

CITY OF YUBA CITY
STAFF REPORT

Date: June 21, 2022
To: Honorable Mayor & Members of the City Council
From: Public Works Department
Presentation By: Ben Moody, Public Works & Development Services Director

Summary

Subject: Small Wireless Telecommunication Facilities within the City's Right-of-Way

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

B. Adopt a Resolution to revise the corresponding City Policy for design standards applicable to Small Wireless Facilities (SWF) in the public right-of-way

Fiscal Impact: Minimal fiscal impact is anticipated with the implementation of the ordinance. Installation of wireless facilities would be subject to permit and inspection fees to offset administrative costs with potential lease revenue in the future. Staff will bring to City Council a proposed Master License Agreement for use of City infrastructure in the ROW and a Fee Resolution for any fees associated with these applications at the time of the second reading.

Purpose:

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

Council's Strategic Goals:

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

Background:

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

Wireless telecommunication carriers increasingly seek to place SWFs in the City's public right-of-way on utility poles, streetlights, and new poles. The demand for such wireless installations, particularly

SWFs, is expected to grow exponentially over the next several years given the expansion of home streaming video, social media, drones, self-driving cars, and the Internet of Things (IoT) serving homes and businesses. To accommodate this expansion, the telecommunications industry seeks to implement small cell facilities by installing them onto street light poles and other utility poles in the public right-of-way that are well-suited for limited range SWFs.

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

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

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

Analysis:

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

Permitting for macro and small wireless telecommunication facilities will require a new type of permit, titled a Wireless Telecommunication Facility (WTF) Permit. To address the difference between macro and small wireless telecommunication facilities, the WTF permit will have a supplemental application to classify the facility.

Fiscal Impact:

Minimal fiscal impact is anticipated with the implementation of the ordinance. Installation of wireless facilities would be subject to permit and inspection fees to offset administrative costs. There may also be the potential for lease revenue at some future date. Staff will bring to City Council a proposed Master License Agreement for use of City infrastructure in the ROW and a fee resolution for any fees associated with these applications at the time of the second reading.

Alternatives:

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

Recommendation:

A. Introduce an Ordinance of the City Council of the City of Yuba City adding Chapter 8 Wireless Telecommunications Facilities in the Public Right of Way to Title 6 of the Yuba City Municipal Code by title

only and waive the first reading.

B. Adopt a Resolution to revise the corresponding City Policy for design standards applicable to Small Wireless Facilities in the public right-of-way.

Attachments:

1. Wireless Telecommunication Facilities Ordinance - Final Draft 6.15.2022
2. Resolution - Small Wireless Telecommunication Facilities within the City's Right-of-Way
3. Exhibit A - General Small Wireless Telecommunication Facilities Council Policy (2021) Amended 6.21.22

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ORDINANCE NO. _____

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

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

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

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

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

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

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

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

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

Sec. 6-8.01 – PURPOSE.

The purpose and intent of this chapter is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the City’s public right-of-way. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This chapter provides

standards necessary (1) for the preservation of the public right-of-way (“PROW”) in the City for the maximum benefit and use of the public, (2) to promote and protect public health and safety, community welfare, visual resources (including but not limited to scenic corridors) and the aesthetic quality of the City consistent with the goals, objectives and policies of the general plan, (3) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with state and federal laws, rules and regulations, including those regulations of the Federal Communications Commission (“FCC”) and California Public Utilities Commission (“CPUC”), and (4) to ensure that the use and enjoyment of the PROW is not inconvenienced by the use of the PROW for the placement of wireless facilities. The City recognizes the importance of wireless facilities to provide high-quality communications service to the residents and businesses within the City, and the City also recognizes its obligation to comply with applicable federal and state laws. This chapter shall be constructed and applied in consistency with the provisions of state and federal laws, and the rules and regulations of FCC and CPUC.

Sec. 6-8.02 – DEFINITIONS.

- (a) “Accessory equipment” means any and all on-site equipment, including, without limitation, back-up generators and power supply units, cabinets, coaxial and fiber optic cables, connections, equipment buildings, shelters, radio transceivers, transmitters, pedestals, splice boxes, fencing and shielding, surface location markers, meters, regular power supply units, fans, air conditioning units, cables, and wiring, to which an antenna is attached in order to facilitate the provision of wireless telecommunication services.
- (b) “Antenna” means that specific device for transmitting and/or receiving radio frequency or other signals for purposes of wireless telecommunications services. “Antenna” includes but is not limited to satellite, microwave or panel elements of a wireless telecommunications facility.
- (c) “Antenna array” shall mean two or more antennas having active elements extending in one or more directions, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.
- (d) “Base station” shall have the meaning as set forth in Title 47 Code of Federal Regulations (C.F.R.) Section 1.6100(b)(1), or any successor provision as may be amended from time to time. This means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network . “Base station” does not encompass a tower or any equipment associated with a tower. Base station includes, without limitation:

- (1) Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
 - (2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small wireless facilities).
 - (3) Any structure other than a tower that, at the time the relevant application is filed with the City under this chapter, supports or houses equipment described in paragraphs 1 and 2 of this definition that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.
 - (4) “Base station” does not include any structure that, at the time the relevant application is filed under this chapter, does not support or house equipment described in paragraphs 1 and 2 of this definition. Other structures that do not host wireless telecommunications facilities are not “base stations.”
 - (5) As an illustration and not a limitation, the FCC’s definition of “base station” refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles, light standards, or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.
- (e) “City” means the City of Yuba City.
- (f) “Code” means the City of Yuba City Municipal Code.
- (g) “Collocation” bears the following meanings:
- (1) For the purposes of any eligible facilities request, the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), as may be amended, which defines that term as “[t]he 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.” As an illustration and not a limitation, the FCC’s definition means to add transmission equipment to an existing facility and does not necessarily refer to two or more different facility operators in the same location; and

- (2) For all other purposes, the same as defined in 47 CFR § 1.6002(g)(1) and (2), as may be amended, which defines that term as (1) Mounting or installing an antenna facility on a pre-existing structure, and/or (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
- (h) “Collocation facility” means the eligible support structure on, or immediately adjacent to, which a collocation is proposed, or a wireless telecommunications facility that includes collocation facilities. (See, Gov. Code, § 65850.6(d)(1).)
- (i) “COW” means a “cell on wheels,” which is a portable, self-contained wireless telecommunications facility that can be moved to a location and set up to provide wireless telecommunication services, which facility is temporarily rolled in, or temporarily installed, at a location. Under this chapter, the maximum time a facility can be installed to be considered a COW is five (5) days. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.
- (j) “Development Services Director” means the director of the Development Services and Engineering Department or their designee.
- (k) “Eligible facilities request” means any request for modification to an existing eligible support structure that does not substantially change the physical dimensions of such structure, involving:
 - (1) Collocation of new transmission equipment;
 - (2) Removal of transmission equipment;
 - (3) Replacement of transmission equipment (replacement does not include completely replacing the underlying support structure); or
 - (4) Hardening through structural enhancement where such hardening is necessary to accomplish the eligible facilities request, but does not include replacement of the underlying support structure.
 - (5) “Eligible facilities request” does not include modifications or replacements when an eligible support structure was constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. “Eligible facilities request” does include collocation facilities satisfying all the requirements for a non-discretionary collocation facility pursuant to Government Code Section 65850.6.

- (l) “Eligible support structure” means any support structure located in the PROW that is existing at the time the relevant application is filed with the City under this chapter.
- (m) “Existing” means a support structure, wireless telecommunications facility, or accessory equipment that has been reviewed and approved under the City’s applicable zoning or siting process, or under another applicable state or local regulatory review process, and lawfully constructed prior to the time the relevant application is filed under this chapter. “Existing” does not apply to any structure that (1) was illegally constructed without all proper local agency approvals, or (2) was constructed in noncompliance with such approvals. “Existing” does not apply where an existing support structure is proposed to be replaced in furtherance of the proposed wireless telecommunications facility.
- (n) “Facility(ies)” means wireless telecommunications facility(ies).
- (o) “FCC” means the Federal Communications Commission.
- (p) “Ground-mounted” means mounted to a pole, tower or other freestanding structure which is specifically constructed for the purpose of supporting an antenna or wireless telecommunications facility and placed directly on the ground at grade level.
- (q) “Located within (or in) the public right-of-way” includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the PROW.
- (r) “Modification” means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. “Modification” does not include repair, replacement or maintenance if those actions do not involve whatsoever any expansion, alteration, enlargement, intensification, reduction, or augmentation of an existing wireless telecommunications facility.
- (s) “Monopole” means a structure composed of a pole or tower used solely to support antennas or related equipment. A monopole also includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole (e.g. water tower).
- (t) “OTARD antennas” means antennas covered by the “over-the-air reception devices” rule in 47 C.F.R. §§ 1.4000 et seq. as may be amended or replaced from time to time.
- (u) “Permittee” means any person or entity granted a WTFP pursuant to this chapter.

- (v) “Personal wireless services” shall have the same meaning as set forth in 47 United States Code Section 332(c)(7)(C)(i).
- (w) “Pole” means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this code.
- (x) “Public Works Director” shall mean the Director of Public Works, or his or her designee.
- (y) “Public right-of-way” or “PROW” means a strip of land acquired by reservation, dedication, prescription, condemnation, or easement that allows for the passage of people and goods. The PROW includes, but is not necessarily limited to, streets, curbs, gutters, sidewalks, parkways, roadway medians, and parking strips. The PROW does not include lands owned, controlled or operated by the City for uses unrelated to streets or the passage of people and goods, such as, without limitation, parks, City Hall and community center lands, City yards, and lands supporting reservoirs, water towers, police or fire facilities and non-publicly accessible utilities.
- (z) “Replacement” refers only to replacement of transmission equipment, wireless telecommunications facilities or eligible support structures where the replacement structure will be of like-for-like kind to resemble the appearance and dimensions of the structure or equipment replaced, including size, height, color, landscaping, materials and style.
 - (1) In the context of determining whether an application qualifies as an eligible facilities request, the term “replacement” relates only to the replacement of transmission equipment and does not include replacing the support structure on which the equipment is located.
 - (2) In the context of determining whether a SWF application qualifies as being placed upon a new eligible support structure or qualifies as a collocation, an application proposing the “replacement” of the underlying support structure qualifies as a new pole proposal.
- (aa) “RF” means radio frequency.
- (bb) “Spectrum Act” means Section 6409(a) of the Middle Class Tax Relief Act and Job Creation Act of 2012, 47 U.S.C. §1455(a).
- (cc) “Substantial change” has the same meaning as “substantial change” as defined by the FCC at 47 C.F.R. § 1.6100(b)(7). Notwithstanding the definition above, if an existing pole-mounted cabinet is proposed to be replaced with an underground cabinet at a facility where there are no pre-existing ground cabinets associated with the structure, such modification may be deemed a non-substantial change, in the discretion of the Public Works Director and based upon his/her reasonable consideration of the

cabinet's proximity to residential view sheds, interference to public views and/or degradation of concealment elements. If undergrounding the cabinet is technologically infeasible such that it is materially inhibitive to the project, the Director may allow for a ground mounted cabinet. A modification or collocation that results in a "substantial change" to the physical dimensions of an eligible support structure if it does any of the following:

- (1) It increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
- (2) It involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- (3) It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets. However, for towers and base stations located in the public rights-of-way, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- (4) It entails any excavation or deployment outside the current site. For purposes of this Subsection, excavation outside the current site occurs where excavation more than twelve feet from the eligible support structure is proposed;
- (5) It defeats the concealment or stealthing elements of the eligible support structure; or
- (6) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs 1 through 4 of this definition.
- (7) The thresholds and conditions for a "substantial change" described in this Section are disjunctive such that the violation of any individual threshold or condition results in a substantial change. The height and width thresholds for a substantial change described in this Section are cumulative for each individual support structure. The cumulative limit is measured from the physical dimensions of the original structure for base stations, and for all other facilities sites in the PROW from the smallest physical dimensions that existed on or after February 22, 2012, inclusive of originally approved-

appurtenances and any modifications that were approved prior to that date.

- (dd) “Support structure” means a tower, pole, base station or other structure used to support a wireless telecommunications facility.
- (ee) “SWF” means a “small wireless facility” as defined by the FCC in 47 C.F.R. § 1.6002(l) as may be amended, which are wireless facilities that meet all the following conditions that, solely for convenience, have been set forth below:
 - (1) The facility:
 - i. Is mounted on an existing or proposed structure 50 feet or less in height, including antennas, as defined in Title 47 C.F.R. § 1.1320(d); or
 - ii. Is mounted on an existing or proposed structure no more than 10 percent taller than other adjacent structures, or
 - iii. Does not extend an existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
 - (2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. § 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 facility does not require antenna structure registration under 47 C.F.R. Part 17, Section 17.4;
 - (5) The facility is not located on Tribal lands, as defined under Title 36 C.F.R. § 800.16(x); and
 - (6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Title 47 C.F.R. § 1.1307(b).
- (ff) “SWF Regulations” means those regulations adopted by the City Council (including but not limited City Council Policy No. 21-102) implementing the provisions of this chapter applicable to SWFs and further regulations and standards applicable to SWFs.

- (gg) “Telecommunications tower” or “tower” bears the meaning ascribed to wireless towers by the FCC in 47 C.F.R. § 1.6100(b)(9), including without limitation a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower, or other structure designed and built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.
- (hh) “Transmission equipment” bears the meaning at the FCC in 47 C.F.R. § 1.6100(b)(8), which is defined as equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (ii) “Utility pole” means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission. A telecommunications tower is not a utility pole.
- (jj) “Wireless telecommunications facility” means equipment and network components such as antennas, accessory equipment, support structures, and emergency power systems that are integral to providing wireless telecommunications services. Exceptions: The term “wireless telecommunications facility” does not apply to the following:
- (1) Government-owned and operated telecommunications facilities.
 - (2) Emergency medical care provider-owned and operated telecommunications facilities.
 - (3) Mobile services providing public information coverage of news events of a temporary nature.
 - (4) Any wireless telecommunications facilities exempted from this code by federal law or state law.
- (kk) “Wireless telecommunications services” means the provision of services using a wireless telecommunications facility or a collocation facility, and shall include, but not limited to, the following services: personal wireless services as defined in the federal Telecommunications Act of 1996 at 47 U.S.C. § 332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.

- (II) “WTFP” means a “wireless telecommunications facility permit” required by this chapter.

Sec 6-8.03 – APPLICABILITY.

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

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

- (a) Administration. Unless a matter is referred to the Development Services Planning Division as provided below, The Public Works Director is responsible for administering this chapter. As part of the administration of this chapter, the Public Works Director may:
 - (1) Interpret the provisions of this chapter;

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

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

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

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

- (1) All applications for WTFPs shall be initially submitted to the Public Works Director. In addition to the information required of an applicant for an encroachment permit or any other permit required by this Code, each applicant shall fully and completely submit to the City a written application on a form prepared by the Public Works and published on the City's website.
 - (2) Ground mounted equipment, conduit, junction boxes and fiber and electrical connections necessary for and intended for use in the deployment shall also be specified, to the extent known regardless of whether the additional facilities are to be constructed by the applicant or leased from a third party. Where another party is responsible for installing such electric and fiber utilities, conduits, cables, and related improvements, applicant's construction drawings will include such utilities to the extent known at the time of application, but at a minimum applicant must indicate how it expects to obtain fiber and electric service to the small wireless facility. Notwithstanding the foregoing, no ground mounted equipment, conduit, junction boxes or fiber and electrical connections necessary for and intended for use in the deployment shall be installed until a WTFP has been approved or conditionally approved for the deployment.
- (b) Application Contents—Administrative WTFPs. The content of the application form for facilities subject to an Administrative WTFP shall be determined by the Public Works Director. Fees and Deposits Submitted with Application(s).
- (1) For all WTFPs, application fee(s) and or deposit(s) shall be required to be submitted with any application, as established by City Council resolution and in accordance with California Government Code Section 50030. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a WTFP unless paid as a refundable deposit.
- (c) Costs. Reasonable costs of City staff, consultant and attorney time (including that of the City Attorney) pertaining to the review, processing, noticing and hearing procedures directly attributable to a WTFP shall be reimbursable to the City. To this end, the, as applicable, may require applicants to enter cost recovery agreement, in a form approved by the City Attorney, or other established trust/deposit accounting mechanism for purposes of obtaining an applicant deposit from which the direct costs of City processing of an application may be drawn-down.
- (d) Effect of State or Federal Law on Application Process. In the event a state or federal law prohibits the collection of any information required by the application. Public Works Director is authorized to omit, modify, or add to

that request from the City's application form in consultation with the City Attorney. Requests for waivers from any application requirement of this Section shall be made in writing to the Public Works Director or designee. The Public Works Director may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the WTFP sought. All waivers approved pursuant to this Subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored to minimize deviation from the requirements of this Code.

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

Sec. 6-8.06 – REVIEW PROCEDURE.

- (a) Generally. Wireless telecommunications facilities shall be installed and modified in a manner that minimizes risks to public safety and utilizes installation of new support structures or equipment cabinets in the PROW

only after all existing and replacement structure options have been exhausted, and where feasible, places equipment underground, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the PROW; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the ROW, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate the PROW or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the PROW.

(b) Findings Required for Approval.

(1) Administrative WTFP Applications for SWFs. For WTFP applications proposing a SWF, the Public Works Director, as the case may be, shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:

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

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

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

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

(1) Administrative WTFPs: Notice of a WTFP application for a SWF shall be mailed to owners and occupants of real property surrounding the

proposed SWF site in the manner specified in the SWF Regulations. Applications qualifying for eligible facilities requests shall not require notice.

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

- i. A general explanation of the decision, including the findings required for the decision, if any, and how those findings were supported or not supported by substantial evidence;
- ii. A general description of the property involved;
- iii. Information about applicable rights to appeal the decision and explanation of how that right may be exercised; and
- iv. To be given by first class mail to:
 - a. The project applicant and property owner,
 - b. Any person who submitted written comments concerning the WTFP,
 - c. Any person within who has filed a written request with the City to receive such notice, and
 - d. Adjacent property owners within 300 feet of the WTFP facility.

(3) Once a WTFP is approved, no changes shall be made to the approved plans without review and approval in accordance with this chapter.

(d) Appeals.

(1) Administrative WTFP Appeals. Any person claiming to be adversely affected by an administrative decision pursuant to this chapter may appeal such decision. The appeal will be considered by either a hearing officer appointed by the City Manager or the City Manager. The hearing officer may decide the issues de novo and whose written decision will be the final decision of the City. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service

provider that intends to use the wireless facility. Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, appeals of the administrative decision premised on the environmental effects of radio frequency emissions will not be considered.

- i. Where the administrative decision grants an application based on a finding that denial would result in a prohibition or effective prohibition under applicable federal law, the decision shall be automatically appealed to the hearing officer. All non-automatic appeals by third-parties must be filed within two (2) business days of the written administrative decision, unless the Public Works Director extends the time therefore, and are only appealable by persons who (a) received formal notice of the application pursuant to Section 7.28.60(c), or (b) actively participated in or commented upon the City decision-making process, or (c) otherwise demonstrate that they are directly impacted by aesthetic, safety-related or legal impacts attributable to the installation. An extension may not be granted where extension would result in approval of the application by operation of law.
 - ii. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law. For SWFs, the appeal shall be conducted in accordance with any procedures adopted in the SWF Regulations.
- (e) Notice of Shot Clock Expiration. The City acknowledges there are federal and state shot clocks which may be applicable to a proposed wireless telecommunications facility. That is, federal and state law provide time periods in which the City must approve or deny a proposed wireless telecommunications facility. As such, the applicant is required to provide the written notice, which may be by email, of the expiration of any shot clock, which the applicant shall ensure is received by the City (e.g. overnight mail) no later than 10 days prior to the expiration.

Sec. 6-8.07 – DESIGN AND DEVELOPMENT STANDARDS.

- (a) SWF Design and Development Standards. SWFs are subject to those design and development standards and conditions of approval set forth in the SWF Regulations. The City's grant of a WTFP for a SWF does not waive, and shall not be construed to waive, any standing by the City to challenge any FCC orders or rules related to small wireless facilities, or any modification to those FCC orders or rules.

- (b) Eligible Facilities Request Design and Development Standards. Approved eligible facilities requests for which the findings set forth in Section 6-8.060 have been made are subject to the following conditions, unless modified by the approving authority:
- (1) WTFP subject to conditions of underlying permit. Any WTFP granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit and all such conditions that were applicable to the facility prior to approval of the subject eligible facility request, provided such conditions do not apply in such a manner as to prohibit the granting of the Eligible Facilities Request.
 - (2) No permit term extension. The City's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City's grant or grant by operation of law of an eligible facilities request will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall have the same term as the underlying permit or other regulatory approval for the subject tower or base station.
- (c) Other General Design Standards. Excepting applications for eligible facilities requests, all wireless telecommunications facilities that are located within the public right-of-way shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following standards. WTFP applications (excepting those eligible facilities requests) that do not meet any of the following standards are prohibited unless such standards (i) would be technically infeasible to achieve the applicant's service objectives, as supported by clear and convincing evidence in the written record, and/or (ii) subject to an exception for State or Federal law consistent with Section 6.8.16 below.
- (1) The applicant shall employ screening, undergrounding, and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is as visually screened as technically feasible, to prevent the facility from dominating the surrounding area and to minimize significant view impacts from surrounding properties and public views, all in a manner that achieves compatibility with the community and in compliance with this code.
 - (2) Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage,

disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.

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

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

Sec. 6-8.09 – OPERATION AND MAINTENANCE STANDARDS.

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

- (a) The permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules, including, without limitation, those applying to use of the PROW. The permittee shall ensure that all equipment and other improvements to be constructed and/or

installed in connection with the approved WTFP are maintained in a manner that is not detrimental or injurious to the public health, safety, and general welfare and that the aesthetic appearance is continuously preserved, and substantially the same as shown in the approved plans at all times relevant to the WTFP.

- (b) Unless otherwise provided herein, all necessary repairs and restoration shall be completed by the permittee, owner, operator, or any designated maintenance agent at its sole cost within 3 business days:
 - (1) After discovery of the need by the permittee, owner, operator, or any designated maintenance agent; or
 - (2) After permittee, owner, operator, or any designated maintenance agent receives notification from the City.
- (c) Insurance. The permittee shall obtain and maintain throughout the term of the permit a type and amount of insurance as specified by City's risk management. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insured. The permittee shall use its best efforts to provide thirty (30) days prior notice to the Public Works Director the cancellation or material modification of any applicable insurance policy.
- (d) Indemnities. The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees:
 - (1) From any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the City or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and
 - (2) From any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors.
 - (3) In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and, if applicable, the private property owner and shall reasonably cooperate in the

defense. The City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or Permittee (as applicable) shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of defending itself against any such actions or claims as noted herein.

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

nature, or utility lines and systems, underground utility line and systems (water, sewer, storm drains, gas, oil, electrical, etc.) that result from any activities performed in connection with the installation and/or maintenance of a wireless facility in the PROW;

- (2) General dirt and grease;
 - (3) Chipped, faded, peeling, and cracked paint;
 - (4) Rust and corrosion;
 - (5) Cracks, dents, and discoloration;
 - (6) Missing, discolored or damaged artificial foliage or other camouflage;
 - (7) Graffiti, bills, stickers, advertisements, litter and debris. All graffiti on facilities must be removed at the sole expense of the permittee within forty eight (48) hours after notification from the City;
 - (8) Broken and misshapen structural parts; and
 - (9) Any damage from any cause.
- (i) All trees, foliage, or other landscaping elements approved as part of the facility shall be maintained in neat, safe, and good condition at all times, and the permittee, owner, and operator of the facility shall be responsible for replacing any damaged, dead, or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the Public Works Director.
 - (j) The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.
 - (k) Each facility shall be operated and maintained to comply with all conditions of approval. The permittee, when directed by the City, must perform an inspection of the facility and submit a report to the Public Works Director on the condition of the facility to include any identified concerns and corrective action taken.
 - (l) Failure to comply with the City's adopted noise standard, Section 4.12.710, *et seq.* after written notice and reasonable opportunity to cure have been given shall be grounds for the City to revoke the permit.
 - (m) Interference
 - (1) The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property

without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a wireless telecommunication facility permit, the permittee shall provide the City with documentation establishing to the City's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the PROW or City utility easement to be affected by permittee's facilities.

- (2) The facility shall not damage or interfere in any way with City property, the City's operations or the operations of prior-existing, third party installations. The City will reasonably cooperate with the permittee and/or carrier to carry out such activities as are necessary to correct the interference.
 - i. Signal Interference. The permittee shall cure any such interference within 24 hours of written notification of the interference, or such other timeframes as may be dictated by FCC regulations, and in accordance with FCC regulations. Interference by applicant equipment impacting public safety signals shall be promptly and diligently resolved by the applicant, and may require a cease of operations of such equipment until the interference with public safety signals is fully resolved.
 - ii. Physical Interference. The City shall give the permittee thirty (30) days to correct the interference after which the City reserves the right to take any action it deems necessary, which could include revocation of the permit.
- (3) The City at all times reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the sites. Such actions may temporarily interfere with the operation of the facility. The City will in all cases, other than emergencies, give the applicant written notification of such planned, non-emergency actions, which notice shall be provided commensurate with the City's commencement of design planning or 30 prior to the non-emergency action, whichever is greater.
- (4) RF Exposure Compliance. All facilities must comply with all standards and regulations of the FCC and any other state or federal

government agency with the authority to regulate RF exposure standards.

- (5) Wind Load. Each facility shall be properly engineered to withstand wind loads as required by this code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.
- (n) Records. The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event the records cannot be produced by the City or the applicant, the applicant shall have the opportunity to demonstrate by other relevant evidence that the facility as-built is compliant with the applicable code and all entitlements in-place at the time of construction of the original facility and any subsequent modifications to the original facility.
- (o) Attorney's Fees. In the event it is necessary to take legal action pursuant to this chapter, all costs of such legal action, including reasonable attorney's fees, shall be paid to the prevailing party, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the parties otherwise agree to waive said fees or any part thereof.

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

No person shall install, use or maintain any wireless telecommunications facility that in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, fire station, fire escape, water valve, underground vault, valve housing structure, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety. A facility shall not be located within any portion of the public right-of-way interfering with access to a fire hydrant or any other public health or safety facility.

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

- (a) No permit or approval granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way

of the City for any purpose whatsoever. Further, no approval shall be construed as a warranty of title.

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

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

- (a) Permit Term. Unless Government Code Section 65964, as may be amended, or any other law authorizes the City to issue a permit with a shorter term, a permit for any wireless telecommunications facility shall be valid for a period of ten (10) years, unless pursuant to another provision of this code it lapses sooner or is revoked. At the end of ten (10) years from the date of issuance, such permit shall automatically expire.
- (b) A permittee may apply for a new permit within 180 days prior to expiration. To the extent allowed by law, said application and proposal shall comply with the City's current code requirements for wireless telecommunications facilities.
- (c) Timing of Installation. The installation and construction authorized by a WTFP shall begin within one (1) year after its approval, or it will expire without further action by the City. The installation and construction authorized by a WTFP shall conclude, including any necessary post-installation repairs and/or restoration to the PROW, within thirty (30) days following the day construction commenced, or at such later completion date as otherwise approved by the Director in writing based upon the City's reasonable discretion.

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

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

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

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

- (a) Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the WTFP or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to the condition it was in prior to the granting of

the WTFP, except for retaining the landscaping improvements and any other improvements at the discretion of the City. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the City. Expired, terminated or revoked wireless telecommunications facility equipment shall be removed from the site at no cost or expense to the City.

- (b) Failure of the permittee, owner or operator to promptly remove its facility and restore the property within ninety (90) days after expiration, earlier termination or revocation of the WTFP, or abandonment of the facility, shall be a violation of this code. Upon a showing of good cause, an extension may be granted by the Public Works Director where circumstances are beyond the control of the permittee after expiration. Further failure to abide by the timeline provided in this Section shall be grounds for:
 - (1) Prosecution;
 - (2) Acting on any security instrument required by this chapter or conditions of approval of permit;
 - (3) Removal of the facilities by the City in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
 - (4) Any other remedies permitted under this code or by law.
- (c) **Summary Removal.** In the event any City director or City engineer determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), such director or City engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within 60 days, the facility shall be treated as abandoned property.
- (d) **Removal of Facilities by City.** In the event the City removes a wireless telecommunications facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the City for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the City may collect such costs from the

performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this code. Unless otherwise provided herein, the City has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the City destroys any such facility not timely removed by the permittee, owner or operator after notice, or removal by the City due to exigent circumstances.

Sec. 6-8.15 – EFFECT ON OTHER ORDINANCES.

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

Sec. 6-8.16 – STATE OR FEDERAL LAW.

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

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

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

structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property.

ATTACHMENT 2

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
AMMENDING THE CITY'S POLICY REGARDING SMALL WIRELESS FACILITIES IN
THE PUBLIC RIGHT-OF-WAY**

WHEREAS, significant changes in federal law have recently been enacted, which affect local authority over Small Wireless Facilities (SWFs), as defined in 47 CFR 1.6002(1); and

WHEREAS, in response to these legislative changes, the City proposes adoption of a new City Policy that would establish requirements for permitting, operation, and maintenance of SWFs within the City of Yuba City; and

WHEREAS, Council desires to provide the maximum amount of local control for SWFs considering the revisions to federal law; and

WHEREAS, Telecommunication companies have provided comments on the previously adopted Small Wireless Facilities Policy, and

WHEREAS, Staff determined amendment to the Small Wireless Facilities Policy is needed, and

NOW, THEREFORE, be it resolved by the City Council of the City of Yuba City as follows:

1. The foregoing recitals are true and correct.
2. The City Policy "SWF Regulations" and all associated exhibits attached hereto as Exhibit A is hereby approved and established.

The foregoing Resolution was duly and regularly introduced, passed, and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 21st day of June, 2022.

AYES:

NOES:

ABSENT:

ATTEST

Dave Shaw, Mayor

Ciara Wakefield, Deputy City Clerk

APPROVED AS TO FORM
COUNSEL FOR YUBA CITY

Shannon L. Chaffin, City Attorney
Aleshire & Wynder, LLP

Attachment(s):
Exhibit A – City Policy “SWF Regulations”

EXHIBIT "A"

CITY POLICY
SMALL WIRELESS FACILITIES PER 47 CFR 1.6002(1)
“SWF REGULATIONS”

<u>SUBJECT:</u> Small Wireless Facilities (Administrative Approvals and Standards)	<u>AUTHORITY:</u> Resolution No. <u>21-102</u>	<u>DATE ADOPTED:</u> July 20, 2021
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SECTION 1. GENERAL PROVISIONS

SECTION 1.1 PURPOSE AND INTENT

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 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 1.2 GENERAL DEFINITIONS

- (a) **Undefined Terms.** Undefined phrases, terms or words in this Policy will have the meanings assigned to them in Title 6 Chapter 8 of the Yuba City Municipal Code, as may be amended or superseded, and, if not defined therein, will have their ordinary meanings. If any definition assigned to any phrase, term or word in this Policy conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.
- (b) **Defined Terms.**
- (1) **“Approval authority”** means the City official responsible for reviewing applications for small cell permits and vested with the authority to approve, conditionally approve, or deny such applications as provided in this Policy. The approval authority for applications in connection with small wireless facilities within the public rights-of-way shall be the Public Works Department.
 - (2) **“Arterial road”** means a road designed primarily for long-distance travel with a typical curb-to-curb width greater than 60 feet, high traffic capacity, and low accessibility from neighboring roads. The term “arterial road” as used in this Policy defined in the Yuba City Municipal Code, Sec. 8-2.1405.
 - (3) **“Collector road”** means a road designed primarily as a connection between local roads and arterials, with a typical curb-to-curb width greater than 40 feet and less than 60 feet, moderate to low traffic capacity, and high accessibility from local roads. The term “collector road” as used in this Policy defined in the Yuba City Municipal Code, Sec. 8-2.1405.
 - (4) **“Concealed” or “concealment”** means camouflaging techniques that integrate the transmission equipment into the surrounding natural and/or built environment such that the average, untrained observer cannot directly view the equipment but would

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likely recognize the existence of the wireless facility or concealment technique. Camouflaging concealment techniques include, but are not limited to: (1) facade or rooftop mounted pop-out screen boxes; (2) antennas mounted within a radome above a streetlight; (3) equipment cabinets in the public rights-of-way painted or wrapped to match the background; and (4) an isolated or standalone faux-tree.

- (5) **“Decorative pole”** means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole, or the public rights-of-way in which the pole is located.
- (6) **“FCC Shot Clock”** means the presumptively reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended from time to time.
- (7) **“Ministerial permit”** means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City's jurisdiction. Ministerial permits may include, without limitation, a building permit, construction permit, electrical permit, encroachment permit, excavation permit, and/or traffic control permit.
- (8) **“Personal wireless services”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.
- (9) **“Personal wireless service facilities”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as facilities that provide personal wireless services.
- (10) **“Section 6409”** means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.
- (11) **“Small cell”** bears the same meaning as “small wireless facility” or “SWF” as used in Title 6 Chapter 8 of the Municipal Code.

SECTION 1.3 ACRONYM DEFINITIONS

(a) **Defined Acronyms.**

- (1) **“FCC”** means Federal Communications Commission
- (2) **“OSHA”** means Occupational Safety and Health Administration
- (3) **“PROW”** means Public Right of Way
- (4) **“RF”** means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.

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- (5) “SWF” means Small Wireless Facility
- (6) “WTFP” means Wireless Telecommunication Facility Permit

SECTION 2. SMALL WIRELESS FACILITIES

SECTION 2.1 APPLICABILITY; REQUIRED PERMITS AND APPROVALS

- (a) **Applicable Wireless Facilities.** Except as expressly provided otherwise in this Policy, the provisions in this Policy shall be applicable to all existing small wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, or otherwise deploy small wireless facilities within the City's jurisdictional and territorial boundaries within the public right-of-way.

SECTION 2.2 SMALL CELL PERMIT APPLICATION REQUIREMENTS; PRE-APPLICATION PUBLIC NOTICING REQUIREMENTS

- (a) **Small Cell Permit Application Contents.** All applications for a SWF WTFP must include all the information and materials required in this subsection (a), unless exempted by the approval authority.
 - (1) **Application Form.** The applicant shall submit a complete, duly executed SWF WTFP application on the then-current form prepared pursuant to Title 6 Chapter 8 of the Municipal Code.
 - (2) **Application Fee.** The applicant shall submit the applicable SWF WTFP application fee established by City Council resolution. Batched applications must include the applicable application fee for each SWF in the batch.
 - (3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees, and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all structures within 50 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.

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- (4) **Site Survey.** For any SWF proposed to be located within the PROW, the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 50 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks, and other street furniture; and (viii) existing trees, planters and other landscaping features.
- (5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed SWF in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location, and the photo location for each vantage point.
- (6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a SWF as defined by the FCC in 47 C.F.R. 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a structure as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a SWF permit as provided in Section 2.4.
- (7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed SWF, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- (8) **Public Notice.** *Prior to a SWF application being deemed complete, applicants shall submit proof of mailing of public notice to all owners and occupants of real property, and the resident manager for any multi-family dwelling unit that includes ten (10) or more units, within 100 feet of the proposed SWF. The notice must contain: (1) a general project description and dimensioned, full color photo*

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simulations; (2) the applicant's identification and contact information as provided on the application submitted to the City; (3) contact information for the approval authority; (4) a statement that the approval authority will act on the application without a public hearing but will accept written public comments that evaluate the application for compliance with the standards in this Policy; (5) a statement that the FCC requires the City to act on small cell permit applications, which includes any administrative appeals, in 60 days for attachments to existing structures and 90 days for new structures, unless the applicant voluntarily agrees to toll the timeframe for review; and (6) a deadline for submission of written public comments to the approval authority, which deadline shall not be less than thirty (30) days after mailing of said notice.

- (9) **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the SWF proposed in the application.
- (10) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by an engineer for the proposed SWF and all associated equipment including all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.
- (11) **Wind Load Analysis.** The applicant shall submit a wind load analysis based on the City's region with an evaluation of high wind load capacity and shall include the impact of modification of an existing facility based on the City's region.
- (12) **Environmental Data.** A completed environmental assessment application, or in the alternative any and all documentation identifying the proposed WTFP as exempt from environmental review (under the California Environmental Quality Act, Public Resources Code 21000–21189, the National Environmental Policy Act, 42 U.S.C. §4321 *et seq.*, or related environmental laws). Notwithstanding any determination of environmental exemption issued by another governmental entity, the city reserves its right to exercise its rights as a responsible agency to review *de novo* the environmental impacts of any WTFP application.
- (13) **FAA Documentation.** Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the proposed wireless telecommunications facility.
- (14) **Traffic Control Plan (TCP).** A traffic control plan when the proposed installation is on any City street. The city shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g. crane).

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- (15) **Landscape Plan.** A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening, and proposed irrigation with a discussion of how the chosen material at maturity will screen the SWF and its accessory equipment.
 - (16) **CPCN.** Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the PROW. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.
- (b) **Additional Requirements.** The City Council authorizes the approval authority 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 approval authority finds necessary, appropriate, or useful for processing any application governed under this Policy. All such requirements and materials must be in written form and publicly stated to provide all interested parties with prior notice (or posted upon the City's website).

SECTION 2.3 SMALL CELL PERMIT APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

- (a) **Pre-Submittal Conferences.** For purposes of SWFs only, and notwithstanding any contrary provisions of Title 6 Chapter 8, the City does not require pre-submittal appointments for the submission of SWF WTFPs. However, the City strongly encourages applicants to schedule and attend a pre-submittal conference with the approval authority for all proposed SWF projects, and particularly those that involve more than five SWFs. This voluntary pre-submittal conference does not cause the FCC Shot Clock to begin and 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 project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The approval authority 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.
- (b) **Batched Applications.** Applicants may submit up to five individual applications for a SWF permit in a batch; provided, however, that small wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each site in the batch.

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- (c) **Additional Procedures.** The City Council authorizes the approval authority to establish other reasonable rules and regulations for duly filed applications. All such rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice (or posted upon the City's website).

SECTION 2.4 ADDITIONAL FINDINGS FOR SWFs

- (a) **Required Findings.** In addition to those finding requirements set forth in Title 6 Chapter 8 for SWF WTFP, the following findings are required for the approval or conditional approval of a SWF application:
 - (1) The proposed SWF would not be located on a prohibited support structure identified in this Policy;
 - (2) The proposed SWF would utilize the most preferred support structure and location within 250 feet from the originally proposed site in any direction, or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) or locations within 250 feet would be technically infeasible;
 - (3) The pole the proposed SWF would utilize shall be inspected prior to installation and justification shall be provided in the construction drawings during the submittal confirming the structural integrity of the pole would not be compromised with the addition of SWF and all accessory parts installed;
 - (4) All public notices required for the application have been given.
- (b) Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, no decision upon a SWF application shall be premised upon the environmental or health effects of RF emissions, nor shall public comments be considered to the extent they are premised upon the environmental or health effects of RF emissions.

SECTION 2.5 STANDARD CONDITIONS OF APPROVAL

- (a) **General Conditions.** In addition to all other conditions adopted by the approval authority and Title 6 Chapter 8 for a SWF permit, all SWF WTFPs issued under this Policy shall be automatically subject to the conditions in this subsection (a).
 - (1) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a SWF approved or deemed-approved, the permittee shall provide the approval authority with documentation reasonably acceptable to the approval authority that the SWF 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.

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- (2) **Adverse Impacts on Other Properties.** In addition to those requirements in Title 6 Chapter 8 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 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 a state of emergency within the City. The approval authority may issue a stop work order for any activities that violates this condition in whole or in part.
- (3) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors, or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. 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.
- (4) **Future Undergrounding Programs.** If other public utilities or communications providers in the PROW underground their facilities in the segment of the PROW where the permittee's SWF is located, the permittee must underground its equipment as technologically feasible except the antennas and any other equipment that must be placed above ground to function. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. SWFs 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.
- (5) **Electric Meter Upgrades.** If 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.
- (6) **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (i) change any street grade, width or location; (ii) add, remove, or otherwise change any improvements in, on, under or along any

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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 (iii) 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 the SWF permit. If the Public Works Director determines that any City work will require the permittee's SWF located in the PROW 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 SWF within a reasonable time after the Public Works Director'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 SWF without prior notice to permittee when the Public Works Director determines that the 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 days after a written demand for reimbursement and reasonable documentation to support such costs.

SECTION 2.6 LOCATION REQUIREMENTS

- (a) **Preface to Location Requirements.** Applications that involve lesser-preferred locations or structures may be approved so long as the applicant demonstrates that either (1) no more preferred locations or structures exist within 250 feet from the proposed site; or (2) any more preferred locations or structures within 250 feet from the proposed site would be technically infeasible to achieve the operator's service objectives, as supported by clear and convincing evidence in the written record. The final subsection of this Section 2.6 identifies "prohibited" support structures on which the City shall not approve any small cell permit application for any competitor or potential competitor.
- (1) Allowable locations for SWFs are on existing or replacement infrastructure such as street lights and utility poles.
 - (2) When locating in an alley, the SWF shall be placed at a height above the roof line of adjacent buildings to avoid being placed adjacent to a window. When locating in a walk-street, the facility shall be placed below the roof line of the adjacent buildings.
 - (3) When choosing locations, choose locations in between occupiable buildings rather than immediately adjacent to occupiable buildings, and not adjacent to a window.
 - (4) If the SWF is not able to be placed on existing infrastructure, the applicant shall provide a map of existing infrastructure in the service area and describe why each such site was not feasible.

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- (b) **Locations in the Public Rights-of-Way.** The City prefers small wireless facilities in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:
- (1) Locations within commercial or industrial districts on or along arterial roads;
 - (2) Locations within commercial or industrial districts on or along collector roads;
 - (3) Locations within commercial or industrial districts on or along local roads;
 - (4) Locations within residential districts on or along arterial roads;
 - (5) Locations within residential districts on or along collector roads;
 - (6) Any location in any district within 250 feet from any structure approved for a residential use.
- (c) **Support Structures in the Public Rights-of-Way.** The City prefers SWFs to be installed on support structures in the PROW, ordered from most preferred to least preferred, as follows:
- (1) Existing or replacement streetlight poles;
 - (2) Existing or replacement wood utility poles;
 - (3) New, non-replacement streetlight poles;
 - (4) New, non-replacement poles for small wireless facilities.
- (d) **Prohibited Support Structures.** The City prohibits SWFs to be installed on the following support structures:
- (1) Decorative poles;
 - (2) Traffic signal signs, cabinets, and other related structures;
 - (3) Any utility pole scheduled for removal or relocation within 12 months from the time the approval authority acts on the small cell permit application;

SECTION 2.7 DESIGN STANDARDS

- (a) **Visual & Other General Standards.** SWFs shall be designed in the least visible means possible and to be compatible with support structure/surroundings.
- (1) **Noise.** SWFs and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations in Title 4 Chapter 17 of Yuba City Municipal Code, as may be amended or superseded, and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable district/zone.

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- (2) **Lights.** SWFs shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection (a)(2) shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this Policy.
- (3) **Landscape Features.** SWFs shall not displace any existing landscape features unless: (A) such displaced landscaping is replaced with native and/or drought-resistant plants, trees, or other landscape features approved by the approval authority and (B) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size, and location. Landscape maintenance must be performed in accordance with Title 6 Chapter 8 of Yuba City Municipal Code, as either may be amended or superseded.
 - (A) 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. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
 - (B) To preserve existing landscaping in the public rights-of-way, all work performed in connection with SWFs shall not cause any street trees to be trimmed, damaged, or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees at the site for the duration of the permit term.
- (4) **Site Security Measures.** SWFs may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The approval authority shall not approve any barbed wire, razor ribbon, electrified fences, or any similarly dangerous security measures. All exterior surfaces on SWFs shall be constructed from or coated with graffiti-resistant materials.
- (5) **Signage; Advertisements.** All SWFs shall contain a site identification sticker that accurately identifies the site owner/operator, the owner/operator's site name, or identification number and a toll-free number to the owner/operator's network operations center. SWFs may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, OSHA, Federal Aviation Administration or other United States governmental agencies for compliance with RF emissions regulations. Permittees shall:

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- (A) Remove or paint over unnecessary equipment manufacturer decals and fill-in any visibly depressed manufacturer logos on equipment.
 - (B) Utilize the smallest and lowest visibility stickers required by government or electric utility regulations.
 - (C) Use sticker colors that are muted.
 - (D) Signage shall be maintained in legible condition and the carrier will be required to replace any faded signage within thirty (30) days of receiving written notification from the City that it is in need of replacing.
- (6) **Compliance with Health and Safety Regulations.** All SWFs shall be designed, constructed, operated, and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions.
- (b) **Dimensions; Design.** Wireless facilities shall satisfy all specifications listed in the FCC Order defining a SWF.
- (1) **Overall Height.** SWFs may not exceed either (A) the minimum separation from electrical lines required by applicable safety regulations, or (B) the 28 cubic feet maximum volumetric requirement for SWFs. In addition, SWFs shall be located no higher than 10% or 10 feet, whichever is greater, than the height otherwise permitted in the immediately adjacent zoning district.
 - (2) **Concealment.** All antennas and associated mounting equipment, hardware, cables, or other connectors must be completely concealed as technologically feasible. Antenna shrouds or radomes must be painted a flat, non-reflective color to match the underlying support structure. The wireless facility and accessory equipment shall be camouflaged with use of one or more concealment elements to blend the facility with surrounding materials and colors of the adjacent street light or utility pole to which it is mounted. Concealment elements include:
 - (A) Radio frequency transparent screening;
 - (B) Approved, specific colors;
 - (C) Use of non-reflective material(s);
 - (D) Minimizing the size of the site;
 - (E) Integrating the installation into existing or replacement utility infrastructure;
 - (F) Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site.

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- (G) Antennas, brackets (mounting), PVC or steel risers and cabling shall match the color of the adjacent structure.
 - (H) Paint shall be of durable quality.
 - (I) Materials shall be non-flammable and non-reflective.
 - (J) Each individual antenna may not exceed three cubic feet in volume.
- (3) **Accessory Equipment.**
- (A) **Installation Preferences.** SWF accessory equipment shall be enclosed in replacement poles or placed underground where technically feasible, and if not feasible, shall be as small, short and unobtrusive as possible. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically infeasible as supported by clear and convincing evidence in the written record.
 - (B) **Undergrounded Accessory Equipment.** 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. 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. Applicants shall not be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced.
- (c) **Streetlights.** Applicants that propose to install SWFs on an existing streetlight must remove and replace the existing streetlight with one substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment. To mitigate any material changes in the streetlighting patterns, the replacement pole must: (A) be located as close to the removed pole as possible; (B) be aligned with the other existing streetlights; and (C) include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. All antennas must be installed in a way to not disrupt streetlighting patterns and be camouflaged as technologically feasible.
- (d) **Wood Utility Poles.** Applicants that propose to install SWFs on an existing wood utility pole must install all antennas above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud or other similar device as technologically feasible. All cables, wires, and other connectors must be concealed within the side-arm mount, extension arm, or via conduit. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.

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- (e) **For Replacement Poles and Street Lights.** If an applicant proposes a replacement pole or street light to accommodate the SWF, the replacement shall be immediately adjacent to the street light or pole being replaced; unless the replacement will not meet all applicable standards, then replacement may be located in an alternative location within 25 feet of original location and shall comply with the requirements herein.
- (f) **New, Non-Replacement Poles.** Applicants that propose to install SWFs on a new, non-replacement pole must install a pole substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment located within 25 feet to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole, concealed via conduit flush to the outside of the pole, or within an integrated enclosure located at the base of the pole. All antennas, whether on a new streetlight or other new pole, shall be installed above the pole as technologically feasible and/or be camouflaged as technologically feasible.
 - (1) The new pole must actually function for a purpose other than placement of a wireless facility (e.g. street light, utility pole, etc.).
 - (2) The design must match the dimensions and design of existing and similar types of poles and antennas in the surrounding areas.
- (g) **Encroachments over Private Property.** SWFs may not encroach onto or over any private or other property outside the PROW without the property owner's express written consent.
- (h) **Backup Power Sources.** Fossil-fuel based backup power sources shall not be permitted within the PROW; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state, or local officials.
- (i) **Obstructions; Public Safety.** Small wireless facilities and any associated equipment or improvements shall not physically interfere with or impede access to any: (A) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (B) access to any public transportation vehicles, shelters, street furniture, or other improvements at any public transportation stop; (C) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (D) fire hydrant or water valve; (E) access to any doors, gates, sidewalk doors, passage doors, stoops, or other ingress and egress points to any building appurtenant to the rights-of-way; or (F) access to any fire escape.
- (j) **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric, and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables,

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wires and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through and concealed from view within: (A) internal risers or conduits if on a concrete, composite or similar pole; or (B) a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. 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.

(k) **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.

(l) **Electric Meters.**

(1) SWFs shall use unmetered (flat rate) electric service, if allowed by the utility company, or use the narrowest, shrouded electric meter, and disconnect available. Permittees shall ensure the meter and other enclosures are well maintained, including regular painting, and the use of a graffiti-resistant paint, and stack the disconnect switch above/below the meter, instead of attached to the side of the meter.

(2) Electrical meters, vaults, and fans shall be located underground where feasible.

(m) **Building-Mounted Small Wireless Facilities.**

(A) **Preferred Concealment Techniques.** All applicants must propose new non-tower SWFs 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, if the applicant demonstrates with clear and convincing evidence that integration with existing features is technically infeasible, the applicant may 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, steeples and chimneys).

(B) **Facade-Mounted Equipment.** When SWFs 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 flush to the facade. The approval authority may not approve "pop-out" screen boxes. Except in industrial zones, the approval authority may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade.

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- (n) **Future Modifications.** Any modifications to existing facilities or collocations shall not defeat the concealment elements of the existing structure/facility.