



**SPECIAL CITY COUNCIL
MEETING AGENDA
TUESDAY, NOVEMBER 20, 2018
Special Meeting – 8:00 AM**

**City Hall – Beryl P. Robinson, Jr. Conference Room
317 Broad Street, Nevada City, CA 95959**

MISSION STATEMENT

The City of Nevada City is dedicated to preserving and enhancing its small town character and historical architecture while providing quality public services for our current and future residents, businesses and visitors.

CITY COUNCIL

David Parker, Mayor

**Reinette Senum, Vice Mayor
Erin Minett, Council Member**

**Duane Strawser, Council Member
Valerie Moberg, Council Member**

The City Council and Planning Commission welcome you to this special meeting. Please turn off all cell phones or similar devices. Action may be taken on any agenda item. Agenda notices are available at City Hall.

SPECIAL MEETING 8:00 AM - Call to Order

Roll Call: Moberg, Strawser, Minett, Vice Mayor Senum, & Mayor Parker

PUBLIC HEARING:

- A. Subject:** Extension of Urgency Interim Ordinance 2018-08 to Regulate Wireless Telecommunications Facilities in the Right of Way
Recommendation: Hold a Public Hearing, waive full reading, and adopt by title only, via a 4/5 roll call vote, an extension to the urgency ordinance entitled, “Ordinance to Extend the Existing Urgency Interim Ordinance 2018-08 of the City of Nevada City Temporarily Adding Chapter 17.150 to the Municipal Code, Entitled ‘Wireless Telecommunications Facilities in the Right of Way’”.

ADJOURNMENT

Certification of Posting of Agenda

I, Loree’ McCay, Administrative Services Manager/Deputy City Clerk for the City of Nevada City, declare that the foregoing agenda for the November 20, 2018 Special Meeting of the Nevada City City Council was posted November 13, 2018 at the office of the City of Nevada City (City Hall). The agenda is also posted on the City’s website www.nevadacityca.gov.

Signed this November 13, 2016 at Nevada City, California

_____, Loree’ McCay, Administrative Services Manager/Deputy City Clerk

NOTICE: *As presiding officer, the Mayor has the authority to preserve order at all City Council meetings, to remove or cause the removal of any person from any such meeting for disorderly conduct, or for making personal, impertinent, or slanderous remarks, using profanity, or becoming boisterous, threatening or personally abusive while addressing said Council and to enforce the rules of the Council.*

REPORT TO CITY COUNCIL

City of Nevada City
317 Broad Street
Nevada City CA 95959
www.nevadacityca.gov

November 20, 2018

TITLE: Extension of Urgency Interim Ordinance 2018-08 to Regulate Wireless Telecommunications Facilities in the Right of Way

RECOMMENDATION: Hold a Public Hearing, waive full reading, and adopt by title only, via a 4/5 roll call vote, an extension to the urgency ordinance entitled, "Ordinance to Extend the Existing Urgency Interim Ordinance 2018-08 of the City of Nevada City Temporarily Adding Chapter 17.150 to the Municipal Code, Entitled 'Wireless Telecommunications Facilities in the Right of Way'".

CONTACT: Catrina Olson, City Manager
Scott E. Porter, Special Counsel

BACKGROUND:

This Item from the November 14, 2018 Meeting Agenda was Continued to November 20, 2018 due to noticing requirement.

On July 25, 2018 the City Council directed staff to return with an Interim Urgency Ordinance regarding the regulation of wireless facilities in the right of way which was passed on October 10, 2018.

The Interim Urgency Ordinance went into immediate effect as it was adopted by a roll call vote of 4 City Council members that were present at the October 10, 2018 meeting. Ordinance 2018-08 went into immediate effect for an initial period of 45 days (expiring November 24).

On October 18, 2018, the Planning Commission conducted a Public Hearing on a permanent Telecommunications Ordinance which is being presented as a City Council Public Hearing on November 14, 2018 as item 6C on the agenda.

Staff is now placing an item on the November 14, 2018 City Council meeting to allow the Council to vote on whether to extend the Ordinance. The Ordinance can be extended twice this being extension number one. As drafted the Ordinance would be extended for 10 months and 15 days.

Effect of Ordinance. The Ordinance establishes a temporary moratorium on the construction of any wireless facility in the right of way that does not meet the requirements of both the moratorium and the city's existing municipal code. Because in many cases the municipal code has only limited regulations, practically speaking, in many instances the moratorium ordinance will be the only relevant requirement. This ordinance applies only to facilities in the right of way.

The Ordinance establishes a three-tiered system for the approval of wireless telecommunications facilities.

1. *Major Wireless Telecommunication Facility Permit.* Unless a lower level permit is allowed, a major permit is required. This is a discretionary permit which is issued by the Planning Commission. If a new facility is in a residential zone or in the Historic Combining District, the major permit is required.
2. *Minor Wireless Telecommunications Facility Permit.* Unless a ministerial permit is allowed, a minor permit is required. This is a discretionary permit which is solely limited to architectural review. If a new facility is in the Scenic Combining District or in a Residential zoning designation, no less than a minor permit is required.
3. *Ministerial Wireless Telecommunications Facility Permit.* This permit would be issued by staff on a ministerial basis, provided all code requirements are met. The most important requirement is that the proposed facility complies with wireless design guidelines which had been approved by the City Council. To date, the City Council has not yet approved any wireless design guidelines. Until the Council does so, no ministerial permits can be issued.

The Ordinance further authorizes staff to establish its own list of what is required for an application to be complete and lists multiple items that that staff may require in the application process. Staff would require more information for a major permit than for a minor permit than for a ministerial permit.

Federal law prohibits a city from enacting zoning regulations for the purpose of preventing wireless facilities that comply with federal Radio Frequency (RF) emission standards. The ordinance, does however, require applicants to demonstrate compliance with such standards.

The moratorium does not prohibit the processing of applications which are inconsistent with the moratorium – it merely prohibits approving such applications.

ENVIRONMENTAL CONSIDERATIONS: The Ordinance includes a finding that the project is exempt from the California Environmental Quality Act (CEQA). Here, this Ordinance does not allow anything that is not currently allowed, and therefore cannot create a significant impact on the environment.

FISCAL IMPACT: There have been costs relating to staff and legal review and Public Hearing and Ordinance processing costs.

ATTACHMENTS:

- ✓ Ordinance 2018-XX – Extension of Interim Urgency Ordinance (marked up version)
- ✓ Ordinance 2018-XX – Extension of Interim Urgency Ordinance (clean version)

ORDINANCE NO. ~~2018-XX~~

Formatted: Font: Bold

AN ~~URGENCY INTERIM~~ ORDINANCE TO EXTEND THE EXISTING ~~URGENCY INTERIM ORDINANCE~~ OF THE CITY OF NEVADA CITY TEMPORARILY ADDING CHAPTER 17.150 TO THE MUNICIPAL CODE, ENTITLED "WIRELESS TELECOMMUNICATION FACILITIES IN THE RIGHT OF WAY"

Formatted: Indent: Left: 1.13", Right: 1.13"

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

Formatted: Font: Bold

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

Formatted: Font: Bold

WHEREAS, Section 50030 of the California Government Code provides that any permit fee imposed by a city for the placement, installation, repair, or upgrading of telecommunications facilities, such as lines, poles, or antennas, by a telephone corporation that has obtained all required authorizations from the CPUC and the FCC to provide telecommunications services, must not exceed the reasonable costs of providing the service for which the fee is charged, and must not be levied for general revenue purposes; and

Formatted: Font: Bold

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

Formatted: Font: Bold

WHEREAS, Government Code Section 65858 provides that a city may adopt an urgency interim ordinance by a four-fifths vote where necessary to protect the public health, safety

Formatted: Font: Bold

and welfare, to prohibit uses that may be in conflict with a contemplated zoning proposal of the legislative body, which ordinance shall expire 45 days after adoption unless extended by the legislative body;

WHEREAS, on October 10, 2018, the City Council, adopted an interim urgency ordinance which is currently set to expire at 11:59 p.m. on November 24, 2018 unless extended or prematurely terminated; and

Formatted: Font: Bold

WHEREAS, on ~~November~~October 18, 2018, the Planning Commission conducted a public hearing on a permanent telecommunications ordinance;

Formatted: Font: Bold

WHEREAS, at the same meeting as this extension ordinance is considered, the City Council will conduct a public hearing on the proposed permanent telecommunications ordinance.

Formatted: Font: Bold

Formatted: Justified

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

Formatted: Font: Bold

Formatted: Left

SECTION 1. Findings. There is a current and immediate threat to the public health, safety and welfare in that the city's existing municipal code does not currently adequately regulate the location, appearance and processing of wireless telecommunications facilities within the city's right of way. In some instances, the municipal code does not have express language on whether wireless facilities are allowed, prohibited, or processed. Absent the city adopting this interim ordinance, there could be legal confusion about what legal standards apply, the city could be forced to approve facilities which would be inconsistent with the city's aesthetic goals for such facilities and/or the city could be subject to unnecessary legal risk. The city council further finds that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which does not meet the minimum standards of both this ordinance and the existing municipal code would result in that threat to public health, safety, or welfare.

SECTION 2: Prohibition.

A. *New Entitlements Must Also Comply with this Ordinance.* No subdivision, use permit, variance, building permit or any other applicable entitlement for use for any wireless telecommunication facility that is in any portion of a right-of-way may be issued unless the proposal meets all of the requirements of the existing municipal code, in addition to meeting all additional requirements of this ordinance.

B. *More Restrictive Requirements Also Apply.* If there is a conflict between the requirements of the existing municipal code and this ordinance, to the maximum extent possible, the more restrictive rules shall apply, provided that if both this ordinance and the municipal code require the issuance of a use permit, only the use permit required by the municipal code shall be required. If, for example, the municipal code already

requires a conditional use permit, then only that conditional use permit shall be required, and the applicable wireless telecommunications permit shall not be required. However, the conditional use permit may only be issued if that proposed project would meet all of the applicable substantive requirements of this ordinance and any findings that would be required under this ordinance for a use permit shall also be required for the issuance of the conditional use permit.

C. *Processing Still Allowed.* Nothing in this ordinance prohibits the City from processing use permits, variances, building permits or any other applicable entitlement provided that new entitlements for wireless telecommunications facilities in the right of way are not in fact issued for projects that do not meet the applicable requirements.

SECTION 3: Interim Regulations. A new Chapter 17.150, to be entitled, "Wireless Telecommunications Facilities in the Public Right of Way" is hereby created to provide as follows:

17.150.010 Purpose.

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

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

17.150.020 Definitions.

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

"Antenna" means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals.

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

“Code” means the Nevada City Municipal Code.

“Collocation” means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signal for communication purposes.

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

“Facility(ies)” means wireless telecommunications facilities.

“Ground-Mounted” means mounted to a telecommunications tower.

“Located within public right-of-way” includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the public right-of-way.

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

“Monopole” means a structure composed of a pole or telecommunications tower used to support antennas or related equipment. A monopole also includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole.

“Mounted” means attached or supported.

“Pole” means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this Code.

“Small cell facility” means a facility which has its telecommunications equipment affixed to a pole which transmits and/or provides connection to a mobile communication system and which has equipment not exceeding (4) cubic feet per location/site (excluding antennae) with a maximum of two antennas per location/site.

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

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

“Wireless telecommunications services” means the provision of services using a wireless telecommunications facility or a wireless telecommunications collocation facility, and shall include, but not limited to, the following services: personal wireless services as defined in the federal Telecommunications Act of 1996 at 47 U.S.C. § 332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.

“Wireless telecommunications facility”, “facility” or “facilities” mean any facility that transmits and/or receives electromagnetic waves. It includes, but is not limited to, antennas and/or other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting such equipment, related accessory equipment, equipment buildings, parking areas, and other accessory development.

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

(a) A telecommunications facility that is both owned and operated by a governmental entity where the director determines enforcing the requirements of this Chapter are against the public interest.

(b) Mobile services providing public information coverage of news events of a temporary nature.

(d) Any wireless telecommunications facilities exempted from this Code by federal law or state law.

17.150.030 Applicability

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

1. All facilities for which applications were not approved prior to October 10, 2018 shall be subject to and comply with all provisions of this chapter.

2. All facilities for which applications were approved by the city prior October 10, 2018 shall not be required to obtain a new or amended permit until such time as a provision of this code so requires. Any wireless telecommunication facility that was lawfully constructed prior to October 10, 2018 that does not comply with the standards, regulations and/or requirements of this chapter, shall be deemed a nonconforming use and shall also be subject to the provisions of section 17.150.230.

3. All facilities, notwithstanding the date approved, shall be subject immediately to the provisions of this chapter governing the operation and maintenance (section 17.150.130), cessation of use and abandonment (section 17.150.170), removal and restoration (section 17.150.180) of wireless telecommunications facilities and the prohibition of dangerous conditions or obstructions by such facilities (section 17.150.150); provided, however, if a condition of approval conflicts with a provision of this chapter, the condition of approval shall control until the permit is amended or revoked.

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

17.150.040 Wireless Telecommunications Facility Permit Requirements.

A. General Rule: Major Wireless Telecommunications Facility Permit Required

1. Unless otherwise provided, all wireless facilities or collocations or modifications to existing wireless facilities shall require a Major Wireless Telecommunication Facility Permit. See section 17.150.060, below for review procedures.
2. The Planning Commission may refer a major wireless telecommunications facility permit to the City Council for approval.
3. A facility that obtains a minor telecommunications facility permit or a ministerial wireless telecommunications facilities permit need not obtain a major wireless telecommunications permit.
4. A facility in the Sales Tax Geographic Area 5 (7-Hills Business District), the Historical Combining District or in a residential zone requires a major wireless telecommunications facility permit.

B. Minor Wireless Telecommunications Facility Permit

A small cell facility may obtain a minor telecommunications facility permit if all of the following apply:

1. The facility complies with all requirements of the Ministerial Wireless Telecommunications Facilities permit except the applicant need not have complied with the requirements of section 17.105.040.C.1; and
2. The applicant obtained an architectural review permit. See Section 17.88.040.

C. Ministerial Wireless Telecommunications Facilities Permit.

Notwithstanding Municipal Code 17.150.220, the Director shall approve a ministerial wireless telecommunications permit for a small cell facility if all of the following apply:

1. The facility is not in the Sales Tax Geographic Area 5 (7-Hills Business District), a residential zone, the Historical Combining District, or in the Scenic Corridor Combining District.
2. The facility will comply with all applicable laws including, but not limited to:
 - a. The Americans with Disabilities Act;
 - b. All building and safety requirements, including those within the California Building Standards Code, as amended by the city;
 - c. All requirements of the Federal Communications Commission (FCC), including requirements relating to radio-frequency (RF) emissions and limits on interference.
 - d. The requirements of this Chapter 17.150.
3. The City Council has approved wireless design guidelines and the proposed facility complies with such design guidelines.
4. The proposed facility will be installed on either:
 - a. An existing pole that meets all of the following requirements:
 - i. The pole does not support a traffic control device (examples include stop signs and traffic signals);
 - ii. The facility will match the design of the pole; and
 - iii. If feasible, all equipment installed on the pole will be the same color as the pole; or
 - b. A new light pole that meets all of the following requirements:
 - i. The pole is at least ninety (90) feet away from any existing light pole; and
 - ii. Unless requested otherwise by the City in writing, the light on the pole will be illuminated, operated, and maintained consistent with the operation of the other light poles in the City, and the full costs of illumination shall be fully borne by the applicant.
5. Either the City has issued all required encroachment permits and entered into any required franchise agreement(s); or it is a condition of the issuance of the permit that no installation begin in reliance on the permit until the City has issued all required encroachment permits and entered into any required franchise agreement(s).

6. All accessory equipment is housed in a container which is either (a) attached to the pole such that it does not protrude from the pole by more than four (4) inches; is attached more than ten (10) feet above the ground and more than 16.5 feet above the drivable road surface; and is camouflaged to the maximum extent feasible; or (b) installed underground.

7. Antennas must be:

- a. Mounted symmetrically on top of the pole;
- b. No more than four (4) inches wider in diameter than the existing pole;
- c. The same color as the pole; and
- d. The same shape as the pole (which shape is typically cylindrical).

8. Neither a discretionary Major Wireless Telecommunications Facilities Permit nor a Minor Wireless Telecommunications Permit is required.

D. Master Deployment Plan Permit

1. Any applicant that seeks approval of five (5) or more wireless telecommunications facilities may elect to submit an application for a Master Development Plan Permit. The proposed facilities in a Master Development Plan shall be reviewed together at the same time and subject to the same requirements and procedures applicable to a Major Wireless Telecommunications Facility Permit.

2. A Master Development Plan Permit shall be deemed an approval for all wireless telecommunications facilities within the plan; provided, however, that an individual encroachment permit shall be required for each wireless communications facility.

3. After the approval of a Master Development Plan Permit, any deviations or alterations from the approved plan for an individual wireless telecommunications facility shall require either a Major Wireless Telecommunications Facility Permit or an Administrative Wireless Telecommunications Facility Permit, as applicable.

E. Other Permits Required. In addition to any permit that may be required under this chapter, the applicant must obtain all other required prior permits or other approvals from other city departments, or state or federal agencies. Any permit granted under this chapter is subject to the conditions and/or requirements of other required permits or other approvals from other city departments, state or federal agencies.

F. Eligible Applicants. Only applicants who have been granted the right to enter the public right-of-way pursuant to state or federal law, or who have entered into a franchise

agreement with the city permitting them to use the public right-of-way, shall be eligible for a permit to install or modify a wireless telecommunications facility or a wireless telecommunication collocation facility in the public right-of-way.

G. **Speculative Equipment Prohibited.** The city shall not approve any equipment or other improvements in connection with a Wireless Telecommunications Facility Permit when the applicant does not actually and presently intend to install such equipment or construct such improvements.

12.40.050 Application for Wireless Telecommunications Facility Permit

A. Application.

1. Application form. In addition to the information required of an applicant for an encroachment permit or any other permit required by this code, each applicant requesting approval of the installation or modification of a wireless telecommunications facility in the public right-of-way shall fully and completely submit to the city a written application on a form prepared by the director.

2. Simultaneous Cabling. No applicant seeking to install wireless antennas shall seek an encroachment permit for fiber or coaxial cable only. Applicants shall simultaneously request fiber installation or other cable installation when seeking to install antennas in the right-of-way.

B. Application contents. The director shall develop an application form and make it available to applicants upon request. The supplemental application form for a new or modified wireless telecommunications facility installation in the public right-of-way may require the following information, in addition to all other information determined necessary by the director:

1. Contact information. The name, address, email address, and telephone number of the applicant, owner and the operator of the proposed facility.

2. Signed Authorization. If the applicant is an agent, the applicant shall provide a duly executed letter of authorization from the owner of the facility. If the owner will not directly provide wireless telecommunications services, the applicant shall provide a duly executed letter of authorization from the person(s) or entity(ies) that will provide those services.

3. Owner Authorization. If the facility will be located on or in the property of someone other than the owner of the facility (such as a street light pole, traffic signal pole, utility pole, utility cabinet, vault, or cable conduit), the applicant shall provide a duly executed written authorization from the property owner(s) authorizing the placement of the facility on or in the property owner's property.

4. Description. A full written description of the proposed facility and its

purpose.

5. Engineering Plans. Detailed engineering plans of the proposed facility and related report prepared by a professional engineer registered in the state documenting the following:

a. Height, diameter and design of the facility, including technical engineering specifications, economic and other pertinent factors governing selection of the proposed design, together with evidence that demonstrates that the proposed facility has been designed to be the least visible equipment within the particular technology the carrier chooses to deploy. A layout plan, section and elevation of the tower structure shall be included.

b. A photograph and model name and number of each piece of equipment included.

c. Power output and operating frequency for the proposed antenna.

d. Total anticipated capacity of the structure, indicating the number and types of antennas and power and frequency ranges, which can be accommodated.

e. Sufficient evidence of the structural integrity of the pole or other supporting structure as required by the city, such as a TIA ANSI 222 report.

6. Justification Study. A justification study which includes the rationale for selecting the proposed use; if applicable, a detailed explanation of the coverage gap that the proposed use would serve; and how the proposed use is the least intrusive means for the applicant to provide wireless service. Said study shall include all existing structures and/or alternative sites evaluated for potential installation of the proposed facility and why said alternatives are not a viable option.

7. Site Plans. Site plan(s) to scale, specifying and depicting the exact proposed location of the pole, pole diameter, antennas, accessory equipment, access or utility easements, landscaped areas, existing utilities, adjacent land uses, and showing compliance with section 17.150.080.

8. Elevations. Scaled elevation plans of proposed poles, antennas, accessory equipment, and related landscaping and screening.

9. Environmental Assessment. A completed environmental assessment application.

10. Exemption Justification. If the applicant requests an exception to the requirements of this chapter (in accordance with section 17.150.190), the applicant shall provide all information and studies necessary for the city to evaluate that request.

11. Visual Impact Analysis. An accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the facility, including scaled photo simulations from at least 3 different angles.

12. RF Exposure Checklist. Completion of the radio frequency (RF) emissions exposure guidelines checklist contained in Appendix A to the Federal Communications Commission's (FCC) "Local Government Official's Guide to Transmitting Antenna RF Emission Safety" to determine whether the facility will be "categorically excluded" as that term is used by the FCC.

13. RF Compliance Report. For a facility that is not categorically excluded under the FCC regulations for RF emissions, the applicant shall submit an RF exposure compliance report prepared and certified by an RF engineer acceptable to the city that certifies that the proposed facility, as well as any facilities that contribute to the cumulative exposure in the subject area, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts Effective Radio Power "ERP") for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site. A Power Density Worksheet may be required, which worksheet requires, among other things, submission of technical data such as ERP per channel, antenna details such as the numbering and bearing of sectors, the center of radiation, desired output data, and the facility's distance from nearby structures.

14. FAA Documents. Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the facility.

15. Noise Study. A noise study prepared by a qualified acoustic engineer documenting that the level of noise to be emitted by the proposed wireless telecommunications facility will comply with this Code including section 17.150.080(A)(15)(b).

16. Traffic Control. A traffic control plan when the proposed installation is on any street in a non-residential zone. The city shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g. crane).

17. Landscape Plan. A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the site.

18. Propagation Maps. A written description identifying the geographic service area for the subject installation including geographic and propagation maps, that identifies

the location of the proposed facility in relation to all existing and planned facilities maintained within the city by each of the applicant, operator, and owner, if different entities, as well as the estimated number of potentially affected uses in the geographic service area. Regardless of whether a Master Deployment Plan Permit is sought, the applicant shall depict all locations anticipated for new construction and/or modifications to existing facilities, including collocation, within two years of submittal of the application. Longer range conceptual plans for a period of five years shall also be provided, if available.

a. If the applicant seeks to install a wireless telecommunications facility to address service coverage concerns, full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites.

b. If the applicant seeks to address service capacity concerns, a written explanation identifying the existing facilities with service capacity issues together with competent evidence to demonstrate the inability of those facilities to meet capacity demands.

19. CPCN. Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.

20. Application Fee. An application fee, and a deposit for a consultant's review as set forth in paragraph D of this section in an amount set by resolution by the city council and in accordance with California Government Code section 50030.

21. Mock-Up. Proof that a temporary mock-up of the facility and sign has been installed at the proposed location for a period of at least thirty (30) calendar days.

a. Applicant shall obtain an encroachment permit before installing the temporary mock-up, and must remove the temporary mock-up within five (5) calendar days of receiving a written notice to remove from the director.

b. When seeking the encroachment permit, the applicant shall provide address labels for use by the city in noticing all property owners within 500 feet of the proposed installation. The city shall mail a notice regarding installation of the mock-up at least five (5) business days prior to the installation.

c. The mock-up shall demonstrate the height and mass of the facility, including all interconnecting cables. The applicant shall not be entitled to install the facility it intends to install permanently. The mock-up may consist of story poles or the like.

d. The mock-up shall include a sign that displays photo simulations depicting before and after images, including any accessory equipment cabinet, and the telephone number of the Public Works Department.

e. The applicant shall be required to follow any other city practices or processes relevant to the installation of a mock-up as may be provided in a publicly accessible form or document.

f. After installation of the mock-up, the applicant shall certify that the mock-up accurately represents the height and width of the proposed installation and has been installed consistent with this Code.

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

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

1. Compliance with applicable radio frequency emission standards;
2. Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;
3. The accuracy and completeness of submissions;
4. Technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;
5. The applicability of analysis techniques and methodologies;
6. The validity of conclusions reached or claims made by applicant;
7. The viability of alternative sites and alternative designs; and
8. Any other specific technical issues identified by the consultant or designated by the city.

The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule which may be adopted by resolution. No permit shall be issued to any applicant which has not fully reimbursed the city for the consultant's cost, even if the cost exceeds the initial amount of the deposit.

17.150.060 Review Procedure

A. *Pre-submittal Conference.* Prior to application submittal, the city strongly encourages all applicants to schedule and attend a pre-submittal conference with Public Works Department staff to receive informal feedback on the proposed location, design and application materials. The pre-submittal conference is intended to identify potential concerns and streamline the formal application review process after submittal. Staff will endeavor to provide applicants with an appointment within five business days after receipt of a written request.

B. *Application Submittal Appointment.* All applications must be submitted to the city at a pre-scheduled appointment. Applicants may submit one (1) application per appointment but may schedule successive appointments for multiple applications whenever feasible as determined by the city. Staff will endeavor to provide applicants with an appointment within five business days after receipt of a written request.

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

1. *Planning Commission Hearings.* Any permit application under this chapter subject to planning commission approval (directly, or via appeal) shall require notice and a public hearing as required by section 17.88.020.C.5. The planning commission may approve, or conditionally approve, an application only after it makes the findings required in section 17.150.090.

2. *Decision by Planning Commission.* The Planning Commission may approve, or conditionally approve, an application only after it makes the findings required in section 17.150.090. Within ten days after the Planning Commission approves or conditionally approves an application under this chapter, the director shall issue a notice of the decision and any applicable conditions of approval shall be provided to the applicant at the contact information provided on the application.

3. *Notice of Shot Clock Expiration.* The applicant is required to provide the city written notice of the expiration of any applicable shot clock, which the applicant shall ensure is received by the city (e.g. overnight mail) no later than twenty (20) days prior to the expiration.

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

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

17.150.080 Requirements for Facilities within the Public Right-of-Way

Formatted: Keep with next, Keep lines together

A. *Design and Development Standards.* All wireless telecommunications facilities that are located within public right-of-way shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following:

1. General Guidelines:

a. The applicant shall employ screening, undergrounding and camouflage design techniques in the design and placement of wireless telecommunications facilities to ensure that the facility is as visually screened as feasible, to prevent the facility from dominating the surrounding area and to minimize significant view impacts from surrounding properties all in a manner that achieves compatibility with the community and in compliance with section 17.400.175 of this Code.

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

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

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

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

4. Equipment. The applicant shall use the least visible equipment possible. Antenna elements shall be flush mounted, to the extent feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless otherwise provided in this section, antennas shall be situated as close to the ground as possible.

5. Poles.

a. Facilities shall be located consistent with section 17.150.200.

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

c. Utility Poles. The maximum height of any antenna shall not exceed forty-eight (48) 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 twenty-four (24) 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 may be revised or superseded.

d. Light Poles. The maximum height of any antenna shall not exceed four (4) feet above the existing height of a light pole. For a design meeting the city's design standard, the maximum height of the antenna shall not exceed six (6) feet above the existing height of light pole. Any portion of the antenna or equipment mounted on a pole shall be no less than ten (10) feet above the ground and no less than sixteen and a half (16.5) feet above any drivable road surface.

e. Replacement Poles. If an applicant proposes to replace a pole in order to accommodate a proposed facility, the pole shall either be (i) designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials and style to the maximum extent feasible; or (ii) designed consistent with adopted wireless design guidelines.

f. Pole mounted equipment and enclosure, exclusive of antennas, shall not exceed four (4) cubic feet in total volume. Strand mounted equipment and enclosure shall not exceed (2) cubic feet in total volume.

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

7. Wind Loads. Each facility shall be properly engineered to withstand wind loads as required by this Code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.

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

9. Public Facilities. A facility shall not be located within the public right-of-way interfering with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility.

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

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

a. Unless city staff determines that there is no room in the public right-of-way for undergrounding, or that undergrounding is not feasible, an exception shall be required in order to place accessory equipment above-ground and concealed with natural or manmade features to the maximum extent possible.

b. When above-ground is the only feasible location for a particular type of accessory equipment and will be ground-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five (5) feet and a total footprint of fifteen (15) square feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be screened and/or camouflaged. Also, while pole-mounted equipment is generally the least favored installation, should pole-mounted equipment be sought, it shall be installed as required in this Chapter.

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

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

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

14. Lighting.

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

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

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

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

requirement when the applicant demonstrates a substantial public safety need.

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

15. Noise.

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

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

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

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

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

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

1. As built drawings. The permittee shall submit an as built drawing within ninety (90) days after installation of the facility. As-builts shall be in an electronic format

acceptable to the city which can be linked to the city's GIS.

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

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

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

3. Assignment. The permittee shall notify the city in writing at least ninety (90) days prior to any transfer or assignment of the permit. The written notice required in this section must include: (1) the transferee's legal name; (2) the transferee's full contact information, including a primary contact person, mailing address, telephone number and email address; and (3) a statement signed by the transferee that the transferee shall accept all permit terms and conditions. The director may require the transferor and/or the transferee to submit any materials or documentation necessary to determine that the proposed transfer complies with the existing permit and all its conditions of approval, if any. Such materials or documentation may include, but shall not be limited to: federal, state and/or local approvals, licenses, certificates or franchise agreements; statements; photographs; site plans and/or as-built drawings; and/or an analysis by a qualified radio frequency engineer demonstrating compliance with all applicable regulations and standards of the Federal Communications Commission. Noncompliance with the permit and all its conditions of approval, if any, or failure to submit the materials required by the director shall be a cause for the city to revoke the applicable permits pursuant to and following the procedure set on in section 17.150.180.

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

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

the bond and shall be specified in the conditions of approval.) Before issuance of any building permit, permittee must submit said security instrument.

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

7. Permit Expiration. A condition setting forth the permit expiration date in accordance with section 17.150.160 shall be included in the conditions of approval.

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

9. Permit Transfer. The permittee shall not transfer the permit to any person prior to the completion of the construction of the facility covered by the permit, unless and until the transferee of the permit has submitted the security instrument required by section 17.150.080(B)(5).

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

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

12. Repair Obligations. The permittee shall repair, at its sole cost and expense, any damage including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation and/or maintenance of a wireless telecommunications facility in the public right-of-way. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the city engineer. Such time period for correction shall be based on the facts and circumstances, danger to the community and severity of the disrepair. Should the permittee not make said correction within the time period allotted the city engineer shall cause such repair to be completed at permittee's sole cost and expense.

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

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

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

16. Hold Harmless. Additionally, to the fullest extent permitted by law, the permittee, and every permittee and person in a shared permit, jointly and severally, shall defend, indemnify, protect and hold the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers harmless from and against all claims, suits, demands, actions, losses,

liabilities, judgments, settlements, costs (including, but not limited to, attorney's fees, interest and expert witness fees), or damages claimed by third parties against the city for any injury claim, and for property damage sustained by any person, arising out of, resulting from, or are in any way related to the wireless telecommunications facility, or to any work done by or use of the public right-of-way by the permittee, owner or operator of the wireless telecommunications facility, or their agents, excepting only liability arising out of the sole negligence or willful misconduct of the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers.

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

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

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

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

21. "Permittee" shall include the applicant and all successors in interest to this permit.

17.150.090 Findings.

No major wireless telecommunication facilities permit shall be granted for a wireless telecommunications facility unless the approving party makes all of the following findings:

- A. All notices required for the proposed installation have been given.
- B. The proposed facility has been designed and located in compliance with all applicable laws, including the requirements of this Chapter 17.150.
- C. The applicant has provided sufficient 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 otherwise obtained a legal authorization to use the public right-of-way.
- D. The facility is designed in a manner consistent with the architectural requirements applicable to the zone, if any.
- E. The applicant has shown that no other feasible design would be less intrusive upon the values intended to be protected by Chapter 17.150.
- F. There is no known feasible alternate location which is available to the applicant at commercially reasonable rates that would be less intrusive upon the values intended to be protected by Chapter 17.150, and which location would allow the applicant to meet its reasonable wireless coverage objectives.

17.150.100 Planning Commission.

The Planning Commission will review and approve, conditionally approve, or deny Major Wireless Telecommunications Facility Permit and Master Deployment Plan Permits. Except as otherwise provided herein, said permits shall be subject to all of the same rules as conditional use permits except that the findings in section 17.150.090 shall be used instead.

17.150.110 Nonexclusive Grant

No permit or approval granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the city for any purpose whatsoever. Further, no approval shall be construed as any warranty of title.

17.150.120 Emergency Deployment.

A COW shall be permitted for the duration of an emergency declared by the city or at the discretion of the director. "COW" means a "cell on wheels," which is a wireless telecommunications facility temporarily rolled in or temporarily installed.

17.150.130 Operation and Maintenance Standards.

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

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

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

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

B. Each permittee of a wireless telecommunications facility shall provide the director with the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility ("contact information"). Contact information shall be updated within seven (7) days of any change.

C. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good 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.

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

E. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.

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

17.150.140 [Reserved]

17.150.150 No Dangerous Condition or Obstructions Allowed.

No person shall install, use or maintain any facility which in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impairs or impedes the flow of pedestrian, bicycle, or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location. A facility, an equipment enclosure, and ancillary equipment must be designed and located in a manner that does not materially obstruct the roadway views of vehicles, bicycles, and pedestrians traveling within the public right-of-way, and does not obstruct the visibility of signs located within the right-of-way.

17.150.160 Permit Expiration.

A. Unless Government Code section 65964, as may be amended, authorizes the city to issue a permit with a shorter term, a permit for any wireless telecommunications facility shall be valid for a period of ten (10) years, unless pursuant to another provision of this Code it lapses sooner or is revoked. At the end of ten (10) years from the date of issuance, such permit shall automatically expire.

B. A permittee may apply for a new permit within one hundred and eighty (180) days prior to expiration. Said application and proposal shall comply with the city's current code requirements for wireless telecommunications facilities.

17.150.170 Cessation of Use or Abandonment.

A. A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for ninety (90) or more consecutive days unless the permittee has obtained prior written approval from the director which shall not be unreasonably denied. If there are two (2) or more users of a single facility, then this provision shall not become effective until all users cease using the facility.

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

C. Failure to inform the director of cessation or discontinuation of operations of any existing facility as required by this section shall constitute a violation of any approvals and be grounds for:

1. Litigation;
2. Revocation or modification of the permit;
3. Acting on any bond or other assurance required by this article or conditions of approval of the permit;
4. Removal of the facilities by the city in accordance with the procedures established under this Code for abatement of a public nuisance at the owner's expense; and/or
5. Any other remedies permitted under this Code.

17.150.180 Removal and Restoration – Permit Expiration, Revocation or Abandonment.

A. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the permit or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the city. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the city. The facility shall be removed from the property, at no cost or expense to the city.

B. Failure of the permittee, owner or operator to promptly remove its facility and restore the property within ninety (90) days after expiration, earlier termination or revocation of the permit, or abandonment of the facility, shall be a violation of this Code.

Upon a showing of good cause, an extension may be granted by the director where circumstances are beyond the control of the permittee after expiration. Further failure to abide by the timeline provided in this section shall be grounds for:

1. Prosecution;
2. Acting on any security instrument required by this chapter or conditions of approval of permit;
3. Removal of the facilities by the city in accordance with the procedures established under this Code for abatement of a public nuisance at the owner's expense; and/or
4. Any other remedies permitted under this Code.

C. *Summary Removal.* In the event the director or city engineer determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), the director or city engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five (5) business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within sixty (60) days, the facility shall be treated as abandoned property.

D. *Removal of Facilities by city.* In the event the city removes a facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the city for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the city may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this Code. Unless otherwise provided herein, the city has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the city destroys any such facility not timely removed by the permittee, owner or operator after notice, or removed by the city due to exigent circumstances.

17.150.190 Exceptions.

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

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

1. The proposed wireless facility qualifies as a “personal wireless service facility” as defined in United States Code, Title 14, section 332(c)(7)(C)(ii);

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

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

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

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

D. Independent Consultant. The city shall have the right to hire, at applicant's expense, an independent consultant to evaluate issues raised by the application and to submit recommendations and evidence in response to the application.

17.150.200 Location Prohibitions and Preferences

A. Prohibited. Unless otherwise required by law, no wireless facility in the right of way may be located in any area the City Engineer determines is inconsistent with existing or planned or expected uses of the right of way.

B. Especially Discouraged. Unless authorized by a major wireless telecommunications facility permit, telecommunications facilities shall not be allowed within those portions of the right of way which are in any residential zone, the Sales Tax Geographic Area 5 (7-Hills Business District), or in the Historical Combining District.

C. Discouraged. Wireless telecommunication facilities are discouraged from being in the Scenic Corridor Combining District. A facility in the scenic corridor

combining district must either obtain a major wireless telecommunications facility permit or a minor wireless telecommunications facility permit.

- D. Encouraged. Wireless telecommunication facilities are encouraged to be in industrial and commercial zones.

17.150.210 Effect on Other Ordinances.

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

17.150.220 State or Federal Law.

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

B. If subsequent to the issuance of the city attorney's written determination pursuant to (A) above, the city attorney determines that the law has changed and that such discretionary permitting is permissible, the city attorney shall issue such determination in writing with citations to legal authority and all discretionary permitting requirements shall be reinstated. The city attorney's written determination shall be a public record.

17.150.230 Nonconforming Wireless Telecommunications Facilities in the Right-of-Way.

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

B. Nonconforming wireless telecommunications facilities shall, within ten (10) years from the date such facility becomes nonconforming, be brought into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this Code at such time, to the extent the city can require such compliance under federal and state law.

C. An aggrieved person may file an appeal to the city council of any decision of the director made pursuant to this section. In the event of an appeal alleging that the ten (10)

year amortization period is not reasonable as applied to a particular property, the city council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property.”

SECTION 4. CEQA. This Ordinance is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15061 because CEQA only applies to projects which have the potential to have a significant impact on the environment and because the environmental impact of each individual project will be analyzed at the time that the project is submitted. There are no impacts of this ordinance which have the potential to cumulatively cause a significant effect on the environment because the city is so small, and it is not anticipated that there will be enough facilities to cause such an impact. Furthermore, this ordinance does not authorize any activity not previously allowed.

~~SECTION 5. Ten Day Report. The City Manager, or designee, is directed to prepare a report for City Council consideration describing the measures taken to address the conditions which led to adoption of this Ordinance. This report must be provided to the City Council so that it may be considered and issued not later than 10 days before this Ordinance expires.~~

SECTION 56. Immediately Effective. Based on the findings set forth above, this is an urgency ordinance adopted for the immediate preservation of the public peace, health, safety and welfare. As such, this ordinance shall become effective immediately.

SECTION 67. Expiration Date. This ordinance shall expire at 11:59 p.m. on ~~November-October 24~~⁹, 201~~9~~⁸ unless extended or prematurely terminated.

SECTION 78. Certification. The City Clerk shall certify to the passage and adoption of this ordinance as required by law.

~~SECTION 9. Direction to Planning Commission. The City Council hereby directs the Planning Commission to consider the adoption of an ordinance to regulate wireless telecommunications facilities in the right of way, and consideration of wireless design guidelines.~~

PASSED, APPROVED AND ADOPTED this ___th day of _____2018 by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

David Parker, Mayor

|
|
ATTEST:

Niel Locke, City Clerk

|
|
APPROVED AS TO FORM

Hal DeGraw, City Attorney

I, _____, City Clerk of Nevada City, do hereby certify that the foregoing urgency ordinance was introduced and adopted at a meeting thereof on the ____ day of _____ 2018.

Niel Locke, City Clerk

ORDINANCE NO. 2018-XX

**AN ORDINANCE TO EXTEND THE EXISTING
URGENCY INTERIM ORDINANCE OF THE CITY OF
NEVADA CITY TEMPORARILY ADDING CHAPTER
17.150 TO THE MUNICIPAL CODE, ENTITLED
“WIRELESS TELECOMMUNICATION FACILITIES IN
THE RIGHT OF WAY”**

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

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

WHEREAS, Section 50030 of the California Government Code provides that any permit fee imposed by a city for the placement, installation, repair, or upgrading of telecommunications facilities, such as lines, poles, or antennas, by a telephone corporation that has obtained all required authorizations from the CPUC and the FCC to provide telecommunications services, must not exceed the reasonable costs of providing the service for which the fee is charged, and must not be levied for general revenue purposes; and

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

WHEREAS, Government Code Section 65858 provides that a city may adopt an urgency interim ordinance by a four-fifths vote where necessary to protect the public health, safety and welfare, to prohibit uses that may be in conflict with a contemplated zoning proposal

of the legislative body, which ordinance shall expire 45 days after adoption unless extended by the legislative body;

WHEREAS, on October 10, 2018, the City Council, adopted an interim urgency ordinance which is currently set to expire at 11:59 p.m. on November 24, 2018 unless extended or prematurely terminated; and

WHEREAS, on October 18, 2018, the Planning Commission conducted a public hearing on a permanent telecommunications ordinance;

WHEREAS, at the same meeting as this extension ordinance is considered, the City Council will conduct a public hearing on the proposed permanent telecommunications ordinance.

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

SECTION 1. Findings. There is a current and immediate threat to the public health, safety and welfare in that the city's existing municipal code does not currently adequately regulate the location, appearance and processing of wireless telecommunications facilities within the city's right of way. In some instances, the municipal code does not have express language on whether wireless facilities are allowed, prohibited, or processed. Absent the city adopting this interim ordinance, there could be legal confusion about what legal standards apply, the city could be forced to approve facilities which would be inconsistent with the city's aesthetic goals for such facilities and/or the city could be subject to unnecessary legal risk. The city council further finds that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which does not meet the minimum standards of both this ordinance and the existing municipal code would result in that threat to public health, safety, or welfare.

SECTION 2: Prohibition.

A. *New Entitlements Must Also Comply with this Ordinance.* No subdivision, use permit, variance, building permit or any other applicable entitlement for use for any wireless telecommunication facility that is in any portion of a right-of-way may be issued unless the proposal meets all of the requirements of the existing municipal code, in addition to meeting all additional requirements of this ordinance.

B. *More Restrictive Requirements Also Apply.* If there is a conflict between the requirements of the existing municipal code and this ordinance, to the maximum extent possible, the more restrictive rules shall apply, provided that if both this ordinance and the municipal code require the issuance of a use permit, only the use permit required by the municipal code shall be required. If, for example, the municipal code already requires a conditional use permit, then only that conditional use permit shall be required, and the applicable wireless telecommunications permit shall not be required. However,

the conditional use permit may only be issued if that proposed project would meet all of the applicable substantive requirements of this ordinance and any findings that would be required under this ordinance for a use permit shall also be required for the issuance of the conditional use permit.

C. *Processing Still Allowed.* Nothing in this ordinance prohibits the City from processing use permits, variances, building permits or any other applicable entitlement provided that new entitlements for wireless telecommunications facilities in the right of way are not in fact issued for projects that do not meet the applicable requirements.

SECTION 3: Interim Regulations. A new Chapter 17.150, to be entitled, “Wireless Telecommunications Facilities in the Public Right of Way” is hereby created to provide as follows:

17.150.010 Purpose.

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

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

17.150.020 Definitions.

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

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

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

“Code” means the Nevada City Municipal Code.

“Collocation” means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signal for communication purposes.

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

“Facility(ies)” means wireless telecommunications facilities.

“Ground-Mounted” means mounted to a telecommunications tower.

“Located within public right-of-way” includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the public right-of-way.

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

“Monopole” means a structure composed of a pole or telecommunications tower used to support antennas or related equipment. A monopole also includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole.

“Mounted” means attached or supported.

“Pole” means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this Code.

“Small cell facility” means a facility which has its telecommunications equipment affixed to a pole which transmits and/or provides connection to a mobile communication system and which has equipment not exceeding (4) cubic feet per location/site (excluding antennae) with a maximum of two antennas per location/site.

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

“Utility pole” means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services

regulated by the California Public Utilities Commission.

"Wireless telecommunications services" means the provision of services using a wireless telecommunications facility or a wireless telecommunications collocation facility, and shall include, but not limited to, the following services: personal wireless services as defined in the federal Telecommunications Act of 1996 at 47 U.S.C. § 332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.

"Wireless telecommunications facility", "facility" or "facilities" mean any facility that transmits and/or receives electromagnetic waves. It includes, but is not limited to, antennas and/or other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting such equipment, related accessory equipment, equipment buildings, parking areas, and other accessory development.

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

(a) A telecommunications facility that is both owned and operated by a governmental entity where the director determines enforcing the requirements of this Chapter are against the public interest.

(b) Mobile services providing public information coverage of news events of a temporary nature.

(d) Any wireless telecommunications facilities exempted from this Code by federal law or state law.

17.150.030 Applicability

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

1. All facilities for which applications were not approved prior to October 10, 2018 shall be subject to and comply with all provisions of this chapter.

2. All facilities for which applications were approved by the city prior October 10, 2018 shall not be required to obtain a new or amended permit until such time as a provision of this code so requires. Any wireless telecommunication facility that was lawfully constructed prior to October 10, 2018 that does not comply with the standards, regulations and/or requirements of this chapter, shall be deemed a nonconforming use and shall also be subject to the provisions of section 17.150.230.

3. All facilities, notwithstanding the date approved, shall be subject immediately to the provisions of this chapter governing the operation and maintenance

(section 17.150.130), cessation of use and abandonment (section 17.150.170), removal and restoration (section 17.150.180) of wireless telecommunications facilities and the prohibition of dangerous conditions or obstructions by such facilities (section 17.150.150); provided, however, if a condition of approval conflicts with a provision of this chapter, the condition of approval shall control until the permit is amended or revoked.

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

17.150.040 Wireless Telecommunications Facility Permit Requirements.

A. General Rule: Major Wireless Telecommunications Facility Permit Required

1. Unless otherwise provided, all wireless facilities or collocations or modifications to existing wireless facilities shall require a Major Wireless Telecommunication Facility Permit. See section 17.150.060, below for review procedures.
2. The Planning Commission may refer a major wireless telecommunications facility permit to the City Council for approval.
3. A facility that obtains a minor telecommunications facility permit or a ministerial wireless telecommunications facilities permit need not obtain a major wireless telecommunications permit.
4. A facility in the Sales Tax Geographic Area 5 (7-Hills Business District), the Historical Combining District or in a residential zone requires a major wireless telecommunications facility permit.

B. Minor Wireless Telecommunications Facility Permit

A small cell facility may obtain a minor telecommunications facility permit if all of the following apply:

1. The facility complies with all requirements of the Ministerial Wireless Telecommunications Facilities permit except the applicant need not have complied with the requirements of section 17.105.040.C.1; and
2. The applicant obtained an architectural review permit. See Section 17.88.040.

C. Ministerial Wireless Telecommunications Facilities Permit.

Notwithstanding Municipal Code 17.150.220, the Director shall approve a ministerial wireless telecommunications permit for a small cell facility if all of the following apply:

1. The facility is not in the Sales Tax Geographic Area 5 (7-Hills Business District), a residential zone, the Historical Combining District, or in the Scenic Corridor Combining District.
2. The facility will comply with all applicable laws including, but not limited to:
 - a. The Americans with Disabilities Act;
 - b. All building and safety requirements, including those within the California Building Standards Code, as amended by the city;
 - c. All requirements of the Federal Communications Commission (FCC), including requirements relating to radio-frequency (RF) emissions and limits on interference.
 - d. The requirements of this Chapter 17.150.
3. The City Council has approved wireless design guidelines and the proposed facility complies with such design guidelines.
4. The proposed facility will be installed on either:
 - a. An existing pole that meets all of the following requirements:
 - i. The pole does not support a traffic control device (examples include stop signs and traffic signals);
 - ii. The facility will match the design of the pole; and
 - iii. If feasible, all equipment installed on the pole will be the same color as the pole; or
 - b. A new light pole that meets all of the following requirements:
 - i. The pole is at least ninety (90) feet away from any existing light pole; and
 - ii. Unless requested otherwise by the City in writing, the light on the pole will be illuminated, operated, and maintained consistent with the operation of the other light poles in the City, and the full costs of illumination shall be fully borne by the applicant.
5. Either the City has issued all required encroachment permits and entered into any required franchise agreement(s); or it is a condition of the issuance of the permit that no installation begin in reliance on the permit until the City has issued all required encroachment permits and entered into any required franchise agreement(s).

6. All accessory equipment is housed in a container which is either (a) attached to the pole such that it does not protrude from the pole by more than four (4) inches; is attached more than ten (10) feet above the ground and more than 16.5 feet above the drivable road surface; and is camouflaged to the maximum extent feasible; or (b) installed underground.

7. Antennas must be:

- a. Mounted symmetrically on top of the pole;
- b. No more than four (4) inches wider in diameter than the existing pole;
- c. The same color as the pole; and
- d. The same shape as the pole (which shape is typically cylindrical).

8. Neither a discretionary Major Wireless Telecommunications Facilities Permit nor a Minor Wireless Telecommunications Permit is required.

D. Master Deployment Plan Permit

1. Any applicant that seeks approval of five (5) or more wireless telecommunications facilities may elect to submit an application for a Master Development Plan Permit. The proposed facilities in a Master Development Plan shall be reviewed together at the same time and subject to the same requirements and procedures applicable to a Major Wireless Telecommunications Facility Permit.

2. A Master Development Plan Permit shall be deemed an approval for all wireless telecommunications facilities within the plan; provided, however, that an individual encroachment permit shall be required for each wireless communications facility.

3. After the approval of a Master Development Plan Permit, any deviations or alterations from the approved plan for an individual wireless telecommunications facility shall require either a Major Wireless Telecommunications Facility Permit or an Administrative Wireless Telecommunications Facility Permit, as applicable.

E. Other Permits Required. In addition to any permit that may be required under this chapter, the applicant must obtain all other required prior permits or other approvals from other city departments, or state or federal agencies. Any permit granted under this chapter is subject to the conditions and/or requirements of other required permits or other approvals from other city departments, state or federal agencies.

F. Eligible Applicants. Only applicants who have been granted the right to enter the public right-of-way pursuant to state or federal law, or who have entered into a franchise

agreement with the city permitting them to use the public right-of-way, shall be eligible for a permit to install or modify a wireless telecommunications facility or a wireless telecommunication collocation facility in the public right-of-way.

G. **Speculative Equipment Prohibited.** The city shall not approve any equipment or other improvements in connection with a Wireless Telecommunications Facility Permit when the applicant does not actually and presently intend to install such equipment or construct such improvements.

12.40.050 Application for Wireless Telecommunications Facility Permit

A. Application.

1. Application form. In addition to the information required of an applicant for an encroachment permit or any other permit required by this code, each applicant requesting approval of the installation or modification of a wireless telecommunications facility in the public right-of-way shall fully and completely submit to the city a written application on a form prepared by the director.

2. Simultaneous Cabling. No applicant seeking to install wireless antennas shall seek an encroachment permit for fiber or coaxial cable only. Applicants shall simultaneously request fiber installation or other cable installation when seeking to install antennas in the right-of-way.

B. Application contents. The director shall develop an application form and make it available to applicants upon request. The supplemental application form for a new or modified wireless telecommunications facility installation in the public right-of-way may require the following information, in addition to all other information determined necessary by the director:

1. Contact information. The name, address, email address, and telephone number of the applicant, owner and the operator of the proposed facility.

2. Signed Authorization. If the applicant is an agent, the applicant shall provide a duly executed letter of authorization from the owner of the facility. If the owner will not directly provide wireless telecommunications services, the applicant shall provide a duly executed letter of authorization from the person(s) or entity(ies) that will provide those services.

3. Owner Authorization. If the facility will be located on or in the property of someone other than the owner of the facility (such as a street light pole, traffic signal pole, utility pole, utility cabinet, vault, or cable conduit), the applicant shall provide a duly executed written authorization from the property owner(s) authorizing the placement of the facility on or in the property owner's property.

4. Description. A full written description of the proposed facility and its

purpose.

5. Engineering Plans. Detailed engineering plans of the proposed facility and related report prepared by a professional engineer registered in the state documenting the following:

a. Height, diameter and design of the facility, including technical engineering specifications, economic and other pertinent factors governing selection of the proposed design, together with evidence that demonstrates that the proposed facility has been designed to be the least visible equipment within the particular technology the carrier chooses to deploy. A layout plan, section and elevation of the tower structure shall be included.

b. A photograph and model name and number of each piece of equipment included.

c. Power output and operating frequency for the proposed antenna.

d. Total anticipated capacity of the structure, indicating the number and types of antennas and power and frequency ranges, which can be accommodated.

e. Sufficient evidence of the structural integrity of the pole or other supporting structure as required by the city, such as a TIA ANSI 222 report.

6. Justification Study. A justification study which includes the rationale for selecting the proposed use; if applicable, a detailed explanation of the coverage gap that the proposed use would serve; and how the proposed use is the least intrusive means for the applicant to provide wireless service. Said study shall include all existing structures and/or alternative sites evaluated for potential installation of the proposed facility and why said alternatives are not a viable option.

7. Site Plans. Site plan(s) to scale, specifying and depicting the exact proposed location of the pole, pole diameter, antennas, accessory equipment, access or utility easements, landscaped areas, existing utilities, adjacent land uses, and showing compliance with section 17.150.080.

8. Elevations. Scaled elevation plans of proposed poles, antennas, accessory equipment, and related landscaping and screening.

9. Environmental Assessment. A completed environmental assessment application.

10. Exemption Justification. If the applicant requests an exception to the requirements of this chapter (in accordance with section 17.150.190), the applicant shall provide all information and studies necessary for the city to evaluate that request.

11. Visual Impact Analysis. An accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the facility, including scaled photo simulations from at least 3 different angles.

12. RF Exposure Checklist. Completion of the radio frequency (RF) emissions exposure guidelines checklist contained in Appendix A to the Federal Communications Commission's (FCC) "Local Government Official's Guide to Transmitting Antenna RF Emission Safety" to determine whether the facility will be "categorically excluded" as that term is used by the FCC.

13. RF Compliance Report. For a facility that is not categorically excluded under the FCC regulations for RF emissions, the applicant shall submit an RF exposure compliance report prepared and certified by an RF engineer acceptable to the city that certifies that the proposed facility, as well as any facilities that contribute to the cumulative exposure in the subject area, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts Effective Radio Power "ERP") for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site. A Power Density Worksheet may be required, which worksheet requires, among other things, submission of technical data such as ERP per channel, antenna details such as the numbering and bearing of sectors, the center of radiation, desired output data, and the facility's distance from nearby structures.

14. FAA Documents. Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the facility.

15. Noise Study. A noise study prepared by a qualified acoustic engineer documenting that the level of noise to be emitted by the proposed wireless telecommunications facility will comply with this Code including section 17.150.080(A)(15)(b).

16. Traffic Control. A traffic control plan when the proposed installation is on any street in a non-residential zone. The city shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g. crane).

17. Landscape Plan. A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the site.

18. Propagation Maps. A written description identifying the geographic service area for the subject installation including geographic and propagation maps, that identifies

the location of the proposed facility in relation to all existing and planned facilities maintained within the city by each of the applicant, operator, and owner, if different entities, as well as the estimated number of potentially affected uses in the geographic service area. Regardless of whether a Master Deployment Plan Permit is sought, the applicant shall depict all locations anticipated for new construction and/or modifications to existing facilities, including collocation, within two years of submittal of the application. Longer range conceptual plans for a period of five years shall also be provided, if available.

a. If the applicant seeks to install a wireless telecommunications facility to address service coverage concerns, full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites.

b. If the applicant seeks to address service capacity concerns, a written explanation identifying the existing facilities with service capacity issues together with competent evidence to demonstrate the inability of those facilities to meet capacity demands.

19. CPCN. Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.

20. Application Fee. An application fee, and a deposit for a consultant's review as set forth in paragraph D of this section in an amount set by resolution by the city council and in accordance with California Government Code section 50030.

21. Mock-Up. Proof that a temporary mock-up of the facility and sign has been installed at the proposed location for a period of at least thirty (30) calendar days.

a. Applicant shall obtain an encroachment permit before installing the temporary mock-up, and must remove the temporary mock-up within five (5) calendar days of receiving a written notice to remove from the director.

b. When seeking the encroachment permit, the applicant shall provide address labels for use by the city in noticing all property owners within 500 feet of the proposed installation. The city shall mail a notice regarding installation of the mock-up at least five (5) business days prior to the installation.

c. The mock-up shall demonstrate the height and mass of the facility, including all interconnecting cables. The applicant shall not be entitled to install the facility it intends to install permanently. The mock-up may consist of story poles or the like.

d. The mock-up shall include a sign that displays photo simulations depicting before and after images, including any accessory equipment cabinet, and the telephone number of the Public Works Department.

e. The applicant shall be required to follow any other city practices or processes relevant to the installation of a mock-up as may be provided in a publicly accessible form or document.

f. After installation of the mock-up, the applicant shall certify that the mock-up accurately represents the height and width of the proposed installation and has been installed consistent with this Code.

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

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

1. Compliance with applicable radio frequency emission standards;
2. Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;
3. The accuracy and completeness of submissions;
4. Technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;
5. The applicability of analysis techniques and methodologies;
6. The validity of conclusions reached or claims made by applicant;
7. The viability of alternative sites and alternative designs; and
8. Any other specific technical issues identified by the consultant or designated by the city.

The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule which may be adopted by resolution. No permit shall be issued to any applicant which has not fully reimbursed the city for the consultant's cost, even if the cost exceeds the initial amount of the deposit.

17.150.060 Review Procedure

A. *Pre-submittal Conference.* Prior to application submittal, the city strongly encourages all applicants to schedule and attend a pre-submittal conference with Public Works Department staff to receive informal feedback on the proposed location, design and application materials. The pre-submittal conference is intended to identify potential concerns and streamline the formal application review process after submittal. Staff will endeavor to provide applicants with an appointment within five business days after receipt of a written request.

B. *Application Submittal Appointment.* All applications must be submitted to the city at a pre-scheduled appointment. Applicants may submit one (1) application per appointment but may schedule successive appointments for multiple applications whenever feasible as determined by the city. Staff will endeavor to provide applicants with an appointment within five business days after receipt of a written request.

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

1. *Planning Commission Hearings.* Any permit application under this chapter subject to planning commission approval (directly, or via appeal) shall require notice and a public hearing as required by section 17.88.020.C.5. The planning commission may approve, or conditionally approve, an application only after it makes the findings required in section 17.150.090.

2. *Decision by Planning Commission.* The Planning Commission may approve, or conditionally approve, an application only after it makes the findings required in section 17.150.090. Within ten days after the Planning Commission approves or conditionally approves an application under this chapter, the director shall issue a notice of the decision and any applicable conditions of approval shall be provided to the applicant at the contact information provided on the application.

3. *Notice of Shot Clock Expiration.* The applicant is required to provide the city written notice of the expiration of any applicable shot clock, which the applicant shall ensure is received by the city (e.g. overnight mail) no later than twenty (20) days prior to the expiration.

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

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

17.150.080 Requirements for Facilities within the Public Right-of-Way

A. *Design and Development Standards.* All wireless telecommunications facilities that are located within public right-of-way shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following:

1. General Guidelines:

a. The applicant shall employ screening, undergrounding and camouflage design techniques in the design and placement of wireless telecommunications facilities to ensure that the facility is as visually screened as feasible, to prevent the facility from dominating the surrounding area and to minimize significant view impacts from surrounding properties all in a manner that achieves compatibility with the community and in compliance with section 17.400.175 of this Code.

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

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

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

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

4. Equipment. The applicant shall use the least visible equipment possible. Antenna elements shall be flush mounted, to the extent feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless otherwise provided in this section, antennas shall be situated as close to the ground as possible.

5. Poles.

a. Facilities shall be located consistent with section 17.150.200.

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

c. Utility Poles. The maximum height of any antenna shall not exceed forty-eight (48) 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 twenty-four (24) 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 may be revised or superseded.

d. Light Poles. The maximum height of any antenna shall not exceed four (4) feet above the existing height of a light pole. For a design meeting the city's design standard, the maximum height of the antenna shall not exceed six (6) feet above the existing height of light pole. Any portion of the antenna or equipment mounted on a pole shall be no less than ten (10) feet above the ground and no less than sixteen and a half (16.5) feet above any drivable road surface.

e. Replacement Poles. If an applicant proposes to replace a pole in order to accommodate a proposed facility, the pole shall either be (i) designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials and style to the maximum extent feasible; or (ii) designed consistent with adopted wireless design guidelines.

f. Pole mounted equipment and enclosure, exclusive of antennas, shall not exceed four (4) cubic feet in total volume. Strand mounted equipment and enclosure shall not exceed (2) cubic feet in total volume.

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

7. Wind Loads. Each facility shall be properly engineered to withstand wind loads as required by this Code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.

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

9. Public Facilities. A facility shall not be located within the public right-of-way interfering with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility.

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

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

a. Unless city staff determines that there is no room in the public right-of-way for undergrounding, or that undergrounding is not feasible, an exception shall be required in order to place accessory equipment above-ground and concealed with natural or manmade features to the maximum extent possible.

b. When above-ground is the only feasible location for a particular type of accessory equipment and will be ground-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five (5) feet and a total footprint of fifteen (15) square feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be screened and/or camouflaged. Also, while pole-mounted equipment is generally the least favored installation, should pole-mounted equipment be sought, it shall be installed as required in this Chapter.

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

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

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

14. Lighting.

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

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

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

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

requirement when the applicant demonstrates a substantial public safety need.

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

15. Noise.

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

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

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

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

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

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

1. As built drawings. The permittee shall submit an as built drawing within ninety (90) days after installation of the facility. As-builts shall be in an electronic format

acceptable to the city which can be linked to the city's GIS.

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

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

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

3. Assignment. The permittee shall notify the city in writing at least ninety (90) days prior to any transfer or assignment of the permit. The written notice required in this section must include: (1) the transferee's legal name; (2) the transferee's full contact information, including a primary contact person, mailing address, telephone number and email address; and (3) a statement signed by the transferee that the transferee shall accept all permit terms and conditions. The director may require the transferor and/or the transferee to submit any materials or documentation necessary to determine that the proposed transfer complies with the existing permit and all its conditions of approval, if any. Such materials or documentation may include, but shall not be limited to: federal, state and/or local approvals, licenses, certificates or franchise agreements; statements; photographs; site plans and/or as-built drawings; and/or an analysis by a qualified radio frequency engineer demonstrating compliance with all applicable regulations and standards of the Federal Communications Commission. Noncompliance with the permit and all its conditions of approval, if any, or failure to submit the materials required by the director shall be a cause for the city to revoke the applicable permits pursuant to and following the procedure set on in section 17.150.180.

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

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

the bond and shall be specified in the conditions of approval.) Before issuance of any building permit, permittee must submit said security instrument.

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

7. Permit Expiration. A condition setting forth the permit expiration date in accordance with section 17.150.160 shall be included in the conditions of approval.

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

9. Permit Transfer. The permittee shall not transfer the permit to any person prior to the completion of the construction of the facility covered by the permit, unless and until the transferee of the permit has submitted the security instrument required by section 17.150.080(B)(5).

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

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

12. Repair Obligations. The permittee shall repair, at its sole cost and expense, any damage including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation and/or maintenance of a wireless telecommunications facility in the public right-of-way. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the city engineer. Such time period for correction shall be based on the facts and circumstances, danger to the community and severity of the disrepair. Should the permittee not make said correction within the time period allotted the city engineer shall cause such repair to be completed at permittee's sole cost and expense.

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

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

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

16. Hold Harmless. Additionally, to the fullest extent permitted by law, the permittee, and every permittee and person in a shared permit, jointly and severally, shall defend, indemnify, protect and hold the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers harmless from and against all claims, suits, demands, actions, losses,

liabilities, judgments, settlements, costs (including, but not limited to, attorney's fees, interest and expert witness fees), or damages claimed by third parties against the city for any injury claim, and for property damage sustained by any person, arising out of, resulting from, or are in any way related to the wireless telecommunications facility, or to any work done by or use of the public right-of-way by the permittee, owner or operator of the wireless telecommunications facility, or their agents, excepting only liability arising out of the sole negligence or willful misconduct of the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers.

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

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

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

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

21. "Permittee" shall include the applicant and all successors in interest to this permit.

17.150.090 Findings.

No major wireless telecommunication facilities permit shall be granted for a wireless telecommunications facility unless the approving party makes all of the following findings:

A. All notices required for the proposed installation have been given.

B. The proposed facility has been designed and located in compliance with all applicable laws, including the requirements of this Chapter 17.150.

C. The applicant has provided sufficient 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 otherwise obtained a legal authorization to use the public right-of-way.

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

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

F. There is no known feasible alternate location which is available to the applicant at commercially reasonable rates that would be less intrusive upon the values intended to be protected by Chapter 17.150, and which location would allow the applicant to meet its reasonable wireless coverage objectives.

17.150.100 Planning Commission.

The Planning Commission will review and approve, conditionally approve, or deny Major Wireless Telecommunications Facility Permit and Master Deployment Plan Permits. Except as otherwise provided herein, said permits shall be subject to all of the same rules as conditional use permits except that the findings in section 17.150.090 shall be used instead.

17.150.110 Nonexclusive Grant

No permit or approval granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the city for any purpose whatsoever. Further, no approval shall be construed as any warranty of title.

17.150.120 Emergency Deployment.

A COW shall be permitted for the duration of an emergency declared by the city or at the discretion of the director. "COW" means a "cell on wheels," which is a wireless telecommunications facility temporarily rolled in or temporarily installed.

17.150.130 Operation and Maintenance Standards.

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

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

1. After discovery of the need by the permittee, owner, operator or any designated maintenance agent; or
2. After permittee, owner, operator or any designated maintenance agent receives notification from the city.

B. Each permittee of a wireless telecommunications facility shall provide the director with the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility ("contact information"). Contact information shall be updated within seven (7) days of any change.

C. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good 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.

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

E. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.

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

17.150.140 [Reserved]

17.150.150 No Dangerous Condition or Obstructions Allowed.

No person shall install, use or maintain any facility which in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impairs or impedes the flow of pedestrian, bicycle, or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location. A facility, an equipment enclosure, and ancillary equipment must be designed and located in a manner that does not materially obstruct the roadway views of vehicles, bicycles, and pedestrians traveling within the public right-of-way, and does not obstruct the visibility of signs located within the right-of-way.

17.150.160 Permit Expiration.

A. Unless Government Code section 65964, as may be amended, authorizes the city to issue a permit with a shorter term, a permit for any wireless telecommunications facility shall be valid for a period of ten (10) years, unless pursuant to another provision of this Code it lapses sooner or is revoked. At the end of ten (10) years from the date of issuance, such permit shall automatically expire.

B. A permittee may apply for a new permit within one hundred and eighty (180) days prior to expiration. Said application and proposal shall comply with the city's current code requirements for wireless telecommunications facilities.

17.150.170 Cessation of Use or Abandonment.

A. A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for ninety (90) or more consecutive days unless the permittee has obtained prior written approval from the director which shall not be unreasonably denied. If there are two (2) or more users of a single facility, then this provision shall not become effective until all users cease using the facility.

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

C. Failure to inform the director of cessation or discontinuation of operations of any existing facility as required by this section shall constitute a violation of any approvals and be grounds for:

1. Litigation;
2. Revocation or modification of the permit;
3. Acting on any bond or other assurance required by this article or conditions of approval of the permit;
4. Removal of the facilities by the city in accordance with the procedures established under this Code for abatement of a public nuisance at the owner's expense; and/or
5. Any other remedies permitted under this Code.

17.150.180 Removal and Restoration – Permit Expiration, Revocation or Abandonment.

A. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the permit or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the city. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the city. The facility shall be removed from the property, at no cost or expense to the city.

B. Failure of the permittee, owner or operator to promptly remove its facility and restore the property within ninety (90) days after expiration, earlier termination or revocation of the permit, or abandonment of the facility, shall be a violation of this Code.

Upon a showing of good cause, an extension may be granted by the director where circumstances are beyond the control of the permittee after expiration. Further failure to abide by the timeline provided in this section shall be grounds for:

1. Prosecution;
2. Acting on any security instrument required by this chapter or conditions of approval of permit;
3. Removal of the facilities by the city in accordance with the procedures established under this Code for abatement of a public nuisance at the owner's expense; and/or
4. Any other remedies permitted under this Code.

C. *Summary Removal.* In the event the director or city engineer determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), the director or city engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five (5) business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within sixty (60) days, the facility shall be treated as abandoned property.

D. *Removal of Facilities by city.* In the event the city removes a facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the city for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the city may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this Code. Unless otherwise provided herein, the city has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the city destroys any such facility not timely removed by the permittee, owner or operator after notice, or removed by the city due to exigent circumstances.

17.150.190 Exceptions.

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

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

1. The proposed wireless facility qualifies as a “personal wireless service facility” as defined in United States Code, Title 14, section 332(c)(7)(C)(ii);

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

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

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

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

D. Independent Consultant. The city shall have the right to hire, at applicant’s expense, an independent consultant to evaluate issues raised by the application and to submit recommendations and evidence in response to the application.

17.150.200 Location Prohibitions and Preferences

A. Prohibited. Unless otherwise required by law, no wireless facility in the right of way may be located in any area the City Engineer determines is inconsistent with existing or planned or expected uses of the right of way.

B. Especially Discouraged. Unless authorized by a major wireless telecommunications facility permit, telecommunications facilities shall not be allowed within those portions of the right of way which are in any residential zone, the Sales Tax Geographic Area 5 (7-Hills Business District), or in the Historical Combining District.

C. Discouraged. Wireless telecommunication facilities are discouraged from being in the Scenic Corridor Combining District. A facility in the scenic corridor

combining district must either obtain a major wireless telecommunications facility permit or a minor wireless telecommunications facility permit.

- D. Encouraged. Wireless telecommunication facilities are encouraged to be in industrial and commercial zones.

17.150.210 Effect on Other Ordinances.

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

17.150.220 State or Federal Law.

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

B. If subsequent to the issuance of the city attorney's written determination pursuant to (A) above, the city attorney determines that the law has changed and that such discretionary permitting is permissible, the city attorney shall issue such determination in writing with citations to legal authority and all discretionary permitting requirements shall be reinstated. The city attorney's written determination shall be a public record.

17.150.230 Nonconforming Wireless Telecommunications Facilities in the Right-of-Way.

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

B. Nonconforming wireless telecommunications facilities shall, within ten (10) years from the date such facility becomes nonconforming, be brought into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this Code at such time, to the extent the city can require such compliance under federal and state law.

C. An aggrieved person may file an appeal to the city council of any decision of the director made pursuant to this section. In the event of an appeal alleging that the ten (10)

year amortization period is not reasonable as applied to a particular property, the city council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property.”

SECTION 4. CEQA. This Ordinance is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15061 because CEQA only applies to projects which have the potential to have a significant impact on the environment and because the environmental impact of each individual project will be analyzed at the time that the project is submitted. There are no impacts of this ordinance which have the potential to cumulatively cause a significant effect on the environment because the city is so small, and it is not anticipated that there will be enough facilities to cause such an impact. Furthermore, this ordinance does not authorize any activity not previously allowed.

SECTION 5. Immediately Effective. Based on the findings set forth above, this is an urgency ordinance adopted for the immediate preservation of the public peace, health, safety and welfare. As such, this ordinance shall become effective immediately.

SECTION 6. Expiration Date. This ordinance shall expire at 11:59 p.m. on October 9, 2019 unless extended or prematurely terminated.

SECTION 7. Certification. The City Clerk shall certify to the passage and adoption of this ordinance as required by law.

PASSED, APPROVED AND ADOPTED this ___th day of _____2018 by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

David Parker, Mayor

ATTEST:

Niel Locke, City Clerk

APPROVED AS TO FORM

Hal DeGraw, City Attorney

I, _____, City Clerk of Nevada City, do hereby certify that the foregoing urgency ordinance was introduced and adopted at a meeting thereof on the ____ day of _____ 2018.

Niel Locke, City Clerk