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City of Sebastopol
Planning Commission Staff Report

Meeting Date:	April 23, 2019
Agenda Item:	10A
To:	Planning Commission
From:	Kari Svanstrom, Planning Director
Subject:	Telecommunications Ordinance Update and Discussion
Recommendation:	Receive Staff Report

Background:
As you are aware, the City has begun work on updates to its Telecommunication Ordinance, with the last discussion by the Planning Commission on this topic held December 11, 2018. Since then, the City has been working towards a draft ordinance and conduct research as requested by the Planning commission at that meeting. Due to Federal timelines, including FCC regulations that became effective April 15, 2019, staff presented an Urgency Ordinance to act as interim regulations, to the City Council until such time that the Planning Commission can complete its review.

On April 16, the City Council approved an Urgency Ordinance implementing interim regulations for the Telecommunications Ordinance. They also waived the first reading and introduced a regular ordinance (second reading/adoption scheduled for May 7) to protect against any challenges to the urgency findings/urgency ordinance. Both of these ordinances are being treated as interim regulations while the Planning Commission reviews a final ordinance. This interim ordinance (Attachment 1) will serve as the starting point for the Planning Commission's review.

Staff received public comments related to these items, and is continuing to review the draft ordinance and will likely have further modifications to the final draft Ordinance when it comes before the Planning Commission for a formal hearing. However, staff felt, given the amount of material, that it was important to give an overview of the work to date, and the Urgency Ordinance to the Commission as they begin their review.

Discussion:
The following is a summary of the modifications contained in the draft ordinance (and in the interim regulations):

Section 17.130.015 Additional Definitions – This section moves definitions specific to telecommunications from the general definitions section to the Telecommunications Ordinance (17.130); adds a number of definitions that relate to new technologies and installation methods; and, clarifies that 'minor antenna' provisions are applicable to non-commercial antenna installations only.

Section 17.20, Table 17.20-1 and Section 17.25 Table 17.25-1 – This section removes the references to telecommunications facilities from the Permitted and Conditionally Permitted Uses tables. This is similar to how various cannabis businesses are handled, These references are relocated to the Telecommunications Ordinance, Section 17.130.025 and modified so that all commercial telecommunications facilities (except for those eligible for ministerial review under Federal [6409(a)] or State [Gov Code Section 65850.6]), require a Conditional Use Permit (CUP), including those in the public right-of-way. This Section has also been modified to disallow commercial telecommunications facilities in residential districts (except as may be approved through the Exception process).

Table 17.130-1 Permitted and Conditionally Permitted Telecommunications Uses

Description Wireless Facility	***Private Property***			***Public Right-of Way[1]***
	Residential Zoning Districts[2]	***ESOS, Wetlands***	***All Other Zoning Districts*** *(Commercial, Industrial, and Community Facilities)*	***Non-Residential Zoning Districts***
Non-commercial minor antenna (Class A and B)	P[4]	-	P[4]	-
Non-commercial minor antenna (Class C and D)	CUP[3]	-	CUP[3]	-
Minor Commercial Telecommunications Facility (less than 35 ft)	-	-	CUP	CUP
Minor Commercial Telecommunications Facility (greater than 35 ft and less than 100 ft)	-	-	CUP	CUP
Major Commercial Antenna (greater than 100 ft)	-	-	CUP with special findings	CUP with special findings
Eligible facilities request or application pursuant to California Government code Section 65850.6[3]	P[4]	P[4]	P[4]	P[4]

P = Permitted Use

C = Conditional Use Permit, Planning Commission review

- = Use Not Allowed

[1] For any public right-of-way on the boundary between zoning districts the zoning applicable to the location of a wireless telecommunication facility shall be determined based upon the closest district adjacent to the facility's location. The centerline of the public right-of-way will be used as the boundary between districts.

[2] Planned Community districts containing any residential dwelling units are considered a "Residential Zoning District" for the purposes of this Section.

[3] Requests eligible as a modification under either Section 6409(a) or the Wireless Telecommunications Collocation Facilities Covered under California Government Code Section 65850.6; Administrative Review Required.

[4] Administrative Review Permit required.

Section 17.130.070 Minimum Application Requirements – This section updates the application requirements to include requirements that will help the City process applications within the new shortened shot-clocks. These provisions were discussed by the Planning Commission at its December 2018 meeting and unanimously supported. The new requirements would apply to all (public and private property) installations, and include: an in-person submittal appointment with the Planning Director; that each location is a separate application; and, specifies withdrawal timeline and procedures for dormant/non-responsive applications. Additionally, an applicant is required to hold a community meeting prior to the Planning Commission's review. This was previously

proposed as a pre-submittal community meeting; however, this would start the clock for the time frame for review ("Shot clock"). The other option would be to keep this as a pre-application meeting but have it be optional.

Section 17.130.090 Life of Permits is replaced with ***Section 17.330*** through ***Section 17.360***, which provide the same 10-year permit time frame required by Federal law, but updates expiration provisions, and adds additional provisions to address abandoned facilities, restoration of sites, and revocation of permits.

Section 17.130.100 Design and Development Standards for All Facilities – This section is applicable to both public ROW and private property installations, and adds additional criteria to address speculative installations (not allowed), screening of equipment, aesthetics, and safety issues.

Section 17.130.130 Additional Location and Configuration Preferences – This section provides guidelines for preferred location and configuration of telecommunications facilities. The Planning Commission's December study session reviewed and discussed the location list, with the preference to avoid both residential zones and community facilities that are populated by children on a frequent basis (schools and parks). The proposed preference order prioritizes use of collocation on existing macro-towers before other collocations and new facilities. The preference to avoid residential zones and community facilities that are populated by children on a frequent basis (schools and parks) is maintained.

Of note, the use of these preferences is part of the Conditional Use Permit requirements and review process, which requires the applicant to provide alternative sites and, if a less preferred configuration/location is proposed, demonstrate that a more preferred configuration/location cannot meet their needs.

Section 17.130.235 Additional Design and Development Standards for Facilities in the Public Right-of-Way – This section includes additional design and development standards for telecommunication facilities that are located *inside* the public right-of-way, including establishing maximum height limits on utility and streetlight poles for antennas, occupation of space (with a strong preference for undergrounding of accessory equipment), required permits, and other requirements.

These additional design and development standards have been incorporated based on several local area city's requirements, including Petaluma and Sonoma cities' recently adopted ordinances. As we have had interest from some community members that are concerned about the potential health impacts associated with pole mounted wireless facilities, staff has incorporated a distance requirement between facilities (1,500 feet apart) for pole-mounted facilities. The current ordinance also provides for a setback from properties with residential dwelling units on them (75 feet from any property line) which would also be applicable.

Section 17.130.260 Conditions of Approval for All Commercial Telecommunications Facilities; Section 17.130.270 Additional Conditions of Approval for Facilities Located in the Public Right-of-Way; and Section 17.130.280 Findings – These sections outline findings and conditions of approval for new commercial facilities, including requirements for post-installation testing of actual radio frequency (RF) emissions, and bi-annual testing thereafter, to be done by the City's consultant at the applicant's expense.

Section 17.130.290 Exceptions – This section provides for the required exception process to comply with Federal (FCC) regulations, while requiring that the applicant provide the burden of proof for the need for an exception, and limiting any exceptions to the least non-compliant design feasible.

Sections 17.130.300 – This section applies to all collocations or modifications to an existing wireless tower or base station with a written request for approval pursuant to Section 6409(a). This Section generally requires that State and local governments "…not deny, and shall approve" requests to collocate, remove or replace transmission equipment at an existing tower or base station. Such applications undergo administrative review for compliance; the proposed section outlines the required findings for approval, denial, and appeal procedure.

Section 17.130.310– This section provides the requirements, standards, and regulations for a wireless telecommunications collocation facility for which subsequent collocation is a permitted use pursuant to California law.

Public Comment:
Public comments received for the April 2 and April 16, 2019 City council items are available at the City's website under the meeting archive: https://www.ci.sebastopol.ca.us/Meeting-Event.aspx

Recommendation:
Receive Staff Report, receive public comment, and ask questions of staff. Staff anticipates, due to the lengthiness of the document, that the Commission's discussion may be limited, and will be scheduling the item for a more in depth discussion at a future meeting.

No action will be taken on this item at this meeting.

Attachments:
1. Draft Ordinance (with redlines of changes)*
   **This is the same Ordinance as the Urgency Ordinance 1122 adopted by Council 4/16/19*
2. April 2 and April 16, 2019 City Council staff reports
3. December 18, 2018 Planning Commission minutes

EXHIBIT A
URGENCY ORDINANCE

Section 1. The following definitions shall be deleted from Chapter 17.08:

17.08.030 Definitions "A"

"Antenna" means any system of wires, poles, rods, reflecting discs, or similar devices used for the transmission or reception of electromagnetic waves when such system is either external to or attached to the exterior of a structure. Antennas shall include devices having active elements extending in any direction, and directional beam-type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be a part of the antenna.

1. "Antenna, building-mounted" means any antenna, other than an antenna with its supports resting on the ground, directly attached or affixed to a building, tank, tower, building-mounted mast less than 13 feet tall and six inches in diameter, or structure other than a telecommunications tower.
2. "Antenna, ground-mounted" means any antenna with its base placed directly on the ground or a mast less than 13 feet tall and six inches in diameter.
3. "Antenna, vertical" means a vertical type antenna without horizontal cross-sections greater than one-half inch in diameter.

"Antenna, minor" means any of the following:

1. A ground- or building-mounted receive-only radio or television antenna including any mast;
2. A ground- or building-mounted citizens band radio antenna including any mast;
3. A single ground- or building-mounted whip (omni) antenna without a reflector less than four inches in diameter whose total height includes any mast to which it is attached;
4. A ground- or building-mounted panel antenna with a face area of less than four and one-half square feet;
5. A ground- or building-mounted satellite dish no greater than 10 feet in diameter; or
6. A ground-, building-, or tower-mounted antenna operated by a Federally licensed amateur radio operator as part of the Amateur Radio Service

"Minor antenna, non-commercial" uses are separated into four classes:

Minor antennas, Class A. Noncommercial minor antennas that meet the requirements of SMC 17.130.020 through 17.130.060, and comply with the following, as appropriate:

1. Ground-mounted antennas may not exceed 20 feet in height, except that citizens band radio antennas or a ground- or tower-mounted antenna operated by a Federally licensed radio operator as a part of the Amateur Radio Service may not exceed 30 feet in height.
2. Building-mounted antennas may not exceed 15 feet (including any mast height) on a building that does not exceed 35 feet in height.

Minor antennas, Class B. Noncommercial minor antennas that meet the requirements of SMC 17.130.020 through 17.130.060, obtain site plan approval from the Planning Director, and comply with the following, as appropriate:

1. Ground-mounted antennas may not exceed 35 feet in height, except that citizens band radio antennas or a ground- or tower-mounted antenna operated by a Federally licensed radio operator as a part of the Amateur Radio Service may not exceed 75 feet in height.
2. Building-mounted antennas may not exceed 20 feet (including any mast height) on a building that does not exceed 35 feet in height, except that citizens band radio antennas or a ground- or tower-mounted antenna operated by a Federally licensed radio operator as a part of the Amateur Radio Service may not exceed 40 feet in height on a building that does not exceed 35 feet in height.

Minor Antennas, Class C. Noncommercial minor antennas that do not meet all of the requirements of SMC 17.130.020 through 17.130.060.

Minor antennas, Class D. Noncommercial minor antennas that exceed the permitted heights for ground-mounted or building-mounted antennas, except that they may not exceed 100 feet in height.

17.08.120 Definitions "S"

"Silhouette" means a representation of the outline of the towers and antenna associated with a telecommunications facility, as seen from an elevation perspective.

17.08.121 Definitions "T"

"Telecommunications facility" means a facility that transmits and/or receives electromagnetic signals. It includes antennas, microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting said equipment, equipment buildings, parking areas, and other accessory development. It does not include facilities staffed with other than occasional maintenance and installation personnel, minor antennas meeting the requirements of SMC 17.130.010 through 17.130.050, vehicle or other outdoor storage yards, offices, or broadcast studios other than those designed for emergency use.

1. "Telecommunications facility - major" means telecommunications facilities 35 to 100 feet in height and that adhere to SMC 17.130.010 to 17.130.230.
2. "Telecommunications facility - minor" means telecommunications facilities no greater than 35 feet in height and that adhere to SMC 17.130.010 through 17.130.240. If a facility does not meet these criteria, then it is considered a "major" telecommunications facility.
3. "Telecommunications facility - co-located" means a telecommunications facility comprised of a single telecommunications tower or building supporting one or more antennas, dishes, or similar devices owned or used by more than one public or private entity.
4. "Telecommunications facility - commercial" means a telecommunications facility that is operated primarily for a business purpose or purposes.
5. "Telecommunications facility - multiple user" means a telecommunications facility comprised of multiple telecommunications towers or buildings supporting one or more antennas owned or used by more than one public or private entity.
6. "Telecommunications facility - noncommercial" means a telecommunications facility that is operated solely for a nonbusiness purpose.

7. "Telecommunications tower" means a mast, pole, monopole, guyed tower, lattice tower, freestanding tower, or other structure designed and primarily used to support antennas. A ground- or building-mounted mast less than 13 feet tall and six inches in diameter supporting a single antenna shall not be considered a telecommunications tower.

Section 3. Chapter 17.20, Table 17-20-1 shall be amended to read as follows:

Table 17.20-1: Permitted and Conditionally Permitted Uses in the Residential Districts

Use	R1	R2	R3	R4	R5	R6	R7	RMH
Accessory dwelling	P	P	P	P	P	P	P	-
Bed and breakfast inns	C	C	C	C	C	C	C	-
Dwelling groups	-	-	-	-	P	P	P	-
Employee housing (agricultural)	P	P	-	-	-	-	-	-
Homeless shelter	-	-	-	-	C	C	C	-
Junior accessory dwelling	P	P	P	P	P	P	-	-
Large community care, residential	C	C	C	C	C	C	C	-
Mobile home parks	C	C	C	C	-	C	C	P
Mobile home replacement, existing pad	-	-	-	-	-	-	-	P
Multifamily dwellings	-	-	-	-	P	P	P	-
Semi-transient	-	-	-	-	-	-	C	-
Single family dwelling, attached	-	-	-	-	P	P	P	-
Single family dwelling, detached; one per parcel	P	P	P	P	P	P	P	-
Single room occupancy dwelling	-	-	-	-	-	-	P	-
Small community care, residential	P	P	P	P	P	P	P	-
Small family day care, residential	P	P	P	P	P	P	P	-
Temporary dwelling	T	T	T	T	T	T	T	T
Transient	-	-	-	-	-	-	C	-
Two detached single family dwellings	-	-	-	-	P	P	-	-
Two-family dwelling	-	-	-	-	P	P	P	-
Civic Uses								
Community assembly	C	C	C	C	C	C	C	-
Community care facility	-	-	-	-	-	-	C	-
Community education, small or large	C	C	C	C	C	C	C	-
Community garden	P	P	P	P	P	P	P	P

EXHIBIT A
URGENCY ORDINANCE

Use	R1	R2	R3	R4	R5	R6	R7	RMH
Community park	P	P	P	P	P	P	P	P
Extensive impact civic	C	-	-	-	-	-	-	-
Health care	-	-	-	-	-	-	C	-
Large family day care center	C	C	C	C	C	C	C	-
Parking lots, when adjacent to any C or M District	-	-	-	-	-	-	C	-
Utility civic	C	C	C	C	C	C	-	C
Other Uses								
Accessory uses, structures, and buildings	P	P	P	P	P	P	P	C
Agriculture, indoor growing and harvesting (structure <800 square feet)	P	P	-	-	-	-	-	-
Agriculture, outdoor growing and harvesting	P	P	C	C	C	-	-	-
Beekeeping, amateur	P	P	P	P	P	P	P	P
~~Commercial minor antennas (>35 and ≤100 ft in height), and major telecommunications facilities~~	-	-	~~C~~	~~C~~	~~C~~	-	-	-
Home occupation	P	P	P	P	P	P	P	P
~~Minor antennas, Classes A and B~~	~~P~~	~~P~~	~~P~~	~~P~~	~~P~~	~~P~~	~~P~~	~~P~~
~~Minor antennas, Classes C and D, minor telecommunication facilities, commercial minor antennas (≤35 ft. in height)~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~
P = Permitted Use C = Conditional Use Permit, Planning Commission review T = Temporary Use Permit - = Use Not Allowed								

Section 3. Chapter 17.25 Table 17.25-1 shall be amended to read as follows:

Table 17.25-1: Permitted and Conditionally Permitted Uses in the Commercial, Office, and Industrial Zones

Use	CO	CG	CD	M	OLM	CM
Commercial Uses						
Agriculture, outdoor and indoor growing and harvesting	-	-	-	-	C	-
Alcoholic beverage tasting establishment	C	C	C	-	-	C
Animal hospital and kennels	-	C	-	C	C	-
Animal hospital, office only	CD	CD	C	CD	CD	C
Automotive gas or fueling station	-	C	-	C	C	-
Automotive repair and service	-	-	-	P	-	-
Automotive sales, service, and repair	-	C	C	-	-	-
Beekeeping, commercial	-	P	-	P	P	P
Commercial manufacturing	-	-	-	P	-	P
Convenience sales and service	P	P/C[(1)]	P	-	-	P
Drive-through	-	-	-	-	-	-
Exercise facilities	CD	CD	C	C	P	C
Extensive commercial	-	C[(1)]	C	-	-	-
Food sales	P	P/C[(1)]	P	P	P	P
General wholesale sales	-	C	-	P	-	P
Home occupations	P	P	P	P	P	P
Mobile food truck court	P	P	P	-	-	P
Office	P	P	P	P[(2)]	P	P[(2)]
Outdoor commercial barbecue	-	C	C	C	-	C
Plant nurseries	-	C	-	P	P	P

Use	CO	CG	CD	M	OLM	CM
Restaurant, fast-food	-	C	C	-	-	-
Restaurant, table or counter service	P	P	P	P	P	P
Restaurant, walk-up	P	P	P	-	-	P
Retail sales	P	P/C[1]	P	C	-	P/C[3]
Storage, personal or vehicle	-	C	-	C	-	-
Tobacco or smoke shops, vape shops	-	C	-	-	-	-
Industrial Uses						
Artist work studios and arts-related fabrication	CD	CD	C	P	P	P
General industrial	-	-	-	C	-	C
Heavy industrial	-	-	-	C	-	-
Laboratories	C	-	-	P[4]	P[4]	C
Light industrial	-	-	-	P	CD	P
Research and development	-	-	-	P	P	C
Warehouse, storage and transport	-	-	-	P	-	C[5]
Warehouse, wholesaling and distribution	-	-	-	C	P	C[5]
Wineries, distilleries, and brewing facilities	-	-	-	C	C	C
Civic Uses						
Community assembly	C	C	C	C	C	C
Community garden	P	P	C	P	P	P
Community non-assembly	C	C	C	C	C	C
Community park	P	P	P	P	P	P
Extensive impact civic	-	-	-	C	C	-
Health care uses	C	C	C	C	C	C
Large community care	C	-	-	-	-	-

Use	CO	CG	CD	M	OLM	CM
Large community education	C	C	C	C	C	C
Large community education, adult	C	C	C	C	C	C
Outdoor farmers' market	-	C	C	C	C	C
Parking facilities	C	C	C	C	C	-
Small community care	P	-	-	-	-	-
Small community education	P	P	P	-	P	-
Sports park	-C	C	-	C	C	-
Utility civic	C	C	C	C	C	C
Affordable housing projects	P	P	P	C	C	C
Bed and breakfast inns	C	C	C	-	-	-
Homeless shelter	-	P	C	-	-	-
Permanent residential uses that are allowed in the R7 District when part of a mixed-use development	P(6)	P(6)	P(6)	C	C	C
Permanent residential uses that are allowed in the R7 District when not part of a mixed-use development	C	C	C	C	C	C
Residential, Semi-transient	C(7)	C(7)	C	-	-	-
Residential, Transient	C(7)	C	P/C(8)	C	-	C
Other Use Types						
~~Commercial minor antennas (>35 and ≤100 ft in height), Minor antennas, Classes C and D, and major telecommunications facilities~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~

Use	CO	CG	CD	M	OLM	CM
~~Minor antennas, Classes A and B~~	~~P~~	~~P~~	~~P~~	~~P~~	~~P~~	~~P~~
~~Minor telecommunications facilities and commercial minor antennas (≤35 feet in height)~~[f]	~~P~~	~~P~~	~~P~~	~~P~~	~~P~~	~~P~~
New development comprising ≥ 20,000 square feet of floor area	-	-	-	C	-	C
New development comprising ≥ 25,000 square feet of floor area	-	-	C	C	-	C
New drive-through uses	-	-	-	-	-	-

P = Permitted Use
C = Conditional Use Permit, Planning Commission review
CD = Conditional Use Permit, Planning Director review
- = Use Not Allowed
(1) Commercial uses allowed that have individual buildings exceeding 30,000 square feet in size.
(2) Only when located on second floors
(3) Permitted where uses are 1,500 square feet or less and the use is located within a footprint or space existing as of August 7, 2018; all other retail uses require a conditional use permit.
(4) Except those which in the opinion of the Planning Director have the potential to be harmful, injurious, or detrimental to property or the general health, safety, and welfare of the City and its residents in which case a conditional use permit shall be required.
(5) Allowed when secondary to a primary permitted use.
(6) Live-work units are not permitted along the street frontage on Sebastopol Avenue, Healdsburg Avenue/Gravenstein Highway North, or Gravenstein Highway South, except by conditional use permit.
(7) Allowed when part of a mixed-use development.
(8)Permitted only when involving less than 50 rooms; conditional use permit required when involving 50 or more rooms.

Section 4. Chapter 17.130 shall be amended to read as follows:

Chapter 17.130: GENERAL PROVISIONS RELATING TO TELECOMMUNICATIONS FACILITIES AND MINOR ANTENNAS

17.130.010 Purpose - Applicability.
The purpose and intent of this chapter is to provide a uniform and comprehensive set of standards for the development of telecommunications facilities and installation of minor antennas. The regulations contained herein are designed to protect and promote public health, safety, and community welfare while at the same time not unduly restricting the development of needed telecommunications facilities and important amateur radio installations. They have been also developed to further the policies of the Sebastopol General Plan.

It is furthermore intended that these regulations specifically accomplish the following:

A. Protect the visual character of the City from the potential adverse effects of telecommunications facility development and minor antenna installation;

B. Protect the inhabitants of the City from the possible adverse health effects associated with exposure to high levels of NIER (nonionizing electromagnetic radiation);

C. Protect the environmental resources of the City;

D. Create telecommunications facilities that will serve as an important and effective part of the City's emergency response network;

E. Any antenna and its associated support structure installed for the sole use of Federally licensed amateur radio operators in the Amateur Radio Service shall not, by definition, be considered telecommunications facilities and shall be exempt from any other antenna or telecommunications facility ordinances enacted by the City, and shall be regulated solely by the following; and

F. Simplify and shorten the process for obtaining necessary permits for telecommunications facilities while at the same time protecting the legitimate interests of the City's citizens.

17.130.015 Additional Definitions.

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

"Antenna" means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals or electromagnetic waves for the provision of services, including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such devices include, but are not limited to, directional antennas, such as panel antenna, microwave dishes, and satellite dishes; omnidirectional antennas; wireless access points (Wi-Fi); and strand-mounted wireless access points.

This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

1. "Antenna, building-mounted" means any antenna, other than an antenna with its supports resting on the ground, directly attached or affixed to a building, tank, tower, building-mounted mast less than 13 feet tall and six inches in diameter, or structure other than a telecommunications tower.
2. "Antenna, ground-mounted" means any antenna with its base placed directly on the ground or a mast less than 13 feet tall and six inches in diameter.
3. "Antenna, vertical" means a vertical type antenna without horizontal cross-sections greater than one-half inch in diameter.
4. "Antenna, strand-mounted" means an antenna mounted to a vertical or horizontal cable, including existing utility lines.

"Antenna, minor" means a non-commercial antenna that meets any of the following criteria:

1. A ground- or building-mounted receive-only radio or television antenna including any mast;
2. A ground- or building-mounted citizens band radio antenna including any mast;
3. A single ground- or building-mounted whip (omni) antenna without a reflector less than four inches in diameter whose total height includes any mast to which it is attached;
4. A ground- or building-mounted panel antenna with a face area of less than four and one-half square feet;
5. A ground- or building-mounted satellite dish no greater than 10 feet in diameter; or
6. A ground-, building-, or tower-mounted antenna operated by a Federally licensed amateur radio operator as part of the Amateur Radio Service

"Minor antenna, non-commercial" uses are separated into four classes:

Minor antennas, Class A. Noncommercial minor antennas that meet the requirements of SMC 17.130.020 through 17.130.060, and comply with the following, as appropriate:

1. Ground-mounted antennas may not exceed 20 feet in height, except that citizens band radio antennas or a ground- or tower-mounted antenna operated by a Federally licensed radio operator as a part of the Amateur Radio Service may not exceed 30 feet in height.
2. Building-mounted antennas may not exceed 15 feet (including any mast height) on a building that does not exceed 35 feet in height.

Minor antennas, Class B. Noncommercial minor antennas that meet the requirements of SMC 17.130.020 through 17.130.060, obtain site plan approval from the Planning Director, and comply with the following, as appropriate:

1. Ground-mounted antennas may not exceed 35 feet in height, except that citizens band radio antennas or a ground- or tower-mounted antenna operated by a Federally licensed radio operator as a part of the Amateur Radio Service may not exceed 75 feet in height.
2. Building-mounted antennas may not exceed 20 feet (including any mast height) on a building that does not exceed 35 feet in height, except that citizens band radio antennas or a ground-

or tower-mounted antenna operated by a Federally licensed radio operator as a part of the Amateur Radio Service may not exceed 40 feet in height on a building that does not exceed 35 feet in height.

Minor Antennas, Class C. Noncommercial minor antennas that do not meet all of the requirements of SMC 17.130.020 through 17.130.060.

Minor antennas, Class D. Noncommercial minor antennas that exceed the permitted heights for ground-mounted or building-mounted antennas, except that they may not exceed 100 feet in height.

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

"Eligible Facilities Request" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended, which defines that term as any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

"Eligible Support Structure" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which defines that term as any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.

"Existing" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(54), as may be amended, which provides that a constructed tower or base station is existing for purposes of the FCC's Section 6409(a) regulations if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

"FCC" means the Federal Communications Commission or its duly appointed successor agency.

"Modification" means any change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, modification, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, a change in size, shape, color, visual design, or exterior material. Modification does not include repair, replacement, or maintenance if those actions do not involve a change to the existing facility involving any of the following: collocation, expansion, modification, alteration, enlargement, intensification, reduction, or augmentation.

"Monopole" means a structure consisting of a single pole used to support antennas or related equipment and includes a mono pine, monored wood, and similar monopoles camouflaged to resemble trees or other objects.

"Personal Wireless Services" means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

"Personal Wireless Service Facilities" means the same as defined in 47 U.S.C. §332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal wireless services.

"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 the SMC. "Pole" does not include a City- owned pole with one or more streetlights and related equipment mounted on it that is solely operated by the City.

"Public Right-of-Way or "Right-of-Way" means any public street, public way, public alley or public place, laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, under the jurisdiction of the City.

"RF" means radio frequency or electromagnetic waves between 30 kHz and 300 GHz in the electromagnetic spectrum range.

"Section 6409(a)" 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 such law may be amended from time to time.

"Section 6409(a) Approval" means the approval required by Section 6409(a).

"Site" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be amended, which provides that for towers other than towers in the public rights- of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

"Substantial Change" means the same as defined by the FCC in 47 C.F.R.

§1.40001(b)(7), as may be amended, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC's criteria and thresholds for a substantial change according to the wireless facility type and location.

1. For towers outside the public rights-of-way, a substantial change occurs when:
    a. the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or
    b. the proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
    c. the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
    d. the proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
2. For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
    a. the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or

b. the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or
c. the proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
d. the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or
e. the proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.

3. In addition, for all towers and base stations wherever located, a substantial change occurs when:
   a. the proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the Planning Director; or the proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.

   The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012-the date that Congress passed Section 6409(a).

"Silhouette" means a representation of the outline of the towers and antenna associated with a telecommunications facility, as seen from an elevation perspective.

"Transmission Equipment" means the same as defined by the FCC in 47 C.F.R. §1.40001(b)(8), as may be amended, which defines that term 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.

"Utility Pole" means a pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission.

"Wireless Services" means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

"Wireless Telecommunications Facility" or "Telecommunication Facility" or "Facility" means any facility constructed, installed, or operated for wireless service. "Wireless telecommunications facility" or

Telecommunication Facility" or "Facility" includes, but is not limited to, antennas or other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting such equipment, related accessory equipment, equipment buildings, parking areas, and other accessory development. "Wireless telecommunications facility" or "Facility" does not mean any of the following:

1. A facility that qualifies as an amateur station as defined by the FCC, 47 C.F.R. Part 97, of the Commission's Rules, or its successor regulation.
2. An antenna facility that is subject to the FCC Over-The-Air-Receiving Devices rule, 47
3. C.F.R. Section 1.4000, or any successor regulation, including, but not limited to, direct- to- home satellite dishes that are less than one meter in diameter, TV antennas used to receive television broadcast signals and wireless cable antennas.
4. Portable radios and devices including, but not limited to, hand-held, vehicular, or other portable receivers, transmitters or transceivers, cellular phones, CB radios, emergency services radio, and other similar portable devices as determined by the Planning Director.
5. Telecommunications facilities owned and operated by any government agency.
6. Telecommunications facilities owned and operated by any emergency medical care provider.
7. Mobile services providing public information coverage of news events of a temporary nature.
8. Any wireless telecommunications facilities exempted from the SMC by federal law or state law.

Wireless Telecommunication Facilities are further defined as follows:

1. "Telecommunications facility - major" means a wireless telecommunications facilities greater than 35 feet in height and that adhere to SMC 17.130.010 to 17.130.230.
2. "Telecommunications facility - minor" means a wireless telecommunications facility no greater than 35 feet in height and that adhere to SMC 17.130.010 through 17.130.240. If a facility does not meet these criteria, then it is considered a "major" telecommunications facility.
3. "Telecommunications facility - co-located" means a wireless telecommunications facility means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC's definition effectively means "to add" and does not necessarily refer to more than one wireless telecommunication facility installed at a single site.
4. "Telecommunications facility - commercial" means a wireless telecommunications facility that is operated primarily for a business purpose or purposes.
5. "Telecommunications facility - multiple user" means a wireless telecommunications facility comprised of multiple telecommunications towers or buildings supporting one or more antennas owned or used by more than one public or private entity.
6. "Telecommunications facility - noncommercial" means a wireless telecommunications facility that is operated solely for a nonbusiness purpose.

7. "Telecommunications tower" means a mast, pole, monopole, guyed tower, lattice tower, freestanding tower, or other structure designed and primarily used to support antennas. A ground- or building-mounted mast less than 13 feet tall and six inches in diameter supporting a single antenna shall not be considered a telecommunications tower.

17.130.020 General provisions.

The following requirements shall ~~be met for~~ apply to all telecommunications facilities and minor antennas in any zoning district:

A. Any applicable General Plan policies, specific plan, area plan, local area development guidelines, and the permit requirements of any agencies which have jurisdiction over the project;

B. The other chapters of this title that are not superseded by the requirements contained in this chapter;

C. Adopted International Building Code requirements pursuant to SMC 15.04, where applicable;

D. Any applicable Airport Land Use Commission regulations and Federal Aviation Administration regulations;

E. Any applicable easements or similar restrictions on the subject property, including neighborhood, community, or homeowners' association standards;

F. Telecommunications facilities and minor antennas cannot be located in any required yard setback area of the zoning district in which it is located;

G. All setbacks shall be measured from the base of the tower or structure closest to the applicable line or structure;

H. Comply at all times with all FCC rules, regulations, and standards, including any requirement that minor antennas and telecommunications facilities do not cause interference with other communication facilities and devices, such as telephones, television sets, radios, etc.;

I. Maintain in place a security program when determined necessary by the Police Chief that will prevent unauthorized access and vandalism; and

J. Satellite dish and parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function.

17.130.025 Wireless Telecommunications Facility Permit Required.

A. **Permit required.** No wireless telecommunication facility shall be located or modified within the City on any property, including the public right-of-way, without compliance with this chapter.

B. Excluding Eligible Facility requests and certain minor non-commercial antenna, applications for wireless facilities shall require a use permit subject to the requirements of this chapter, to be acted upon by the Planning Commission pursuant to Chapter 17.415 ("Conditional Use Permit Procedure"), and other permits as set forth in the table below in addition to any other permit required pursuant to the SMC.

Table 17.130-1 Permitted and Conditionally Permitted Telecommunications Uses

Description Wireless Facility	***Private Property***			***Public Right-of Way[1]***
	Residential Zoning Districts[2]	***ESOS, Wetlands***	***All Other Zoning Districts*** *(Commercial, Industrial, and Community Facilities)*	***Non-Residential Zoning Districts***
Non-commercial minor antenna (Class A and B)	P[4]	-	P[4]	-
Non-commercial minor antenna (Class C and D)	CUP[3]	-	CUP[3]	-
Minor Commercial Telecommunications Facility (less than 35 ft)	-	-	CUP	CUP
Minor Commercial Telecommunications Facility (greater than 35 ft and less than 100 ft)	-	-	CUP	CUP
Major Commercial Telecommunications Facility (greater than 100 ft)	-	-	CUP with special findings	CUP with special findings
Eligible facilities request or application pursuant to California Government code Section 65850.6[3]	P[4]	P[4]	P[4]	P[4]

P = Permitted Use
C = Conditional Use Permit, Planning Commission review
- = Use Not Allowed

[1] For any public right-of-way on the boundary between zoning districts the zoning applicable to the location of a wireless telecommunication facility shall be determined based upon the closest district adjacent to the facility's location. The centerline of the public right-of-way will be used as the boundary between districts.
[2] Planned Community districts containing any residential dwelling units are considered a "Residential Zoning District" for the purposes of this Section.
[3] Requests eligible as a modification under either Section 6409(a) or the Wireless Telecommunications Collocation Facilities Covered under California Government Code Section 65850.6; Administrative Review Required.
[4] Administrative Review Permit required.

C. Non-exclusive grant. No 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 delivery of telecommunications services or any other purposes. Further, no approval shall be construed as any warranty of title.

17.130.030 Minor antennas - Basic requirements.
Minor antennas as defined in SMC 17.08.030 may be installed, erected, maintained and/or operated in any zoning district where such antennas are permitted under this title as long as all the following conditions are met:

A. The minor antenna use involved is accessory to the primary use of the property which is not a telecommunications facility;

B. No more than a total of six antennas, satellite dishes no greater than 10 feet in diameter, panel antennas with up to three panels, or combination thereof, are allowed on the parcel;

C. The combined NIER levels produced by all the antennas present on the parcel does not exceed the NIER standard established in SMC 17.130.230;

D. The antenna is not situated between the primary building on the parcel and any public or private street adjoining the parcel;

E. The antenna is located outside all yard and street setbacks specified in the zoning district in which the antenna is to be located and no closer than 20 feet to any property line, except if mounted on a primary structure;

F. None of the guy wires employed are anchored within the area in front of the primary structure on the parcel;

G. No portion of the antenna array extends beyond the property lines or into the area in front of the primary building on the parcel;

H. At least 10 feet of horizontal clearance exists between the antenna and any power lines, unless more clearance is required to meet PUC standards. The more stringent standard shall apply;

I. All towers, masts and booms are made of a noncombustible material and all hardware such as brackets, turnbuckles, clips, and similar type equipment subject to rust or corrosion has been protected either by galvanizing or sheradizing after forming;

J. The materials employed are not unnecessarily bright, shiny or reflective and are of a color and type that blends with the surroundings to the greatest extent possible;

K. The installation is in compliance with the manufacturer's structural specifications and the requirements of SMC 15.04;

L. The height of the facility shall include the height of any structure upon which it is placed, except if a specific exception is provided for under this chapter;

M. All towers in excess of 10 feet shall be within a fenced yard or be anti-climbing equipped under OSHA regulations;

N. The general criteria set forth in SMC 17.130.0~~1~~20 are met;

O. The following minor antennas are exempt from SMC 17.130.040 through 17.130.060 and are permitted uses in the zoning districts indicated below:

1. A ground- or building-mounted receive-only satellite dish that is 3.28 feet or less in diameter in any area regardless of land use or zoning category;

2. A ground- or building-mounted receive or transmission satellite dish that is 6.56 feet or less in diameter in areas with commercial or industrial zoning;

3. An antenna that is designed to receive television broadcast signals when not located within public view in any area regardless of land use or zoning category.

17.130.040 Minor antennas - Satellite dishes.
A. Ground- and building-mounted satellite dishes may be installed, erected, maintained, and/or operated in any zoning district where minor antennas, as defined in SMC 17.08, are permitted so long as all the following conditions are met:

1. The minimum standards specified in SMC 17.130.020 and 17.130.030 are complied with;

2. No more than two satellite dishes are allowed on the parcel, one of which may be over 3.28 feet in diameter, but no larger than 10 feet in diameter;

3. Any roof-mounted satellite dish larger than two feet in diameter is located in back of, and does not extend above, the peak of the roof;

4. Any ground-mounted satellite dish with a diameter greater than four feet that is situated less than five times its actual diameter from adjoining property lines has screening treatments located along the antenna's non-reception window axes and low-level landscape treatments along its reception window axes; and

5. For any roof or mast-mounted satellite dish larger than 3.28 feet in diameter, a building permit has been obtained and compliance with the applicable standards of SMC 15.04 has been demonstrated to the satisfaction of the Building Official.

B. No person shall place a satellite dish larger than 6.56 feet in diameter on private property without first submitting sufficient information to the Planning Director, including but not limited to a site plan and elevations, to determine compliance with this section and SMC 17.130.010 and 17.130.020. The Planning Director may approve, disapprove or modify the proposed placement. In addition, he/she may require that the satellite dish be of a specific diameter, color, or type of construction.

17.130.050 Minor antennas - Panel antennas.
Ground- and building-mounted panel antennas, as defined in SMC 17.08.030, may be installed, erected, maintained, and/or operated in any zoning district where minor antennas are permitted so long as all the following conditions are met:

A. The minimum standards specified in SMC 17.130.020 are complied with;

B. No more than one panel antenna with up to three panels is present on the parcel;

C. Any roof-mounted panel antenna with a face area greater than 3.5 square feet for each panel is located behind, and does not extend above, the peak of the roof nearest the closest inhabited area off site, or public road, if there is one.

17.130.060 Other minor antennas.
Ground- and building-mounted radio and receive-only television antennas may be installed, erected, maintained, and/or operated in any zoning district where minor antennas are permitted under this title so long as all the following conditions are met:

A. The minimum standards specified in SMC 17.130.020 and 17.130.030 are complied with;

B. No boom or any active element of the antenna is longer than 15 feet;

C. Any wire antenna that is not self-supporting is supported by objects within the property lines but not within the area in front of the primary structure on the property.

17.130.070 Telecommunications facilities - Minimum application requirements.
The following are the minimum criteria applicable to all telecommunications facilities. The approval authority shall not approve any request for a use permit except upon a duly filed application consistent with this Section 17.130 and any other written rules the City or the Planning Director may establish from time to time in any publicly-stated format. In the event that a project is subject to discretionary and/or environmental review, mitigation measures, more restrictive criteria than presented in this chapter, or other conditions of approval may also be necessary. All telecommunications facilities shall comply with:

A. **Form of Application.** The Planning Director shall establish and maintain a list of information that must accompany every application for the installation of a telecommunications facility. Said information may include, but shall not be limited to, completed supplemental project information forms, a specific maximum requested gross cross-sectional area, or silhouette, of the facility; service area maps, network maps, alternative site analysis, visual impact demonstrations including mock-ups and/or photo-montages, facility design alternatives to the proposal, visual impact analysis, NIER (nonionizing electromagnetic radiation) exposure studies, title reports identifying legal access, security programs, lists of other nearby telecommunications facilities, and deposits for peer review. The Planning Director may release an applicant from having to provide one or more of the pieces of information on this list upon a finding that in the specific case involved said information is not necessary to process or make a decision on the application being submitted. All applications shall require the applicant to demonstrate that the proposed project will be in planned compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions.

B. **Application Review.**

1. **Authorization.** The Planning Director is explicitly authorized at his/her discretion to employ on behalf of the City an independent technical expert in connection with any permit authorized under this Chapter to review any technical materials submitted including, but not limited to, those required under this section and in those cases where a technical demonstration of unavoidable need or unavailability of alternatives is required.

2. **Scope.** The Planning Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation: (a) permit application completeness and/or accuracy; (b) pre-construction planned compliance with applicable regulations for human exposure to RF emissions; (c) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (d) whether and to what extent a proposed project will address a gap in the applicant's wireless services; (e) whether and to what extent any technically feasible and/or potentially available alternative sites or concealment techniques may exist; (f) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the City's discretion to review; and (g) any other issue identified by the Planning Director that requires expert or specialized knowledge. The Planning Director may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with City staff and/or the applicant.

3. **Consultant Fees; Deposits.** -The applicant shall pay all the costs of said review, including any administrative costs incurred by the City. In the event that the Planning Director elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings. Before the independent consultant may perform any services, the applicant shall tender to the City a deposit in an amount equal to the estimated cost for the services to be provided, as determined by the Planning Director. The Planning Director may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant's services. In the event that the deposit exceeds the total costs for consultant's services, the Planning Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection by the Building Official or his or her designee. In the event that the reasonable costs for the independent consultant's services exceed the deposit, the Planning Director shall invoice the applicant for the balance. The City shall not issue any construction or grading permit to any applicant with any unpaid deposit requests or invoices.

~~1.~~4. Proprietary information. Any proprietary information disclosed to the City or the expert hired shall remain confidential and shall not be disclosed to any third party~~.~~

C. **Procedures for a Duly Filed Application.** Any application for a use permit will not be considered duly filed unless submitted in accordance with the procedures in this Subsection (D).

1. **Pre-Submittal Conference.** Before application submittal, the applicant must schedule and attend a pre-submittal conference with the Planning Director for all proposed projects subject to a use permit. Pre-submittal conferences for all other proposed projects are strongly encouraged but not required. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, any latent issues in connection with the proposed or existing wireless tower or base station, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other 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 Planning Director shall use reasonable efforts to provide the applicant with an appointment within five working days after the Director receives 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.

2. **Submittal Appointment.** All applications must be submitted to the City at a pre-scheduled appointment with the Planning Director. Applicants may generally submit one application per appointment, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The Planning Director shall use reasonable efforts to provide the applicant with an appointment within five working days after the Planning Director receives a written request and, if applicable, confirms that the applicant complied with the pre-submittal conference requirement. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed unless the applicant received a written exemption from the Director at a pre-submittal conference.

D. **Procedures for a Community Meeting.** The applicant shall schedule and hold a community meeting at least two weeks before the date of the Planning Commission meeting at which the application will be heard to provide residents information about the application for a wireless facility and streamline the review process by providing applicants an opportunity to consider residents' suggestions prior to a public hearing before the Planning Commission. Applicants are encouraged to bring preliminary drawings, RF emissions information, and other materials that may assist the residents' understanding of the project. The community meeting shall be held at a location within the City. If multiple applications are submitted, one meeting that includes all of the applications submitted on the same day shall be sufficient to satisfy this paragraph. A mock-up of the proposed project shall be erected at the subject site before the meeting. The primary location and all alternative sites shall be presented to the community as well as the reasons for the selection of the primary location. Notice of the date, time and place of such meeting shall be sent at least seven (7) days before the meeting and shall be filed with the Planning Department. The applicant should provide notice in accordance with SMC Section 17.460.020 (Noticing: Procedures), except as modified in this subsection, to all property owners of parcels within 600 feet of the boundaries of the subject parcel on which the applicant intends to propose the facility or modification. No general circulation or posted notice is required.

1. If the hearing on the application is continued by the planning commission, the applicant is encouraged, but not required, to hold a further meeting with the persons entitled to notice pursuant to subparagraph (a) at least one week prior to the continued hearing.
2. If a meeting pursuant to subparagraph (b) results in any modifications to the project prior to the planning commission hearing on the project, the applicant shall (1) notify the director of the proposed modifications, and (2) explain to the planning commission at the hearing on the matter any discrepancy between the project as proposed in the notice sent pursuant to subparagraph (a) and the project as presented to the planning commission.

E. **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, and in accordance with SMC Section 17.400.030 (Application filing and review), any application governed under this Section will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the Planning Department within 90 calendar days after the Planning Department deems the application incomplete in a written notice to the applicant. The Planning Director may, in his/her discretion, grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.

17.130.0835~~0~~0 Telecommunications facilities - Public notice.

In addition to the public notice required under SMC 17.400, the following special noticing shall be provided:

A. Notice of a public hearing on a conditional use permit authorizing the establishment or modification of a telecommunications facility shall be provided to the operators of all telecommunications facilities within one mile of the subject parcel via mailing of the standard legal notice prepared in response to SMC 17.400; and

B. Notice of the approval of a site plan by the Planning Director authorizing the establishment or modification of, or the renewal of a permit for, a telecommunications facility or minor antenna needing site plan review shall be mailed to all adjacent property owners within 300 feet. Mailing of said notice shall start an appeal period pursuant to SMC 17.455.

17.130.0890 Telecommunications facilities - Standard agreements required.

A. A maintenance/facility removal agreement signed by the applicant shall be submitted to the Planning Director prior to approval of the conditional use permit or other entitlement for use authorizing the establishment or modification of any telecommunications facility which includes a telecommunications tower, one or more new buildings/equipment enclosures larger in aggregate than 300 square feet, more than three satellite dishes of any size, or an applicant's successors-in-interest to properly maintain the exterior appearance and ultimately remove the facility, all in compliance with the provisions of this chapter and any conditions of approval. It shall further bind them to pay all costs for monitoring compliance with and enforcement of the agreement and to reimburse the City for all costs incurred to perform any work required of the applicant by this agreement that the applicant fails to perform. It shall also specifically authorize the City and/or its agents to enter onto the property and undertake said work so long as:

1. The Planning Director has first provided the applicant the following written notices:

   a. An initial compliance request identifying the work needed to comply with the agreement and providing the applicant at least 45 calendar days to complete it; and

   b. A follow-up notice of default specifying the applicant's failure to comply with the work within the time period specified and indicating the City's intent to commence the required work within 10 working days;

2. The applicant has not filed an appeal pursuant to SMC 17.455 within 10 working days of the notice required under subsection (A)(1)(b) of this section. If an appeal is filed, the City shall be authorized to

enter the property and perform the necessary work if the appeal is dismissed or final action on it taken in favor of the Planning Director.

B. All costs incurred by the City to undertake any work required to be performed by the applicant pursuant to the agreement referred to in subsection A of this section including, but not limited to, administrative and job supervision costs, shall be borne solely by the applicant. The applicant shall deposit within 10 working days of written request therefor such costs as the City reasonably estimates or has actually incurred to complete such work. When estimates are employed, additional monies shall be deposited as needed within 10 working days of demand to cover actual costs. The agreement shall specifically require the applicant to immediately cease operation of the telecommunications facility involved if the applicant fails to pay the monies demanded within 10 working days. It shall further require that operation remain suspended until such costs are paid in full.

~~**17.130.090 Telecommunications facilities - Life of permits.**~~

~~A conditional use permit issued or a site plan approval issued pursuant to the SMC authorizing establishment of a telecommunications facility shall be valid for a period of 10 years via the applicable process specified in SMC 17.400, 17.405, and 17.415. The grounds for nonrenewal shall be limited to a finding that:~~

~~1. The use involved is no longer allowed in the zoning district involved,~~

~~2. The facility fails to comply with the relevant requirements of this chapter as they exist at the time of renewal and the permittee has failed to supply assurances acceptable to the Planning Director that the facility will be brought into compliance within 120 days,~~

~~3. The permittee has failed to comply with the conditions of approval imposed,~~

~~4. The facility has not been properly maintained, or~~

~~5. The facility has not been upgraded to minimize its impact to the greatest extent permitted by the technology that exists at the time of renewal and is consistent with the provisions of universal service at affordable rates.~~

~~The grounds for appeal of issuance of a renewal shall be limited to a showing that one or more of the situations listed above do in fact exist or that the notice required under SMC 17.130.260 was not provided.~~

~~B. If a conditional use permit or other entitlement for use is not renewed, it shall automatically become null and void without notice or hearing 10 years after it is issued or upon cessation of use for more than a year and a day, whichever comes first. Unless a new conditional use permit or entitlement of use is issued within 120 days thereafter, all improvements installed including their foundations down to three feet shall be removed from the property and the site restored to its natural pre-construction state within 180 days of nonrenewal or abandonment. Any access road installed shall also be removed and the ground returned to its natural condition unless the property owner establishes to the satisfaction of the Planning Director that these sections of road are necessary to serve some other allowed use of the property that is currently present or to provide access to adjoining parcels.~~

17.130.1001 Telecommunications facilities - Basic ~~tower and building d~~Design and Development Standards for all Facilities.

The design and development standards set forth in this section apply to all wireless telecommunications facilities no matter where they are located. Wireless telecommunications facilities shall be designed and maintained so as to minimize visual and noise impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the design and development standards in this section. All telecommunications facilities shall be designed to blend into the surrounding environment to the greatest extent feasible. To this end all the following measures shall be implemented:

A. **No speculative facilities.** A wireless telecommunications facility, wireless telecommunications collocation facility, or a telecommunications tower, which is built on speculation and for which there is no wireless tenant is prohibited within the City.

B. **General guidelines.** The applicant shall employ screening and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is as visually inconspicuous as possible, to prevent the facility from dominating the surrounding area and to hide the facility from predominant views from surrounding properties, all in a manner that achieves compatibility with the community.

C. **Antennas.** The applicant shall use the least visible antennas possible to accomplish the coverage objectives. Antenna elements shall be flush mounted, to the extent reasonably feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Antennas shall be situated as to reduce visual impact without compromising their function. Whip antennas need not be screened.

~~C.~~D. Telecommunications towers shall be constructed out of metal or other nonflammable material.

E. Telecommunications towers taller than 35 feet shall be monopoles or guyed/lattice towers except where satisfactory evidence is submitted to the Planning Director or Planning Commission, as appropriate, that a self-supporting tower is required to provide the height and/or capacity necessary for the proposed telecommunications use to minimize the need for screening from adjacent properties, or to reduce the potential for bird strikes.

F. Telecommunications towers shall not exceed 100 feet in height unless the following findings are made by the Planning Commission: that it is not technically feasible to have a tower below this height at the requested location, that alternative locations which would not require a tower height in excess of the standard given above are not available or feasible, that the facility blends with the surrounding existing natural and manmade environment in such a manner as to be effectively unnoticeable; and that the requirements of SMC 17.130.010 through 17.130.230 are met.

G. ~~D.~~ Satellite dishes other than microwave dishes shall be of mesh construction, except where technical evidence is acceptable to the Planning Director or Planning Commission, as appropriate, is submitted showing that this is infeasible.

H. Telecommunications support facilities (i.e., vaults, equipment rooms, utilities, and equipment enclosures) shall be constructed out of non-reflective materials (visible exterior surfaces only).

I. Telecommunications support facilities shall be no taller than one story (15 feet) in height and shall be treated to look like a building or facility typically found in the area.

~~D.~~J. Telecommunications support facilities in areas of high visibility shall where possible be sited below the ridgeline or designed (i.e., placed underground, depressed, or located behind earth berms) or other mitigation measures to minimize their profile.

~~E.~~K. All buildings, poles, towers, antenna supports, antennas, and other components of each telecommunications site shall be initially painted and thereafter repainted as necessary with a "flat" paint, if it is determined by the decision-making body that the native coloring of the facility does not provide adequate blending with the surrounding environment. The color selected shall be one that, in the opinion of the Planning Director or Planning Commission, after receiving a Design Review Board recommendation, as appropriate, will minimize their visibility to the greatest extent feasible. To this end, improvements which will be primarily viewed against soils, trees or grasslands and adjacent structures, when present, shall be painted colors matching these landscapes and structures, while elements which rise above the horizon shall be painted a blue gray that matches the typical sky color at that location.

~~F.~~L. ~~I.~~ The project description and permit shall include a specific maximum allowable gross cross-sectional area, or silhouette, of the facility. The silhouette shall be measured from the "worst case" elevation perspective.

~~G.~~M. Each wireless telecommunications facility and wireless telecommunications collocation facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight, or attractive nuisances. The reviewing authority may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location or accessibility, a facility has the potential to become an attractive nuisance.

~~H.~~N. At the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with and equipment approved for use by federal law and regulation that reduces visual, noise, and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.

O. Telecommunications facility shall not be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health. To that end no telecommunications facility or combination of facilities shall produce at any time power densities in any inhabited area as this term is defined in SMC 17.08 that exceed the FCC adopted NIER standard for human exposure, as amended from time to time.

17.130.110~~100~~ Telecommunications facilities - Structural requirements.
No telecommunications facility shall be designed and/or sited such that it poses a potential hazard to nearby residences or surrounding properties or improvements. To this end, any telecommunications tower shall be

designed and maintained to withstand without failure the maximum forces expected from wind, earthquakes, and ice when the tower is fully loaded with antennas, transmitters and other equipment, and camouflaging. Initial demonstration of compliance with this requirement shall be provided via submission of a report to the Building Official prepared by a structural engineer licensed by the State describing the tower structure, specifying the number and type of antennas it is designed to accommodate, providing the basis for the calculations done, and documenting the actual calculations performed. Proof of ongoing compliance shall be provided via submission to the Planning Director at least every five (self-supporting and guyed towers)/10 (monopoles) years of an inspection report prepared by a State-licensed structural engineer indicating the number and types of antennas and related equipment actually present and indicating the structural integrity of the tower. Based on this report, the Building Official may require repair of or, if a serious safety problem exists, removal of the tower.

17.130.120 Telecommunications facilities - Critical disaster response facilities.
A. All radio, television and voice communication facilities providing service to government or the general public shall be designed to survive a natural disaster without interruption in operation. To this end all the following measures shall be implemented:

1. Nonflammable exterior wall and roof covering shall be used in the construction of all buildings;
2. Openings in all buildings shall be protected against penetration by fire and windblown embers;
3. The telecommunications tower when fully loaded with antennas, transmitters, and other equipment and camouflaging shall be designed to withstand the forces expected during the "maximum credible earthquake" All equipment mounting racks and equipment used shall be anchored in such a manner that such a quake will not tip them over, throw the equipment off its shelves, or otherwise act to damage it;
4. All connections between various components of the facility and with necessary power and telephone lines shall be protected against damage by wildfire, flooding, and earthquake; and
5. Measures shall be taken to ensure that the facility is operational in the event of a disaster or power loss.

B. Demonstration of compliance with the requirements of subsections (A) (1), (2), (4) and (5) (fire only) of this section shall be evidenced by a certification signed by the Fire Chief on the building plans submitted.

C. Demonstration of compliance with the requirements of subsections (A)(3) through (5) (earthquake only) of this section shall be provided via a second certification on said plans signed by a structural engineer or other appropriate professional licensed by the State.

17.130.130 Telecommunications facilities - Location.
All telecommunications facilities shall be located so as to minimize their visibility and the number of distinct facilities present. To this end all of the following measures shall be implemented:

A. No telecommunications facility shall be installed within the safety zone of any airport or helipad unless the operator indicates that it will not adversely affect the operation of the airport;

B. No telecommunications facility shall be installed at a location where special painting or lighting will be required by the FAA regulations unless technical evidence acceptable to the Planning Director or Planning Commission, as appropriate, is submitted showing that this is the only technically feasible location for this facility;

C. No telecommunications facility shall be installed on an exposed ridgeline, in or at a location readily visible from a public trail, public park or other outdoor recreation area, or on property designated with a W (Wetland) or ESOS (Environmental and Scenic Open Space Combining District), unless the Planning Commission makes a finding upon issuance of the conditional use permit that it blends with the surrounding existing natural and manmade environment in such a manner as to be effectively unnoticeable and that no other location is technically feasible;

D. No telecommunications facility that is readily visible from off-site shall be installed closer than one-quarter mile from another readily visible uncamouflaged or unscreened telecommunications facility unless it is a co-located facility, situated on a multiple-user site, or blends with the surrounding existing natural and manmade environment in such a manner as to be effectively unnoticeable;

E. No telecommunications facility that is readily visible from off-site shall be installed on a site that is not already developed with telecommunications facilities or other public or quasi-public uses unless it blends with the surrounding existing natural and manmade environment acceptable to the Planning Director or Planning Commission, as appropriate, and information is submitted showing a clear need for this facility and the infeasibility of co-locating it on one of these former sites; and

F. Telecommunications towers shall be set back at least 20 percent of the tower height from all property lines and at least 100 feet from any public trail, park, Laguna buffer setback, or property line.

G. No commercial minor antenna greater than 35 feet in height and no major telecommunication facility may be installed within 75 feet of any property line of a parcel with a residential dwelling unit which is within 75 feet of said property line.

17.130.140 Telecommunications facilities - Height determination.
Telecommunications tower shall be measured from the natural undisturbed ground surface below the center of the base of said tower to the top of the tower itself or, if higher, to the tip of the highest antenna or piece of equipment attached thereto. In the case of building-mounted towers, the height of the tower includes the height of the portion of the building on which it is mounted. In the case of "crank-up" or other similar towers whose height can be adjusted, the height of the tower shall be the maximum height to which it is capable of being raised.

17.130.150 Telecommunications facilities - Co-located and multiple-user facilities.
A. An analysis shall be prepared by or on behalf of the applicant, subject to the approval of the decision-making body, which identifies all reasonable, technically feasible, alternative locations and/or facilities which would provide the proposed telecommunications service. The intention of the alternatives analysis is to present alternative strategies which would minimize the number, size, and adverse environmental impacts of facilities necessary to provide the needed services to the subject area. The analysis shall address the potential for co-location at an existing or a new site and the potential to locate facilities as close as possible to the intended service area. It shall also explain the rationale for selection of the proposed site in view of the relative merits of any of the feasible alternatives. Approval of the project is subject to the decision-

making body making a finding that the proposed site results in fewer or less severe environmental impacts than any feasible alternative site. The City may require independent verification of this analysis at the applicant's expense. Facilities which are not proposed to be co-located with another telecommunications facility shall provide a written explanation why the subject facility is not a candidate for co-location.

B. All co-located and multiple-user telecommunications facilities shall be designed to promote facility and site sharing. To this end telecommunications towers and necessary appurtenances, including but not limited to parking areas, access roads, utilities and equipment buildings shall be shared by site users when in the determination of the Planning Director or Planning Commission, as appropriate, this will minimize overall visual impact to the community.

C. The facility shall make available unutilized space for co-location of other telecommunications facilities, including space for these entities providing similar, competing services. A good faith effort in achieving co-location shall be required of the host entity. Requests for utilization of facility space and responses to such requests shall be made in a timely manner and in writing and copies shall be provided to the City's permit files. Unresolved disputes may be mediated by the Planning Commission. Co-location is not required in cases where the addition of the new service or facilities would cause interference of the host's signal or if it became necessary for the host to go off-line for a significant period of time.

17.130.155 Telecommunications facilities – Additional Location and Configuration Preferences.
The purpose of this section is to provide guidelines to applicants and the reviewing authority regarding the preferred locations and configurations for wireless telecommunication facilities in the City, provided that nothing in this section shall be construed to permit a wireless telecommunication facility in any location or configuration that it is otherwise prohibited by this chapter.

A. **Review of Location and Configuration.** The reviewing authority shall consider the extent to which a proposed wireless telecommunication facility complies with these preferences and whether there are feasible alternative locations or configurations to the proposed facility that are more preferred under this section. If the location or configuration of a proposed facility qualifies for two or more categories of preferred locations or configurations, it shall be deemed to belong to the least preferred category.

B. **Order of Preference - Configurations.** The order of preference for the configuration for wireless telecommunication facilities from most preferred to least preferred is:

1. Collocation with existing major telecommunication facilities,
2. Collocation with other existing minor telecommunication facilities,
3. Roof-mounted,
4. Building-mounted,
5. Mounted on an existing pole or utility pole
6. Mounted on a new pole or utility pole that will replace an existing pole or utility pole,
7. Mounted on a new telecommunication tower.

C. **Order of Preference - Location.** The order of preference for the location of wireless telecommunications facilities from most preferred to least preferred is:

1. In the Industrial (M) zoning district,
2. In the Commercial Industrial (CM) zoning district,
3. In the Office/Light Industrial (OLM) zoning district,
4. In a Commercial zoning district,
5. In the public right-of-way with the closest adjacent district being the M zoning district,
6. In the public right-of-way with the closest adjacent district being the CM zoning district,
7. In the public right-of-way with the closest adjacent district being the OLM zoning district,
8. In the public right-of-way with the closest adjacent district being a Commercial zoning district,
9. Any public right-of-way location that abuts the property line of a structure recognized as a local, state or national historic landmark, historic district or on the register of historic places.
10. Lowest priority shall be given to public right-of-way with the closest adjacent districting being a Community Facilities zoning district that is used as a school or playground and residential zoning districts.

17.130.160 Telecommunications facilities - Lighting.
A. All telecommunications facilities shall be unlit except for the following:

1. A manually operated or motion-detector-controlled light above the equipment shed door which shall be kept off except when personnel are actually present at night; and
2. The minimum tower lighting required under FAA regulation; and

B. Where tower lighting is required, it shall be shielded or directed to the greatest extent possible in such a manner as to minimize the amount of light that falls onto nearby residences.

17.130.170 Telecommunications facilities - Roads and parking.
All telecommunications facilities shall be served by the minimum roads and parking areas necessary. To this end all the following measures shall be implemented:

A. Existing roads shall be used for access, whenever possible, and be upgraded the minimum amount necessary to meet standards specified by the Fire Chief and City Engineer. Any new roads or parking areas built shall, whenever feasible, be shared with subsequent telecommunications facilities and/or other permitted uses. In addition, they shall meet the width and structural requirements of the Fire Chief and City Engineer;

B. Existing parking areas shall, whenever possible, be used; and

C. Any new parking areas constructed shall be no larger than 350 square feet.

17.130.180 Telecommunications facilities - Vegetation protection and facility screening.
All telecommunications facilities shall be installed in such a manner so as to maintain and enhance existing native vegetation and to install suitable landscaping to screen the facility, where necessary. Where appropriate, facilities shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening. Additional landscaping shall be planted, irrigated, and maintained where such vegetation is deemed necessary by the City to provide screening or to block the line of sight between facilities and adjacent uses.

To this end all of the following measures shall be implemented:

A. A landscape plan shall be submitted with project application submittal indicating all existing vegetation that is to be retained on the site and any additional vegetation that is needed to satisfactorily screen the facility from adjacent land uses and public view areas. The landscape plan shall be in compliance with SMC 15.36, Water Efficient Landscape Program, and shall be subject to review and approval of the Design Review Board. All trees protected under SMC 8.12, Tree Protection, shall be identified in the landscape plan with indication of species type, diameter at four and one-half feet high, and whether it is to be retained or removed with project development;

B. Existing trees and other screening vegetation in the vicinity of the facility and along the access roads and power/telecommunications line routes involved shall be protected from damage, both during the construction period and thereafter. To this end, the following measures shall be implemented:

1. A tree protection plan shall be submitted with building permit or improvement plan submittal in accordance with SMC 8.12, Tree Protection. This plan shall be prepared by a certified arborist and give specific measures to protect trees during project construction;

2. Grading, cutting/filling, and the storage/parking of equipment/vehicles shall be prohibited in landscaped areas to be protected and the dripline of any trees required to be preserved. Such areas shall be fenced to the satisfaction of the Planning Director or Design Review Board, as appropriate. Trash, debris, or spoils shall not be placed within these fences nor shall the fences henceforth be opened or moved until the project is complete and written approval to take the fences down has been received from the Planning Director; and

3. All underground lines shall be routed such that a minimum amount of damage is done to tree root systems;

C. All areas disturbed during project construction other than the access road and parking areas required under SMC 17.130.170 shall be replanted with vegetation compatible with the vegetation in the surrounding area (e.g., ornamental shrubs or natural brush, depending upon the circumstances) to the satisfaction of the Planning Director;

D. Any existing trees or significant vegetation that die subsequent to installation of a tower shall be replaced with native trees and vegetation of a size and species acceptable to the Planning Director and City Arborist; and

E. No actions shall be taken subsequent to project completion with respect to the vegetation present that would increase the visibility of the facility itself or the access road and power/telecommunications lines serving it.

F. All telecommunication facilities shall blend with the surrounding existing natural and manmade environment to the extent reasonably feasible.

17.130.190 Telecommunications facilities - Fire prevention.
A. All telecommunications facilities shall be designed and operated in such a manner so as to minimize the risk of igniting a fire or intensifying one that otherwise occurs. To this end all of the following measures shall be implemented:

1. At least one-hour fire resistant interior surfaces shall be used in the construction of all buildings;
2. Monitored automatic fire extinguishing systems approved by the Fire Chief shall be installed in all equipment buildings and enclosures;
3. Rapid entry (KNOX) systems shall be installed as required by the Fire Chief;
4. Type and location of vegetation and other materials within 10 feet of the facility and all new structures, including telecommunications towers, shall have review for fire safety purposes by the Fire Chief. Requirements established by the Fire Chief shall be followed; and
5. All tree trimmings and trash generated by construction of the facility shall be removed from the property and properly disposed of prior to building permit finalization or commencement of operation, whichever comes first; and

B. Demonstration of compliance with requirements in subsections (A) (1) through (4) of this section shall be evidenced by a certificate signed by the Fire Chief on the building plans submitted.

17.130.200 Telecommunications facilities - Environmental resource protection.
All telecommunications facilities shall be sited so as to minimize the effect on environmental resources. To that end the following measures shall be implemented:

A. No telecommunications facility or related improvements including but not limited to access roads and power lines shall be sited so as to create a significant threat to the health or survival of rare, threatened or endangered plant or animal species;

B. No telecommunications facility or related improvements shall be sited such that their construction will damage an archaeological site or have an adverse effect on the historic character of a historic feature or site;

C. No telecommunications facility shall be sited such that its presence threatens the health or safety of migratory birds;

D. The facility installation shall comply with the policies contained with the Laguna de Santa Rosa Master Plan as contained within the Sebastopol General Plan pertaining to buffer setbacks from the Laguna, biotic resource protection and visual impact;

E. The facility shall comply with SMC15.16, Flood Damage Prevention;

F. Potential adverse visual impacts which might result from project related grading or road construction shall be minimized;

G. Potential adverse impacts upon nearby public use areas such as parks or trails shall be minimized; and

H. Drainage, erosion, and sediment controls shall be required as necessary to avoid soil erosion and sedimentation of waterways. Structures and roads on slopes of 10 percent or greater shall be avoided. Erosion control measures shall be incorporated for any proposed facility which involves grading or construction near a waterway or on lands with slopes over 10 percent. Natural vegetation and topography shall be retained to the extent feasible.

17.130.210 Telecommunications - Noise and traffic.
All telecommunications facilities shall be constructed and operated in such a manner as to minimize the amount of disruption caused the residents of nearby homes and the users of nearby recreational areas such as public parks and trails. To that end all the following measures shall be implemented:

A. Outdoor noise producing construction activities shall only take place on weekdays (Monday through Friday) between the hours of 7:30 a.m. and 5:30 p.m. unless allowed at other times by the Planning Commission;

B. Backup generators shall only be operated during power outages and for testing and maintenance purposes. Noise attenuation measures shall be included to reduce noise levels to an exterior noise level of at least an Ldn of 60 dB at the property line and an interior noise level of an Ldn of 45 dB;

Testing and maintenance shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.; and

C. Any equipment, including but not limited to air conditioning units, that may emit noise that would be audible from beyond three feet from the facility in the case of a facility located in the right-of-way, or in the case of other facilities the facility's property line, shall be enclosed or equipped with noise attenuation devices to the extent necessary to ensure compliance with applicable noise limitations under the SMC.

~~C.~~D.- Traffic safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety, including but not limited to pedestrian, bicycle, and vehicle safety.

E. Traffic at all times shall be kept to an absolute minimum, but in no case more than two round trips per day on an average annualized basis once construction is complete.

17.130.220 Telecommunications facilities - Visual compatibility.
A. Facility structures and equipment shall be located, designed and screened to blend with the existing natural or built surroundings so as to reduce visual impacts to the extent feasible considering the technological requirements of the proposed telecommunications service and to be compatible with neighboring residences and the character of the community.

B. The facility is designed to blend with any existing supporting structure and does not substantially alter the character of the structure or local area.

C. Following assembly and installation of the facility, all waste and debris shall be removed and disposed of in a lawful manner; and

D. A visual analysis, which may include photo montage, field mock-up, or other techniques, shall be prepared by or on behalf of the applicant which identifies the potential visual impacts, at design capacity, of the proposed facility to the satisfaction of the Planning Director. Consideration shall be given to views from public areas and, for telecommunications on private property (not in the public right-of-way), as well as from private residences. The analysis shall assess the cumulative impacts of the proposed facility and other existing and foreseeable telecommunications facilities in the area, and shall identify and include all feasible mitigation measures consistent with the technological requirements of the proposed telecommunications service.

17.130.230 Telecommunications facilities - NIER exposure.

A. Telecommunications facility shall not be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health. To that end no telecommunications facility or combination of facilities shall produce at any time power densities in any inhabited area as this term is defined in SMC 17.08 that exceed the FCC adopted NIER standard for human exposure, as amended from time to time.

B. Initial compliance with this requirement shall be demonstrated for any facility within 400 feet of residential uses or sensitive receptors such as schools, churches, hospitals, etc., and all broadcast radio and television facilities, regardless of adjacent land uses, through submission, at the time of application for the necessary permit or entitlement, of NIER calculations specifying NIER levels in the inhabited area where the levels produced are projected to be highest. If these calculated NIER levels exceed 80 percent of the NIER standard established by this section, the applicant shall hire a qualified electrical engineer licensed by the State to measure NIER levels at said location after the facility is in operation. A report of these measurements and his/her findings with respect to compliance with the established NIER standard shall be submitted to the Planning Director. Said facility shall not commence normal operations until it complies with, or has been modified to comply with, this standard. Proof of said compliance shall be a certification provided by the engineer who prepared the original report. In order to assure the objectivity of the analysis, the City may require, at the applicant's expense, independent verification of the results of the analysis.

C. Every telecommunications facility within 400 feet of an inhabited area and all broadcast radio and television facilities shall demonstrate continued compliance with the NIER standard established by this section. Every five years a report listing each transmitter and antenna present at the facility and the effective radiated power radiated shall be submitted to the Planning Director. If either the equipment or effective radiated power has changed, calculations specifying NIER levels in the inhabited areas where said levels are projected to be highest shall be prepared. NIER calculations shall also be prepared every time the adopted NIER standard changes. If calculated levels in either of these cases exceed 80 percent of the standard established by this section, the operator of the facility shall hire a qualified electrical engineer licensed by the State to measure the actual NIER levels produced. A report of these calculations, required measurements, if any, and the author's/engineer's findings with respect to compliance with the current NIER standard shall be submitted to the Planning Director within five years of facility approval and every five years thereafter. In the case of a change in the standard, the required report shall be submitted within 90 days of the date said change becomes effective.

D. Failure to supply the required reports or to remain in continued compliance with the NIER standard established by this section shall be grounds for revocation of the conditional use permit or other entitlement use.

17.130.240 Telecommunications facilities – Additional Design and Development Standards for Facilities in the Public Right-of-Way.

A. **Basic Requirements**. Facilities located in the public right-of-way are subject to the design and development standards set forth in this Section in addition to all design and development standards that apply to all facilities.

B. **Right-of-way authority.** An encroachment permit under Chapter 12.48 must be obtained for any work in the public right of way. Only applicants authorized to enter the public right-of-way pursuant to state or federal law or a franchise or other agreement with the City shall be eligible for a permit to install or modify a wireless telecommunications facility in the public right-of-way.

C. **Antennas**.

1. Utility poles. The maximum height of any antenna mounted to an existing utility pole shall not exceed 24 inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than 18 feet above any drivable road surface. All installations on utility poles shall fully comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as revised.

2. Street light poles. The maximum height of any antenna mounted to a street light pole shall not exceed seven feet above the existing height of a street light pole in a location with its closest adjacent district being a commercial zoning district and shall not exceed three feet above the existing height of a street light pole in any other zoning district. Any portion of the antenna or equipment mounted on such a pole shall be no less than 18 feet above any drivable road surface.

D. **Poles**.

~~2.~~1. Only pole-mounted antennas shall be permitted in the right-of-way. All other telecommunications towers are prohibited, and no new poles are permitted that are not replacing an existing pole.

2. Pole height and width limitations:

(a) All poles shall be designed to be the minimum functional height and width required to support the proposed antenna installation and meet FCC requirements. Poles and antennas and similar structures shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility.

(b) Notwithstanding the above, no facility shall be located on a pole that is less than 26 feet in height and no facility shall exceed 35 feet in height, including, but not limited to the pole and any antenna that protrudes above the pole.

(c) Pole mounted equipment shall not exceed six cubic feet in dimension.

3. If an applicant proposes to replace a pole in order to accommodate the facility, the pole shall

match the appearance of the original pole to the extent feasible, unless another design better accomplishes the objectives of this section. Such replacement pole shall not exceed the height of the pole it is replacing by more than seven feet.

4. If an exception is granted for placement of new poles in the right-of-way, new poles shall be designed to resemble existing poles in the right-of-way, including size, height, color, materials and style, with the exception of any existing pole designs that are scheduled to be removed and not replaced, unless another design better accomplishes the objectives of this section. Such new poles that are not replacement poles shall be located no closer than 90 feet to an existing pole.

E. **Spatial Design.** Facilities shall be designed to occupy the least amount of space in the right- of-way that is technically feasible.

F. Location.

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

2. A facility shall not be located within any portion of the public right-of-way interfering with access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing structures, or any other vital public health and safety facility.

3. Facilities mounted to a telecommunications tower, above-ground accessory equipment, or walls, fences, landscaping or other screening methods shall be setback a minimum of 18 inches from the front of a curb.

4. Each pole mounted wireless telecommunications facility must be separated by at least 1,500 feet.

5. All cables, including, but not limited to, electrical and utility cables, between the pole and any accessory equipment shall be placed underground, if feasible.

6. All new wires needed to service the wireless telecommunications facility must be installed within the width of the existing utility pole so as to not exceed the diameter and height of the existing utility pole.

G. **Americans with Disabilities Act Compliance.** All facilities shall be built in compliance with the Americans with Disabilities Act (ADA).

H. **Accessory equipment.** To preserve community aesthetics, all accessory equipment (with the exception of the smallest possible electrical meter boxes and any other equipment that may not be so placed) shall be placed within an underground vault whenever there are no physical or site constraints to make an underground vault infeasible, except as may be determined by the reviewing authority, Equipment which may not be placed in an underground vault shall be pole¬ mounted to the extent feasible. When above-ground is the only feasible location for a particular type of accessory equipment and when such accessory equipment cannot be pole-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five feet and a total footprint of 15 square feet, and shall be

screened and camouflaged to the fullest extent possible, including the use of landscaping or alternate screening. Required electrical meter cabinets shall be adequately screened and camouflaged. Infeasibility under this paragraph shall not be demonstrated by mere cost to construct an underground vault or place the equipment within the vault.

I. **Documentation.** The applicant shall provide documentation satisfactory to the Planning Director establishing compliance with this section 17.130.225.

17.130.24~~40~~50 Telecommunications facilities ~~–~~ Provisions for Minor facilities.

Minor telecommunications facilities as defined in SMC 17.08 may be installed, erected, maintained and/or operated in any zoning district where such facilities are permitted under this title so long as all the following conditions are met:

A. The facility complies with all of the minimum requirements specified in SMC 17.130.010 through 17.130.230 except as changed below:

B. The facility use involved is accessory to the primary use of the property which is not a telecommunications facility;

C. The facility does not exceed 35 feet in height;

D. No more than six minor antennas, satellite dishes no greater than 10 feet or less in diameter, panel antennas, or combination thereof, are allowed on the parcel;

E. No more than a single telecommunications tower and one related equipment building/structure is allowed on the parcel;

F. The combined NIER levels produced by all the telecommunications facilities and minor antennas present on the parcel are less than 10 percent of the NIER standard established in SMC 17.130.230;

G. The facility is located at least 75 feet away from any residential dwelling unit, except for one single-family residence on the property in which the facility is located;

H. The facility is located outside all yard and street setbacks specified in the zoning district regulations in which the facility is located and no closer than 20 feet to any property line;

I. Traffic at all times shall be kept to an absolute minimum, but in no case more than one round trip per day on an average annualized basis once construction is complete;

J. No native trees 20 inches or larger in diameter measured at four and one-half feet high on the tree would have to be removed;

K. Any new building(s) shall be effectively screened from view from off site;

L. The site has an average cross slope of 10 percent or less;

M. The total silhouette of a tower shall not exceed 80 square feet in area; and

N. All utility lines to the facility from public or private streets shall be undergrounded.

The Planning Director may deny a site plan permit for a minor telecommunications facility that meets all of the above standards if he/she determines, in his/her sole discretion, that the public interest would be furthered by having the Planning Commission review this matter. In that case and the case of any proposed facility that fails to meet one or more of the standards listed above, a conditional use permit approved by the Planning Commission shall be required to construct the facility in question.

~~**17.130.250 Telecommunications facilities - Exceptions.**~~

~~A. Exceptions to the requirements specified in SMC 17.130.010 through 17.130.210 may be granted through issuance of a conditional use permit by the Planning Commission. Such a permit may only be approved if the Planning Commission finds, after receipt of sufficient evidence, that failure to adhere to the standard under consideration in the specific instance will not increase the visibility of the facility or decrease public safety.~~

~~B. An exception to the requirements of SMC 17.130.160 and 17.130.180 may only be granted upon written concurrence by the Fire Chief.~~

~~C. Tower setback requirements may be waived under any of the following circumstances:~~

~~1. The facility is proposed to be co-located onto an existing, legally established telecommunications tower; and~~

~~2. Overall, the reduced setback enables further mitigation of adverse visual and other environmental impacts than would otherwise be possible.~~

17.130.260 Conditions of Approval for All Commercial Telecommunications Facilities.

A. In addition to compliance with the requirements of this chapter, upon approval all facilities shall be subject to each of the following conditions of approval, as well as any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:

1. Before the permittee submits any application for a building permit or other permits required by the SMC, the permittee must incorporate the wireless telecommunication facility permit granted under this chapter, all conditions associated with the wireless telecommunications facility permit and the approved plans and any photo simulations (the "Approved Plans") into the project plans. The permittee must construct, install and operate the wireless telecommunications facility in strict compliance with the Approved Plans. The permittee shall submit a as-built drawings within 90 days after installation of the facility.

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

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

   b. The legal status of the owner of the wireless telecommunications facility, including official identification numbers and FCC certification.

c. Name, address, and telephone number of the property owner if different than the permittee.

3. The permittee shall not place any facilities that will deny access to, or otherwise interfere with, any public utility, easement, or right-of-way located on the site. The permittee shall allow the City reasonable access to, and maintenance of, all utilities and existing public improvements within or adjacent to the site, including, but not limited to, pavement, trees, public utilities, lighting and public signage.

4. At all times, all required notices and signs shall be posted on the site as required by the FCC and California Public Utilities Commission, and as approved by the City. The location and dimensions of a sign bearing the emergency contact name and telephone number shall be posted pursuant to the approved plans.

5. At all times, the permittee shall ensure that the facility complies with the most current regulatory and operational standards including, but not limited to, radio frequency emissions standards adopted by the FCC and antenna height standards adopted by the Federal Aviation Administration. The City shall retain a consultant, at the sole expense of the permittee, to perform testing demonstrating compliance with current federal regulatory and operational standards. Tests shall occur upon commencement of operations and bi-annually thereafter.

6. If at any time while the permit is in effect the Planning Director determines there is good cause to believe that the facility may emit radio frequency emissions that are likely to exceed FCC standards, the Planning Director may require the permittee to submit a report described by this section. Failure to comply with this section shall be grounds for revocation of the use permit. The report shall also include an acoustical analysis that demonstrates compliance with the noise requirements herein and with the City's Noise Ordinance contained within Section 8.25 of the SMC.

7. Permittee shall pay for and provide a performance bond, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and the SMC. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping obligations. The amount of the performance bond shall be set by the Planning Director in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.

8. Indemnification shall be made a condition of approval and shall include the following responsibilities: Permittee shall defend, indemnify, protect and hold harmless the City, its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers from and against any and all claims, actions, or proceedings against the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers to attack, set aside, void or annul, an approval of the City, Planning Commission or City Council concerning this permit and the project. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs

or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The City shall promptly notify the permittee of any claim, action, or proceeding. Nothing contained herein shall prohibit City from participating in a defense of any claim, action or proceeding. The City shall have the option of coordinating the defense, including, but not limited to, choosing counsel for the defense at permittee's expense.

9. All conditions of approval shall be binding as to the applicant and all successors in interest to permittee.

10. A condition setting forth the permit expiration date in accordance with Section 17.130.090 shall be included in the conditions of approval.

11. A condition setting forth the modification requirement stated within Section 17.130.110(N).

17.130.270 Additional Conditions of Approval for Facilities Located in the Public Right-of-Way.

A. In addition to compliance with the requirements of this chapter, upon approval all facilities in the public right-of-way shall be subject to each of the conditions of approval set forth in section 17.130.260, each of the following conditions of approval, and any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:

1. The wireless telecommunications facility approved in the public right-of-way is subject to, and subordinate to the public's right to use the public right of way. Any such wireless telecommunications facility shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the City engineer for the purpose of: (a) protecting the public health, safety, and welfare, (b) preventing interference with pedestrian and vehicular traffic, and (c) preventing damage to the public right-of-way or any property adjacent to it including, but not limited to repair, replacement, modifications, and/or upgrades of public roads and sidewalks. The City may modify the permit to reflect such conditions, changes or limitations by following the same notice and public hearing procedures as are applicable to the grant of a wireless telecommunications facility permit for similarly located facilities, except the permittee shall be given notice by personal service or by registered or certified mail at the last address provided to the City by the permittee.

2. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement or property without the prior consent of the owner of that structure, improvement or property. No structure, improvement or property owned by the City shall be moved to accommodate a wireless telecommunications facility unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the City's structure, improvement or property. Prior to commencement of any work pursuant to an encroachment permit issued for any facility within the public right-of-way, the permittee shall provide the City with documentation establishing to the City's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement or property within the public right-of-

way to be affected by applicant's facilities.

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

4. The permittee shall repair, at its sole cost and expense, any damage including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to City streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation or maintenance of a wireless telecommunications facility in the public right-of-way. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the Planning Director, the Planning Director shall cause such repair to be completed at permittee's sole cost and expense.

5. Prior to issuance of a building permit, the applicant shall obtain the Planning Director's approval of a tree protection plan prepared by a certified arborist if the installation of the wireless telecommunication facility will be located within the canopy of a street tree, or a protected tree on private property, or within a ten-foot radius of the base of such a tree. Depending on site specific criteria (e.g., location of tree, size, and type of tree, etc.), a radius greater than ten feet may be required by the Planning Director.

6. Should any utility company offer electrical service that does not require the use of a meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet and any related foundation within 30 days of such service being offered and reasonably restore the area to its prior condition.

7. The permittee shall modify, remove, or relocate its facility, or portion thereof, without cost or expense to City, if and when made necessary by:

   a. Any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or aboveground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by City or any other public agency;

   b. Any abandonment of any street, sidewalk, or other public facility;

   c. Any change of grade, alignment or width of any street, sidewalk or other public facility; or

   d. A determination by the Planning Director that the wireless telecommunications facility has become incompatible with public health, safety or welfare or the public's use of the public right-of-way.

8. Any modification, removal, or relocation of the facility shall be completed within 90 days of written notification by City unless exigencies dictate a shorter period for removal or relocation. Modification or relocation of the facility shall require submittal, review and approval of a permit amendment pursuant to the SMC. The permittee shall be entitled, on permittee's election, to either a pro-rata refund of fees paid for the original permit or to a new permit, without additional fee, at a location as close to the original location as the standards set forth in the SMC allow. In the event the facility is not modified, removed, or relocated within said period of time, the City may cause the same to be done at the sole cost and expense of permittee. Further, due to exigent circumstances as provided in the SMC, the City may modify, remove, or relocate wireless telecommunications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.

17.130.280 Findings.

A. Where a wireless telecommunication facility requires a use permit under this chapter, the reviewing authority shall not approve any application unless, in addition to the findings generally applicable to all use permits, all of the following additional findings are made:

1. The proposed facility complies with all applicable provisions of this chapter.

2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.

3. The applicant has submitted a statement of its willingness to allow other carriers to collocate on the proposed wireless telecommunications facility wherever technically and economically feasible and where collocation would not harm community compatibility.

4. Noise generated by equipment will not be excessive, annoying nor be detrimental to the public health, safety, and welfare and will not exceed the standards set forth in this chapter.

B. In addition to the findings in paragraph (A) above, approval of a wireless telecommunications facility permit for a facility that will be located in the public right-of- way may be granted only if the following findings are made by the reviewingauthority:

1. The applicant has provided substantial written evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise or other agreement with the City permitting them to use the public right-of-way.

2. The applicant has demonstrated that the facility will not interfere with the use of the public right-of-way, existing subterranean infrastructure, or the City's plans for modification or use of such location and infrastructure.

17.130.290 Exceptions.

A. Exceptions pertaining to any provision of this chapter, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the reviewing authority if the reviewing authority makes the finding that:

1. Denial of the facility as proposed would violate federal law, state law, or both; or

2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.

B. An applicant may request an exception only at the time of applying for a wireless telecommunications facility permit and not at any time thereafter. The request must include both the specific provision(s) of this chapter from which the exception is sought and the basis of the request. Any request for an exception after the City has deemed an application complete shall be treated as a new application.

C. Notwithstanding any other provision of this chapter, a use permit shall be required for a facility when an exception is requested.

D. The applicant shall have the burden of proving that denial of the facility as proposed would violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both, using the evidentiary standards required by that law at issue. The City shall have the right to hire one or more independent consultants, at the applicant's expense in accordance with Section 17.130.070, to evaluate the issues raised by the exception request and shall have the right to submit rebuttal evidence to refute the applicant's claim.

~~A.~~E. Exceptions shall only be granted as necessary to ensure compliance with federal law, state law, or both. Any exceptions granted pursuant to the section shall adhere as closely as practicable to the requirements of this Chapter.

F. Exceptions to the requirements specified in SMC 17.130.010 through 17.130.210 may be granted through issuance of a conditional use permit by the Planning Commission. Such a permit may only be approved if the Planning Commission finds, after receipt of sufficient evidence, that failure to adhere to the standard under consideration in the specific instance will not increase the visibility of the facility or decrease public safety.

G. An exception to the requirements of SMC 17.130.160 and 17.130.180 may only be granted upon written concurrence by the Fire Chief.

H. Tower setback requirements may be waived under any of the following circumstances:

1. The facility is proposed to be co-located onto an existing, legally established telecommunications tower; and

2. Overall, the reduced setback enables further mitigation of adverse visual and other environmental impacts than would otherwise be possible.

17.130.290 Wireless Telecommunications Facilities Covered under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012.

A. **Purpose.** Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified in 47 U.S.C. § 1455(a), generally requires that State and local governments "may not deny, and shall approve" requests to collocate, remove or replace transmission equipment at an existing tower or base station. Federal Communication Commission regulations interpret this statute and create procedural rules for local review, which generally preempt certain subjective land-use regulations, limit permit application content requirements and provide the applicant with a potential "deemed granted" remedy when the State or local government fails to approve or deny the request within sixty (60) days after submittal (accounting for any tolling periods). Moreover, whereas Section 704 of the Telecommunications Act of 1996, Pub. L. 104-104, codified in 47 U.S.C. § 332, applies to only "personal wireless service facilities" (e.g., cellular telephone towers and equipment), Section 6409(a) applies to all "wireless" facilities licensed or authorized by the FCC (e.g., cellular, Wi-Fi, satellite, microwave backhaul, etc.).

The overlap between wireless deployments covered under Section 6409(a) and other wireless deployments, combined with the different substantive and procedural rules applicable to such deployments, creates a potential for confusion that harms the public interest in both efficient wireless facilities deployment and carefully planned community development in accordance with local values. A separate permit application and review process specifically designed for compliance with Section 6409(a) contained in a section devoted to Section 6409(a) will mitigate such potential confusion, streamline local review and preserve the City's land-use authority to maximum extent possible.

B. **Applicability.** This Section applies to all collocations or modifications to an existing wireless tower or base station submitted with a written request for approval pursuant to Section 6409(a).

C. **Approval Required.** Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted with a written request for a 6409(a) approval shall be subject to the Planning Director's approval, conditional approval or denial without prejudice pursuant to the standards and procedures contained in this chapter

D. **Other Regulatory Approvals.** No collocation or modification approved under any section 6409(a) approval may occur unless the applicant also obtains all other applicable permits or regulatory approvals from the City and state or federal agencies. Furthermore, any section 6409(a) approval granted under this chapter shall remain subject to any and all lawful conditions or requirements associated with such other permits or regulatory approvals from the City and state or federal agencies.

E. **Application Requirement.** The City shall not approve any wireless facility subject to this chapter except upon a duly filed application consistent with this Section and any other written rules the City or the Planning Director may establish from time to time. An application must include the information required by Section 17.130.070 and the following additional information:

1. A title report prepared within the six months prior to the application filing date in order for the City to verify the property owner's identity. If the applicant does not own the subject property,

the application must include a written authorization signed by the property owner that empowers the applicant to file the application and perform all wireless facility construction, installation, operation and maintenance to the extent described in the application.

2. A written statement that explains in plain factual detail whether and why Section 6409(a) and the related FCC regulations at 47 C.F.R. § 1.40001 et seq. require approval for the specific project. 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 this written statement the applicant must also include (i) whether and why the support structure qualifies as an existing tower or existing base station; and (ii) whether and why the proposed collocation or modification does not cause a substantial change in height, width, excavation, equipment cabinets, concealment or permit compliance.

F. **Procedures for a Duly Filed Application.** The City shall not review any application unless duly filed in accordance with this Section, as follows:

1. **Pre-Submittal Conference.** Before application submittal, applicants must schedule and attend a pre-application meeting with the Planning Director for all proposed modifications submitted for approval pursuant to Section 6409(a). The pre- submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification, including whether the project qualifies for Section 6409(a); any latent issues in connection with the existing tower or base station; potential concealment issues (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 about whether such applications or other materials may be incomplete or unacceptable. The Planning Director may, in the Planning Director's discretion, grant a written exemption to the submittal appointment under Section 17.130.290(F)(2) or for a specific requirement for a complete application to any applicant who (i) schedules, attends and fully participates in any pre- submittal conference and (ii) shows to the Planning Director's satisfaction that such specific requirement duplicates information already provided in other materials to be submitted or is otherwise unnecessary to the City's review under facts and circumstances in that particular case. Any written exemption will be limited to the project discussed at the pre-submittal conference and will not be extended to any other project.

2. **Submittal Appointment.** All applications must be filed with the City at a pre-scheduled appointment. Applicants may generally submit one application per appointment but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. Any application received without an appointment, whether delivered in-person or through any other means, will not be considered duly filed unless the applicant received a written exemption from the Planning Director at a pre-submittal conference.

3. **Appointment Scheduling Procedures.** For any event in the submittal process that requires an appointment, applicants must submit a written request to the Planning Director. The Planning

Director shall endeavor to provide applicants with an appointment as soon as reasonably feasible and within five business days after a written request is received.

4. **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, an application will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the City within 90 calendar days after the City deems the application incomplete in a written notice to the applicant. The Planning Director may, in the Planning Director's discretion, grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.

5. **Departmental Forms, Rules and Other Regulations.** The City Council authorizes the Planning Director to develop and publish permit application forms, checklists, informational handouts and other related materials that the Planning Director finds necessary, appropriate or useful for processing requests for section 6409(a) approvals. Without further authorization from the City Council, the Planning Director may from time- to- time update and alter any such permit application forms, checklists, informational handouts and other related materials as the Planning Director deems necessary, appropriate or useful to respond to regulatory, technological or other changes related to this chapter. The City Council authorizes the Planning Director to establish other reasonable rules and regulations, which may include without limitation regular hours for appointments with applicants, as the Planning Director deems necessary or appropriate to organize, document and manage the application intake process.

G. **Administrative Review; Decision Notices.** The Planning Director shall administratively review an application for a section 6409(a) approval and act on such an application without prior notice or a public hearing. Within five working days after the Planning Director conditionally approves or denies an application submitted for Section 6409(a) approval or before the FCC timeframe for review expires (whichever occurs first), the Planning Director shall send a written notice to the applicant. In the event that the Planning Director determines that an application submitted for approval pursuant to Section 6409(a) does not qualify for approval, the Planning Director will send written notice to the applicant that includes the reasons to support the review authority's decision and states that the application will be automatically denied without prejudice on the 60th day after the date the application was filed unless the applicant withdraws the application.

H. **Required Findings for 6409(a) Approval.** The Planning Director may approve or conditionally approve an application submitted for Section 6409(a) approval when the Planning Director finds that the proposed project:

1. Involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and

2. Does not substantially change the physical dimensions of the existing wireless tower or base station.

I. **Criteria for Denial Without Prejudice.** Notwithstanding any other provisions in this chapter, and consistent with all applicable federal laws and regulations, the Planning Director may deny without prejudice an application submitted for approval pursuant to Section 6409(a) when it finds that the proposed project:

1. Does not satisfy the criteria for approval;

2. Violates any legally enforceable standard or permit condition reasonably related to public health and safety then in effect; or

3. Involves the replacement of the entire support structure.

J. Conditional 6409(a) Approvals. Subject to any applicable limitations in federal or state law, nothing in this chapter is intended to limit the City's authority to conditionally approve an application for a section 6409(a) approval to protect and promote the public health, safety and welfare.

K. **Appeals.** Notwithstanding any provision of the SMC to the contrary, including but not limited to Chapter 17.455 and any other section of this Chapter, an applicant may appeal a decision by the Planning Director to deny without prejudice a Section 6409(a) application. The appeal must be filed within 10 days from the Planning Director's decision. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The City Manager shall serve as the appellate authority for all appeals of all actions of the Planning Director taken pursuant to this section. The City shall provide notice for an administrative hearing by the City Manager. The City Manager shall limit its review to whether the project should be approved or denied in accordance with the provisions in paragraphs (H) and (I) of this section. The decision of the City manager shall be final and not subject to any further administrative appeals.

L. **Standard Conditions of Approval.** In addition to all other conditions adopted by the Planning Director, all Section 6409(a) approvals, whether approved by the Planning Director or deemed approved by the operation of law, shall be automatically subject to the following conditions in this Section; provided, however, that the Planning Director shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances:

1. **Approved Plans.** Before the permittee submits any application for a building permit or other permits required by the SMC, the permittee must incorporate the wireless telecommunications facility permit granted under this section, all conditions associated with the wireless telecommunications facility permit and the approved plans and any photo simulations (the "Approved Plans") into the project plans. The permittee must construct, install and operate the wireless telecommunications facility in strict compliance with the Approved Plans. The permittee shall submit an as built drawing within 90 days after installation of the facility.

2. **Permit Term.** The City's grant or grant by operation of law of a Section 6409(a) approval constitutes a federally-mandated modification to the underlying permit or other prior regulatory authorization for the subject tower or base station. The City's grant or grant by operation of law

of a section 6409(a) approval will not extend the permit term, if any, for any conditional use permit, or other underlying prior regulatory authorization. Accordingly, the term for a section 6409(a) approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station.

3. **Accelerated Permit Terms Due to Invalidation.** In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Section 6409(a) approval, such 6409(a) approvals shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved section 6409(a) approvals or the Planning Director grants an extension upon written request from the permittee that shows good cause for the extension, which includes without limitation extreme financial hardship. Notwithstanding anything in the previous sentence to the contrary, the Planning Director may not grant a permanent exemption or indefinite extension. A permittee shall not be required to remove its improvements approved under the invalidated section 6409(a) approval when it has applied for a conditional use permit for those improvements before the one-year period ends.

4. **No Waiver of Standing.** The City's grant or grant by operation of law of a Section 6409(a) approval does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any section 6409(a) approval.

5. **Build-out Period.** The section 6409(a) approval will automatically expire one year from the issuance date unless the permittee obtains all other permits and approvals required to install, construct and operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use. The Planning Director may grant one written extension to a date certain when the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition. Any further extensions may be granted by the Planning Commission.

6. **Maintenance Obligations; Vandalism.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the Approved Plans and all conditions in this section 6409(a) approval. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

7. **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("Laws") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this section 6409(a) approval. The permittee expressly

acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws.

8. **Adverse Impacts on Other Properties**. The permittee shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's construction, installation, operation, modification, maintenance, repair, removal or other activities at the site. 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 on any day and at any time prohibited under the SMC. 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. The Planning Director may issue a stop work order for any work that violates this condition.

9. **Noise Complaints.** The permittee shall conduct all activities on the site in compliance with the noise standards in the SMC. In the event that any person files a noise complaint and the City verifies that such complaint is valid, the permittee must remedy the violation within 10 days after notice from the City, which may include a demonstration that the permittee has amended its operational guidelines in situations where the violation arises from the permittee's personnel rather than the permittee's equipment.

10. **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City or its designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the City or its designee 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 will be permitted to supervise the City or its designee while such inspection or emergency access occurs.

11. **Contact Information.** The permittee shall furnish the City with accurate and up-to- date contact information for a person responsible for the wireless facility, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times.

12. **Indemnification.** The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, employees and volunteers from any and all (1) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("Claims") brought against the City or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the City's approval of this section 6409(a) approval, and (2) other Claims any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this section 6409(a) approval or the wireless facility. In the event

the City becomes aware of any Claims, the City will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this section 6409(a) approval, and that such indemnification obligations will survive the expiration or revocation of this section 6409(a) approval.

13. **Performance Bond.** Before the City issues any construction permit in connection with the wireless facility, the permittee shall post a performance bond from a surety and in a form acceptable to the City manager in an amount equal to or greater than a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the City manager shall take into consideration information provided by the permittee regarding the cost to remove the wireless facility.

14. **Record Retention.** The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless 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 that the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.

15. **Compliance Obligations.** An applicant or permittee will not be relieved of its obligation to comply with every applicable provision in the SMC, any permit, any permit condition or any applicable law or regulation by reason of any failure by the City to timely notice, prompt or enforce compliance by the applicant orpermittee.

17.130.310 Wireless Telecommunications Collocation Facilities Covered Under California Government Code Section 65850.6.

A. **Purpose.** The purpose of this section is to comply with an application for a Wireless Telecommunications Collocation Facility under California Government Code Section 65850.6, for which a 6409(a) approval is not being requested. This section provides the requirements, standards and regulations for a wireless telecommunications collocation facility for which subsequent collocation is a permitted use pursuant to California law. Only those facilities that fully comply with the eligibility requirements set forth in California Government Code Section 65850.6, or its successor

provision, and which strictly adhere to the requirements and regulations set forth in this section shall qualify as a wireless telecommunications collocation facility.

B. **Definitions.** For the purposes of this section, the following terms are defined as follows:

1. "Collocation Facility" means the placement or installation of wireless facilities, including antennas, and related equipment, on, or immediately adjacent to, a wireless telecommunications collocation facility.

2. "Wireless Telecommunications Facility" means equipment and network components such as towers, utility poles, transmitters, base stations, and emergency power systems that are integral to providing wireless telecommunications services.

3. "Wireless Telecommunications Collocation Facility" means a wireless telecommunications facility that includes collocation facilities.

C. **Procedures.** An application for a Wireless Telecommunications Collocation Facility under California Government Code Section 65850.6 shall be processed in the same manner as an application for 6409(a) approval is processed, except that where the process requires justification for the 6409(a) approval, the applicant shall instead provide the justification for a Wireless Telecommunications Collocation Facility under California Government Code Section 65850.6.

D. **Requirements.** All requirements, regulations, and standards set forth in this chapter for a wireless telecommunications facility shall apply to a wireless telecommunications collocation facility; provided, however, the following shall also apply to a wireless telecommunications collocation facility:

1. The applicant for a wireless telecommunications collocation facility permit shall describe or depict:

   a. The wireless telecommunications collocation facility as it will be initially built; and

   b. All collocations at full build-out, including, but not limited to, all antennas, antenna support structures, and accessory equipment.

2. Any collocation shall use screening methods substantially similar to those used on the existing wireless telecommunications facilities unless other optional screening methods are specified in the conditions of approval.

3. A wireless telecommunications collocation facility permit shall not be approved unless an environmental impact report, negative declaration, or mitigated negative declaration was prepared and approved for the wireless telecommunications collocation facility under the California Environmental Quality Act ("CEQA"), California Public Resources Code § 21000 et seq..

E. **Permitted Use.** Notwithstanding any other provision of this chapter, a subsequent collocation on a wireless telecommunications collocation facility shall be a permitted use only if all of the following requirements are satisfied:

1. The wireless telecommunications collocation facility:

a. Was approved after January 1, 2007, by discretionary permit;

b. Was approved subject to an environmental impact report, negative declaration, or mitigated negative declaration; and

c. Otherwise complies with the requirements of California Government Code Section 65850.6(b), or its successor provision, for addition of a collocation facility to a wireless telecommunications collocation facility, including, but not limited to, compliance with all performance and maintenance requirements, regulations and standards in this chapter and the conditions of approval in the wireless telecommunications collocation facility permit; and

2. The collocations were specifically considered when the relevant environmental document was prepared for the wireless telecommunications collocation facility.

3. Before collocation, the applicant seeking collocation shall obtain all other applicable non-discretionary permits, as required pursuant to the SMC.

F. **New or Amended Permit.** Except as otherwise provided above, approval of a new or amended permit shall be required when the facility is modified other than by collocation in accordance with this section, or the proposed collocation:

1. Increases the height of the existing permitted telecommunications tower or otherwise changes the bulk, size, location, or any other physical attributes of the existing permitted wireless telecommunications collocation facility unless specifically permitted under the conditions of approval applicable to such wireless telecommunications collocation facility; or

2. Adds any microwave dish or other antenna not expressly permitted to be included in a collocation facility by the conditions of approval.

G. **Appeals.** Notwithstanding any provision of the SMC to the contrary, including but not limited to Chapter 17.455 and any other section of this Chapter, any applicant may appeal a decision by the Planning Director. The appeal must be filed within 10 days from the Planning Director's decision. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The City manager shall serve as the appellate authority for all appeals of all actions of the Planning Director taken pursuant to this section. The City shall provide notice for an administrative hearing by the City manager. The City manager shall limit its review to whether the project should be approved or denied in accordance with the provisions in this section. The decision of the City manager shall be final and not subject to any further administrative appeals.

17.130.300 Business License.

A permit issued pursuant to this chapter shall not be a substitute for any business license otherwise required under the Sebastopol Municipal Code.

17.130.310 Operation and Maintenance Standards.

A. All wireless telecommunications facilities must comply at all times with the following operation and maintenance standards. All necessary repairs and restoration shall be completed by the permittee, owner, or operator within 48 hours:

1. After discovery of the need by the permittee, owner, operator or any designated maintenance agent; or

2. After permittee, owner, operator, or any designated maintenance agent receives notification

from a resident or the Planning Director.

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

C. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the Planning Director.

D. 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.

E. Each facility shall be operated and maintained at all times in compliance with applicable federal regulations, including FCC radio frequency emissions standards.

F. Each facility shall be operated and maintained to comply at all times with the noise regulations of this chapter and shall be operated and maintained in a manner that will minimize noise impacts to surrounding residents. Except for emergency repairs, any testing and maintenance activities that will be audible beyond the property line shall only occur between the hours of 8:00 a.m. and 5:00 p.m. on Monday through Friday, excluding holidays, unless alternative hours are approved by the Planning Director. Backup generators, if permitted, shall only be operated during periods of power outages or for testing.

G. If a flagpole is used for camouflaging a wireless telecommunications facility, flags shall be flown and shall be properly maintained at all times.

H. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the standards set forth in this section and the conditions of approval.

17.130.320 No Dangerous Conditions or Obstructions Allowed.

No person shall install, use or maintain any wireless telecommunications facility which in whole or in part rests upon, in or over any public sidewalk or parkway, 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 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, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

17.130.330 Life of permits.

A. A conditional use permit issued or a site plan approval issued pursuant to the SMC authorizing establishment of a telecommunications facility shall be valid for a period of 10 years A permit for any wireless telecommunications facility shall be valid for a period of 10 years, unless the Planning Commission authorizes a longer period or pursuant to another provision of the SMC the permit lapses sooner or is revoked. At the end of such period, the permit shall expire.

B. A permittee may apply for extensions of its permit in increments of no more than ten years and no sooner than twelve months prior to expiration of the permit.

C. If a permit has not expired at the time an application is made for an extension, the Planning Director may administratively extend the term of the permit for subsequent ten-year terms upon verification of continued compliance with the findings and conditions of approval under which the application was originally approved, as well as any other applicable provisions of the SMC that are in effect at the time the permit extension is granted.

1. At the Planning Director's discretion, additional studies and information may be required of the applicant.

2. If the Planning Director determines that the facility is nonconforming or that additional conditions of approval are necessary to bring the facility into compliance with the provisions of the SMC that are then in effect at the time of permit expiration, the Planning Director shall refer the extension request to the Planning Commission.

D. The request for an extension shall be decided by the Planning Commission if the permit expired before the application is made for an extension or if the Planning Director refers the matter to the Planning Commission. After notice and a public hearing, the Planning Commission may approve, conditionally approve, or deny the extension.

17.130.340 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 90 or more consecutive days. 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 City 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 Planning Director of any discontinuation of operations of 30 days or more.

C. Failure to inform the Planning 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. Prosecution;

~~1.~~2. Revocation or modification of the permit;

3. Calling of any bond or other assurance required by this chapter or conditions of approval of the permit;

4. Removal of the facilities by the City in accordance with the procedures established under the SMC for abatement of a public nuisance at the owner's expense; and

~~2.~~5. Any other remedies permitted under the SMC.

17.130.350 Revocation.

A. Grounds for revocation. A permit granted under this chapter may be revoked for noncompliance with any enforceable permit, permit condition or legal provision applicable to the facility.

B. Revocation procedures.

1. When the Planning Director finds reason to believe that grounds for permit revocation exist, the Planning Director shall send written notice by certified U.S. mail, return receipt requested, to the permittee at the permittee's last known address that states the nature of the noncompliance as grounds for permit revocation. The permittee shall have a reasonable time from the date of the notice, but no more than thirty days unless authorized by the Planning Director, to cure the noncompliance or show that no noncompliance ever occurred.

2. If after notice and opportunity to show that no noncompliance ever occurred or to cure the noncompliance, the permittee fails to cure the noncompliance, the City Council shall conduct a noticed public hearing to determine whether to revoke the permit for uncured noncompliance. The permittee shall be afforded an opportunity to be heard and may speak and submit written materials to the City Council. After the noticed public hearing, the City Council may revoke or suspend the permit when it finds that the permittee had notice of the noncompliance and remained in noncompliance with an enforceable permit, permit condition or law applicable to the facility. Written notice of the City Council's determination and the reasons therefor shall be dispatched by certified

   a. U.S. mail, return receipt requested, to the permittee's last known address. Upon revocation, the City Council may take any legally permissible action or combination of actions necessary to protect public health, safety, and welfare.

17.130.360 Removal and Restoration, Permit Expiration, Revocation or Abandonment.

A. **Permittee's removal obligation.** Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the permit or abandonment of the facility, the permittee, owner

or operator shall remove its wireless telecommunications facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the City. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the City. The facility shall be removed from the property within 30 days, at no cost or expense to the City. If the facility is located on private property, the private property owner shall also be independently responsible for the expense of timely removal and restoration.

B. **Failure to remove.** Failure of the permittee, owner, or operator to promptly remove its facility and restore the property within 30 days after expiration, earlier termination, or revocation of the permit, or abandonment of the facility, shall be a violation of the SMC, and be grounds for:

1. Prosecution;
2. Calling of any bond or other assurance 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 the SMC for abatement of a public nuisance at the owner's expense; or
4. Any other remedies permitted under the SMC.

C. **Summary removal**. In the event the Planning Director determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), the Planning Director may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall be served upon the 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 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 the SMC. Unless otherwise provided herein, the City has no obligation to store such facility. Neither the permittee nor the owner nor operator shall have any claim if the City destroys any such facility not timely removed by the permittee, owner, or operator after notice, or removed by the City due to exigent circumstances.

17.130.370 Effect on other Ordinances.

Compliance with the provisions of this chapter shall not relieve a person from complying with any other applicable provision of the SMC, including but not limited to obtaining any necessary encroachment or building permits. In the event of a conflict between any provision of this chapter and other provisions of the SMC, this chapter shall control.

17.130.380 Effect of State or Federal Law.

In the event that state or federal law prohibits discretionary permitting requirements for certain wireless telecommunications facilities, the permits required by this chapter for those facilities shall be deemed to be ministerial permits. For those facilities, in lieu of a conditional use permit, a ministerial permit shall be required prior to installation or modification of a wireless telecommunications facility and all provisions of this chapter shall be applicable to any such facility with the exception that the required permit shall be reviewed and administered as a ministerial permit by the Planning Director rather than as a discretionary permit. Any conditions of approval set forth in this chapter or deemed necessary by the Planning Director shall be imposed and administered as reasonable time, place and manner rules.

17.130.390 Appeals.

Except as may be otherwise provided by this Chapter, any Planning Commission determination on the issuance, modification, revocation, or extension of a use permit may be appealed to the City Council under, and in accordance with, the provisions of Chapter 17.455.

~~**17.130.260 Telecommunications facilities - Public notice.**~~

~~In addition to the public notice required under SMC 17.400, the following special noticing shall be provided:~~

~~A. Notice of a public hearing on a conditional use permit authorizing the establishment or modification of a telecommunications facility shall be provided to the operators of all telecommunications facilities within one mile of the subject parcel via mailing of the standard legal notice prepared in response to SMC 17.400; and~~

~~B. Notice of the approval of a site plan by the Planning Director authorizing the establishment or modification of, or the renewal of a permit for, a telecommunications facility or minor antenna needing site plan review shall be mailed to all adjacent property owners within 300 feet. Mailing of said notice shall start an appeal period pursuant to SMC 17.455.~~

Agenda Item Number: ___

Agenda Report Reviewed by:
City Manager: _____

CITY OF SEBASTOPOL
CITY COUNCIL
AGENDA ITEM REPORT

Meeting Date:	April 2, 2019
To:	Honorable Mayor and City Councilmembers
From:	Kari Svanstrom, Planning Director
Subject:	Urgency Ordinance Establishing Interim Regulations for Wireless Facilities and Telecommunications Facilities in the Public Right-of-Way, and Modifying Title 17.130 – General Provisions Relating to Telecommunications Facilities and Minor Antennas
Recommendation:	That the City Council adopt the Urgency Ordinance
Funding:	Currently Budgeted: _____ Yes _____ No __XX__ N/A Net General Fund Cost: N/A Amount: N/A

Introduction:

This report recommends that the Council adopt an Urgency Ordinance modifying Title 17 "Zoning" of the Sebastopol Municipal Code to establish interim regulations for telecommunications. The Urgency Ordinance would repeal Ordinances 1117 and 1120, a moratorium (and extension) on telecommunications in the public right-of-way, and establish new regulations for placement of new telecommunications facilities in the public right-of-way, and modify other sections of the telecommunication ordinance (17.130). These regulations would be in place until the Planning Commission reviews and make recommendations to the Council, and the Council adopts a modified ordinance.

Background:

On October 30, 2018, the City Council adopted an Urgency Ordinance establishing a moratorium on applications and placement of new telecommunications facilities in the public right-of-way pending completion of the review and adoption of a permanent ordinance. This moratorium was extended at the Council's December 4, 2018 meeting (Ordinance 1120) and is currently in effect until October 2019, or until the adoption of an Urgency or permanent Ordinance.

The final section of regulations adopted by the Federal Communications Commission (FCC) on September 27, 2018 go into effect on April 15, 2019. These regulations require a city or other permitting agency to have design and development standard regulations in place at that time. After that date, it is likely that any adopted moratorium would be null and void, and hence not provide the desired protection to the city as it develops its final regulations, as the FCC rulings require any design and development standards to be published in advance of any application.

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Therefore, staff is recommending that the Council adopt a new Urgency Ordinance which would repeal the current moratorium and put in place interim regulations for telecommunications in the public right-of-way, as well as updating other areas of the ordinance.

The proposed ordinance provisions are based on best practices being implemented by many northern California communities with the same concerns as Sebastopol, including the cities of Sonoma, Petaluma, Mill Valley, and San Anselmo. The provisions are also based on a preliminary discussion of the ordinance by the Planning Commission at its December 11, 2018 meeting. Further hearings will be scheduled with the Planning Commission to continue their review of the changes to the Telecommunications Ordinance; these discussions will use the proposed Urgency Ordinance as the basis for discussion.

Urgency Ordinance:

The proposed Urgency Ordinance maintains much of the current Telecommunications Ordinance (Sebastopol Municipal Code [SMC] 17.130) in relation to regulations on private property; however there are certain sections that have been updated to address new state and federal law, new technologies (specifically in the definitions), and improved application procedures.

The proposed development standards are additive to the current ordinance and provide for comprehensive regulations for the permitting, development, siting, installation, design, operation, and maintenance of telecommunications in the public right-of-way.

Below is a brief summary of the provision of the proposed ordinance:

Section 17.130.015 Additional Definitions – This section moves definitions specific to telecommunications from the general definitions section to the Telecommunications Ordinance (17.130); adds a number of definitions that relate to new technologies and installation methods; and, clarifies that 'minor antenna' provisions are applicable to non-commercial antenna installations only.

Section 17.130.070 Minimum Application Requirements – This section updates the application requirements to include requirements that will help the City process applications within the new shortened shot-clocks. These provisions were discussed with the Planning Commission and unanimously supported. The new requirements would apply to all (public and private property) installations, and include: requirement of a pre-submittal conference with the Planning Department; a community meeting by the applicant prior to submittal; an in-person submittal appointment with the Planning Director; and, specifies withdrawal timeline and procedures for dormant/non-responsive applications.

Section 17.130.090 Life of Permits is replaced with ***Section 17.330*** through ***Section 17.360***, which provide the same 10-year permit time frame required by Federal law, but updates expiration provisions, and adds additional provisions to address abandoned facilities, restoration of sites, and revocation of permits.

Section 17.130.100 Design and Development Standards for All Facilities – This section is applicable to both public ROW and private property installations, and adds additional criteria to

ATTACHMENT 2

address speculative installations (not allowed), screening of equipment, aesthetics, and safety issues.

Section 17.130.130 Additional Location and Configuration Preferences – This section provides guidelines for preferred location and configuration of telecommunications facilities. The Planning Commission's December study session reviewed and discussed the location list, with the preference to avoid both residential zones and community facilities that are populated by children on a frequent basis (schools and parks). While the Commission has not yet reviewed the order of preferences, the listing prioritizes less-populated areas (manufacturing zones) over commercial and then residential zones (see page 22 of Exhibit A)

Section 17.130.235 Additional Design and Development Standards for Facilities in the Public Right-of-Way – This section includes additional design and development standards for telecommunication facilities that are located *inside* the public right-of-way, including establishing maximum height limits on utility and streetlight poles for antennas, occupation of space (with a strong preference for undergrounding of accessory equipment), required permits, and other requirements.

These additional design and development standards have been incorporated based on several local area city's requirements, including Petaluma and Sonoma cities' recently adopted ordinances. As we have had interest from some community members that are concerned about the potential health impacts associated with pole mounted wireless facilities, staff has incorporated a distance requirement between facilities (1,500 feet apart) for pole-mounted facilities. The current ordinance also provides for a setback from properties with residential dwelling units on them (75 feet from any property line) which would also be applicable.

Section 17.130.260 Conditions of Approval for All Commercial Telecommunications Facilities; Section 17.130.270 Additional Conditions of Approval for Facilities Located in the Public Right-of-Way; and Section 17.130.280 Findings – These sections outline findings and conditions of approval for new commercial facilities, including requirements for post-installation testing of actual radio frequency (RF) emissions, and bi-annual testing thereafter, to be done by the City's consultant at the applicant's expense.

Section 17.130.290 Exceptions – This section provides for the required exception process to comply with Federal (FCC) regulations, while requiring that the applicant provide the burden of proof for the need for an exception, and limiting any exceptions to the least non-compliant design feasible.

Sections 17.130.300 – This section applies to all collocations or modifications to an existing wireless tower or base station with a written request for approval pursuant to Section 6409(a). This Section generally requires that State and local governments "…not deny, and shall approve" requests to collocate, remove or replace transmission equipment at an existing tower or base station. Such applications undergo administrative review for compliance; the proposed section outlines the required findings for approval, denial, and appeal procedure.

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Section 17.130.310– This section provides the requirements, standards, and regulations for a wireless telecommunications collocation facility for which subsequent collocation is a permitted use pursuant to California law.

Environmental Review:

The proposed ordinance is exempt from the California Environmental Quality Act ("CEQA") based on CEQA Guidelines Section 15061(b) (3), which excludes projects where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." The proposed regulations will not allow for the development of any new or expanded small cell wireless telecommunication facilities anywhere other than where they were previously allowed under existing federal, state, and local regulations.

Recommendation:

It is recommended that the City Council receive a presentation, hold a public hearing, and introduce and adopt the attached Urgency Ordinance, which would repeal Ordinance 1120 (extension of the moratorium); establish new regulations for placement of new telecommunications facilities in the public right-of-way; and, modify other sections of the Telecommunication Ordinance (17.130).

The Urgency Ordinance would be adopted pursuant to Government Code Section 36937(b), which allows for the adoption of an urgency ordinance with a four-fifths (4/5) affirmative vote of the City Council. If adopted, the ordinance would be effective immediately. Note, unlike the prior ordinances (1117 and 1120), which were adopted under Gov. Code Section 65858 and effective for 45 days and an extension of 10 months 15 days, an ordinance adopted under Government Code Section 36937(b) does not expire, so the proposed ordinance would be effective until such time that the Planning Commission can review and make recommendations to the Council for its consideration.

Attachment:

1. Urgency Ordinance
2. Exhibit A (Urgency Ordinance) with "redlines" showing proposed changes
3. October 30, 2018 and December 4, 2018 City Council staff reports
4. December 11, 2018 Planning Commission staff report and draft minutes

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Agenda Item Number: ___

Agenda Report Reviewed by:
City Manager: _____

CITY OF SEBASTOPOL
CITY COUNCIL
AGENDA ITEM REPORT

Meeting Date:	April 16, 2019
To:	Honorable Mayor and City Councilmembers
From:	Kari Svanstrom, Planning Director
Subject:	Adoption of Telecommunications Urgency Ordinance and Repeal of Moratorium
Recommendation:	That the City Council adopt the Urgency Ordinance
Funding:	Currently Budgeted: _____ Yes _____ No __XX__ N/A Net General Fund Cost: N/A Amount: N/A

Introduction:

This report recommends that the Council adopt an Urgency Ordinance modifying Title 17 "Zoning" of the Sebastopol Municipal Code to establish interim regulations for telecommunications. The Urgency Ordinance would repeal Ordinances 1117 and 1120, a moratorium (and extension) on wireless telecommunications facilities (WTF) in the public right-of-way, and establish new regulations for placement of new telecommunications facilities in the public right-of-way, and modify other sections of the telecommunication ordinance (17.130). These regulations would be in place until the Planning Commission reviews and make recommendations to the Council, and the Council adopts a modified ordinance.

Background:

On April 2, the City Council conducted a public hearing to consider adoption of an Urgency Ordinance establishing interim regulations for telecommunications in the public right-of-way, as well as updating other areas of the ordinance, and repealing the current moratorium (Ordinances 1117 and 1120). Several communications were received prior to that meeting. The Council received a staff report, opened the public hearing and heard public testimony, and continued the hearing to the April 16, 2019 City Council meeting to allow time for both the public to review the ordinance, as requested by some members of the public, and to allow staff time to review and analyze the comments, and address questions from the Council.

Urgency Ordinance:

As noted in the prior staff report (see Attachment 3), the proposed Urgency Ordinance maintains much of the current Telecommunications Ordinance (Sebastopol Municipal Code [SMC] 17.130) in relation to regulations on private property; however there are certain sections that have been updated to address new state and federal law, new technologies (specifically in the definitions), and improved application procedures.

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The proposed development standards are generally additive to the current ordinance and provide for comprehensive regulations for the permitting, development, siting, installation, design, operation, and maintenance of telecommunications in the public right-of-way.

In addition to the modifications described in the April 2, 2019 staff report, staff has included the following additional modifications to the proposed ordinance

Section 17.20, Table 17.20-1 and Section 17.25 Table 17.25-1 – This section would be modified to remove the references to telecommunications facilities from the Permitted and Conditionally Permitted Uses tables. This is similar to how various cannabis businesses are handled, These references would be relocated to the Telecommunications Ordinance, Section 17.130.025 and modified so that all commercial telecommunications facilities (except for those eligible for ministerial review under Federal [6409(a)] or State [Gov Code Section 65850.6]), require a Conditional Use Permit (CUP), including those in the public right-of-way. This Section has also been modified to disallow commercial telecommunications facilities in residential districts (except as may be approved through the Exception process).

ATTACHMENT 2

Permitted and Conditionally Permitted Telecommunications Uses

Description Wireless Facility	***Private Property***			***Public Right-of Way[1]***
	Residential Zoning Districts[2]	***ESOS, Wetlands***	***All Other Zoning Districts*** *(Commercial, Industrial, and Community Facilities)*	***Non-Residential Zoning Districts***
Non-commercial minor antenna (Class A and B)	P[4]	-	P[4]	-
Non-commercial minor antenna (Class C and D)	CUP[3]	-	CUP[3]	-
Minor Commercial Telecommunications Facility (less than 35 ft)	-	-	CUP	CUP
Minor Commercial Telecommunications Facility (greater than 35 ft and less than 100 ft)	-	-	CUP	CUP
Major Commercial Antenna (greater than 100 ft)	-	-	CUP with special findings	CUP with special findings
Eligible facilities request or application pursuant to California Government code Section 65850.6[3]	P[4]	P[4]	P[4]	P[4]

P = Permitted Use

C = Conditional Use Permit, Planning Commission review

- = Use Not Allowed

[1] For any public right-of-way on the boundary between zoning districts the zoning applicable to the location of a wireless telecommunication facility shall be determined based upon the closest district adjacent to the facility's location. The centerline of the public right-of-way will be used as the boundary between districts.

[2] Planned Community districts containing any residential dwelling units are considered a "Residential Zoning District" for the purposes of this Section.

[3] Requests eligible as a modification under either Section 6409(a) or the Wireless Telecommunications Collocation Facilities Covered under California Government Code Section 65850.6; Administrative Review Required.

[4] Administrative Review Permit required.

Section 17.130.070 Minimum Application Requirements – This section has been modified to remove the sentence: *The Planning Director may release an applicant from having to provide one or more of the pieces of information on this list upon a finding that in the specific case*

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involved said information is not necessary to process or make a decision on the application being submitted.

The required pre-application community meeting has been revised to be required by the applicant post-application, but a minimum two weeks prior to the Planning Commission hearing date. This modification was done to protect the City's review time ("shot clock") but still provide time for the community to be made aware of and understand the proposal. The request to include radio frequency (RF) emissions information in the community meeting has been added to the language. Alternatively, the City could change the requirement to maintain the pre-application meeting, but make that meeting optional.

Section 17.130.130 Additional Location and Configuration Preferences – This section has been modified to prioritize use of collocation on existing macro-towers before other collocations and new facilities. The preference to avoid residential zones and community facilities that are populated by children on a frequent basis (schools and parks) is maintained. Of note, the use of these preferences is part of the Conditional Use Permit requirements and review process., which requires the applicant to provide alternative sites and, if a less preferred configuration/location is proposed, demonstrate that a more preferred configuration/location cannot meet their needs.

Section 17.130.250 and 17.130.290 Exceptions – These sections have been combined (in Section 17.130.290), and language has been added to clarify that any exceptions proposed must be the least non-compliant design feasible: 17.130.290(E) *Exceptions shall only be granted as necessary to ensure compliance with federal law, state law, or both. Any exceptions granted pursuant to the section shall adhere as closely as practicable to the requirements of this Chapter.*

Other Comments/Clarifications:

Other comments from the public and questions from Council are addressed below:

- Clarify what Section 6409(a) code section is (Section 17.130.290)

Section 17.130.290(A) provides a general description of this 2012 Federal law and the associated regulations:

Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified in 47 U.S.C. § 1455(a), generally requires that State and local governments "may not deny, and shall approve" requests to collocate, remove or replace transmission equipment at an existing tower or base station. Federal Communication Commission regulations interpret this statute and create procedural rules for local review, which generally preempt certain subjective land-use regulations, limit permit application content requirements and provide the applicant with a potential "deemed granted" remedy when the State or local government fails to approve or deny the request within sixty (60) days after submittal (accounting for any tolling periods). Moreover, whereas Section 704 of the Telecommunications Act of 1996, Pub. L. 104-104, codified in 47 U.S.C. § 332, applies to only "personal wireless service facilities" (e.g., cellular

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telephone towers and equipment), Section 6409(a) applies to all "wireless" facilities licensed or authorized by the FCC (e.g., cellular, Wi-Fi, satellite, microwave backhaul, etc.).

- Question regarding the Town of Fairfax's regulations

Fairfax adopted an Urgency Ordinance in September 2018 which is very similar to our proposed regulations. The Town is currently working on some updates to this, with a special Council meeting scheduled for April 23 (those materials are not yet available). Staff will continue to track these updates, and those of other communities, as the Planning Commission continues their review for the final regulations.

- Requests to require a minimum height for WTFs in the public right-of-way that is over 100 feet (175 feet or greater was requested)

Under Federal regulations all utilities in the public right-of-way must be treated equally. Requiring WTFs to be several stories taller than other utilities is not permissible. Additionally, this would conflict with many of the regulatory and aesthetic requirements found throughout both the current and proposed ordinance (which limits tower height to 100 foot maximum unless special findings are made) and other proposed regulations related to screening, etc.

- Clarify who (review body) determines aesthetics, and consider modifications to be more specific

All telecommunication facilities (except those eligible for ministerial review) require a Conditional Use Permit reviewed by the Planning Commission, and subject to appeal by the City Council. As such, the Planning Commission is the primary review body for this. However, aesthetics regulations, including specific metrics for telecommunication facilities, are laid out in Sections 17.130.100-17.130.240 (size, location, screening, landscaping, lighting, etc.) as criteria for evaluation. Of note, staff will be utilizing the provisions of this Urgency Ordinance as a draft for the Planning Commission's review of a permanent ordinance. Staff anticipates the Commission will review these in detail, and determine areas where items like 'community compatibility' and how to 'minimize visual impacts', etc., can be further clarified in any revisions they recommend to Council.

- Clarification on Significant Gap and how that is expressed in the proposed regulations

The "significant gap" test is an interpretation from the Federal Ninth Circuit court, while the FCC defines 'effective prohibition' more broadly. This is an element which is in flux. The City's proposed regulations

- CEQA review should be required for all facilities

CEQA review will be required for each application based on the specific application. Individual projects would be considered by the City and a determination made as to the appropriate level of CEQA review, if any.

Other comments, which were not made part of this

Recommendation:

It is recommended that the City Council receive a presentation, continue the public hearing, and introduce and adopt the attached Urgency Ordinance, which would repeal Ordinances 117 and

1120 (moratorium and the extension of the moratorium); modify Sections 17.20 and 17.25 allowed uses chart to remove references to telecommunications and minor antennas (to be added to Section 17.130); establish new regulations for placement of new telecommunications facilities in the public right-of-way; and, modify other sections of the Telecommunication Ordinance (17.130).

The Urgency Ordinance would be adopted pursuant to Government Code Section 36937(b), which allows for the adoption of an urgency ordinance with a four-fifths (4/5) affirmative vote of the City Council. If adopted, the ordinance would be effective immediately.

As noted in the prior staff report, these regulations will be treated as 'interim' regulations while the Planning Commission continues their review of the regulations.

Attachment:

1. Urgency Ordinance
2. Exhibit A (Urgency Ordinance) with "redlines" showing proposed changes
3. April 2, 2019, City Council staff report
4. Public Comments

ATTACHMENT 2

City of Sebastopol
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PLANNING COMMISSION
MEETING OF: December 11, 2018
SEBASTOPOL YOUTH ANNEX
425 MORRIS STREET

APPROVED MINUTES

PLANNING COMMISSION
CITY OF SEBASTOPOL
MINUTES OF DECEMBER 11, 2018

SEBASTOPOL YOUTH ANNEX
425 MORRIS STREET

PLANNING COMMISSION:

The notice of the meeting was posted on December 06, 2018.

ANNOUNCEMENT: Please turn off all cell phones and pagers during the meeting.

1. CALL TO ORDER: Chair Douch called the meeting to order at 7:03 p.m.

2. ROLL CALL:

Present:	Chair Douch, and Commissioners Glaser, Wilson, Fernandez, Doyle, Kelley and Fritz
Absent:	Vice Chair Jacob (excused)
Staff:	Kari Svanstrom, Planning Director Rebecca Mansour, Planning Technician

3. APPROVAL OF PLANNING COMMISSION MINUTES: October 09, 2018 and October 23, 2018

Committee Member Wilson asked a clarifying question of staff.

Commissioner Glaser made a motion to approve the minutes of October 09, 2018 as submitted.

Commissioner Doyle seconded the motion.

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AYES:	Chair Douch, and Commissioners Glaser, Wilson, Fernandez, Doyle, and Fritz
NOES:	None
ABSTAIN:	Commissioner Kelley
ABSENT:	Vice Chair Jacob

Committee Member Fernandez amended the minutes of October 23, 2018.

Commissioner Fritz made a motion to approve the minutes of October 23, 2018 as amended.

Commissioner Fernandez seconded the motion.

AYES:	Chair Douch, and Commissioners Glaser, Wilson, Fernandez, Doyle, Kelley, and Fritz
NOES:	None
ABSTAIN:	None
ABSENT:	Vice Chair Jacob

4. COMMENTS FROM THE PUBLIC ON ITEMS NOT ON AGENDA: This is for items *not* on the agenda, but that are related to the responsibilities of the Planning Commission or City Council. The Commission and Council receive any such comments, but under law, may not act on them. If there are a large number of persons wishing to speak under this item, speaking time may be reduced to less than 3 minutes, or if there is more than 15 minutes of testimony, the item may be moved to the end of the meeting to allow agendized business to be conducted.

Chair Douch asked for comments from the public on items not on tonight's agenda.

There were none.

5. STATEMENTS OF CONFLICTS OF INTEREST: There were none.

6. CONSENT CALENDAR (PUBLIC HEARING IF REQUESTED): (none)

7. PUBLIC HEARING: (none)

8. DISCUSSION:

A. DISCUSSION OF TELECOMMUNICATIONS ORDINANCE UPDATE: Receive a staff report, public input, and discuss and provide direction to staff regarding updates to the City's Telecommunications Ordinance (Sebastopol Municipal Code 17.130). Potential modifications include: definitions, allowed uses and zones, location requirements, design requirements, application process and procedures.

Director Svanstrom presented the staff report.

Chair Douch spoke on process.

The Commission asked Director Svanstrom clarifying and procedural questions that were general in nature.

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The Commission asked questions of a member of the public named Paul André-Schabracq.

Commissioner Doyle asked Director Svanstrom how capacity issues with multiple providers wanting to collocate on the same pole would be handled.

Director Svanstrom responded that she would research that.

Commissioner Doyle asked Director Svanstrom how the small cell antennas work in terms of transmitting data.

Director Svanstrom responded that she would have to research that.

Chair Douch commented:

- When it comes to large towers and these new small cell installations, he has no frame of reference in terms of what is better or worse EMF-wise.
- Would like to have an expert attend a hearing so the Commission can get information, or at least an opinion, on these types of questions.

Director Svanstrom responded that she would look into the feasibility of having an expert at a future meeting and commented that she'd like whomever was selected to be fairly neutral as there are strong opinions on both sides.

Chair Douch asked if members of the public wished to speak on this item.

Paul André-Schabracq commented:

- Complimented staff on a very thorough staff report.
- Agrees with many of staff's initial recommendations.
- Recognizes the need for a lot of technical information as this is a really technical field.
- Would like the Commission to grant time (approx. 10 to 15 minutes) to hear from an expert that he and others have been working with at a future meeting.
  - This expert could answer many of the questions that the Commission has as well.
- Has been following this issue for years.
- This is an issue of huge concern to the community.
- The rollout of 5G is something that has been wholly unexamined.
- A large amount of peer-reviewed scientific research has appeared in the last two to three years which documents the links between microwave radiation emitted by cellphone towers and cellphones and all kinds of diseases.
- Just last week the City Council heard from the residents of Petaluma Avenue Homes which is located across from the Palm Drive Hospital property.
  - There is a significant number of people who live there that are terminally ill.
  - A number of people have died.
  - These people live about 250 feet away from the Crown Castle cell tower that is on the Palm Drive Hospital site.
  - We don't have the studies that show that the tower is the cause, however, there appears to be an extremely strong association.
  - There is clearly some type of health crisis going on here.
- Unfortunately, a large part of the real action on this in terms of regulations lies in Washington.
- We as a city are really constrained by the FCC.

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Mr. Schabracq requested additional time.

Chair Douch granted Mr. Schabracq's request for more time.

Mr. Schabracq comments continued:

- Submitted a letter from Senator Richard Blumenthal and Representative Eshoo into the public record.
  - This letter was sent to the FCC and seeks answers regarding potential health risks posed by new 5G wireless technology.
- There is a growing public concern about the exposure of levels.
- The FCC only regulates thermal.
- 5G operates at extremely high levels but fluctuates rapidly.
  - The scientific studies show that this specific type of fluctuation is harmful to our health.
- Thanked the Commission for their time.
- Really appreciates the important work that the Commission is doing.
- Will return with additional information at a future meeting.
- Available to answer any questions that the Commission may have.

The Commission asked questions of Mr. Schabracq.

Iliani Matisse commented:

- Submitted materials for the public record.
- The concern about this is wide-reaching.
- While we do defer to the FCC for our protection, our trust in them may not be well placed.
- Most of our current regulations regarding radiofrequency safety were adopted in 1996 and have not been updated for the next generation of devices.
- The FCC's specific absorption rate (SAR) limits do not apply to devices operating above 6gHz.
  - 5G devices will operate at frequencies as high, or even exceeding 24gHz.
- The FCC has acknowledged that a number of things need more examination.
- They're moving ahead with a multibillion-dollar expansion of an industry without seriously knowing what the impact is.
- It's not even proven that we need 5G.
- A special on 60 minutes this past Sunday dealt with the impact of all of our devices and screen time on kids' brains.
  - The special showed premature thinning of their cortex.
  - Thinning of the cortex is generally associated with maturing.
  - This is happening to kids.
  - We don't know if that's good or bad yet.
- Urged the Commission to really slow the process.
- Before figuring out how to make this work, we should decide if it even needs to be made to work.
- Thanked the Commission for their time.

Sandi Mauer, Director of the EMF Safety Network, commented:

- Thanked staff for their great work on this.
- This is going in a brilliant direction.

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- Loves the idea of a pre-meeting and of ensuring that their application is complete before accepting it.
- Appreciates the notion of not allowing these installs in residential zoning districts.
- Submitted a letter into the public record.
- Hopes to meet with Director Svanstrom to discuss some points in her letter next week.
- Summarized key references in her letter for Commission consideration.

With her time running out, Ms. Mauer commented that she could have somebody else read the rest of her list.

Chair Douch allowed Ms. Mauer to continue with her list.

Ms. Mauer comments continued:
- Thanked the Commission for allowing her to continue with her list.
- Continued summarizing key references in her letter for Commission consideration.
- Thanked the Commission for their time.

Hearing nothing further, Chair Douch closed the public comment period and brought it back to the Commission for discussion.

The Commission asked additional questions of Director Svanstrom throughout their discussion.

Commissioner Glaser asked if there was a formal definition for a "significant gap in coverage".

Director Svanstrom responded that she didn't believe so and commented that she would look into that to be sure.

Commissioner Wilson commented:
- If the City is going to require undergrounding to mitigate the way these facilities look on poles, the City should have objective standards about separation and how undergrounding will occur because there is a lot of stuff underground already.
  - Likes the idea of them not being visible.
  - Any undergrounding must be harmonious with what is already underground, and with what is anticipated to be underground in the future.

Chair Douch commented:
- There are already robust standards and specifications.
  - Acknowledged that there may be more to do.

Commissioner Wilson commented:
- Generally aware of that, however, it is important to ensure that Public Works has what they need to deal with all of the new undergrounding.
  - There may already be adequate standards.
  - This should be looked into.

Director Svanstrom responded:
- The Public Works Superintendent did specify that these should be done per Caltrans underground vault standards.

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- There is also the question of whether or not there is enough room underground to do it all.

Commissioner Wilson responded that yes, he could see the issue of available space coming up at some point.

Commissioner Doyle commented:
- Especially if there are multiple providers at one location.
- Perhaps the first provider should be required to install a larger vault with the assumption that others may want to collocate and need that vault space at some point in the future.
- There are a lot of unanswered questions here.

Commissioner Wilson commented:
- An applicant may then decide that it's not feasible to underground and request that their equipment be installed on a pole.
- Perhaps the applicant responsible for installing the larger vault could be reimbursed for the oversizing.

Director Svanstrom responded:
- Often, it's not the mobile carrier that owns the infrastructure that supports the antenna.
- Could work to further clarify how an underground vault would be handled when it comes to collocation.

Chair Douch spoke on process and asked to hear from the Commission on section, '#1. Use Permit' in the staff report.

The Commission asked additional questions of Director Svanstrom.

Commissioner Fritz commented:
- Likes the idea of prioritizing zones.
- Likes the idea of excluding residential zones.

Commissioner Doyle commented:
- Questioned why the City categorizes these based on their height.
- The height of these seems to be a purely aesthetic consideration since the City cannot consider radiation levels when reviewing these applications.

Director Svanstrom responded that she would look at the definitions of 'minor antenna' and 'major antenna' to see the differences other than height, if there are any.

Commissioner Doyle commented:
- If the differences are solely based on height, it's an aesthetic concern.
- The public concern that has been expressed isn't based on aesthetics, it's based on their power.
- Calling the antennas 'minor' and 'major' is confusing if the only difference is height.

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Chair Douch commented:

- Concurred with Commissioner Doyle and commented that it's a difference between categories such as small cell wireless facilities and traditional tower facilities.
- Small cell wireless facilities and traditional tower facilities should be defined.

Commissioner Glaser commented:

- Any distinction between how we classify, and review antennas and/or towers should be addressed in the Zoning Ordinance.

Commissioner Doyle commented:

- The lower towers may be more of a concern.
- Would like to be able to ask some specific, technical questions of an expert.
- Doesn't want to speculate.
- Staff did a great job on this staff report.

Chair Douch surmised that the Commission needs more technical information at this point.

Commissioner Wilson commented:

- Hopes for one or two sample ordinances (that were well written, and consultant driven) that the Commission can use as a starting point.
- We don't want to have to reinvent the wheel.
- Finds it easier to look at a proposed ordinance rather than disparate issues.

Director Svanstrom commented:

- Can come back with a draft ordinance.
- It is helpful for her to hear some of the technical issues that the Commission wants information on.

Commissioner Wilson commented:

- Likes a lot of the suggestions in the letter that was submitted by Ms. Maurer.
  - Appreciates the effort Ms. Maurer put into it.
- Saying that something is 'not permitted' usually means that it cannot be done.
  - In the context we've discussed, it appears as though an exception could be made if an applicant could prove that a significant gap in coverage exists, meaning that it could potentially be permitted.
  - Doesn't want to give false hope.
- Likes the approach of prioritizing areas, zones or uses, and requiring an applicant to demonstrate various items as suggested by Director Svanstrom.
  - There needs to be a clear hierarchy.

Commissioner Doyle commented:

- Not everybody wants these installs prohibited in residential.
- Understands the intent to have small cell wireless facilities installed in commercial areas, as that is the path of least resistance.
  - Eventually, one of these telecommunications companies is going to challenge their not being allowed to install in residential areas.
  - These installs will eventually wind up being allowed in residential areas.
- Supports an initial prohibition of commercial antennas in residential areas.

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Director Svanstrom responded that a footnote could be added to clarify the hierarchy of the process.

Chair Douch asked if the Commission was in consensus on avoiding installation of commercial antennas in residential areas.

The Commission responded in the affirmative.

Commissioner Kelley asked if the Commission wanted to do something a little more robust with community facilities.

Commissioner Fritz commented:
- Residential often surrounds school.
- We could prohibit commercial antenna installs on school property.

Commissioner Kelley commented:
- It is important to have a buffer from schools as well.

Chair Douch asked to hear from the Commission on section, '#2. Application requirements and process' in the staff report.

Commissioner Wilson commented:
- Telecommunications companies have to own the tower or find a willing lessor.
- The City doesn't have to allow these on City property (sites, light poles, etc.) if they don't want to.
  - Conversely, the City could make money by allowing these to be installed on City property.
- Feasibility can include economics.

Director Svanstrom responded:
- The light poles in town are owned by PG&E, not the City.
  - The City could have more control if they owned the light poles.

Commissioner Wilson commented:
- An encroachment permit may be required when PG&E locates in the public right-of-way so there could be some discretion.
  - The City could look at adding additional conditions when granting an encroachment permit.
- Asked if the City Council could require PG&E to replace wood poles with metal any time they're in need of being replaced.

Director Svanstrom responded that she would have to look into that.

Commissioner Kelley commented:
- Expressed concern over the cell tower at the hospital.
- The hospital property is owned by the Palm Drive Health Care District which is funded by taxpayers.
  - Considers it the property of taxpayers, not private.

Director Svanstrom clarified that the hospital property is a publicly owned parcel and spoke on the difference between a parcel and the public right-of-way.

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Commissioner Kelley commented:

- The hospital is expected to change ownership at some point, although what that will look like is not yet known.

Commissioner Doyle commented:

- San Anselmo's ordinance looks really good, is comprehensive and complete.
- The idea of a pre-application meeting makes a lot of sense.

Commissioner Wilson commented:

- Supports using someone else's work product if we like it and it's in the public domain.

Commissioner Glaser commented:

- Likes San Anselmo's ordinance as well.
  - Appreciates how it describes the process as well.
- The 'Class' definitions should be discussed by the Commission as to whether they're something the Commission wants to have included.
- Some of our processing requirements are listed in the definitions section and they shouldn't be.
- We're not supposed to discuss or make decisions based on emissions but we're discussing regulations based on them which doesn't seem appropriate.
  - The Commissions discussion and concerns, as well as the community's concerns, are all based on emissions.

Chair Douch commented:

- As a general principal, it makes sense not to allow these in residential areas.
- We need expert guidance because we cannot make a decision based on an applications RF levels if they're complaint.
  - The Commission can make decisions based on other factors such as height, etc.

Commissioner Glaser commented:

- The FCC regulations should already address safe distances, etc.
  - Assuming they do, the City shouldn't need to do that as well.
- Reiterated the need for expertise.
- The direction of the Commission's discussion doesn't make sense to him based on the constraints.

Commissioner Doyle concurred with Commissioner Glaser.

Commissioner Wilson commented:

- The City can prioritize zones based on preference.
- This is a good way to start.
- While we can't ban them completely, we don't have to let them be installed anywhere either.
- We need to figure out how we want to regimen this.
- People have a higher tolerance for things in industrial and commercial areas.
- This is a practical approach given the public concern that has been expressed.

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- Surprised people from the telecom industry aren't here.

Chair Douch spoke on process.

Commissioner Kelley commented:

- Would like to look at the City of Rancho Palos Verdes' Wireless Telecommunications Facilities Ordinance as suggested by Ms. Maurer previously.

Director Svanstrom responded in the affirmative.

Commissioner Fernandez commented:

- Likes San Anselmo's ordinance in terms of their requiring a deposit to cover the costs of a peer review.
  - This may something for the City to consider.

Commissioner Fernandez commented:

- It was helpful to have a consultant leading the Commission through the process when they were tasked with updating the General Plan.
- Concurred on the Commission needing technical guidance.

Chair Douch commented:

- In terms of the strict time limits of 60 or 90 days from the time of application;
  - Would like clarification on what deems the time of application.
  - Unless the FCC has something specific as to when they would deem the time of application, we should clearly define it.

Commissioner Wilson commented:

- We don't want the clock to start until the application is complete.
- The criteria in order to deem the application complete would have to be objective.
- Supports almost all staff suggestions.
- The word 'feasible' is a keyword and should be defined in the ordinance.

Chair Douch asked to hear from the Commission on section, '#3. Design and Development Standards' in the staff report.

Commissioner Doyle commented:

- The distance buffer is a good idea but may lack teeth.
- Asked if more than one provider could collocate on a single pole.

Director Svanstrom responded that she believed that more than one provider could collocate on a single pole and commented that she could investigate that further to confirm.

Commissioner Fritz commented:

- If mounted on a building, it should be as architecturally compatible with the building as possible.
  - Would like language included to reflect that.

Commissioner Doyle commented:

- Requiring undergrounding seems very extreme as it is very costly.

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- Could work to deter anything from happening.

Commissioner Glaser commented:
- We should just say that an applicant shall not impinge the public right-of-way.
  - We should also require that any addition be made to look nice.

Commissioner Fritz commented:
- Likes requiring undergrounding regardless of cost.

Commissioner Doyle commented:
- Could see these installations becoming streamlined in which case undergrounding may not be necessary and should not necessarily be required.

Director Svanstrom clarified that the requirement would apply to equipment that would normally be bolted to the ground.

Commissioner Doyle thanked Director Svanstrom for the clarification and commented that the requirement for undergrounding may be ridiculous as technology changes.

Director Svanstrom responded that the language could be clarified to reflect that the requirement would be for ground-mounted equipment only.

Chair Douch asked to hear from the Commission on section, '#4. Electromagnetic Energy (EMF) Considerations' in the staff report.

Commissioner Fritz commented:
- Likes the idea of requiring a more frequent RF report.
  - Requiring a new RF report every 2 years, instead of 5, seems reasonable.
- Would like information on the difference between measuring and calculating RF levels.

Commissioner Wilson commented:
- If it is relatively inexpensive and simple to do these measurements, requiring them every two years seems reasonable.
- Agrees on the importance of knowing that these are operating the way they say they are.

Director Svanstrom responded that these reports are not prohibitively experience and noted that she's seen costs run from $500.00 to $1,000.00.

Chair Douch asked to hear from the Commission on section, '#5. Other Elements' in the staff report. In addition, he asked for any additional comments on the suggestions as outlined in the letter that was submitted by Ms. Maurer.

Chair Douch commented:
- Several of the points Ms. Maurer raised may be FCC regulated thus leaving the City no latitude.

Commissioner Fritz commented:
- Cautioned requiring signs as he wouldn't want sign clutter
- There is enough visual clutter in the world already.

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Members of the Commission concurred with Commissioner Fritz.

Commissioner Fernandez commented:

- The public should have access to a map that identifies where all of these installations are located.

The Commission concurred.

Commissioner Glaser commented:

- #9 on Ms. Maurer's list jumped out at him.
  - Taller does not necessarily mean worse in terms of levels.
  - Asked if the specified height limit of 60'-75' was a range.

Director Svanstrom responded that she would get clarification from Ms. Maurer on that.

Commissioner Fritz commented:

- Requiring separation of 2,000 linear feet between small cell facilities or cellular or wireless communications towers, as suggested under #12 in Ms. Maurer's list could be problematic in that 2,000 linear feet seems long distance.

Director Svanstrom responded that she has seen other City's adopt separation of 1,000 to 1,500 linear feet.

Commissioner Doyle commented:

- Interested in #19 on Ms. Maurer's list which states, 'Consider Comcast wi-fi boxes that have been installed without permits around Sebastopol. Include language in the updated ordinance to revoke their ability to install them without permitting.'

Director Svanstrom responded that she would discuss #19 with Ms. Maurer in order to better understand it as this was the first she'd heard about them.

Commissioner Fernandez commented that he was interested in learning more about #19 on Ms. Maurer's list as well.

Chair Douch asked for further comments from the Commission.

There were none.

Director Svanstrom spoke on the process moving forward. Her comments included the following;

- Will return with technical information as well as movement towards a draft ordinance.
- Asked if that seemed like a reasonable approach to the Commission.

The Commission responded in the affirmative.
Commissioner Doyle reiterated that staff has done a great job and commented that this process was off to a great start.

The Commission concurred.

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Director Svanstrom thanked the Commission.

Commissioner Wilson commented:

- The Commission should move judiciously through this process.
- Supports seeing what works and what doesn't work elsewhere.

In response to a question, Director Svanstrom commented that the Urgency Ordinance is valid through October and could be extended once more. She noted that findings showing that the City is making progress would be required.

Chair Douch commented:

- Curious about elements of the shot clock and whether they're challenged.
  - Could be reason enough to wait.

Commissioner Wilson commented:

- Doesn't want to prolong this longer than necessary, however, the City should proceed methodically.

Director Svanstrom commented that this item may return to the Commission in February.

Hearing nothing further, Chair Douch concluded discussion of this item.

9. PLANNING DEPARTMENT REPORT (Update on Future Agendas, Action of Other Boards and City Council)

Director Svanstrom provided the following updates:

- The City Council will conduct interviews to fill the open seats on the Design Review Board and Planning Commission in January.
- The Planning Commission meeting of December 25 will be canceled due to the holiday.
- The Planning Commission meeting of January 8 will probably be canceled as well.
- There are a couple of Use Permit applications that are expected to come before the Commission in January, likely on January 22.
- Revisions to the Planning Commission's workplan as well as a continuation of the telecommunications discussion will return to the Commission at a later date as well.

The Commission asked questions of Director Svanstrom.

After some discussion, the Commission agreed on preferring that this item occur earlier on the agenda as it used to be.

10. ADJOURNMENT: Commissioner Fernandez made a motion to adjourn the meeting. Commissioner Fritz seconded the motion. The Commission was unanimous. Chair Douch adjourned the meeting at 9:53 p.m. The regularly scheduled Planning Commission meeting of December 25, 2018 has been canceled due to the holiday. The next regularly scheduled meeting will take place on Tuesday, January 08, 2019, at 7:00 p.m. at the Sebastopol Youth Annex, 425 Morris Street, Sebastopol, CA 95472

ATTACHMENT 3

Respectfully Submitted By:

Kari Svanstrom
Planning Director

ATTACHMENT 3