- (c) **Repeal.** The Director may repeal any pre-approved design by notice posted at City Hall and on the city's website. The repeal shall be immediately effective. The Director's repeal, refusal to repeal or failure to act on a request to repeal a pre-approved design is not appealable.
- (d) **Nondiscrimination.** An established pre-approved design may be used by any applicant, whether the applicant originally initiated the pre-approval process or not. The Director's decision to adopt a pre-approved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the pre-approved plans. Any other vendor or manufacturer that fabricates a small wireless facility to the standards and specifications in the pre-approved design with like materials, finishes and overall quality shall be acceptable as a pre-approved design.
- (e) **Modified Findings for Approval.** For any complete site plan review application using a pre-approved design, the approval authority shall presume that the proposed project complies with the findings required under sections 8(b)(1) and 8(b)(3). No such presumption shall be applicable to the required findings under sections 8(b)(2), 8(b)(4) and 8(b)(5).

## 12. STANDARD CONDITIONS OF APPROVAL

- (a) **Standard Conditions.** Except as may be modified in section 12(b), all small wireless facilities approved under this policy shall be automatically subject to the conditions in this section 12(a) and these conditions shall be deemed to be

incorporated by reference to any site plan approval, whether approved by the city or deemed approved by law.

- (1) **Permit Term.** This permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the city to establish a shorter term for public safety reasons or substantial land use reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this small wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.
- (2) **Permit Renewal.** The permittee may apply for permit renewal not more than one year before this permit expires. The permittee must demonstrate that the subject small wireless facility complies with all the conditions of approval associated with this permit and all applicable provisions in the Madera Municipal Code and this policy that exists at the time the decision to renew or not renew is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with the Madera Municipal Code, this policy or other applicable law. Upon renewal, this permit will automatically expire 10 years and one day from its issuance.
- (3) **Approved Plans.** Any final construction plans shall incorporate the permit, together with all conditions of approval and the photo simulations associated with the permit (collectively, the “Approved Plans”). The permittee must construct, install and operate the small wireless facility in substantial compliance with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the small wireless facility, shall be subject to the Director’s prior review and approval. After the Director receives a written request to approve an alteration, modification or other change to the Approved Plans, the Director may refer the request to the approval authority if the Director finds that it substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.
- (4) **CPUC GO-159A Certification.** Within 15 business days after the city issues this permit, the permittee shall serve copies of California Public Utility Commission notification letters required by CPUC General Order No. 159A to the City Clerk, Director and City Manager.
- (5) **Build-Out Period.** This permit will automatically expire 12 months from the approval date (the “Build-Out Period”) unless the permittee obtains all other permits and approvals required to install, construct and/or operate the

approved small wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, support structure or the small wireless facility and/or its use. The permittee may request in writing, and the city may grant in writing, one six-month extension if the permittee submits substantial and reliable written evidence demonstrating justifiable cause for such extension. If the Build-Out Period and any extension finally expire, this permit shall be automatically void but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.

- (6) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility approved under this policy or deemed-approved by law, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- (7) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this permit. At all times, the permittee shall keep the site area free from all litter and debris. The permittee shall regularly inspect the small wireless facility to determine whether any maintenance is needed. The permittee, at no cost to the city, shall remove and remediate any graffiti or other vandalism on the small wireless facility within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- (8) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("Laws") applicable to the permittee, the subject property, the small wireless facility or any use or activities in connection with the use authorized in this permit, which includes without limitation any Laws applicable to human exposure to RF emissions and any standards, specifications or other requirements identified by the Director (such as, without limitation, those requirements affixed to an encroachment permit). The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws. No failure or omission by the city to timely notice, prompt or enforce compliance with any applicable provision in the Madera Municipal Code, this policy any permit, any permit condition or any



applicable Laws, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with same.

- (9) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site and/or small wireless facility. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Madera Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the city or other state or federal government agency or official with authority to declare an emergency within the city. The Director may issue a stop work order for any activities that violates this condition in whole or in part. If the Director finds good cause to believe that ambient noise from the small wireless facility or related equipment violates applicable provisions in the Madera Municipal Code, the Director, in addition to any other actions or remedies authorized by the permit, the Madera Municipal Code or other applicable laws, may require the permittee to commission a noise study by a qualified professional to evaluate the small wireless facility's compliance.
- (10) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that, upon reasonable prior notice to the permittee, the city's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the small wireless facility and related equipment and/or improvements to ensure compliance with this permit and all associated conditions. Notwithstanding the prior sentence, the city's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the city's officers, officials, staff or other designees while any such inspection or emergency access occurs.
- (11) **Contact Information.** At all times relevant to this permit, the permittee shall keep on file with the Director basic contact and site information. This information shall include, but is not limited to, the following: (A) the name, physical address, notice address (if different), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) site operator, (ii) equipment owner, (iii) site manager and (iv) agent for service of process; (B) the small wireless facility's site identification number and/or name used by the permittee and, to the extent applicable, site operator,

equipment owner and site manager; and (C) a toll-free telephone number to the small wireless facility's network operations center where a live person with power-down control over the small wireless facility is available 24 hours-per-day, seven days-per-week. Within 10 business days after a written request by the city, the permittee shall furnish the Director with an updated form that includes all the most-current information described in this condition.

- (12) **Indemnification.** The permittee and, if applicable, the property owner upon which the small wireless facility is installed shall defend, indemnify and hold harmless the city, City Council and the city's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (A) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the city's approval of this permit, and (B) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this permit or the small wireless facility. In the event the city becomes aware of any claims, the city will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the city shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the city's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse the city for any costs and expenses directly and necessarily incurred by the city in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the city to approve this permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this permit.
- (13) **Removal Bond.** Before the city issues any permits required to commence construction in connection with this permit, the permittee shall post a bond issued by a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or similar infrastructure removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the small wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing

or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the small wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject small wireless facility in accordance with this condition.

- (14) **Permit Revocation.** Any permit granted under this policy or deemed approved by the operation of law may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the small wireless facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the small wireless facility and any associated conditions with such permit(s). A permit granted under this policy or deemed approved by the operation of law may be revoked only by the City Council after a duly notice public hearing. Before any public hearing to revoke a permit granted under this policy or deemed approved by the operation of law, the Director must issue a written notice to the permittee that specifies (A) the small wireless facility; (B) the violation(s) to be corrected; (C) the timeframe in which the permittee must correct such violation(s); and (D) that, in addition to all other rights and remedies the city may pursue, the city may initiate revocation proceedings for failure to correct such violation(s). The City Council may revoke a permit when it finds substantial evidence in the written record to show that the small wireless facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the small wireless facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.
- (15) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the permit application, this permit, the Approved Plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the permit (collectively, "Records"). If the permittee does not maintain such Records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing Records will be construed against the permittee. The permittee shall protect all Records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep Records in an electronic format; provided, however, that hard copies or electronic Records kept in the city's regular files will control over any conflicts between such city-controlled copies or Records and the permittee's electronic

copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any Records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

- (16) **Abandoned Facilities.** The small wireless facility authorized under this permit shall be deemed abandoned if not operated for any continuous 12-month period. Within 90 days after a small wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Madera Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the city shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the city in connection with such removal and/or restoration activities and shall reimburse the city for all such costs 30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs.
- (17) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the city. The permittee shall be responsible to maintain any replacement landscape features for a three-year period after such landscaping has been installed. Notwithstanding anything in this condition to the contrary, the Director may agree in a written agreement signed by the permittee to accept an annual in-lieu fee to perform the maintenance work on the permittee's behalf.
- (18) **Cost Reimbursement.** The permittee acknowledges and agrees that (A) the permittee's request for authorization to construct, install and/or operate the small wireless facility will cause the city to incur costs and expenses; (B) the permittee shall be responsible to reimburse the city for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the small wireless facility; (C) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse the city for all such costs

30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs; and (D) the city shall have the right to withhold any permits or other approvals in connection with the small wireless facility until and unless any outstanding costs have been reimbursed to the city by the permittee.

- (19) **Future Undergrounding Programs.** Notwithstanding any term remaining on this permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility is located, the permittee must also underground its equipment, except the antennas and any approved electric meter or related electric-service equipment required by the electric service provider to remain above ground, at approximately the same time. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition; provided, however, that the Director may approve an alternative concealment plan for such equipment that complies with the city's then current design regulations. Small wireless facilities installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the city's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
- (20) **Electric Meter Upgrades.** If the small wireless facility includes a separate or ground-mounted electric meter pedestal and the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
- (21) **Rearrangement and Relocation.** The permittee acknowledges that the city, in its sole discretion and at any time, may: (A) change any street grade, width or location; (B) add, remove or otherwise change any improvements in, on, under or along any street owned by the city or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (C) perform any other work deemed necessary, useful or desirable by the city (collectively, "City Work"). The city reserves the rights to do any and all City Work without any admission on its part that the city would not have such rights without the express reservation in this permit. If the City Engineer determines that any City Work will require the permittee's small

wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility within a reasonable time after the City Engineer's notice, the city may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The city may exercise its rights to rearrange or relocate the permittee's small wireless facility without prior notice to permittee when the City Engineer determines that City Work is immediately necessary to protect public health or safety. The permittee shall reimburse the city for all costs and expenses in connection with such work within 30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs.

- (22) **Successors and Assigns.** The conditions, covenants, promises and terms contained in this permit will bind and inure to the benefit of the city and permittee and their respective successors and assigns.
  - (23) **Truthful and Accurate Statements.** The permittee acknowledges that the city's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the city in connection with this permit or the small wireless facility approved under the this permit, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
  - (24) **City's Standing Reserved.** The city's grant or grant by operation of law of a permit pursuant to this policy does not waive, and shall not be construed to waive, any standing by the city to challenge any (A) FCC rules or regulations that interpret the Telecommunications Act and/or Section 6409 of the Spectrum Act or (B) any permit issued pursuant to this policy.
  - (25) **Severable Conditions.** If any provision in these conditions or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (A) such provision or its application to such person, entity or circumstance will be deemed severed from this permit; (B) all other provisions in this permit or their application to any person, entity or circumstance will not be affected; and (C) all other provisions in this permit or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.
- (b) **Modified Conditions.** The City Council authorizes the Director to modify, add or remove conditions to any site plan approval as the Director deems necessary or

appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in section 12(a) to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment needed for compliance with the Madera Municipal Code, this policy, generally applicable health and safety requirements and/or any other applicable laws.

### **13. EXCEPTIONS**

- (a) **Preface.** The provisions in this section establish a procedure by which the city may grant an exception to the standards in this policy but only to the extent necessary to avoid conflict with applicable federal or state law. When the applicant requests an exception, the approval authority shall consider the findings in section 13(b) in addition to the findings required under section 8(b). Each exception is specific to the facts and circumstances in connection with each application. An exception granted in one instance does not create a presumption or expectation that an exception will be granted in any other instance.
- (b) **Findings for an Exception.** The approval authority may grant an exception to any provision or requirement in this policy only if the approval authority finds that:
  - (1) a denial based on the application's noncompliance with a specific provision or requirement would violate federal law, state law or both; or
  - (2) a provision in this policy, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law.
- (c) **Scope of Exception.** If the approval authority finds that an exception should be granted, the exception shall be narrowly tailored so that the exception deviates from this policy to least extent necessary for compliance with federal or state law.
- (d) **Burden of Proof.** The applicant shall have the burden to prove to the approval authority that an exception should be granted pursuant to this section. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for an exception.

### **14. PEER REVIEW AND INDEPENDENT CONSULTANTS**

- (a) **Authorization.** The City Council authorizes the Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection any permit application. The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include, without limitation: (1) permit application completeness and/or accuracy; (2) pre-construction planned compliance with

applicable regulations for human exposure to RF emissions; (3) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (4) whether and to what extent a proposed project will comply with applicable laws; (5) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the city's discretion to review; and (6) any other issue identified by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant prepare written report, testify at public meetings, hearings and/or appeals and attend meetings with city staff and/or the applicant.

- (b) **Cost Reimbursement.** Subject to applicable laws, the applicant shall be responsible for the reasonable costs actually incurred by the city in connection with a consultant's review, which may include, without limitation, costs incurred by the consultant to attend and participate in any meetings or hearings related to the application. Within a reasonable time after notice from the Director, the applicant shall deposit funds in an amount equal to the estimated costs for the consultant's services, as determined by the Director. The funds shall be applied to the consultant's invoices as such invoices are approved by the Director. If the deposit exceeds the total costs for the consultant's services, the Director shall promptly return any unused funds to the applicant after the small wireless facility has been installed and passes a final inspection. If the reasonable costs for the consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The city shall not issue any building permit or encroachment permit to any applicant with any unpaid invoices.

## **15. VIOLATIONS**

Any use or condition caused or permitted to exist in violation of any provision of this policy shall be and hereby is declared a public nuisance and may be subject to administrative citations as set forth in Madera Municipal Code Title I, Chapter 9, abatement pursuant to Madera Municipal Code §§ 10-3.1601 *et seq.*, California Code of Civil Procedure section 731, or any other remedy available to the city.



## **APPENDIX A – FEDERAL STATUTES**

This Appendix contains relevant federal statutes cited or referred to in the city's policy for informational and reference purposes only. These authorities are current as of the date on which the city adopted the policy. However, the reader should be cautioned that these authorities may be amended or superseded from time-to-time and those amended or superseded versions will control over the reproduced text in this Appendix.

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### **47 U.S.C. § 253 — Removal of barriers to entry.**

#### **(A) In General**

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

#### **(B) State Regulatory Authority**

Nothing in this section shall affect the ability of a State to impose on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

#### **(C) State and Local Government Authority**

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

#### **(D) Preemption**

If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

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## **47 U.S.C. § 332(c)(7) — Preservation of local zoning authority.**

### **(A) General Authority**

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

### **(B) Limitations**

- (i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--
  - (I) shall not unreasonably discriminate among providers of functionally equivalent services; and
  - (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.
- (ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.
- (iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.
- (iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.
- (v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

## **(C) Definitions**

For purposes of this paragraph--

- (i) the term “personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;
- (ii) the term “personal wireless service facilities” means facilities for the provision of personal wireless services; and
- (iii) the term “unlicensed wireless service” means the offering of telecommunications services using duly authorized devices which do not require individual licenses but does not mean the provision of direct-to-home satellite services (as defined in section 303(v) of this title).

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## **47 U.S.C. § 1455(a) — Wireless facilities deployment.**

### **(A) Facility modifications**

#### **(1) In general**

Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

#### **(2) Eligible facilities request**

For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves--

- (A) collocation of new transmission equipment.
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

#### **(3) Applicability of environmental laws**

Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

## **APPENDIX B – FCC REGULATIONS**

This Appendix contains relevant FCC regulations cited or referred to in the city's policy for informational and reference purposes only. These authorities are current as of the date on which the city adopted the policy. However, the reader should be cautioned that these authorities may be amended or superseded from time-to-time and those amended or superseded versions will control over the reproduced text in this Appendix.

Some additional background on how the FCC organizes its regulations may help the reader check for subsequent changes to these rules. The FCC's codified regulations appear in the Code of Federal Regulations (abbreviated as "C.F.R."). The C.F.R. is organized in titles. The FCC's codified regulations appear in Title 47—Telecommunication, and are further organized in chapters, subchapters, parts and subparts. All the provisions reproduced below appear in Part 1, and most appear in Subpart U to Part 1.

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### **47 C.F.R. § 97.3 — Definitions.**

#### **(A) The definitions of terms used in part 97 are:**

- (1) Amateur operator. A person named in an amateur operator/primary license station grant on the [Universal Licensing System] consolidated licensee database to be the control operator of an amateur station.
- (2) Amateur radio services. The amateur service, the amateur-satellite service and the radio amateur civil emergency service.
- (3) Amateur-satellite service. A radiocommunication service using stations on Earth satellites for the same purpose as those of the amateur service.
- (4) Amateur service. A radiocommunication service for the purpose of self-training, intercommunication and technical investigations carried out by amateurs, that is, duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest.
- (5) Amateur station. A station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications.

**47 C.F.R. § 1.4000 — Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.**

(A)(1) [This FCC regulation defines an “OTARD” antenna as follows]:

(i) An antenna that is:

(A) Used to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, and

(B) One meter or less in diameter or is located in Alaska.

(ii) An antenna that is:

(A) Used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite, and

(B) That is one meter or less in diameter or diagonal measurement.

(iii) An antenna that is used to receive television broadcast signals; or

(iv) A mast supporting an antenna described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section;

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**47 C.F.R. § 1.6002 — Definitions.**

Terms not specifically defined in this section or elsewhere in this subpart have the meanings defined in this part and the Communications Act of 1934, 47 U.S.C. 151 *et seq.* Terms used in this subpart have the following meanings:

(A) Action or to act on a siting application means a siting authority's grant of a siting application or issuance of a written decision denying a siting application.

(B) Antenna, consistent with § 1.1320(d), means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the

term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of this chapter.

- (C) Antenna equipment, consistent with § 1.1320(d), means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.
- (D) Antenna facility means an antenna and associated antenna equipment.
- (E) Applicant means a person or entity that submits a siting application and the agents, employees, and contractors of such person or entity.
- (F) Authorization means any approval that a siting authority must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, zoning approval and building permit.
- (G) Collocation, consistent with § 1.1320(d) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, appendix B of this part, section I.B, means—
  - (1) Mounting or installing an antenna facility on a pre-existing structure; and/or
  - (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
  - (3) The definition of “collocation” in § 1.6100(b)(2) applies to the term as used in that section.
- (H) Deployment means placement, construction, or modification of a personal wireless service facility.
- (I) Facility or personal wireless service facility means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.
- (J) Siting application or application means a written submission to a siting authority requesting authorization for the deployment of a personal wireless service facility at a specified location.
- (K) Siting authority means a State government, local government, or instrumentality of a State government or local government, including any official or organizational unit thereof, whose authorization is necessary prior to the deployment of personal wireless service facilities.

(L) Small wireless facilities are facilities that meet each of the following conditions:

(1) The facilities—

- (i) Are mounted on structures 50 feet or less in height including their antennas as defined in § 1.1320(d); or
- (ii) Are mounted on structures no more than 10 percent taller than other adjacent structures; or
- (iii) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in § 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under part 17 of this chapter;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in § 1.1307(b).

(M) Structure means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

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**47 C.F.R. § 1.6003 — Reasonable periods of time to act on siting applications.**

(A) Timely action required. A siting authority that fails to act on a siting application on or before the shot clock date for the application, as defined in paragraph (e) of this section, is presumed not to have acted within a reasonable period of time.

(B) Shot clock period. The shot clock period for a siting application is the sum of—

- (1) The number of days of the presumptively reasonable period of time for the pertinent type of application, pursuant to paragraph (c) of this section; plus

- (2) The number of days of the tolling period, if any, pursuant to paragraph (d) of this section.

(C) Presumptively reasonable periods of time—

- (1) Review periods for individual applications. The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments in the categories set forth in paragraphs (c)(1)(i) through (iv) of this section:
  - (2) Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days.
  - (ii) Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.
  - (iii) Review of an application to deploy a Small Wireless Facility using a new structure: 90 days.
  - (iv) Review of an application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.

(2) Batching.

- (i) If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in either paragraph (c)(1)(i) or (iii) of this section, then the presumptively reasonable period of time for the application as a whole is equal to that for a single deployment within that category.
- (ii) If a single application seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within paragraph (c)(1)(i) of this section and deployments that fall within paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is 90 days.
- (iii) Siting authorities may not refuse to accept applications under paragraphs (c)(2)(i) and (ii) of this section.

(D) Tolling period. Unless a written agreement between the applicant and the siting authority provides otherwise, the tolling period for an application (if any) is as set forth in paragraphs (d)(1) through (3) of this section.

- (1) For an initial application to deploy Small Wireless Facilities, if the siting authority notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the



missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the siting authority to render the application complete.

(2) For all other initial applications, the tolling period shall be the number of days from—

- (i) The day after the date when the siting authority notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation; until
- (ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;
- (iii) But only if the notice pursuant to paragraph (d)(2)(i) of this section is effectuated on or before the 30th day after the date when the application was submitted; or

(3) For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from—

- (i) The day after the date when the siting authority notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the siting authority's original request under paragraph (d)(1) or (2) of this section; until
- (ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;
- (iii) But only if the notice pursuant to paragraph (d)(3)(i) of this section is effectuated on or before the 10th day after the date when the applicant makes a supplemental submission in response to the siting authority's request under paragraph (d)(1) or (2) of this section.

(E) Shot clock date. The shot clock date for a siting application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to paragraph (b) of this section and including any pre-application period asserted by the siting authority; provided, that if the date calculated in this manner is a "holiday" as defined in § 1.4(e)(1) or a legal holiday within the relevant State or local jurisdiction, the shot clock date is the next business day after such date. The

term “business day” means any day as defined in § 1.4(e)(2) and any day that is not a legal holiday as defined by the State or local jurisdiction.

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#### **47 C.F.R. § 1.6100 — Wireless Facility Modifications.<sup>1</sup>**

(A) [Reserved by 83 FR 51886]

(B) Definitions. Terms used in this section have the following meanings.

- (1) Base station. A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.
  - (i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
  - (ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
  - (iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
  - (iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)-(ii) of this section.

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<sup>1</sup> In 2018, the FCC reorganized its regulations and recodified Section 1.40001 as Section 1.6100. See *In re Accelerating Wireless Broadband*, Erratum, 33 FCC Rcd. 9088 at ¶ 2 (Nov. 29, 2018). However, the FCC did not correct all internal cross references and so some provisions in Section 1.6100 still refer to the old subsections within Section 1.40001. This reproduction corrects those typographical errors with the correct cross references, denoted by bracketed text. All other provisions remain consistent with the published FCC regulation.

- (2) Collocation. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
- (3) Eligible facilities request. Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:
  - (i) Collocation of new transmission equipment;
  - (ii) Removal of transmission equipment; or
  - (iii) Replacement of transmission equipment.
- (4) Eligible support structure. Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.
- (5) Existing. A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.
- (6) Site. For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the Section 6409(a) process.
- (7) Substantial change. A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:
  - (i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater.

- (A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.
- (ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- (iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- (iv) It entails any excavation or deployment outside the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site.
- (v) It would defeat the concealment elements of the eligible support structure; or
- (vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.6100(b)(7)(i) through (iv).
- (8) Transmission equipment. Equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

- (9) Tower. Any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(C) Review of applications. A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

- (1) Documentation requirement for review. When an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.
- (2) Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application unless it determines that the application is not covered by this section.
- (3) Tolling of the timeframe for review. The 60-day period begins to run when the application is filed and may be tolled only by mutual agreement or in cases where the reviewing State or local government determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.
- (i) To toll the timeframe for incompleteness, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of this section.
- (ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the State or local government's notice of incompleteness.
- (iii) Following a supplemental submission, the State or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing

information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

- (4) Failure to act. In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.
  - (5) Remedies. Applicants and reviewing authorities may bring claims related to Section 6409(a) to any court of competent jurisdiction.
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## **APPENDIX C – STATE STATUTES**

This Appendix contains relevant California statutes cited or referred to in the city's policy for informational and reference purposes only. These authorities are current as of the date on which the city adopted the policy. However, the reader should be cautioned that these authorities may be amended or superseded from time-to-time and those amended or superseded versions will control over the reproduced text in this Appendix.

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### **California Public Utilities Code § 7901**

Telegraph or telephone corporations may construct lines of telegraph or telephone lines<sup>2</sup> along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments 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.

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#### **California Public Utilities Code § 7901.1**

(a) It is the intent of the Legislature, consistent with Section 7901, that municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed.

(b) The control, to be reasonable, shall, at a minimum, be applied to all entities in an equivalent manner.

(c) Nothing in this section shall add to or subtract from any existing authority with respect to the imposition of fees by municipalities.

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<sup>2</sup> "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires. CAL. PUB. UTILS. CODE § 233.

**ATTACHMENT 3**

**PLANNING COMMISSION RESOLUTION No. 1930**



**RESOLUTION NO. 1930**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA  
RECOMMENDING THE CITY COUNCIL ADOPT AN ORDINANCE ADDING CHAPTER 9 TO  
TITLE X OF THE MADERA MUNICIPAL CODE RELATING TO WIRELESS FACILITIES**

**WHEREAS**, pursuant to the California Constitution, Article XI, section 7; California Government Code Section 37100 and other applicable law, the City Council of the City of Madera ("City Council") may make and enforce within its limits all local, police, sanitary and other ordinances, resolutions and other regulations not in conflict with general laws; and

**WHEREAS**, the federal Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B), preserves local government zoning authority as it relates to location and siting of wireless communication facilities, but limits local regulations in three key ways: (1) a local ordinance may not unreasonably discriminate among providers of functionally equivalent services; (2) a local ordinance may not prohibit or effectively prohibit service; and (3) a local ordinance may not regulate based on environmental impacts from radio frequency emissions; and

**WHEREAS**, the federal Telecommunications Act of 1996, 47 U.S.C. § 253 prohibits state and local requirements that prohibit or effectively prohibit any entity's ability to provide any telecommunication service but preserves the authority of state and local governments to manage the public right-of-way on a nondiscriminatory basis; and

**WHEREAS**, Section 7901 of the California Public Utilities Code grants telephone corporations the limited right to use the public right-of-way to the extent necessary to provide services to their customers in a manner that does not incommode the public's use of the public right-of-way; and

**WHEREAS**, Section 7901.1 of the California Public Utilities Code bolsters the rights reserved to California local governments under Section 7901 and affirms local authority to manage, on a nondiscriminatory basis, the time, place and manner in which telephone corporations access the public right-of-way and deploy their facilities; and

**WHEREAS**, the Planning Commission desires to recommend that the City Council adopt an ordinance adding Chapter 9 to Title X relating to wireless facilities and find the ordinance is exempt from CEQA under CEQA Guidelines § 15061(b)(3) and will, to the extent permitted by federal and California state law, protect and promote public health, safety, and welfare, and also balance the benefits that flow from robust, advanced wireless services within the City's local values, which includes without limitation the aesthetic character of the City, its neighborhoods, and community; and

**WHEREAS**, on July 26, 2022, the Planning Commission held a duly noticed public hearing, evaluated the information in the record, and considered testimony at the public hearing.

NOW THEREFORE, THE PLANNING COMMISSION OF THE CITY OF MADERA DOES RESOLVE AS FOLLOWS:

**SECTION 1. Recitals.** The Planning Commission finds that: (a) the facts set forth in the recitals in this Resolution are true and correct and incorporated by reference; and (b) the recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and

other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this Resolution.

**SECTION 2. Recommendation to Adopt the Ordinance.** The Planning Commission recommends that the City Council (a) find that the provisions in the ordinance adding Chapter 9 to Title X relating to wireless facilities, as provided in **Exhibit A** to this Resolution (the "Ordinance"), are consistent with the General Plan, Municipal Code and applicable federal and state law; (b) find that the Ordinance will not be detrimental to the public interest, health, safety, convenience or welfare; and (c) adopt the Ordinance.

**SECTION 3. CEQA Recommendation.** The Planning Commission recommends that the City Council find that if the Ordinance qualifies as a "project" subject to California Environmental Quality Act ("CEQA") Guidelines § 15378 and California Public Resources Code § 21065, then pursuant to CEQA Guidelines § 15061(b)(3) there is no possibility that the project will have a significant impact on the physical environment. The Ordinance would adopt local regulations for wireless facilities in a manner that complies with federal regulations. The Ordinance would not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new wireless facility or change to an existing wireless facility would be subject to additional environmental review on a case-by-case basis. Accordingly, the Planning Commission recommends that the City Council find that the Ordinance is exempt from CEQA under the general rule.

**SECTION 4. Effective Date.** This Resolution shall become effective immediately.

\* \* \* \* \*

Passed and adopted by the Planning Commission of the City of Madera this 26th day of July 2022, by the following vote:

AYES: Robert Gran, Jr., Rohi Zacharia, Khubaib Sheikh, Balwinder Singh,  
Saim Mohammad and Jose Eduardo Chavez

NOES: None.

ABSTENTIONS: None.

ABSENT: Ramon Lopez-Maciel

  
Robert Gran Jr.  
Planning Commission Chairperson

Attest:

  
Gary Conte, Planning Manager

Exhibit "A" – Draft Ordinance of City Council  
Exhibit "B" – Draft Right of Way Policy

**EXHIBIT "A"**

**An Ordinance of the City Council of the City of Madera Adding Chapter 9 to Title X of the Madera  
Municipal Code Relating to Wireless Facilities**

**ORDINANCE NO. 2022-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA ADDING  
CHAPTER 9 TO TITLE X OF THE MADERA MUNICIPAL CODE RELATING TO  
WIRELESS FACILITIES**

**WHEREAS**, pursuant to the California Constitution, Article XI, section 7; California Government Code Section 37100 and other applicable law, the City Council of the City of Madera ("City Council") may make and enforce within its limits all local, police, sanitary and other ordinances, resolutions and other regulations not in conflict with general laws; and

**WHEREAS**, the federal Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B), preserves local government zoning authority as it relates to location and siting of wireless communication facilities, but limits local regulations in three key ways: (1) a local ordinance may not unreasonably discriminate among providers of functionally equivalent services; (2) a local ordinance may not prohibit or effectively prohibit service; and (3) a local ordinance may not regulate based on environmental impacts from radio frequency emissions; and

**WHEREAS**, the federal Telecommunications Act of 1996, 47 U.S.C. § 253 prohibits state and local requirements that prohibit or effectively prohibit any entity's ability to provide any telecommunication service but preserves the authority of state and local governments to manage the public right-of-way on a nondiscriminatory basis; and

**WHEREAS**, Section 7901 of the California Public Utilities Code grants telephone corporations the limited right to use the public right-of-way to the extent necessary to provide services to their customers in a manner that does not incommode the public's use of the public right-of-way; and

**WHEREAS**, Section 7901.1 of the California Public Utilities Code bolsters the rights reserved to California local governments under Section 7901 and affirms local authority to manage, on a nondiscriminatory basis, the time, place and manner in which telephone corporations access the public right-of-way and deploy their facilities; and

**WHEREAS**, the City Council finds this ordinance will, to the extent permitted by federal and California state law, protect and promote public health, safety, and welfare, and also balance the benefits that flow from robust, advanced wireless services within the City's local values, which includes without limitation the aesthetic character of the City, its neighborhoods, and community; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing to consider this ordinance on July 26, 2022, at which time all interested parties had the opportunity to be heard, and after said public hearing, the Planning Commission adopted Resolution No. 1930, recommending that the City Council adopt this ordinance; and

**WHEREAS**, on August 17, 2022, the City Council held a duly noticed public hearing to consider the adoption of this ordinance.

THE CITY COUNCIL OF THE CITY OF MADERA DOES ORDAIN AS FOLLOWS:

**SECTION 1.** CHAPTER 9 is added to Title X of the Madera Municipal Code to read as follows:

**CHAPTER 9: WIRELESS FACILITIES**

<u>10-9.01</u>	Purpose and Intent.
<u>10-9.02</u>	Definitions.
<u>10-9.03</u>	Applicability.
<u>10-9.04</u>	Required Permits and Approvals.
<u>10-9.05</u>	Administrative Orders and Regulations.
<u>10-9.06</u>	Permit Applications.
<u>10-9.07</u>	Public Notice.
<u>10-9.08</u>	Approvals, Denials, and Appeals.
<u>10-9.09</u>	Location Standards.
<u>10-9.10</u>	Design Standards.
<u>10-9.11</u>	Standard Conditions of Approval.
<u>10-9.12</u>	Amortization.
<u>10-9.13</u>	Exceptions.
<u>10-9.14</u>	Peer and Independent Consultant Review.
<u>10-9.15</u>	Violations.

**Section 10-9.01 PURPOSE AND INTENT.**

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

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

#### **Section 10-9.02 DEFINITIONS.**

All references to codified statutes, regulations or other rules shall be deemed to refer to such statutes, regulations or other rules as they may be amended or superseded.

- (A) **"AMATEUR STATION"** means the same as defined by the FCC in 47 C.F.R. § 97.3, which defines the term as "a station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications." This term includes amateur radio antennas and related facilities used for amateur radio services.
- (B) **"APPROVAL AUTHORITY"** means the city official or body responsible for application review and vested with authority to approve or deny such applications. The approval authority for a conditional use permit shall be the Planning Commission. The approval authority for a site plan review shall be the Director.
- (C) **"CPUC"** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
- (D) **"DIRECTOR"** means the Community Development Director of the city of Madera or the Director's designee.
- (E) **"ELIGIBLE FACILITIES REQUEST"** means the same as defined in 47 U.S.C. § 1455(a)(2), and as interpreted by the FCC in 47 C.F.R. § 1.6100(b)(3).
- (F) **"FCC"** means the Federal Communications Commission, as constituted by the Communications Act of 1934, Pub. L: 73-416, 48 Stat. 1064, codified as 47 U.S.C. §§ 151 *et seq.* or its duly appointed successor agency.
- (G) **"HISTORIC RESOURCE"** means any prehistoric or historic district, site, building, structure

or object included in, or eligible for inclusion in, the National Register of Historic Places, the California Register of Historical Resources or any “historic resource” as listed in Table HC-A of the General Plan. The term includes artifacts, records and remains related to or located within such properties. The term also includes properties with traditional religious and/or cultural importance to any Native American tribe.

- (H) **“OTARD”** means any “over-the-air reception device” subject to 47 C.F.R. §§ 1.4000 *et seq.*, which generally includes satellite television dishes and certain fixed wireless antennas not greater than one meter in diameter.
- (I) **“PERSONAL WIRELESS SERVICE FACILITIES”** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii), which defines the term as facilities that provide personal wireless services.
- (J) **“PERSONAL WIRELESS SERVICES”** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.
- (K) **“PLANNING COMMISSION”** means the Planning Commission of the city of Madera as established by the Madera Municipal Code.
- (L) **“RF”** means radio frequency.
- (M) **“SECTION 6409”** means Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a).
- (N) **“SHOT CLOCK”** means the presumptively reasonable time defined by the FCC in which a state or local government must act on an application or request for authorization to place, construct or modify personal wireless service facilities.
- (O) **“SNALL WIRELESS FACILITY”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(l).
- (P) **“STEALTH”** means concealment techniques that make a wireless facility look like something other than a wireless facility. Stealth concealment techniques include, without limitation: (1) transmission equipment placed completely within existing or replacement architectural features such that the installation causes no visible change in the underlying support structure and (2) new architectural features that mimic or blend with the underlying or surrounding structures in style, proportion and construction quality.
- (Q) **“WIRELESS FACILITY”** means a personal wireless service facility.

#### **Section 10-9.03 APPLICABILITY.**

- (A) *General.* This chapter applies to all requests for the city’s regulatory authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy



wireless facilities on private property (whether owned by a private party or public entity) within the city's territorial and jurisdictional boundaries, unless expressly exempted pursuant to this section.

- (B) *Wireless Facilities on City Property.* This chapter applies to permit applications for wireless facilities on property or structures owned or controlled by the city; provided, however, that this chapter does not govern whether or under what terms and conditions the city would lease, license or otherwise allow a wireless facility on such property or structures.
- (C) *Small Wireless Facilities.* Notwithstanding anything in this chapter to the contrary, all small wireless facilities are subject to a permit as specified in a City Council policy, which may be adopted, amended and/or repealed by a resolution of the City Council. All small wireless facilities shall comply with the City Council's policy. If the City Council policy is repealed and not replaced, an application for a small wireless facility shall be processed pursuant to this chapter.
- (D) *Eligible Facilities Requests.* Notwithstanding anything in this chapter to the contrary, all eligible facilities requests and other applications submitted for approval pursuant to Section 6409 are subject to a City Council policy, which may be adopted, amended and/or repealed by a resolution of the City Council. All eligible facilities requests and other applications submitted for approval pursuant to Section 6409 shall comply with the City Council's policy. If the City Council policy is repealed and not replaced, all eligible facilities requests and other applications submitted for approval pursuant to Section 6409 shall be processed pursuant to this chapter.
- (E) *Other Exemptions.* Notwithstanding anything in this chapter to the contrary, this chapter shall not be applicable to the following:
  - (1) Wireless facilities operated by the city for public purposes;
  - (2) Wireless facilities installed completely indoors or within venues and used to extend personal wireless services into a business or the subscriber's private residence, such as a femto cell or indoor distributed antenna system;
  - (3) OTARD antennas;
  - (4) Antennas and related transmission equipment used in connection with a duly authorized amateur station; or
  - (5) Wireless facilities or other transmission equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power, generation, transmission and distribution facilities subject to CPUC General Order 131-D.

#### **Section 10-9.04 REQUIRED PERMITS AND APPROVALS.**

- (A) *Site Plan Review.* A site plan review, subject to the Director's prior review and approval, is required for all wireless facilities that are located in preferred locations as described in § 10-9.09 and compliant with all applicable design standards in § 10-9.10.
- (B) *Conditional Use Permit.* A conditional use permit, subject to the Planning Commission's prior review and approval, is required for all wireless facilities on private property that are located in discouraged locations as described in § 10-9.09, and do not qualify for site plan review, or require an exception under § 10-9.13.
- (C) *Other Permits and Regulatory Approvals.* In addition to any permit or approval required under this chapter, the applicant must obtain all other permits and regulatory approvals (such as compliance with the California Environmental Quality Act or Madera County Airport Land Use Commission requirements) as may be required by any other federal, state or local government agencies, which includes without limitation any other permits and/or approvals issued by other city departments or divisions. Any permit or approval granted under this chapter or deemed granted or deemed approved by law shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or approvals. Furthermore, and to avoid potential confusion, an exemption from the permit requirement under § 10-9.03(E) does not exempt the same wireless facilities from any other permits or approvals required, which includes without limitation any ministerial permits from the city.

#### **Section 10-9.05 ADMINISTRATIVE ORDERS AND REGULATIONS.**

In addition to the requirements in this chapter, the Director may adopt such orders or regulations as the Director deems necessary or appropriate to protect and maintain public health, safety, welfare and/or convenience. All wireless facilities must conform to all applicable orders and regulations issued by the Director, unless the Director, in the Director's discretion, grants a prior written waiver to deviate, in whole or in part, any such order or regulation. The Director shall develop and publish guidelines to implement the waivers authorized by this section.

#### **Section 10-9.06 PERMIT APPLICATIONS.**

- (A) *Application Required.* The approval authority shall not approve any requests for authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy wireless facilities except upon a complete and duly filed application consistent with this section and any other written rules or requirements the city or the Director may establish from time to time in any publicly stated format.
- (B) *Application Fee.* The applicant shall submit the applicable permit application fee adopted by City Council resolution. If no permit application fee has been adopted, then the applicant must submit a signed written statement that acknowledges that the applicant

will be required to submit a deposit estimated by the Director to reimburse the City for its reasonable costs incurred in connection with the application. Should the deposit be inadequate an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be returned to the applicant.

- (C) *Application Content.* All applications for a permit must include all the information and materials required by the Director for the application. The City Council authorizes the Director to develop, publish and from time-to-time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this chapter. All such requirements must be in written form and publicly stated to provide applicants with prior notice. Notwithstanding anything in this chapter to the contrary, all applications shall, at a minimum, require the applicant to demonstrate that the proposed project will be in planned compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions.
- (D) *Application Submittal.* Unless the Director establishes an alternative submittal procedure pursuant to § 10-9.05, all applications must be submitted to the city at a pre-scheduled appointment with the department. Applicants may generally submit one application per appointment but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The department shall use reasonable efforts to provide the applicant with an appointment within five working days after the department receives a written request and, if applicable, confirms that the applicant complied with the pre-submittal conference requirement. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed.
- (E) *Optional Pre-Submittal Conference.* The city shall provide prospective applicants with the opportunity to schedule and attend a pre-submittal conference with city staff. The city encourages pre-submittal conferences for all proposed projects that require a conditional use permit. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, any latent issues in connection with the proposed or existing wireless facility, such as compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other city departments and/or divisions responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that city staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The city shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the city for its reasonable costs to provide the services

rendered in the pre-submittal conference.

- (F) *Optional Community Meetings.* The city encourages, but does not require, applicants to schedule, notice, arrange, and attend a voluntary pre-submittal community meeting with all interested members of the public for applications that require a conditional use permit. This voluntary community meeting does not cause the shot clock to begin and is intended to give applicants the opportunity to hear from members of the public regarding the proposed deployment. Applicants should schedule any voluntary community meetings at times and in locations that are conducive to maximizing public participation. Applicants are encouraged (but not required) to bring any draft applications, plans, maps, presentations or other materials to facilitate the public's understanding of the applicant's proposal. Applicants are also encouraged (but not required) to maintain minutes or a comment log of the community meeting. The City seeks to encourage dialogue that may allow applicants to address areas of concern. Community meetings may be conducted before or after submittal.
- (G) *Applications Deemed Withdrawn.* To promote efficient review and timely decisions, any application governed under this chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the department within 90 calendar days after the department deems the application incomplete in a written notice to the applicant. The Director, in the Director's discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control.

#### **Section 10-9.07 PUBLIC NOTICE.**

- (A) *Public Hearing Notice.* Notice of public hearing shall be given in accordance with § 10-3.1306 of this chapter for any conditional use permit application.
- (B) *Decision Notices.* Within five calendar days after the approval authority acts on an application governed under this chapter or before the shot clock expires (whichever occurs first), the Director shall send a written notice to the applicant. If the approval authority denies the application (with or without prejudice), the written notice to the applicant must contain the reasons for the denial. All decision notices shall include instructions for how and when to file an appeal.

#### **Section 10-9.08 APPROVALS, DENIALS AND APPEALS.**

- (A) *Required Findings.* The approval authority may approve wireless facility applications only when the approval authority makes all the following findings:
  - (1) the proposed wireless facility is in a preferred location; or the proposed wireless

facility is in a discouraged location and the applicant has demonstrated through a meaningful comparative analysis that no more preferred location or support structure would be technically feasible and potentially available;

- (2) the proposed wireless facility complies with all applicable development standards in this chapter and any other applicable findings required for the approval, such as § 10-3.1307(B) of this chapter (conditional use permits) or § 10-3.4.0106 of this chapter (site plan review);
  - (3) the applicant has provided a signed statement that indicates its willingness to allow other carriers and site operators to collocate transmission equipment with the proposed wireless facility whenever technically feasible and aesthetically desirable in accordance with applicable provisions in this chapter; and
  - (4) the applicant has demonstrated that the proposed wireless facility will comply with all applicable FCC regulations and guidelines for human exposure to RF emissions and will not, either individually or cumulatively with other transmitters in the vicinity, result in RF exposures that exceed the FCC's maximum permissible exposure level for the general population.
- (B) *Conditional Approvals; Denials without Prejudice.* Subject to any applicable federal or state laws, nothing in this chapter is intended to limit the approval authority's ability to conditionally approve or deny without prejudice any application governed under this chapter as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the general plan and any applicable specific plan, the Madera Municipal Code, or this chapter.
- (C) *Appeals.* Within 10 days after the approval authority approves or denies any application under this chapter, any interested person may file an appeal in accordance with the provisions in § 10-3.1309 of this chapter for use permits or §§ 10-3.4.0116 and 10-3.4.0117 of this chapter for site plan review; provided, however, that (1) the notice provisions in this chapter shall control over those in § 10-3.1309 of this chapter and (2) appeals from an approval shall not be permitted when based solely on the environmental effects from RF emissions that are compliant with applicable FCC regulations and guidelines.

#### **Section 10-9.09 LOCATION STANDARDS.**

- (A) *Locations.* To assist applicants, staff and the approval authority understand and respond to the community's aesthetic preferences and values, this subsection describes preferred and discouraged locations for wireless facilities.
- (1) *Preferred Locations.* All applicants must, to the extent technically feasible and potentially available, propose new facilities in a preferred location. No alternative sites

analysis is required for new stealth facilities proposed in any preferred location. For all other new facilities, the approval authority shall consider whether any more preferred location would be technically feasible or potentially available. The following locations are all “preferred” and ordered from most preferred to least preferred:

- (a) industrial zones;
  - (b) commercial zones;
  - (c) other non-residential zones;
  - (d) Public Facilities zone when not directly adjacent to residentially zoned parcels.
- (2) *Discouraged Locations.* Applicants shall not propose to install wireless facilities in a discouraged location unless no alternative site in a preferred location would be technically feasible. If all preferred locations are technically infeasible, the applicant shall use the least-discouraged location. The following locations are discouraged, and ordered from most discouraged to least discouraged:
- (a) historic resource zones and properties;
  - (b) Public Facilities zone when directly adjacent to residentially zoned parcels;
  - (c) residential zones.
- (B) *Support Structures.* To assist applicants, staff and the approval authority understand and respond to the community’s aesthetic preferences and values, and to mitigate the impact of wireless infrastructure deployment, the city requires wireless facilities to be installed on support structures, ordered from most preferred to least preferred, as follows:
- (1) existing structures with existing wireless facilities;
  - (2) existing rooftops;
  - (3) existing building façades, signs, water tank/towers, field lights, or other non-tower structures;
  - (4) new freestanding structures outside the public rights-of-way.

To the extent that a proposed support structure is not included in this list, the Director may, in the Director’s discretion, determine the level of preference for such structure consistent with the goals and purpose of this subsection.

#### **Section 10-9.10 DESIGN STANDARDS.**

- (A) *Concealment.* All wireless facilities must be concealed to the maximum extent feasible

with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses.

- (B) *Overall Height.* All wireless facilities must be compliant with maximum overall height limits applicable to structures on the underlying parcel; provided, however, that a stealth wireless facility may exceed the applicable height limit by not more than 10 feet.
- (C) *Setbacks.* All wireless facilities must be compliant with all setback requirements applicable to structures on the underlying parcel.
- (D) *Fall Zone.* All freestanding towers outside the public rights-of-way must be setback from habitable structures approved for residential occupancy by a distance equal to the tower height. The approval authority may waive the setback requirement for freestanding towers that meet Class 3 structural standards for critical infrastructure as defined in the most current revision of the ANSI/TIA-222 Structural Standard for Antenna Supporting Structures, Antennas and Small Wind Turbine Support Structures.
- (E) *Noise.* All wireless facilities must be compliant with all applicable noise regulations, which includes, without limitation, any noise regulations in the Madera Municipal Code. The approval authority may require the applicant to incorporate appropriate noise-baffling materials and/or noise-mitigation strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations.
- (F) *Landscaping.* All wireless facilities proposed to be placed in a landscaped area must include landscape features (which may include, without limitation, trees, shrubs and ground cover) and a landscape maintenance plan. The approval authority may require additional landscape features to screen the wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the concealment required under this section. All plants proposed or required must be native and/or drought resistant.
- (G) *Security Measures.* To prevent unauthorized access, theft, vandalism, attractive nuisance or other hazards, reasonable and appropriate security measures, such as fences, walls and anti-climbing devices, may be approved. Security measures shall be designed and implemented in a manner that enhances or contributes to the overall concealment, and the approval authority may condition approval on additional concealment elements to mitigate any aesthetic impacts, which may include, without limitation, additional landscape features. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures.
- (H) *Secondary Power Sources.* The approval authority may approve secondary or backup power sources and/or generators on a case-by-case basis. The approval authority shall not approve any permanent diesel generators or other similarly noisy or noxious generators in or within 200 feet from any residence; provided, however, the approval authority may

approve sockets or other connections used for temporary backup generators.

- (I) *Lights.* Wireless facilities may not include exterior lights other than as may be required under Federal Aviation Administration, FCC, other applicable federal or state governmental regulations. All exterior lights permitted or required to be installed must be installed in locations and within enclosures that mitigates illumination impacts on other properties to the maximum extent feasible. Any lights associated with the electronic equipment shall be appropriately shielded from public view. Any light beacons or lightning arresters shall be included in the overall height calculation.
- (J) *Signage; Decals; Advertisements.* All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage, decals or advertisements unless expressly approved by the approval authority, required by law or recommended under FCC or other federal governmental agencies for compliance with RF emissions regulations.
- (K) *Future Expansion.* To the extent feasible and aesthetically desirable, all new wireless facilities should be designed and sited in a manner that accommodates potential future collocations and other expansions that can be integrated into the proposed wireless facility or its associated structures with no or negligible visual changes to the outward appearance. The approval authority may waive the requirements in this subsection when the approval authority determines future expansions at a proposed wireless facility would be aesthetically undesirable.
- (L) *Utilities.* All cables and connectors for telephone, primary electric and other similar utilities must be routed underground to the extent feasible in conduits large enough to accommodate future collocated wireless facilities. To the extent feasible, undergrounded cables and wires must transition directly into the pole base without any external doghouse. Meters, panels, disconnect switches and other associated improvements must be placed in inconspicuous locations to the extent possible. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost. Microwave or other wireless backhaul is discouraged when it would involve a separate and unconcealed antenna.
- (M) *Parking; Access.* Any equipment or improvements constructed or installed in connection with any wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, wireless facilities should use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements should be the minimum size necessary to reasonably accommodate the proposed use.
- (N) *Compliance with Laws.* All wireless facilities must be designed and sited in compliance



with all applicable federal, state and local laws, regulations, rules, restrictions and conditions, which includes without limitation the California Building Standards Code, Americans with Disabilities Act, City of Madera General Plan and any applicable specific plan, the Madera Municipal Code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.

(O) *Towers and Freestanding Wireless Facilities.* In addition to all other design requirements in this section, the following provisions shall be applied to an application for a tower or other freestanding wireless facility:

- (1) *Tower-Mounted Equipment.* All tower-mounted equipment must be mounted as close to the vertical support structure as possible to reduce its overall visual profile. Applicants must mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors and utility demarcation boxes) directly behind the antennas to the maximum extent feasible. All tower-mounted equipment, cables and hardware must be painted with flat/neutral colors subject to the approval authority's prior approval.
- (2) *Ground-Mounted Equipment.* All ground-mounted equipment must either be concealed underground, or concealed within an existing or new structure, or other enclosure(s) subject to the approval authority's prior approval. The approval authority may require additional concealment elements as the approval authority finds necessary or appropriate to blend the ground-mounted equipment, enclosure and/or other improvements into the natural and/or built environment.
- (3) *Monopines.* In addition to all other design requirements in this section, the following provisions shall be applied to an application for a monopine:
  - (a) *Shape and Branching.* Monopines shall be gradually tapered from bottom to top to resemble the natural conical pine-tree shape, with shorter branches at the top and wider branches at the bottom. All monopines shall include a "crown" or "topper" installed above the monopole to create a natural point at the top. Branches shall begin at no greater than 15 feet above ground level and maintain at least 3.5 branches per vertical foot when averaged between the bottom-most branch and the highest point on the monopole (excluding any "crown" or "topper" installed above the monopole).
  - (b) *Overall Height.* To maintain a natural appearance, a monopine may not exceed more than 10 feet above the average height of mature natural trees within the vicinity. If the applicant plants new natural trees around the proposed monopine, the approval authority shall consider the future mature height of such trees when evaluating compliance with this standard.
  - (c) *Bark Cladding.* The entire tower above any fence line shall be fitted with faux-pine

bark cladding, painted or colored with browns or other appropriate earth tones to mimic natural pine bark.

- (d) *Equipment Concealment.* All antennas, accessory equipment, cross arms, hardware, cables and other attachments to the monopine must be painted or colored with flat greens, browns or other appropriate earth tones to blend into the faux pine branches. All antennas, remote radio units, tower-mounted amplifiers and other similar equipment larger than one cubic foot shall be fitted with a faux-pine “sock” with faux-pine needles. No tower-mounted equipment shall be permitted to protrude beyond the branch canopy such that it would materially alter the tapered pine shape.
  - (e) *Material Selection and Approval.* All materials and finishes used to conceal the monopine shall be subject to prior approval by the department. Applicants shall use only high-quality materials to conceal the wireless facility. The applicant shall use color-extruded plastics for elements such as the faux-pine needles and faux-bark cladding to prolong the like-new appearance and reduce fading caused by exposure to the sun and other weather conditions.
- (P) *Building-Mounted Wireless Facilities.* In addition to all other design requirements in this section, the following provisions shall be applied to an application for a wireless facility installed on a building rooftop or facade:
- (1) *Architectural Integration.* All applicants should, to the extent feasible, propose new non-tower wireless facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, when integration with existing building features is not feasible, the applicant should propose completely concealed new structures or appurtenances designed to mimic the support structure’s original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks). Facilities must be located behind existing parapet walls or other existing screening elements to the maximum extent feasible.
  - (2) *Rooftop Wireless Facilities.* All rooftop-mounted equipment must be screened from public view with concealment measures that match the underlying structure in proportion, quality, architectural style and finish. The approval authority may approve unscreened rooftop equipment only when it expressly finds that such equipment is effectively concealed due to its low height and/or setback from the roofline.
  - (3) *Facade-Mounted Wireless Facilities.* When wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the approval authority

may approve facade-mounted equipment in accordance with this subsection. All facade-mounted equipment must be concealed behind screen walls and mounted as flush to the facade as practicable. The approval authority may not approve “pop-out” screen boxes unless the design is architecturally consistent with the original building or support structure. Except in industrial districts, the approval authority may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade. To the extent feasible, facade-mounted equipment must be installed on the facade(s) along the building frontage that is the least prominent or publicly visible.

- (Q) *Administrative Design Guidelines.* The Director may develop, and from time to time amend, design guidelines consistent with the generally applicable design regulations to clarify the aesthetic and public safety goals and standards in this chapter for city staff, applicants and the public. The design guidelines shall provide more detailed standards to implement the general principals articulated in this chapter and may include specific standards for particular wireless facilities or site locations but shall not unreasonably discriminate between functionally equivalent service providers. The design guidelines, and any subsequent amendments, shall not be effective unless approved by a resolution adopted by the City Council. If a conflict arises between the development standards specified in this chapter and the design guidelines, the development standards shall control.

#### **Section 10-9.11 STANDARD CONDITIONS OF APPROVAL.**

- (A) *Standard Conditions.* Except as may be authorized in subsection (B), all wireless facilities approved under this chapter or deemed approved by the operation of law shall be automatically subject to the conditions in this subsection (A) and these conditions shall be deemed to be incorporated by reference to any permit approved or deemed approved by law.
- (1) *Permit Term; Approval Applies to Land.* This permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the city to establish a shorter term for public safety or substantial land use reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law. This permit shall run with the land and shall be valid for the term specified in these conditions of approval. No change in ownership of the wireless facility, the site, or the subject property shall affect the permit term. This permit may not be transferred to another site or property.
- (2) *Permit Renewal.* The permittee may apply for permit renewal not more than one year before this permit expires. The permittee must demonstrate that the subject wireless

facility complies with all the conditions of approval associated with this permit and all applicable provisions in this chapter that exist at the time the decision to renew or not renew is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with this chapter or other applicable law. Upon renewal, this permit will automatically expire 10 years and one day from its issuance.

- (3) *Approved Plans.* Any final construction plans shall incorporate the permit, together with all conditions of approval and the photo simulations associated with the permit (collectively, the "Approved Plans"). The permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, shall be subject to the Director's prior review and approval. After the Director receives a written request to approve an alteration, modification or other change to the Approved Plans, the Director may refer the request to the approval authority if the Director finds that it substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.
- (4) *CPUC GO-159A Certification.* Within 15 business days after the city issues this permit, the permittee shall serve copies of California Public Utility Commission notification letters required by CPUC General Order No. 159A to the City Clerk, Director and City Manager.
- (5) *Build-Out Period.* This permit will automatically expire 12 months from the approval date (the "Build-Out Period") unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, support structure or the wireless facility and/or its use. The permittee may request in writing, and the city may grant in writing, one six-month extension if the permittee submits substantial and reliable written evidence demonstrating justifiable cause for such extension. If the Build-Out Period and any extension finally expire, this permit shall be automatically void but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.
- (6) *Post-Installation Certification.* Within 60 calendar days after the permittee commences full, unattended operations of a wireless facility approved under this chapter or deemed-approved by law, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.

- (7) *Site Maintenance.* The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this permit. At all times, the permittee shall keep the site area free from all litter and debris. The permittee shall regularly inspect the wireless facility to determine whether any maintenance is needed. The permittee, at no cost to the city, shall remove and remediate any graffiti or other vandalism on the wireless facility within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- (8) *Compliance with Laws.* The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("Laws") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this permit, which includes without limitation any Laws applicable to human exposure to RF emissions and any standards, specifications or other requirements identified by the Director (such as, without limitation, those requirements affixed to a building permit). The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws. No failure or omission by the city to timely notice, prompt or enforce compliance with any applicable provision in the Madera Municipal Code, this chapter, any permit, any permit condition or any applicable Laws, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with same.
- (9) *Adverse Impacts on Other Properties.* The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittees or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site and/or wireless facility. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Madera Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the city or other state or federal government agency or official with authority to declare an emergency within the city. The Director may issue a stop work order for any activities that violates this condition in whole or in part. If the Director finds good cause to believe that ambient noise from the wireless facility or related equipment violates applicable provisions in the Madera Municipal Code, the Director, in addition to any other actions or remedies authorized by the permit, the Madera Municipal Code or other applicable laws, may require the permittee to commission a noise study by a qualified professional to

evaluate the wireless facility's compliance.

- (10) *Inspections; Emergencies.* The permittee expressly acknowledges and agrees that, upon reasonable prior notice to the permittee, the city's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the wireless facility and related equipment and/or improvements to ensure compliance with this permit and all associated conditions. Notwithstanding the prior sentence, the city's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the city's officers, officials, staff or other designees while any such inspection or emergency access occurs.
- (11) *Contact Information.* At all times relevant to this permit, the permittee shall keep on file with the Director basic contact and site information. This information shall include, but is not limited to, the following: (A) the name, physical address, notice address (if different), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) site operator, (ii) equipment owner, (iii) site manager and (iv) agent for service of process; (B) the wireless facility's site identification number and/or name used by the permittee and, to the extent applicable, site operator, equipment owner and site manager; and (C) a toll-free telephone number to the wireless facility's network operations center where a live person with power-down control over the wireless facility is available 24 hours-per-day, seven days-per-week. Within 10 business days after a written request by the city, the permittee shall furnish the Director with an updated form that includes all the most-current information described in this condition.
- (12) *Indemnification.* The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the city, City Council and the city's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (A) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the city's approval of this permit, and (B) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this permit or the wireless facility. In the event the city becomes aware of any claims, the city will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the city shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the city's defense, and the

property owner and/or permittee (as applicable) shall promptly reimburse the city for any costs and expenses directly and necessarily incurred by the city in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the city to approve this permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this permit.

- (13) *Removal Bond.* Before the city issues any permits required to commence construction in connection with this permit, the permittee shall post a bond issued by a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or similar infrastructure removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility in accordance with this condition.
- (14) *Permit Revocation.* Notwithstanding any revocation procedures in Title X, any permit granted under this chapter or deemed approved by the operation of law may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). A permit granted under this chapter or deemed approved by the operation of law may be revoked only by the City Council after a duly notice public hearing. Before any public hearing to revoke a permit granted under this chapter or deemed approved by the operation of law, the Director must issue a written notice to the permittee that specifies (A) the facility; (B) the violation(s) to be corrected; (C) the timeframe in which the permittee must correct such violation(s); and (D) that, in addition to all other rights and remedies the city may pursue, the city may initiate revocation proceedings for failure to correct such violation(s). The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after

the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

- (15) *Record Retention.* Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the permit application, this permit, the Approved Plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the permit (collectively, "Records"). If the permittee does not maintain such Records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing Records will be construed against the permittee. The permittee shall protect all Records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep Records in an electronic format; provided, however, that hard copies or electronic Records kept in the city's regular files will control over any conflicts between such city-controlled copies or Records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any Records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.
- (16) *Abandoned Facilities.* The wireless facility authorized under this permit shall be deemed abandoned if not operated for any continuous 12-month period. Within 90 days after a wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Madera Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the city shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the city in connection with such removal and/or restoration activities and shall reimburse the city for all such costs 30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs.
- (17) *Landscaping.* The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist



to select plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the city. The permittee shall be responsible to maintain any replacement landscape features for a three-year period after such landscaping has been installed. Notwithstanding anything in this condition to the contrary, the Director may agree in a written agreement signed by the permittee to accept an annual in-lieu fee to perform the maintenance work on the permittee's behalf.

- (18) *Cost Reimbursement.* The permittee acknowledges and agrees that (A) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the city to incur costs and expenses; (B) the permittee shall be responsible to reimburse the city for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility; (C) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse the city for all such costs 30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs; and (D) the city shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the city by the permittee.
- (19) *Successors and Assigns.* The conditions, covenants, promises and terms contained in this permit will bind and inure to the benefit of the city and permittee and their respective successors and assigns.
- (20) *Truthful and Accurate Statements.* The permittee acknowledges that the city's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the city in connection with the permit or the wireless facility, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
- (21) *City's Standing Reserved.* The city's grant or grant by operation of law of a permit pursuant to this chapter does not waive, and shall not be construed to waive, any standing by the city to challenge any (A) FCC rules or regulations that interpret the Telecommunications Act and/or Section 6409 of the Spectrum Act or (B) any permit issued pursuant to this chapter.
- (22) *Severable Conditions.* If any provision in these conditions or such provision's application to any person, entity or circumstances is or held by any court with

competent jurisdiction to be invalid or unenforceable: (A) such provision or its application to such person, entity or circumstance will be deemed severed from this permit; (B) all other provisions in this permit or their application to any person, entity or circumstance will not be affected; and (C) all other provisions in this permit or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.

- (B) *Modified Conditions.* The City Council authorizes the Director to modify, add or remove conditions to any permit as the Director deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in subsection (A) to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment needed for compliance with this chapter, generally applicable health and safety requirements and/or any other applicable laws.

#### **Section 10-9.12 AMORITIZATION.**

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

<b>Fair Market Value on Effective Date</b>	<b>Minimum Years Allowed</b>
less than \$50,000.....	5
\$50,000 to \$500,000.....	10
greater than \$500,000.....	15

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

Nothing in this section is intended to limit any permit term to less than 10 years for any permit granted on or after January 1, 2007. In the event that the amortization required in this section would reduce the permit term to less than 10 years for any permit granted on or after January 1,

2007, then the minimum years allowed will be automatically extended by the difference between 10 years and the number of years since the city granted such permit. Nothing in this section is intended or may be applied to prohibit any collocation or modification covered under 47 U.S.C. § 1455(a) on the basis that the subject wireless facility is a legal nonconforming wireless facility.

#### **Section 10-9.13 EXCEPTIONS.**

- (A) *Preface.* The provisions in this section establish a procedure by which the city may grant an exception to the standards in this chapter but only to the extent necessary to avoid conflict with applicable federal or state law. When the applicant requests an exception, the approval authority shall consider the findings in subsection (B) in addition to the findings required under § 10-9.08. Each exception is specific to the facts and circumstances in connection with each application. An exception granted in one instance shall not be deemed to create a presumption or expectation that an exception will be granted in any other instance.
- (B) *Findings for an Exception.* The approval authority may grant an exception to any provision or requirement in this chapter only if the approval authority finds that:
  - (1) a denial based on the application's noncompliance with a specific provision or requirement would violate federal law, state law or both; or
  - (2) a provision in this chapter, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law.
- (C) *Scope of Exception.* If the approval authority finds that an exception should be granted, the exception shall be narrowly tailored so that the exception deviates from this chapter to least extent necessary for compliance with federal or state law.
- (D) *Burden of Proof.* The applicant shall have the burden to prove to the approval authority that an exception should be granted pursuant to this section. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for an exception.

#### **Section 10-9.14 PEER AND INDIVIDUAL CONSULTANT REVIEW.**

- (A) *Authorization.* The City Council authorizes the Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection any permit application. The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation: (1) permit application completeness and/or accuracy; (2) pre-construction planned compliance with applicable regulations for human exposure to RF emissions; (3) post-construction actual compliance with applicable regulations for human exposure to RF

emissions; (4) whether and to what extent a proposed project will comply with applicable laws; (5) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the city's discretion to review; and (6) any other issue identified by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with city staff and/or the applicant.

- (B) *Cost Reimbursement.* Subject to applicable laws, the applicant shall be responsible for the reasonable costs actually incurred by the city in connection with a consultant's review, which may include, without limitation, costs incurred by the consultant to attend and participate in any meetings or hearings related to the application. Within a reasonable time after notice from the Director, the applicant shall deposit funds in an amount equal to the estimated costs for the consultant's services, as determined by the Director. The funds shall be applied to the consultant's invoices as such invoices are approved by the Director. If the deposit exceeds the total costs for the consultant's services, the Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection. If the reasonable costs for the consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The city shall not issue any building permit or other construction permit to any applicant with any unpaid invoices.

#### **Section 10-9.15 VIOLATIONS.**

Any use or condition caused or permitted to exist in violation of any provision of this chapter shall be and hereby is declared a public nuisance and may be subject to administrative citations as set forth in Title I, Chapter 9 of the Municipal Code, abatement pursuant to §§ 10-3.1601 *et seq.* of this chapter, California Code of Civil Procedure § 731, or any other remedy available to the city.

#### **Section 10-9.16 CONFLICTING PROVISIONS.**

To the extent, that any provisions in the Madera Municipal Code Section 10.3.419 are inconsistent with this chapter, this chapter shall prevail.

**SECTION 2. Severability.** If any section, subsection, paragraph, sentence, clause, phrase or term (each a "Provision") in this ordinance or Madera Municipal Code Title X, Chapter 9, or any Provision's application to any person or circumstance, is held illegal, invalid or unconstitutional by a court of competent jurisdiction, all other Provisions not held illegal, invalid or unconstitutional, or such Provision's application to other persons or circumstances, shall not be affected. The City Council declares that it would have passed this ordinance and Madera Municipal Code Title X, Chapter 9, and each Provision therein, whether any one or more Provisions be declared illegal, invalid or unconstitutional.

**SECTION 3.** *CEQA.* If this ordinance qualifies as a “project” subject to California Environmental Quality Act (“CEQA”) Guidelines § 15378 and California Public Resources Code § 21065, the City Council finds that, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This ordinance adds regulations related to wireless facilities in a manner that complies with federal regulations. This ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new wireless facility or change to an existing wireless facility would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council finds that this ordinance is exempt from CEQA under the general rule.

**SECTION 4.** *Effective Date.* This ordinance shall become effective thirty days after its adoption.

**SECTION 5.** *Publication.* The City Clerk is authorized to cause this ordinance or a summary of this ordinance to be published in a newspaper of general circulation in the City of Madera, within fifteen days after its adoption. If a summary of the ordinance is published, the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted at City Hall at least five days prior to the meeting at which the ordinance is adopted and again after the meeting at which it is adopted. The ordinance shall become effective thirty days after its adoption.

\* \* \* \* \*

Passed and adopted by the City Council of the City of Madera this 17th day of August 2022, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

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Santos Garcia, Mayor

Attest:

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Alicia Gonzalez, City Clerk

**Exhibit "B"**  
**Draft Right of Way Policy**

<b>CITY OF MADERA</b>	<b>POLICY NO.</b>
<b>Adopted:</b>	
<b>Small Wireless Facilities in the Public Rights-of-Way</b>	

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## 1. PURPOSE AND INTENT

- (a) The City of Madera (the "City") intends this policy to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the city's territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the city's local values, which include without limitation the aesthetic character of the city, its neighborhoods and community. This policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the city's visual character from potential adverse impacts and/or visual blight created or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the city's environmental resources; (4) protecting and preserving the city's public rights-of-way and municipal infrastructure located within the city's public rights-of-way; and (5) promoting access to high-quality, advanced wireless services for the city's residents, businesses and visitors.
- (b) This policy is intended to establish clear procedures for application intake and completeness review. The City Council finds that chronically incomplete applications significantly contribute to unreasonable delay and create barriers to infrastructure deployment. Chronically incomplete applications unfairly prejudice other applicants who may be prepared to submit complete applications for infrastructure in the same or substantially the same location. Chronically incomplete applications also unfairly prejudice the city's ability to act on such applications within the "presumptively reasonable" timeframes established by the FCC. The provisions in this policy afford applicants and city staff opportunities for direct, real-time communication about completeness issues to mitigate incomplete applications prior to submittal. The provisions in this policy also encourage applicants to timely respond to incomplete notices.
- (c) This policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent personal wireless services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the city may not deny under federal or California state law; (6) impose any unreasonable, discriminatory or



anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the city to preempt any applicable federal or California law.

## 2. DEFINITIONS

All references to codified statutes, regulations or other rules shall be deemed to refer to such statutes, regulations or other rules as they may be amended or superseded.

- (a) **"Accessory Equipment"** means equipment other than antennas used in connection with a small wireless facility. The term includes "transmission equipment" as defined by the FCC in 47 C.F.R. § 1.6100(b)(8).
- (b) **"Amateur Station"** means the same as defined by the FCC in 47 C.F.R. § 97.3, which defines the term as "a station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications." This term includes amateur radio antennas and related facilities used for amateur radio services.
- (c) **"Antenna"** means same as defined by the FCC in 47 C.F.R. § 1.6002(b).
- (d) **"Approval Authority"** means the city official or body responsible for application review and vested with authority to approve or deny such applications.
- (e) **"Arterial"** means a street which provides the principle network for traffic flow in the community, connecting areas of major activity to each other and to state highways and important County roads. Arterials will generally include up to four lanes (two in each direction), although total widths of six lanes may be appropriate in some locations. To reduce traffic interruptions and improve safety, direct access via driveways is generally not permitted. The term "arterial" as used in this policy is defined in the Circulation and Infrastructure Element of the General Plan at Policy CI-3. For purposes of this policy, the streets in the Madera Loop and state highways over which the city exercises jurisdiction qualify as arterials.
- (f) **"City Engineer"** means the city of Madera City Engineer or the City Engineer's designee.
- (g) **"Collector"** means a street which provides access and movement between residential, commercial, and industrial areas. The primary function of collector streets is to collect and distribute traffic between local streets and the arterial roadway system. Collectors will generally include up to four lanes (two in each direction). To reduce traffic interruptions and improve safety, direct access via driveways is generally not permitted. The term "collector" as used in this policy is defined in the Circulation and Infrastructure Element of the General Plan at Policy CI-3.
- (h) **"Collocation"** means the same as defined by the FCC in 47 C.F.R. § 1.6002(g).

- (i) **"CPUC"** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
- (j) **"Decorative Pole"** means any pole that includes decorative or ornamental features, design elements and/or materials for aesthetic purposes.
- (k) **"Director"** means the Community Development Director of the city of Madera or the Director's designee.
- (l) **"Eligible Facilities Request"** means the same as defined in 47 U.S.C. § 1455(a)(2), and as interpreted by the FCC in 47 C.F.R. § 1.6100(b)(3).
- (m) **"FCC"** means the "Federal Communications Commission", as constituted by the Communications Act of 1934, Pub. L: 73-416, 48 Stat. 1064, codified as 47 U.S.C. §§ 151 *et seq.* or its duly appointed successor agency.
- (n) **"Historic Resource"** means any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places, the California Register of Historical Resources or any "historic resource" as listed in Table HC-A of the General Plan. The term includes artifacts, records and remains related to or located within such properties. The term also includes properties with traditional religious and/or cultural importance to any Native American tribe.
- (o) **"Local/Branch Collector"** means a single lane street which collects traffic from local streets and feed into the collector and arterial system. Design speeds are lower than for Collector roadways (potentially through the use of meanders, roundabouts, narrower road sections, etc.). To reduce traffic interruptions and improve safety, direct access via driveways is generally not permitted. The term "local/branch collector" as used in this policy is defined in the Circulation and Infrastructure Element of the General Plan at Policy CI-3.
- (p) **"Local Street"** means a roadway which provides access to individual homes and businesses. Local streets have one lane in each direction. Local streets are shown on the Circulation Map for informational purposes only; the General Plan does not define the desired alignments of local streets. The term "local street" as used in this policy is defined in the Circulation and Infrastructure Element of the General Plan at Policy CI-3.
- (q) **"Non-Pole Concealment Structure"** means a structure within the public rights-of-way, other than a pole, that can be adapted (either in its current form or through a replacement) to conceal antennas and/or accessory equipment for small wireless facilities. Examples may include, without limitation, monuments, kiosks, bus shelters and other street furniture.

- (r) **"OTARD"** means any "over-the-air reception device" subject to 47 C.F.R. §§ 1.4000 *et seq.*, which generally includes satellite television dishes and certain fixed wireless antennas not greater than one meter in diameter.
- (s) **"Personal Wireless Service Facilities"** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii).
- (t) **"Personal Wireless Services"** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(i).
- (u) **"Prohibited Support Structure"** means any support structure on which the city prohibits the deployment of wireless facilities, except when authorized as a pre-approved design pursuant to this policy. Prohibited support structures include decorative poles; traffic signal poles, cabinets or related structures; new, nonreplacement wood poles; and any utility pole scheduled for removal within 18 months from the time the Director acts on the application for such pole.
- (v) **"Public Right-of-Way"** or **"Public Rights-of-Way"** means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes. The term does not include private or public utility easements unless such easement is reserved for or dedicated to or open to the use by the general public for road or highway purposes.
- (w) **"RF"** means radio frequency.
- (x) **"Section 6409"** means Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a).
- (y) **"Shot Clock"** means the presumptively reasonable time defined by the FCC in which a state or local government must act on an application or request for authorization to place, construct or modify personal wireless service facilities.
- (z) **"Small Wireless Facility"** means same as defined by the FCC in 47 C.F.R. § 1.6002(l).

### 3. **APPLICABILITY**

- (a) **General.** This policy applies to all requests for the city's regulatory authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy small wireless facilities within the public rights-of-way within the city's territorial and jurisdictional boundaries, unless expressly exempted pursuant to this section 3.

- (b) **Small Wireless Facilities on City Property.** This policy applies to permit applications, submitted to the city in its regulatory capacity, for small wireless facilities on property or structures owned or controlled by the city; provided, however, that this policy does not govern whether or under what terms and conditions the city, in its proprietary capacity as the property or structure owner, would lease, license or otherwise allow a small wireless facility on such property or structures.
- (c) **Eligible Facilities Requests.** Notwithstanding anything in this policy to the contrary, this policy shall not be applicable to eligible facilities requests and/or other applications submitted for approval pursuant to Section 6409.
- (d) **Other Exemptions.** Notwithstanding anything in this policy to the contrary, this policy shall not be applicable to the following:
  - (1) wireless facilities operated by the city for public purposes;
  - (2) small wireless facilities installed completely indoors or within venues and used to extend personal wireless services into a business or subscriber's private residence, such as a femto cell or indoor DAS;
  - (3) OTARD antennas;
  - (4) antennas and related transmission equipment used in connection with a duly authorized amateur station; or
  - (5) wireless facilities or other transmission equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power, generation, transmission and distribution facilities subject to CPUC General Order 131-D.

#### **4. REQUIRED PERMITS AND APPROVALS**

- (a) **Site Plan Review.** All small wireless facilities shall require a site plan review subject to the Director's prior review and approval.
- (b) **Other Permits and Regulatory Approvals.** In addition to a site plan review, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or other approvals issued by other city departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility must contain a valid site plan approval issued by the city for the proposed small wireless facility. Any application for any ministerial permit(s) submitted without such site plan approval may be denied without prejudice. Any site plan approval granted under this policy shall remain subject to all lawful conditions and/or legal requirements associated with

such other permits or approvals. Furthermore, and to avoid potential confusion, an exemption from the site plan review requirement under section 3(d) does not exempt the same wireless facilities from any other permits or approvals required, which includes without limitation any ministerial permits from the city.

## **5. ADMINISTRATIVE ORDERS AND REGULATIONS**

In addition to the requirements in this policy, the Director may adopt such orders or regulations as the Director deems necessary or appropriate to protect and maintain public health, safety, welfare and convenience. All small wireless facilities must conform to all applicable orders and regulations issued by the Director, unless the Director, in the Director's discretion, grants a prior written waiver to deviate, in whole or in part, any such order or regulation. Waivers by the Director shall be considered and approved or denied on a competitively neutral and nondiscriminatory basis. The Director shall develop and publish guidelines to implement the waivers authorized by this section.

## **6. PERMIT APPLICATIONS**

- (a) **Application Required.** The Director shall not approve any requests for authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy small wireless facilities except upon a complete and duly filed application consistent with this section and any other written rules or requirements the city or the Director may establish from time to time in any publicly-stated format.
- (b) **Application Fee.** The applicant shall submit the applicable permit application fee adopted by City Council resolution. Batched applications must include the permit application fee for each small wireless facility in the batch. If no permit application fee has been adopted, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to submit a deposit estimated by the Director to reimburse the city for its reasonable costs incurred in connection with the application. Should the deposit be inadequate an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be returned to the applicant.
- (c) **Application Content.** All applications for a permit must include all the information and materials required by the Director for the application. The City Council authorizes the Director to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this policy. All such requirements must be in written form and publicly stated to provide applicants with prior notice. Notwithstanding anything in this policy to the contrary, all applications shall, at a minimum, require the applicant to demonstrate that the proposed project will be in planned compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions.

- (d) **Application Submittal.** Unless the Director establishes an alternative submittal procedure pursuant to section 5, all applications must be submitted to the city during at a pre-scheduled appointment. Applicants may submit one application per small wireless facility up to a maximum of five separate applications for small wireless facilities together as a batched application per appointment but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The city shall use reasonable efforts to provide the applicant with an appointment within five working days after the city receives a written request. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed.
- (e) **Optional Pre-Submittal Conference.** The city shall provide prospective applicants with the opportunity to schedule and attend a pre-submittal conference with city staff. The city encourages pre-submittal conferences for all applications. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, any latent issues in connection with the proposed or existing small wireless facility, such as compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other city departments and/or divisions responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that city staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The city shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the city for its reasonable costs to provide the services rendered in the pre-submittal conference.
- (f) **Optional Community Meetings.** The city encourages, but does not require, applicants to schedule, notice, arrange, and attend a voluntary pre-submittal community meeting with all interested members of the public. This voluntary community meeting does not cause the shot clock to begin and is intended to give applicants the opportunity to hear from members of the public regarding the proposed deployment. Applicants should schedule any voluntary community meetings at times and in locations that are conducive to maximizing public participation. Applicants are encouraged (but not required) to bring any draft applications, plans, maps, presentations or other materials to facilitate the public's understanding of the applicant's proposal. Applicants are also encouraged (but not required) to maintain minutes or a comment log of the community meeting. The city seeks to encourage dialogue that may allow applicants to address areas of concern and may lessen the likelihood of appeals of the Director's decision to the City Manager by any interested person or entity. Community meetings may be conducted before or after submittal.

- (g) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, any application governed under this policy will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the city within 90 calendar days after the city deems the application incomplete in a written notice to the applicant. The Director, in the Director's discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control.

## **7. PUBLIC NOTICE**

Within five calendar days after the Director acts on an application governed under this policy or before the shot clock expires (whichever occurs first), the Director shall send a written notice to the applicant and any interested person that requests notice of the decision. If the Director denies the application (with or without prejudice), the written notice to the applicant must contain the reasons for the denial. All decision notices shall include instructions for how and when to file an appeal.

## **8. APPROVALS; DENIALS; APPEALS**

- (a) **Initial Administrative Decision.** The Director shall approve, conditionally approve or deny a complete and duly filed permit application without a public hearing. To allow interested persons with a meaningful opportunity to appeal the Director's decision, the Director shall act within 29 shot clock days from a duly filed application.
- (b) **Required Findings for Approval.** The Director (or the City Manager on appeal) may approve or conditionally approve an application for a site plan review only when it makes all the following findings:
- (1) the proposed project qualifies as a "small wireless facility" as defined by the FCC;
  - (2) the proposed project complies with the location standards in section 9;
  - (3) the proposed project complies with the design standards in section 10;
  - (4) the proposed project meets the required findings for site plan review under Madera Municipal Code § 10-3.4.0106;
  - (5) the applicant has shown that it can obtain any wireline communications and electrical service connections necessary to operate the small wireless facility and the project plans show the proposed route for all such connections between their source and the small wireless facility;

- (6) the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and
- (7) all public notices required for the application have been given.
- (c) **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or state laws, nothing in this policy is intended to limit the Director's ability to conditionally approve or deny without prejudice any application governed under this policy as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the general plan and any applicable specific plan, the Madera Municipal Code and/or this policy.
- (d) **Appeals.** Any interested person may appeal the Director's decision to the City Manager. The appeal must be filed with the City Clerk within seven calendar days from the date of the Director's decision. The appeal must contain a short and plain statement about the basis for the appeal, which may be supplemented after the notice period has expired but before the appeal hearing. Appeals from an approval shall not be permitted when based on reasons otherwise compliant under this policy, including appeals based on duly adopted preapproved designs or the environmental effects from RF emissions that are compliant with applicable FCC regulations and guidelines. The City Manager shall hear appeals *de novo* and issue the applicant and any person entitled to notice a written decision within five calendar days after the appeal hearing. If the City Manager denies the application on appeal (whether by affirmation or reversal), the written notice shall contain the reasons for the decision. The City Manager's decision shall be final and not subject to any further appeals.

## 9. LOCATION STANDARDS

- (a) **Locations.** To assist applicants, staff and the approval authority understand and respond to the community's aesthetic preferences and values, this section describes preferred and discouraged locations for small wireless facilities in the public rights-of-way.
  - (1) **Preferred Locations.** The city requires small wireless facilities in the public rights-of-way to be installed at locations, ordered from most preferred to least preferred, as follows:
    - (A) industrial zones along any road classification (arterial, collector, local/branch collector, local street);
    - (B) commercial zones along any road classification (arterial, collector, local/branch collector, local street);
    - (C) other non-residential zones along arterials or collectors;



- (D) other non-residential zones along local/branch collector or local streets;
  - (E) Public Facilities zone not directly adjacent to any residential zones.
- (2) **Discouraged Locations.** Applicants shall not propose to install small wireless facilities in a discouraged location unless no alternative site in a preferred location would be technically feasible. If all preferred locations are technically infeasible, the applicant shall use the least-discouraged location. The following locations are discouraged, and ordered from most discouraged to least discouraged:
- (A) any location within 100 feet of a historically designated property or resource.
  - (B) any location within 100 feet of a residential zone or within 100 feet of a residence;
  - (C) residential zones along local streets;
  - (D) residential zones along local/branch collectors;
  - (E) residential zones along collectors;
  - (F) residential zones along arterials;
  - (G) Public Facilities zone located directly adjacent to residential zones.
- (3) **Additional Location Standards.** In addition to all other standards in this section 9, small wireless facilities and all associated antennas, accessory equipment or improvements shall:
- (A) be placed as close as possible to alignment with the property line that divides two parcels abutting the public rights-of-way;
  - (B) not be placed directly in front of any ground-level door;
  - (C) not be placed directly in front of any first- or multi -story window;
  - (D) not be placed within any clear zone at any intersections;
  - (E) not be placed in any location that obstructs view lines for traveling vehicles, bicycles and pedestrian;
  - (F) not be placed in any location that obstructs views of any traffic signs or signals;

- (G) not be placed in any location that obstructs illumination patterns for existing streetlights;
  - (H) for new, non-replacement support structures, be placed at least 50 feet from any streetlight, utility pole or other similar support structure.
- (b) **Support Structures.** To assist applicants, staff and the approval authority understand and respond to the community's aesthetic preferences and values, and to mitigate unnecessary obstructions in the public rights-of-way, this section 9(b) describes preferred and prohibited support structures.
  - (1) **Support Structure Preferences.** The city requires small wireless facilities in the public rights-of-way to be installed on support structures, ordered from most preferred to least preferred, as follows:
    - (A) existing or replacement non-pole concealment structures, such as monuments, kiosks, bus shelters and other street furniture;
    - (B) existing or replacement streetlights;
    - (C) existing or replacement utility poles;
    - (D) new, non-replacement streetlights;
    - (E) new, non-replacement non-pole concealment structures.
  - (2) **Prohibited Support Structures.** Small wireless facilities shall not be installed on the following support structures:
    - (A) traffic signals;
    - (B) decorative poles;
    - (C) temporary or non-replacement wood poles.
- (c) **Replacement Pole Locations.** All replacement poles must be: (1) located as close to the removed pole's location as possible; (2) aligned with the other existing poles along the public rights-of-way; and (3) compliant with all applicable standards and specifications issued by the Director, which may include, without limitation, requirements related to aesthetics, materials and safety.
- (d) **Encroachments Over Private Property.** No small wireless facility, or any antenna, accessory equipment or other improvements associated with a small wireless facility, may extend onto or over any private or public property outside the public rights-of-way without the property owner's prior written consent.

## 10. DESIGN STANDARDS

(a) **General Design Standards.** The standards in this section 10(a) shall be applicable to all small wireless facilities in the public rights-of-way:

- (1) **Concealment.** All small wireless facilities must be stealth to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses.
- (2) **Overall Height.** No small wireless facility may extend more than six feet above the support structure, plus any minimum separation between the antenna and other pole attachments required by applicable health and safety regulations.
- (3) **Finishes.** All exterior surfaces shall be painted, colored and/or wrapped in flat, nonreflective hues that match the underlying support structure or blend with the surrounding environment. All surfaces shall be treated with graffiti-resistant sealant. All finishes shall be subject to the approval authority's prior approval.
- (4) **Noise.** All small wireless facilities must be compliant with all applicable noise regulations. Equipment likely to create noise, such as cooling fans, are strongly discouraged except when placed in an underground vault. The approval authority may require the applicant to incorporate appropriate noise-baffling materials and/or noise-mitigation strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations.
- (5) **Trees and Landscaped Plants.** Small wireless facilities shall not cause ground disturbance within any tree drip line. Small wireless facilities may not displace any existing tree or landscape features. All small wireless facilities proposed to be placed in a landscaped area in the public rights-of-way must include landscape features (which may include, without limitation, shrubs and ground cover) and a landscape maintenance plan. The approval authority may require additional landscape features for small wireless facilities proposed to be placed in a landscaped area in the public rights-of-way to screen the small wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the concealment required under this policy. All plants proposed or required must be native and/or drought-resistant and be consistent with any landscaping requirements for the underlying zone.
- (6) **Security Measures.** To prevent unauthorized access, theft, vandalism, attractive nuisance or other hazards, reasonable and appropriate security measures, such as locks, removable climbing pegs and anti-climbing devices, may be approved. Security measures shall be designed and implemented in a manner that enhances or contributes to the overall concealment, and the approval authority may condition approval on additional concealment elements to mitigate any aesthetic impacts, which may include, without limitation,

additional landscape features. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures. Cabinets and equipment shrouds must be kept secured to prevent unauthorized access. Alarm systems shall not include any audible sirens or other sounds.

- (7) **Secondary Power Sources.** The approval authority may approve secondary or backup power sources on a case-by-case basis. The approval authority shall not approve any permanent diesel generators within the public rights-of-way or at any other location or within 200 feet from any residence; provided, however, the approval authority may approve sockets or other connections used for temporary backup generators.
- (8) **Lights.** All new or replacement street lights and street light fixtures must be aimed and shielded so that their illumination effects are directed downwards and confined within the public rights-of-way in a manner consistent with any other standards and specifications as identified or required by the approval authority. Small wireless facilities may not include exterior lights other than as may be required under Federal Aviation Administration, FCC or other applicable federal or state governmental regulations. All antennas, accessory equipment and other improvements with indicator, status or other lights must be installed in locations and within enclosures that eliminate illumination impacts visible from publicly accessible areas. Any light beacons or lightning arresters shall be included in the overall height calculation.
- (9) **Signage; Decals; Advertisements.** All small wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities may not bear any other signage, decals or advertisements unless expressly approved by the approval authority, required by law or recommended under FCC or other federal governmental agencies for compliance with RF emissions regulations.
- (10) **Parking.** Small wireless facilities and any associated accessory equipment or other improvements shall not reduce any street parking spaces within the public rights-of-way.
- (11) **Fire Safety.** All small wireless facilities shall include (1) a power shut off immediately accessible to fire service personnel, through a Knox box or similar rapid-access system approved by the fire safety authority, upon arrival at the scene of a fire and/or anticipated power surge due to power being turned off or on for any reason; (2) surge protection devices capable of mitigating a direct or partial direct lightning discharge; (3) surge protection devices capable of mitigating significant electrical disturbances that may enter the small wireless facility via conductive cables; (4) at least one-hour fire resistant interior surfaces to be used in the composition of all structures; and (5) monitored automatic fire

notification and suppression systems for all small wireless facilities as approved by the applicable fire safety authority.

- (12) **Compliance with Laws.** All small wireless facilities must be designed and sited in compliance with all applicable federal, state and local laws, regulations, rules, restrictions and conditions, which includes without limitation the California Building Standards Code, Americans with Disabilities Act, general plan and any applicable specific plan, the Madera Municipal Code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
- (b) **Antennas.** In addition to all generally applicable design standards in section 10(a), this Section 10(b) sets out specific preferences and standards for antennas.
  - (1) **Placement.** Antennas should be placed above the pole, unless the approval authority finds that an alternative placement results in an aesthetically superior design based on site-specific circumstances.
  - (2) **Stealth/Concealment.** All antennas and associated cables, jumpers, wires, mounts, masts, brackets and other connectors and hardware must be installed within a unified shroud or “radome” to the extent technically feasible. Antenna shrouds must be visually consistent with the underlying pole’s design, color and scale. Antenna shrouds placed above a pole must taper down to the point where the shroud and pole connect to conceal the cables below the antennas and create a smooth transition into the pole. All antenna mounting posts shall be trimmed so that the post does not extend above the antenna. For antennas approved to be affixed to the side of the pole within a shroud, all cables must be concealed within the shroud and extension arm to create a smooth transition into the pole, to the maximum extent feasible, or back into the external conduit on the pole, if any.
  - (3) **Volume.** Any individual antenna (including its concealment) shall not exceed three cubic feet in volume. The cumulative limit for all antenna (including their concealment) on a single small wireless facility shall not exceed: (A) three cubic feet for small wireless facilities within 250 feet from a residential dwelling; or (B) six cubic feet for small wireless facilities in all other locations.
- (c) **Accessory Equipment.** In addition to all generally applicable design standards in Section 10(a), this Section 10(c) sets out specific preferences and standards for accessory equipment.
  - (1) **Placement Preferences.** This subsection describes the city’s general preferences for accessory equipment placement and configuration on or around the pole. Applicants shall propose small wireless facilities in compliance with these preferences to the maximum extent feasible. The approval authority may approve a lesser-preferred configuration for the accessory equipment

when the applicant demonstrates that more-preferred configurations are technically infeasible, or the approval authority finds that a lesser-preferred configuration is more consistent with existing poles and the surrounding environment. The city generally prefers accessory equipment to be placed, ordered from most preferred to least preferred, as follows:

- (A) within an environmentally controlled underground equipment vault;
  - (B) within an architecturally integrated enclosure at the base of the pole;
  - (C) within a shroud mounted above ground level on the pole;
  - (D) within a separate surface-mounted equipment cabinet.
- (2) **Volume.** The cumulative limit for all accessory equipment (including their concealment) on a single small wireless facility shall not exceed: (A) 10 cubic feet for small wireless facilities within 250 feet from a residential dwelling; or (B) 17 cubic feet for small wireless facilities in all other locations. These limits shall not be applicable to undergrounded accessory equipment.
- (3) **Undergrounded Equipment.** Consistent with CPUC and local policies, the city strongly prefers undergrounded accessory equipment whenever possible because it mitigates unnecessary physical obstructions and aesthetic harm caused by unsightly infrastructure in the public rights-of-way. This section 10(c)(3) sets out specific preferences and standards for undergrounded accessory equipment.
- (A) **When Required.** Accessory equipment (other than any electric meter (where permitted) and an emergency disconnect switch) shall be placed underground when proposed in any (i) underground utility district; (ii) any area where all existing utilities are substantially undergrounded; or (iii) any location where the approval authority finds substantial evidence that the additional above-ground accessory equipment would incommode the public's uses in the public rights-of-way.
  - (B) **Equipment Vaults.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the city's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover and properly secured to prevent unauthorized access. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Vault lids may contain manufacturer and site operator information but shall not exhibit commercial advertisements.

- (4) **Base-Mounted Accessory Equipment.** This section 10(c)(4) sets out specific preferences and standards for base-mounted accessory equipment.
- (A) **Concealment.** Base-mounted accessory equipment enclosures must be architecturally integrated with the pole and surrounding environment. For poles that already include a larger or decorative base, the base-mounted accessory equipment enclosure should mimic the existing design and/or decorative features. Base-mounted accessory equipment enclosures should include a tapered or decorative transition between the enclosure and the pole, unless (i) the proposed facility is a pre-approved design that does not include such a transition or (ii) the approval authority finds that such a transition would be less aesthetically desirable considering the pole and surrounding environment.
  - (B) **Maximum Dimensions.** Any base-mounted accessory equipment enclosure integrated into the pole shall not exceed the following dimensions: (i) 48 inches in height, measured from grade level to the highest point on the enclosure, but excluding any decorative design elements that transition the wider base into the narrower pole; and (ii) 26 inches in length or width on any rectangular enclosure or 28 inches in diameter for any round, hexagonal, octagonal or similarly shaped enclosure.
  - (C) **Graffiti and Litter Prevention.** Base-mounted accessory equipment enclosures must be coated with anti-graffiti finishes. To prevent litter and other objects placed on such equipment, base-mounted accessory equipment enclosures should not have any flat horizontal surfaces greater than 1.5 square inches.
- (5) **Pole-Mounted Accessory Equipment.** This section 10(c)(5) sets out specific preferences and standards for pole-mounted accessory equipment.
- (A) **Concealment.** Applicants should propose to place any pole-mounted accessory equipment in the least conspicuous position under the circumstances presented by the proposed pole and location. Pole-mounted accessory equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. Unless placed behind a street sign or some other concealment that dictates the equipment orientation on the pole, all pole-mounted accessory equipment should be oriented away from prominent views. In general, the proper orientation will likely be toward the street to reduce the overall profile when viewed from the nearest abutting properties. If orientation toward the street is not feasible, then the proper orientation will most likely be away from oncoming traffic. If more than one orientation would be technically feasible, the Director may select the most appropriate orientation.

- (B) **Minimum Ground Clearance.** The lowest point on any pole-mounted accessory equipment shall be at least 8 feet above ground level adjacent to the pole. If applicable laws require any pole-mounted accessory equipment component to be placed less than 8 feet above ground level, the clearance from ground level shall be no less than required for compliance with such laws.
  - (C) **Horizontal Extensions.** Pole-mounted accessory equipment should be as close to flush with the pole as technically feasible and shall not extend over any roadway for vehicular travel or any abutting private property. If applicable laws preclude flush-mounted accessory equipment, the separation gap between the pole and the accessory equipment shall be no greater than required for compliance with such laws and concealed by opaque material (such as cabinet “flaps” or “wings”).
- (6) **Surface-Mounted Equipment Cabinets.** This section 10(c)(6) sets out specific preferences and standards for surface-mounted accessory equipment.
- (A) **Concealment.** Concealment for surface-mounted equipment cabinets will be assessed on a site-specific basis and consider the location and existing uses and aesthetic elements in the vicinity. In general, the city prefers surface-mounted accessory equipment to be concealed as follows: (i) within a landscaped parkway, median or similar location, behind or among new/existing landscape features and painted or wrapped in flat natural colors to blend with the landscape features; (ii) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks; and (iii) if neither landscaping concealment or street furniture is available, accessory equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing surface-mounted accessory equipment cabinets in the vicinity.
  - (B) **Public Safety.** To promote and protect public health and safety and prevent potential hazards hidden behind large equipment cabinets, individual surface-mounted accessory equipment cabinet may not exceed four feet in height or four feet in width. Surface-mounted accessory equipment enclosures must be coated with anti-graffiti finishes. To prevent litter and other objects placed on such equipment, surface-mounted accessory equipment enclosures should not have any flat horizontal surfaces greater than 1.5 square inches.
- (d) **Utilities.** The provisions in this section 10(d) are applicable to all utilities and other related improvements that serve small wireless facilities.



- (1) **Overhead Lines.** The approval authority shall not approve any new overhead utility lines in underground utility districts. In areas with existing overhead lines, new communication lines shall be “overlashed” with existing communication lines to the extent feasible, but service conduits shall be placed underground. No new overhead utility service drops shall be permitted to traverse any roadway used for vehicular transit.
- (2) **Vertical Cable Risers.** All cables, wires and other connectors must be routed through conduits within the pole or other support structure, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, such as with wood utility poles, applicants shall route them through external conduits or shrouds that have been finished to match the underlying pole. The applicant shall minimize the number and size of external conduits to the extent technically feasible.
- (3) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds
- (4) **Electric Meters.** Small wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a separate meter pedestal per city standards. If the proposed project involves a surface-mounted equipment cabinet, an electric meter may be integrated with the cabinet, but the approval authority shall not approve a separate surface-mounted electric meter pedestal. In no case shall permittee be permitted to use electricity/power provided by a city-owned streetlight or city-owned circuit without separate written authorization from the city.
- (5) **Existing Underground Conduits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants are encouraged to use existing conduits whenever available and technically feasible. Access to any conduit owned by the city shall be subject to a separate written agreement and the Director's prior written approval, which the Director may withhold or condition as the Director deems necessary or appropriate to protect the city's infrastructure, prevent interference with the city's municipal functions and public health and safety.
- (e) **Historic Resources.** This policy shall not be construed or applied to limit the city's authority to enforce other laws or regulations intended to protect or preserve historic resources. Any small wireless facility that adversely impacts any historic resource shall not be approved without an exception pursuant to section 13.

## 11. PRE-APPROVED DESIGNS

- (a) **Preface.** To expedite the review process and encourage collaborative designs among applicants and the city, the City Council authorizes the Director to designate one or more pre-approved designs for small wireless facilities. This section sets out the process to establish or repeal a pre-approved design and the expedited review procedures and findings applicable to these applications.
- (b) **Adoption.** The Director, in the Director's discretion, may establish a pre-approved design when the Director finds that a proposed pre-approved design would be (i) in substantial conformance with the applicable design requirements in section 10 and (ii) architecturally compatible with the areas in which the pre-approved design would be available. The Director shall post a public notice at City Hall and on the city's website. The notice must generally describe the pre-approved design, include a photograph or photo simulation, specify whether the pre-approved design would be limited or restricted in any areas. The pre-approved design shall become effective 15 days from the notice required in this section. A decision by the Director not to adopt a proposed pre-approved design or the Director's failure to act on a request for a proposed pre-approved design is not appealable.
- (c) **Repeal.** The Director may repeal any pre-approved design by notice posted at City Hall and on the city's website. The repeal shall be immediately effective. The Director's repeal, refusal to repeal or failure to act on a request to repeal a pre-approved design is not appealable.
- (d) **Nondiscrimination.** An established pre-approved design may be used by any applicant, whether the applicant originally initiated the pre-approval process or not. The Director's decision to adopt a pre-approved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the pre-approved plans. Any other vendor or manufacturer that fabricates a small wireless facility to the standards and specifications in the pre-approved design with like materials, finishes and overall quality shall be acceptable as a pre-approved design.
- (e) **Modified Findings for Approval.** For any complete site plan review application using a pre-approved design, the approval authority shall presume that the proposed project complies with the findings required under sections 8(b)(1) and 8(b)(3). No such presumption shall be applicable to the required findings under sections 8(b)(2), 8(b)(4) and 8(b)(5).

## 12. STANDARD CONDITIONS OF APPROVAL

- (a) **Standard Conditions.** Except as may be modified in section 12(b), all small wireless facilities approved under this policy shall be automatically subject to the conditions in this section 12(a) and these conditions shall be deemed to be

incorporated by reference to any site plan approval, whether approved by the city or deemed approved by law.

- (1) **Permit Term.** This permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the city to establish a shorter term for public safety reasons or substantial land use reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this small wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.
- (2) **Permit Renewal.** The permittee may apply for permit renewal not more than one year before this permit expires. The permittee must demonstrate that the subject small wireless facility complies with all the conditions of approval associated with this permit and all applicable provisions in the Madera Municipal Code and this policy that exists at the time the decision to renew or not renew is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with the Madera Municipal Code, this policy or other applicable law. Upon renewal, this permit will automatically expire 10 years and one day from its issuance.
- (3) **Approved Plans.** Any final construction plans shall incorporate the permit, together with all conditions of approval and the photo simulations associated with the permit (collectively, the "Approved Plans"). The permittee must construct, install and operate the small wireless facility in substantial compliance with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the small wireless facility, shall be subject to the Director's prior review and approval. After the Director receives a written request to approve an alteration, modification or other change to the Approved Plans, the Director may refer the request to the approval authority if the Director finds that it substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.
- (4) **CPUC GO-159A Certification.** Within 15 business days after the city issues this permit, the permittee shall serve copies of California Public Utility Commission notification letters required by CPUC General Order No. 159A to the City Clerk, Director and City Manager.
- (5) **Build-Out Period.** This permit will automatically expire 12 months from the approval date (the "Build-Out Period") unless the permittee obtains all other permits and approvals required to install, construct and/or operate the

approved small wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, support structure or the small wireless facility and/or its use. The permittee may request in writing, and the city may grant in writing, one six-month extension if the permittee submits substantial and reliable written evidence demonstrating justifiable cause for such extension. If the Build-Out Period and any extension finally expire, this permit shall be automatically void but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.

- (6) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility approved under this policy or deemed-approved by law, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- (7) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this permit. At all times, the permittee shall keep the site area free from all litter and debris. The permittee shall regularly inspect the small wireless facility to determine whether any maintenance is needed. The permittee, at no cost to the city, shall remove and remediate any graffiti or other vandalism on the small wireless facility within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- (8) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("Laws") applicable to the permittee, the subject property, the small wireless facility or any use or activities in connection with the use authorized in this permit, which includes without limitation any Laws applicable to human exposure to RF emissions and any standards, specifications or other requirements identified by the Director (such as, without limitation, those requirements affixed to an encroachment permit). The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws. No failure or omission by the city to timely notice, prompt or enforce compliance with any applicable provision in the Madera Municipal Code, this policy any permit, any permit condition or any

applicable Laws, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with same.

- (9) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site and/or small wireless facility. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Madera Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the city or other state or federal government agency or official with authority to declare an emergency within the city. The Director may issue a stop work order for any activities that violates this condition in whole or in part. If the Director finds good cause to believe that ambient noise from the small wireless facility or related equipment violates applicable provisions in the Madera Municipal Code, the Director, in addition to any other actions or remedies authorized by the permit, the Madera Municipal Code or other applicable laws, may require the permittee to commission a noise study by a qualified professional to evaluate the small wireless facility's compliance.
- (10) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that, upon reasonable prior notice to the permittee, the city's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the small wireless facility and related equipment and/or improvements to ensure compliance with this permit and all associated conditions. Notwithstanding the prior sentence, the city's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the city's officers, officials, staff or other designees while any such inspection or emergency access occurs.
- (11) **Contact Information.** At all times relevant to this permit, the permittee shall keep on file with the Director basic contact and site information. This information shall include, but is not limited to, the following: (A) the name, physical address, notice address (if different), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) site operator, (ii) equipment owner, (iii) site manager and (iv) agent for service of process; (B) the small wireless facility's site identification number and/or name used by the permittee and, to the extent applicable, site operator,

equipment owner and site manager; and (C) a toll-free telephone number to the small wireless facility's network operations center where a live person with power-down control over the small wireless facility is available 24 hours-per-day, seven days-per-week. Within 10 business days after a written request by the city, the permittee shall furnish the Director with an updated form that includes all the most-current information described in this condition.

- (12) **Indemnification.** The permittee and, if applicable, the property owner upon which the small wireless facility is installed shall defend, indemnify and hold harmless the city, City Council and the city's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (A) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the city's approval of this permit, and (B) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this permit or the small wireless facility. In the event the city becomes aware of any claims, the city will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the city shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the city's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse the city for any costs and expenses directly and necessarily incurred by the city in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the city to approve this permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this permit.
- (13) **Removal Bond.** Before the city issues any permits required to commence construction in connection with this permit, the permittee shall post a bond issued by a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or similar infrastructure removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the small wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing

or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the small wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject small wireless facility in accordance with this condition.

- (14) **Permit Revocation.** Any permit granted under this policy or deemed approved by the operation of law may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the small wireless facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the small wireless facility and any associated conditions with such permit(s). A permit granted under this policy or deemed approved by the operation of law may be revoked only by the City Council after a duly notice public hearing. Before any public hearing to revoke a permit granted under this policy or deemed approved by the operation of law, the Director must issue a written notice to the permittee that specifies (A) the small wireless facility; (B) the violation(s) to be corrected; (C) the timeframe in which the permittee must correct such violation(s); and (D) that, in addition to all other rights and remedies the city may pursue, the city may initiate revocation proceedings for failure to correct such violation(s). The City Council may revoke a permit when it finds substantial evidence in the written record to show that the small wireless facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the small wireless facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.
- (15) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the permit application, this permit, the Approved Plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the permit (collectively, "Records"). If the permittee does not maintain such Records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing Records will be construed against the permittee. The permittee shall protect all Records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep Records in an electronic format; provided, however, that hard copies or electronic Records kept in the city's regular files will control over any conflicts between such city-controlled copies or Records and the permittee's electronic

copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any Records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

- (16) **Abandoned Facilities.** The small wireless facility authorized under this permit shall be deemed abandoned if not operated for any continuous 12-month period. Within 90 days after a small wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Madera Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the city shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the city in connection with such removal and/or restoration activities and shall reimburse the city for all such costs 30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs.
- (17) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the city. The permittee shall be responsible to maintain any replacement landscape features for a three-year period after such landscaping has been installed. Notwithstanding anything in this condition to the contrary, the Director may agree in a written agreement signed by the permittee to accept an annual in-lieu fee to perform the maintenance work on the permittee's behalf.
- (18) **Cost Reimbursement.** The permittee acknowledges and agrees that (A) the permittee's request for authorization to construct, install and/or operate the small wireless facility will cause the city to incur costs and expenses; (B) the permittee shall be responsible to reimburse the city for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the small wireless facility; (C) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse the city for all such costs



30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs; and (D) the city shall have the right to withhold any permits or other approvals in connection with the small wireless facility until and unless any outstanding costs have been reimbursed to the city by the permittee.

- (19) **Future Undergrounding Programs.** Notwithstanding any term remaining on this permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility is located, the permittee must also underground its equipment, except the antennas and any approved electric meter or related electric-service equipment required by the electric service provider to remain above ground, at approximately the same time. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition; provided, however, that the Director may approve an alternative concealment plan for such equipment that complies with the city's then current design regulations. Small wireless facilities installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the city's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
- (20) **Electric Meter Upgrades.** If the small wireless facility includes a separate or ground-mounted electric meter pedestal and the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
- (21) **Rearrangement and Relocation.** The permittee acknowledges that the city, in its sole discretion and at any time, may: (A) change any street grade, width or location; (B) add, remove or otherwise change any improvements in, on, under or along any street owned by the city or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (C) perform any other work deemed necessary, useful or desirable by the city (collectively, "City Work"). The city reserves the rights to do any and all City Work without any admission on its part that the city would not have such rights without the express reservation in this permit. If the City Engineer determines that any City Work will require the permittee's small

wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility within a reasonable time after the City Engineer's notice, the city may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The city may exercise its rights to rearrange or relocate the permittee's small wireless facility without prior notice to permittee when the City Engineer determines that City Work is immediately necessary to protect public health or safety. The permittee shall reimburse the city for all costs and expenses in connection with such work within 30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs.

- (22) **Successors and Assigns.** The conditions, covenants, promises and terms contained in this permit will bind and inure to the benefit of the city and permittee and their respective successors and assigns.
  - (23) **Truthful and Accurate Statements.** The permittee acknowledges that the city's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the city in connection with this permit or the small wireless facility approved under the this permit, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
  - (24) **City's Standing Reserved.** The city's grant or grant by operation of law of a permit pursuant to this policy does not waive, and shall not be construed to waive, any standing by the city to challenge any (A) FCC rules or regulations that interpret the Telecommunications Act and/or Section 6409 of the Spectrum Act or (B) any permit issued pursuant to this policy.
  - (25) **Severable Conditions.** If any provision in these conditions or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (A) such provision or its application to such person, entity or circumstance will be deemed severed from this permit; (B) all other provisions in this permit or their application to any person, entity or circumstance will not be affected; and (C) all other provisions in this permit or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.
- (b) **Modified Conditions.** The City Council authorizes the Director to modify, add or remove conditions to any site plan approval as the Director deems necessary or

appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in section 12(a) to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment needed for compliance with the Madera Municipal Code, this policy, generally applicable health and safety requirements and/or any other applicable laws.

### **13. EXCEPTIONS**

- (a) **Preface.** The provisions in this section establish a procedure by which the city may grant an exception to the standards in this policy but only to the extent necessary to avoid conflict with applicable federal or state law. When the applicant requests an exception, the approval authority shall consider the findings in section 13(b) in addition to the findings required under section 8(b). Each exception is specific to the facts and circumstances in connection with each application. An exception granted in one instance does not create a presumption or expectation that an exception will be granted in any other instance.
- (b) **Findings for an Exception.** The approval authority may grant an exception to any provision or requirement in this policy only if the approval authority finds that:
  - (1) a denial based on the application's noncompliance with a specific provision or requirement would violate federal law, state law or both; or
  - (2) a provision in this policy, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law.
- (c) **Scope of Exception.** If the approval authority finds that an exception should be granted, the exception shall be narrowly tailored so that the exception deviates from this policy to least extent necessary for compliance with federal or state law.
- (d) **Burden of Proof.** The applicant shall have the burden to prove to the approval authority that an exception should be granted pursuant to this section. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for an exception.

### **14. PEER REVIEW AND INDEPENDENT CONSULTANTS**

- (a) **Authorization.** The City Council authorizes the Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection any permit application. The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include, without limitation: (1) permit application completeness and/or accuracy; (2) pre-construction planned compliance with

applicable regulations for human exposure to RF emissions; (3) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (4) whether and to what extent a proposed project will comply with applicable laws; (5) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the city's discretion to review; and (6) any other issue identified by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant prepare written report, testify at public meetings, hearings and/or appeals and attend meetings with city staff and/or the applicant.

- (b) **Cost Reimbursement.** Subject to applicable laws, the applicant shall be responsible for the reasonable costs actually incurred by the city in connection with a consultant's review, which may include, without limitation, costs incurred by the consultant to attend and participate in any meetings or hearings related to the application. Within a reasonable time after notice from the Director, the applicant shall deposit funds in an amount equal to the estimated costs for the consultant's services, as determined by the Director. The funds shall be applied to the consultant's invoices as such invoices are approved by the Director. If the deposit exceeds the total costs for the consultant's services, the Director shall promptly return any unused funds to the applicant after the small wireless facility has been installed and passes a final inspection. If the reasonable costs for the consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The city shall not issue any building permit or encroachment permit to any applicant with any unpaid invoices.

## **15. VIOLATIONS**

Any use or condition caused or permitted to exist in violation of any provision of this policy shall be and hereby is declared a public nuisance and may be subject to administrative citations as set forth in Madera Municipal Code Title I, Chapter 9, abatement pursuant to Madera Municipal Code §§ 10-3.1601 *et seq.*, California Code of Civil Procedure section 731, or any other remedy available to the city.

## **APPENDIX A – FEDERAL STATUTES**

This Appendix contains relevant federal statutes cited or referred to in the city's policy for informational and reference purposes only. These authorities are current as of the date on which the city adopted the policy. However, the reader should be cautioned that these authorities may be amended or superseded from time-to-time and those amended or superseded versions will control over the reproduced text in this Appendix.

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### **47 U.S.C. § 253 — Removal of barriers to entry.**

#### **(A) In General**

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

#### **(B) State Regulatory Authority**

Nothing in this section shall affect the ability of a State to impose on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

#### **(C) State and Local Government Authority**

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

#### **(D) Preemption**

If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

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**47 U.S.C. § 332(c)(7) — Preservation of local zoning authority.**

**(A) General Authority**

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

**(B) Limitations**

- (i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--
  - (I) shall not unreasonably discriminate among providers of functionally equivalent services; and
  - (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.
- (ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.
- (iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.
- (iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.
- (v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

## **(C) Definitions**

For purposes of this paragraph--

- (i) the term “personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;
- (ii) the term “personal wireless service facilities” means facilities for the provision of personal wireless services; and
- (iii) the term “unlicensed wireless service” means the offering of telecommunications services using duly authorized devices which do not require individual licenses but does not mean the provision of direct-to-home satellite services (as defined in section 303(v) of this title).

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## **47 U.S.C. § 1455(a) — Wireless facilities deployment.**

### **(A) Facility modifications**

#### **(1) In general**

Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

#### **(2) Eligible facilities request**

For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves--

- (A) collocation of new transmission equipment.
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

#### **(3) Applicability of environmental laws**

Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

## **APPENDIX B – FCC REGULATIONS**

This Appendix contains relevant FCC regulations cited or referred to in the city's policy for informational and reference purposes only. These authorities are current as of the date on which the city adopted the policy. However, the reader should be cautioned that these authorities may be amended or superseded from time-to-time and those amended or superseded versions will control over the reproduced text in this Appendix.

Some additional background on how the FCC organizes its regulations may help the reader check for subsequent changes to these rules. The FCC's codified regulations appear in the Code of Federal Regulations (abbreviated as "C.F.R."). The C.F.R. is organized in titles. The FCC's codified regulations appear in Title 47—Telecommunication, and are further organized in chapters, subchapters, parts and subparts. All the provisions reproduced below appear in Part 1, and most appear in Subpart U to Part 1.

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### **47 C.F.R. § 97.3 — Definitions.**

#### **(A) The definitions of terms used in part 97 are:**

- (1) Amateur operator. A person named in an amateur operator/primary license station grant on the [Universal Licensing System] consolidated licensee database to be the control operator of an amateur station.
- (2) Amateur radio services. The amateur service, the amateur-satellite service and the radio amateur civil emergency service.
- (3) Amateur-satellite service. A radiocommunication service using stations on Earth satellites for the same purpose as those of the amateur service.
- (4) Amateur service. A radiocommunication service for the purpose of self-training, intercommunication and technical investigations carried out by amateurs, that is, duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest.
- (5) Amateur station. A station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications.



**47 C.F.R. § 1.4000 — Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.**

(A)(1) [This FCC regulation defines an “OTARD” antenna as follows]:

(i) An antenna that is:

(A) Used to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, and

(B) One meter or less in diameter or is located in Alaska.

(ii) An antenna that is:

(A) Used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite, and

(B) That is one meter or less in diameter or diagonal measurement.

(iii) An antenna that is used to receive television broadcast signals; or

(iv) A mast supporting an antenna described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section;

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**47 C.F.R. § 1.6002 — Definitions.**

Terms not specifically defined in this section or elsewhere in this subpart have the meanings defined in this part and the Communications Act of 1934, 47 U.S.C. 151 *et seq.* Terms used in this subpart have the following meanings:

(A) Action or to act on a siting application means a siting authority's grant of a siting application or issuance of a written decision denying a siting application.

(B) Antenna, consistent with § 1.1320(d), means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the

term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of this chapter.

- (C) Antenna equipment, consistent with § 1.1320(d), means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.
- (D) Antenna facility means an antenna and associated antenna equipment.
- (E) Applicant means a person or entity that submits a siting application and the agents, employees, and contractors of such person or entity.
- (F) Authorization means any approval that a siting authority must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, zoning approval and building permit.
- (G) Collocation, consistent with § 1.1320(d) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, appendix B of this part, section I.B, means—
  - (1) Mounting or installing an antenna facility on a pre-existing structure; and/or
  - (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
  - (3) The definition of “collocation” in § 1.6100(b)(2) applies to the term as used in that section.
- (H) Deployment means placement, construction, or modification of a personal wireless service facility.
- (I) Facility or personal wireless service facility means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.
- (J) Siting application or application means a written submission to a siting authority requesting authorization for the deployment of a personal wireless service facility at a specified location.
- (K) Siting authority means a State government, local government, or instrumentality of a State government or local government, including any official or organizational unit thereof, whose authorization is necessary prior to the deployment of personal wireless service facilities.

(L) Small wireless facilities are facilities that meet each of the following conditions:

(1) The facilities—

- (i) Are mounted on structures 50 feet or less in height including their antennas as defined in § 1.1320(d); or
- (ii) Are mounted on structures no more than 10 percent taller than other adjacent structures; or
- (iii) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in § 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under part 17 of this chapter;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in § 1.1307(b).

(M) Structure means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

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**47 C.F.R. § 1.6003 — Reasonable periods of time to act on siting applications.**

(A) Timely action required. A siting authority that fails to act on a siting application on or before the shot clock date for the application, as defined in paragraph (e) of this section, is presumed not to have acted within a reasonable period of time.

(B) Shot clock period. The shot clock period for a siting application is the sum of—

- (1) The number of days of the presumptively reasonable period of time for the pertinent type of application, pursuant to paragraph (c) of this section; plus

- (2) The number of days of the tolling period, if any, pursuant to paragraph (d) of this section.

(C) Presumptively reasonable periods of time—

- (1) Review periods for individual applications. The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments in the categories set forth in paragraphs (c)(1)(i) through (iv) of this section:
  - (2) Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days.
  - (ii) Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.
  - (iii) Review of an application to deploy a Small Wireless Facility using a new structure: 90 days.
  - (iv) Review of an application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.

(2) Batching.

- (i) If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in either paragraph (c)(1)(i) or (iii) of this section, then the presumptively reasonable period of time for the application as a whole is equal to that for a single deployment within that category.
- (ii) If a single application seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within paragraph (c)(1)(i) of this section and deployments that fall within paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is 90 days.
- (iii) Siting authorities may not refuse to accept applications under paragraphs (c)(2)(i) and (ii) of this section.

(D) Tolling period. Unless a written agreement between the applicant and the siting authority provides otherwise, the tolling period for an application (if any) is as set forth in paragraphs (d)(1) through (3) of this section.

- (1) For an initial application to deploy Small Wireless Facilities, if the siting authority notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the

missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the siting authority to render the application complete.

(2) For all other initial applications, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation; until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;

(iii) But only if the notice pursuant to paragraph (d)(2)(i) of this section is effectuated on or before the 30th day after the date when the application was submitted; or

(3) For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the siting authority's original request under paragraph (d)(1) or (2) of this section; until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;

(iii) But only if the notice pursuant to paragraph (d)(3)(i) of this section is effectuated on or before the 10th day after the date when the applicant makes a supplemental submission in response to the siting authority's request under paragraph (d)(1) or (2) of this section.

(E) Shot clock date. The shot clock date for a siting application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to paragraph (b) of this section and including any pre-application period asserted by the siting authority; provided, that if the date calculated in this manner is a "holiday" as defined in § 1.4(e)(1) or a legal holiday within the relevant State or local jurisdiction, the shot clock date is the next business day after such date. The

term “business day” means any day as defined in § 1.4(e)(2) and any day that is not a legal holiday as defined by the State or local jurisdiction.

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#### **47 C.F.R. § 1.6100 — Wireless Facility Modifications.<sup>1</sup>**

(A) [Reserved by 83 FR 51886]

(B) Definitions. Terms used in this section have the following meanings.

- (1) Base station. A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.
  - (i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
  - (ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
  - (iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
  - (iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)-(ii) of this section.

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<sup>1</sup> In 2018, the FCC reorganized its regulations and recodified Section 1.40001 as Section 1.6100. See *In re Accelerating Wireless Broadband*, Erratum, 33 FCC Rcd. 9088 at ¶ 2 (Nov. 29, 2018). However, the FCC did not correct all internal cross references and so some provisions in Section 1.6100 still refer to the old subsections within Section 1.40001. This reproduction corrects those typographical errors with the correct cross references, denoted by bracketed text. All other provisions remain consistent with the published FCC regulation.

- (2) Collocation. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
- (3) Eligible facilities request. Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:
  - (i) Collocation of new transmission equipment;
  - (ii) Removal of transmission equipment; or
  - (iii) Replacement of transmission equipment.
- (4) Eligible support structure. Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.
- (5) Existing. A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.
- (6) Site. For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the Section 6409(a) process.
- (7) Substantial change. A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:
  - (i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater.

- (A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.
- (ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- (iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- (iv) It entails any excavation or deployment outside the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site.
- (v) It would defeat the concealment elements of the eligible support structure; or
- (vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.6100(b)(7)(i) through (iv).
- (8) Transmission equipment. Equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.



- (9) Tower. Any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(C) Review of applications. A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

- (1) Documentation requirement for review. When an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.
- (2) Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application unless it determines that the application is not covered by this section.
- (3) Tolling of the timeframe for review. The 60-day period begins to run when the application is filed and may be tolled only by mutual agreement or in cases where the reviewing State or local government determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.
- (i) To toll the timeframe for incompleteness, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of this section.
- (ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the State or local government's notice of incompleteness.
- (iii) Following a supplemental submission, the State or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing

information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

- (4) Failure to act. In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.
  - (5) Remedies. Applicants and reviewing authorities may bring claims related to Section 6409(a) to any court of competent jurisdiction.
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## **APPENDIX C – STATE STATUTES**

This Appendix contains relevant California statutes cited or referred to in the city's policy for informational and reference purposes only. These authorities are current as of the date on which the city adopted the policy. However, the reader should be cautioned that these authorities may be amended or superseded from time-to-time and those amended or superseded versions will control over the reproduced text in this Appendix.

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### **California Public Utilities Code § 7901**

Telegraph or telephone corporations may construct lines of telegraph or telephone lines<sup>2</sup> along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments 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.

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### **California Public Utilities Code § 7901.1**

(a) It is the intent of the Legislature, consistent with Section 7901, that municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed.

(b) The control, to be reasonable, shall, at a minimum, be applied to all entities in an equivalent manner.

(c) Nothing in this section shall add to or subtract from any existing authority with respect to the imposition of fees by municipalities.

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<sup>2</sup> "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires. CAL. PUB. UTILS. CODE § 233.