



CITY OF LAKEPORT COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

DATE: July 10, 2019

FILE NO: AR 19-03

APPLICANT/OWNER: Lake County Tribal Health
Steven W. Rugg
925 Bevins Court
Lakeport, CA 95453

**REPRESENTATIVE/
AGENT:** Vincent Price Design Group
3720 Main Street
Kelseyville, CA. 95451

LOCATION: 925 Bevins Court (25-462-23)

GENERAL PLAN: Office Space

ZONING: PO, Professional Office

STAFF CONTACT: Daniel D. Chance, Associate Planner *DC*

REQUESTED ACTION: The Planning Commission is being asked to review and approve an application for an Architectural and Design Review that allows a 680 square foot addition in the rear of the Lake County Tribal Health building at 925 Bevins Court, further described as APN 025-462-23.

GENERAL PLAN AND ZONING DISTRICT: The subject property is designated Office Space according to the City of Lakeport General Plan Land Use Map and is within the PO, Professional Office zoning district according to the City Zoning Map. Approval of this Minor Architectural and Design Review project allows a 680 square foot addition and is consistent with the intent of the General Plan and 17.27, Architectural and Design Review, in respect to community design.

Section 17.27.020 of the Municipal Code indicates that Architectural and Design Review is required for the proposed exterior remodel of commercial buildings that result in altered appearances, additions, extensions, or enlargements. It further indicates that no building permit or other entitlement for remodel shall be issued until the site plan; the architectural elevations and related plans have been reviewed and approved by either the Planning Commission or Community Development Director as provided for in the Zoning Ordinance.

The size of the project at 680 square feet requires the project be reviewed and approved by the Planning Commission.

PROJECT DESCRIPTION: The proposed project consists of constructing a 680 square foot addition to an existing Tribal Health building. The purpose of the project is to replace a temporary office trailer on the rear of the Tribal Health property. The addition would be located in the rear of an existing building and would not be visible from any public viewing area. The use of the addition would expand the existing maintenance and receiving area, which would allow more area for exercise and therapy areas in the existing building.

Staff reviewed all of the criteria applicable to this project and has determined that the proposed improvements are in compliance with the architectural and design review standards set forth in the Municipal Code at this location. A permit for a 19,883 sq. ft. addition for Tribal Health was approved by the Planning Commission on March of 2009, which has been developed. Tribal Health is currently preparing a Master Plan for this property and adjoining properties for future expansion. Project Conditions of Approval and vicinity map are attached.

The project does not include any changes to the landscaping, lighting or parking in the immediate area of the project. The project would require 2 to 3 additional parking spaces for the addition. The overall parking on the Tribal Health property currently has adequate parking, with additional parking would be included in the proposed master plan.

A temporary trailer was approved on the site by the Planning Commission on July 13, 2016, with a condition that the temporary trailer be removed on and before July 13, 2019, or submit an application prior to that date. At this time, a condition for this project requires the removal of the temporary trailer at the time of the building permit final for the addition.

PARKING LAYOUT: The site plan (C-1) identifies the parking layout with a hammerhead turning area at a dead end road and relocation of the garbage storage containers. Currently, the parking circulation has the roadway extending around to the existing parking lot to the east of the building. Tribal Health, in discussion with staff indicated they are not planning to change the vehicle circulation with this project, and is not planning to restrict that roadway, and would continue to access the parking to the east. The parking circulation as defined on the smaller site plan (11" by 17") reflects the existing and future parking circulation plan.

AGENCY REVIEW COMMENTS: The submitted plans were provided to the Building Official, City Engineer, City Public Works, Air Quality Management District, Police and Fire District for their review.

- Building Official: No significant issues.
- City Engineer: Sheet C-1 needs to be revised to show actual current conditions. Provide certification that the ADA parking and travel path to building complies with current codes.
- Public Works, Roads: Project is on private property with no impacts to city streets. If it is going to impact the sidewalk, it would need to be addressed.
- Public Works, Utilities: Did not respond.

- City Police: No Police concerns.
- Fire District: Fire mitigation fee will be due, otherwise no comments.

The conditions of approval and the Building Permit review would address many of the concerns raised, while other concerns raised would be addressed as part of the Building Permit process. Project Conditions of Approval and vicinity map are attached.

ARCHITECTURAL AND DESIGN REVIEW APPLICATION FINDINGS: As described, the attached plans and photos depict the design and color of the addition on the property is similar to the other buildings on the Tribal Health property, as well as, the 680 square foot addition behind existing buildings at Tribal Health would not have a significant visual impact or have a significant impact the on the aesthetics of the immediate area.

Finding 1: The proposed project is consistent with the purpose of the Lakeport Zoning Ordinance. The property is zoned PO, Professional Offices which allows office use, which would be reflected with the addition, with the long term goal of developing a Master Plan for the entirety of the Tribal Health facilities. The project as proposed is consistent with the Lakeport Zoning Ordinance.

Finding 2: The project is in substantial compliance with the design criteria. The materials and color associated with the addition located in the rear of the property reflects a design consistent with the existing buildings, and a harmonious design within the immediate area, and is not visible from a public viewing area. The project is in compliance with the criteria and standards for 17.27.110 Architectural and Design Review.

Finding 3: The project is consistent with the Lakeport General Plan. The project as proposed is consistent with the objective and policies of the Lakeport General Plan. The General Plan encourages commercial development designs which foster economic growth, reduce land consumption, and compliment adjacent land uses. The proposed addition reflects that objective by fostering economic growth, while complimenting adjacent land uses.

CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS:

Finding 4: The project is categorically exempt from the California Environmental Quality Act. The proposed project has been determined to be categorically exempt from the provisions of the California Environmental Quality Act according to Section 15303(c) of the 2014 CEQA guidelines. This section allows the construction of:

- (c) A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2,500 square feet in floor area.

CONCLUSION, RECOMMENDATION, AND CONDITIONS: Based on the information provided by the applicant and the comments received from City staff, a finding is made that the 680 square foot addition located in the rear of the Tribal Health property located at 925 Bevins Court is in general conformance with the Lakeport Municipal Code Section 17.27.110 (Architectural and Design Review criteria and standards). The proposed improvements will not significantly impact the appearance of the buildings and improve the functionality of the existing professional buildings. The proposed project has been determined to be exempt from the provisions of the California

Environmental Quality Act according to Section 15303(c) of the 2018 CEQA guidelines. This section categorically exempts projects that represent small additions under 2,500 square feet.

Staff recommends that the Planning Commission approve the Minor Architectural and Design Review application subject to the conditions of approval set forth in the staff report (Attachment B).

SAMPLE MOTION

Categorical exemption Approval

I move that the Planning Commission find that AR 19-03 as applied for by Lake County Tribal Health is categorically exempt pursuant to Section 15303(c) of the CEQA Guidelines.

Architectural and Design Review Approval

I move that the Planning Commission find that the Architectural and Design Review applied for by Lake County Tribal Health, on property located at 925 Bevins Court does meet the requirements of Section 17.27.080 of the Lakeport Zoning Ordinance; consistent with the objectives and policies of the Lakeport General Plan; and subject to the project conditions of approval (Attachment B), and with the findings listed in the July 10, 2019 staff report.

The Planning Commission's approval of the applications shall be subject to the conditions of approval specified in the staff report and/or as amended by the Planning Commission at the public hearing.

Attachment A: Vicinity Map
Attachment B: Project Conditions Agreement
Attachment C: Application; Site Plan, Floor Plan, Elevations, & Colors

cc: Applicant/Property Owner
Planning Commission

Attachment A: Vicinity Map



Lake County Tribal Health Addition (AR 19-03) Vicinity Map

Attachment B:
Project Conditions
Agreement



CITY OF LAKEPORT
Community Development Department
225 Park Street
Lakeport, Ca 95453

PROJECT CONDITIONS AGREEMENT

Land Use Application File No. AR 19-03

*This Agreement is entered into by **Lake County Tribal Health**
(hereinafter Applicant/Owner).*

RECITALS

WHEREAS, Applicant/Owner applied to the City of Lakeport for a Minor Architectural and Design Review approval for a 680-square foot addition ; and

WHEREAS, the City of Lakeport has reviewed and approved the project for conformance with the Architectural and Design Review criteria and standards set forth in Section 17.27.110 of the Lakeport Municipal Code; and

WHEREAS, the proposed project is hereby approved subject to the following conditions:

1. The applicant/owner shall sign a standard City of Lakeport Project Conditions Agreement which lists the conditions of approval and shall agree to said conditions. A copy of the signed agreement shall be returned to the Community Development Department.
2. The project shall be developed in accordance with the plans and specifications received by the City in May 1, 2019. Minor alterations may be approved in writing by the City of Lakeport Community Development Director or his designee.
3. The applicant/owner shall maintain the exterior building features in good condition for the life of the project. Damaged or dilapidated portions of the structure or related improvements shall be repaired or replaced as necessary.
4. The final building plans shall include extending the walkway for the entryway to the sidewalk, that walkway shall meet ADA standards.
5. Prior to issuance of occupancy, the applicant/owner shall remove the temporary Office trailer.
6. All other conditions pertaining to the property associated with Use Permit (UP 09-02) and Architectural and Design Review (AR 09-03) shall remain in effect except as where specifically modified by this permit.

NOW, THEREFORE, IT IS AGREED:

1. That the applicant/owner has read and agrees to each and every item and condition herein.
2. That the development and use of the real property described herein shall conform to the conditions listed above and all City of Lakeport Ordinances and Resolutions where applicable.
3. That said conditions shall be binding on all owners or persons having or acquiring any right, title, or interest in said real property, or any part thereof, subject to this agreement.

Dated: _____

APPLICANT/OWNER

SIGNATURE- Steven W. Rugg

PLEASE PRINT NAME

cc: Project File

Attachment C:
Application; Site Plan,
Floor Plan, & Elevation



City of Lakeport

225 Park St – Lakeport CA 95453

Phone: (707) 263-5613 EXT. 205 FAX: (707) 263-9314

www.cityoflakeport.com

LAND USE APPLICATION

WITH OR WITHOUT CATEGORICAL EXEMPTION

APPLICANT'S INFORMATION	LAND OWNER'S INFORMATION
Name <u>Steven Rugg</u>	Name <u>Ernesto Padilla, CEO</u>
Company Name <u>Rugg's Construction Service</u>	Company Name <u>Lake County Tribal Health</u>
Mailing Address <u>P.O. Box 739</u>	Mailing Address <u>925 Bevins Court</u>
City, State, Zip <u>Redwood Valley, CA. 95470</u>	City, State, Zip <u>Lakeport, CA. 95453</u>
Phone <u>(707) 972-0500</u> Fax _____	Phone <u>(707) 263-8382</u> Fax _____
Email <u>srugg@att.net</u>	Email <u>epadilla@lcthc.org</u>

AGENT, ENGINEER, OR ARCHITECT'S INFORMATION (if any)	
Name <u>Vincent Price Design Group</u>	Company Name _____
Mailing Address <u>3720 Main Street</u>	Phone <u>(707) 279-2525</u> Fax _____
City, State, Zip <u>Kelseyville, CA. 95451</u>	Email _____

PROJECT INFORMATION	
Project location: <u>925 Bevins Court, Lakeport</u>	Assessor Parcel No.(s): <u>025-462-230</u>
Current land use: <u>Outpatient Health Clinic</u>	Size of existing parcel: <u>6.25 acres</u>
Current Zoning: <u>Professional Office</u>	Current General Plan Designation: _____
Subdivision tract name: _____	Lot and block numbers: _____
Description of proposed project: <u>See attached Project Description</u>	

ATTACH SUPPLEMENTAL INFORMATION AS REQUIRED

[Signature] 5/1/19
SIGNATURE OF APPLICANT DATE

SIGNATURE OF LAND OWNER DATE

LAND USE APPLICATIONS REQUIRED FOR PROPOSED PROJECT:

<input type="checkbox"/>	\$661.60	Abandonment of Right-of-Way
<input type="checkbox"/>	1,901.44*	Annexation
<input type="checkbox"/>	142.47	Archeological Review
<input type="checkbox"/>	2,701.64*	Architectural & Design Review
<input checked="" type="checkbox"/>	684.43	Arch. & Design Review (Minor)
<input type="checkbox"/>	86.04	Arch. & Design Review (Small Project)
<input type="checkbox"/>	284.93	Approved Plan Revision
<input checked="" type="checkbox"/>	128.35	Categorical Exemption
<input type="checkbox"/>	256.70	Certificate of Compliance
<input type="checkbox"/>	1,197.50	Development Agreement
<input type="checkbox"/>	812.45	Environmental Review
<input type="checkbox"/>	235.20	Fence Request
<input type="checkbox"/>	313.60	Free-Standing Sign
<input type="checkbox"/>	741.43	General Plan Amendment

<input type="checkbox"/>	\$ 855.23	Lot Line Adjustment
<input type="checkbox"/>	114.23	Minor Exception
<input type="checkbox"/>	448.46*	Formal Concept Plan Review
<input type="checkbox"/>	88.87 & up**	Reapportionment – Sewer Assessment
<input type="checkbox"/>	228.03	Shoreline Development
<input type="checkbox"/>	1,788.97*	Tentative Parcel Map
<input type="checkbox"/>	2,582.23*	Tentative Subdivision Map
<input type="checkbox"/>	627.20	Use Permit, Major
<input type="checkbox"/>	165.40	Use Permit, Minor
<input type="checkbox"/>	655.87	Variance
<input type="checkbox"/>	213.70	Voluntary Merger
<input type="checkbox"/>	998.13	Zone Change
<input type="checkbox"/>	174.11*	Zoning Permit
<input type="checkbox"/>		Other

*Planning and Engineering Fees ** Engineering Fee

Total Fees Collected: \$ 812.78 Receipt # _____ Initials _____ Date _____

Revised 7/1/2018

Lake County Tribal Health Consortium
Physical Therapy Remodel Project

PROJECT DESCRIPTION:

The Lake County Tribal Health Consortium (LCTHC) proposes to construct an addition to one of their buildings located on their 6.25 acre site at 925 Bevins Court, Lakeport (APN# 025-462-230). There are currently four (4) distinct buildings on the site that total 32,431 sf of space. The entire facility functions as an outpatient health clinic, an allowable use under the Professional Office, or "PO" City zoning.

There are currently 141 parking stalls on the property, 12 of which are ADA. Required parking for the 32,431 sf facility is one space for every 250 sf, or 130 total. The proposed addition will add 700 sf to the Maintenance/Receiving Building, bringing up the required number of parking spaces to 133.

The proposed addition would add approximately 700 sf of new space to the existing 2,380 sf Maintenance/Receiving Building. The Maintenance/Receiving Building is divided into three distinct areas of use: 1) A maintenance department, 2) a receiving area for goods, supplies and equipment, and 3) an exercise/physical therapy room.

This project would expand the exercise/therapy areas of the building, enabling a full time physical therapist and assistant to work with clients in a quieter, larger, more therapeutic environment. The new addition would accommodate two new offices and about 480 sf of exercise space. One new handwashing sink would be added.

The addition will be built in the same manner as the existing building, done in such a way that once completed the addition will be indistinguishable from the rest of the building. The wood frame structural components, window sizes and tinting, elastomeric stucco, rock face wainscot, asphalt tab roofing and other elements of the building will match the existing. The addition has been designed to blend into the structure and mimic the same design features that are prevalent throughout all four buildings on the site.

Exterior colors are predominately earth tones, with the rock wainscot being a darker brown than the tan colors of the factory mixed stucco/Portland cement acrylic finish. The two-tone green gutter/facias provide a framing effect for the building, separating the browns of the walls from the darker browns of the sloped asphalt roofing. The 3-tab asphalt roofing incorporates a Native inspired geometric design that will be carried through with the new addition.

A wooden trellis that currently exists on the South side will be moved to the West side of the structure, to make room for the addition.

The new addition will not be visible from Bevins Court and is screened by a good number of trees from any views that might be had from the City Corps Yard or the other properties in the vicinity across and South of Forbes Creek.

Exiting in case of emergency has provided for accessibility exit paths of travel. The building is fire sprinklered and alarmed and the addition will be as well. No new site or roof top equipment will be visible to the street.

**Lake County Tribal Health Consortium
Physical Therapy Remodel Addition**



SW Corner Existing Bldg – New Addition Location



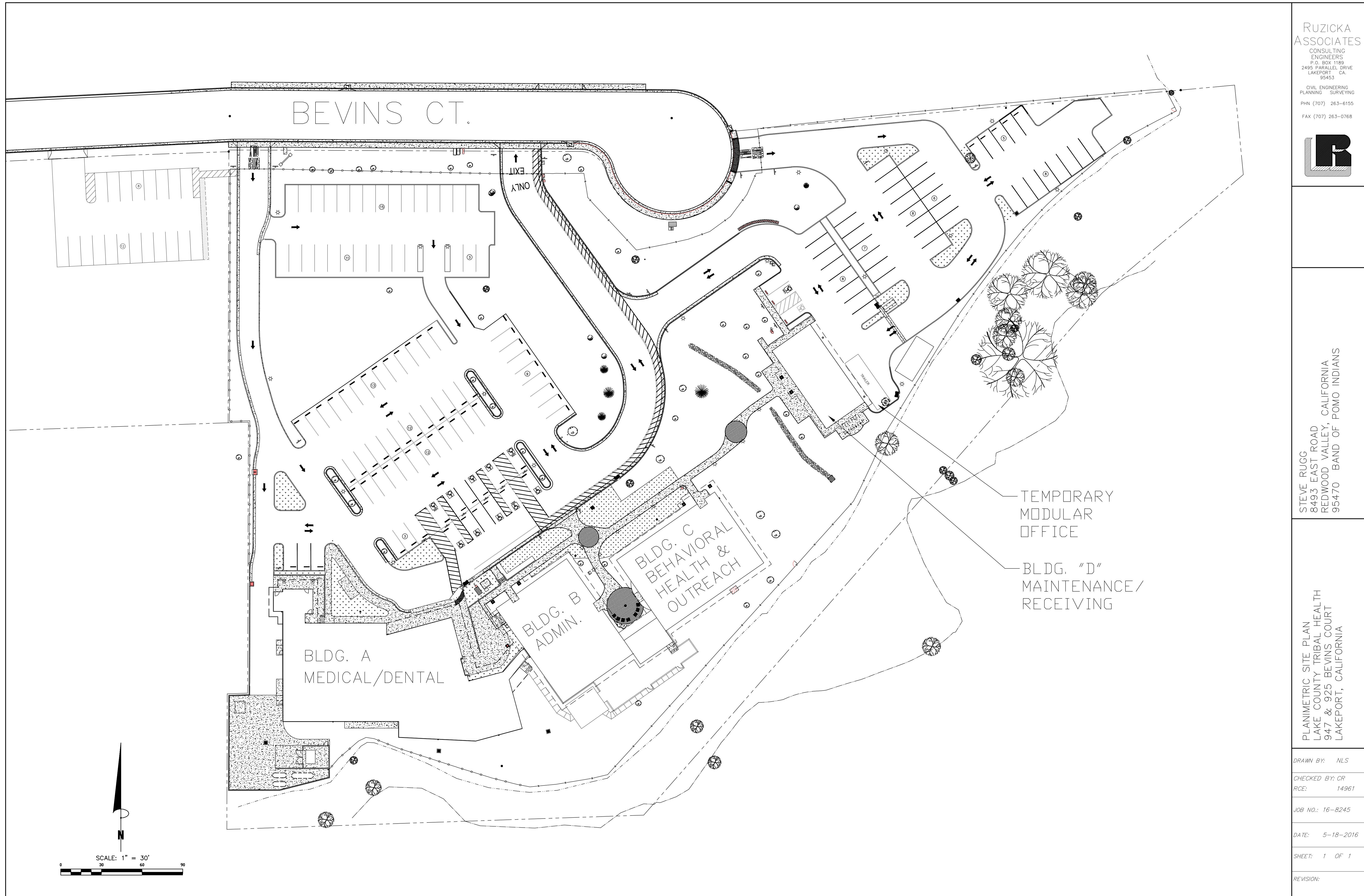
South side of building – New Addition Location



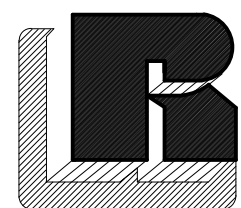
North Side of Building to Receive Addition



Looking South along Western Side



RUZICKA
ASSOCIATES
CONSULTING
ENGINEERS
P.O. BOX 1189
2495 PARALLEL DRIVE
LAKEPORT, CA.
95453
CIVIL ENGINEERING
PLANNING SURVEYING
PHN (707) 263-6155
FAX (707) 263-0768



STEVE RUGG
8493 EAST ROAD
REDWOOD VALLEY, CALIFORNIA
95470 BAND OF POMO INDIANS

PLANIMETRIC SITE PLAN
LAKE COUNTY TRIBAL HEALTH
947 & 925 BEVINS COURT
LAKEPORT, CALIFORNIA

DRAWN BY: NLS

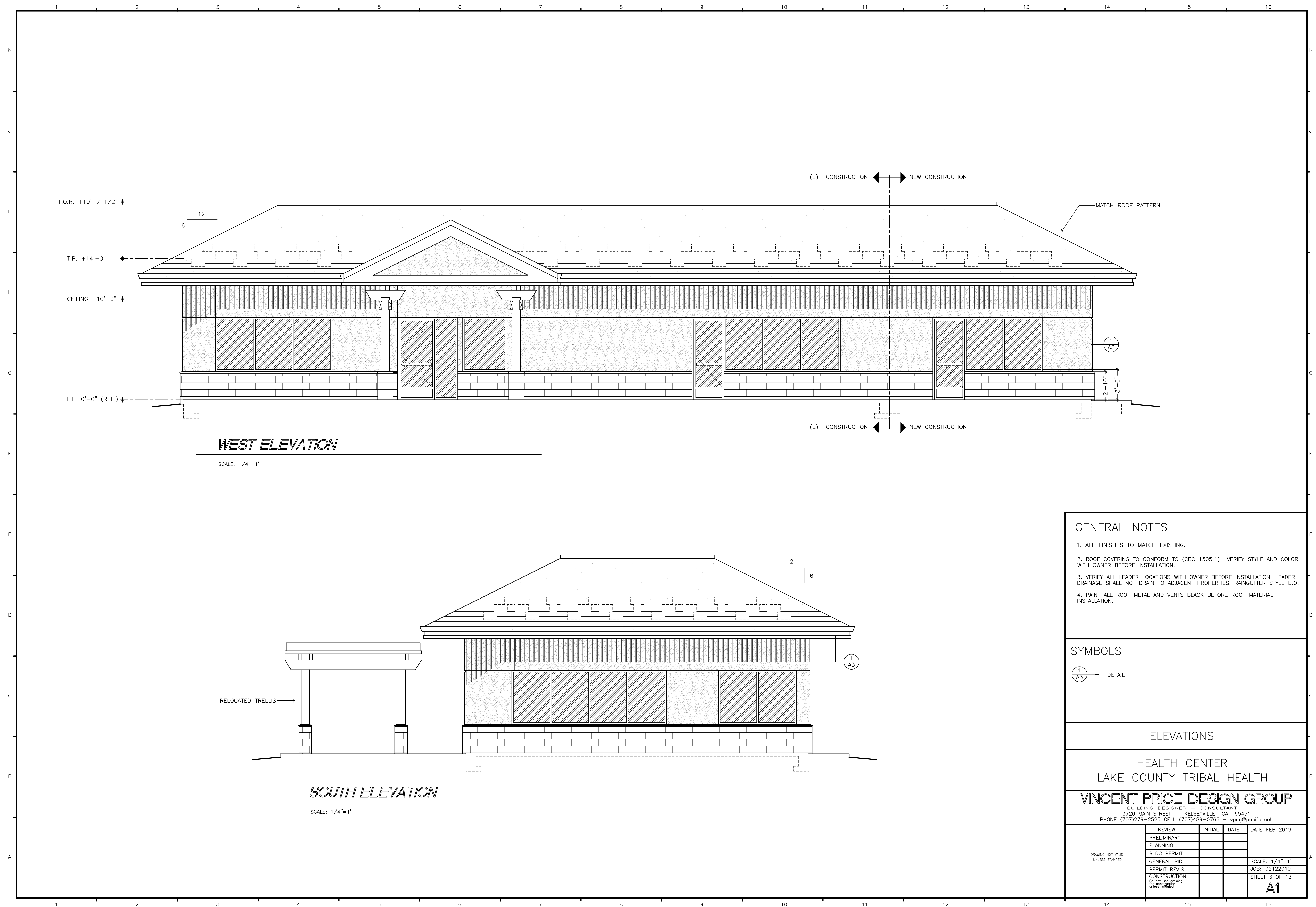
CHECKED BY: CR
RCE: 14961

JOB NO.: 16-8245

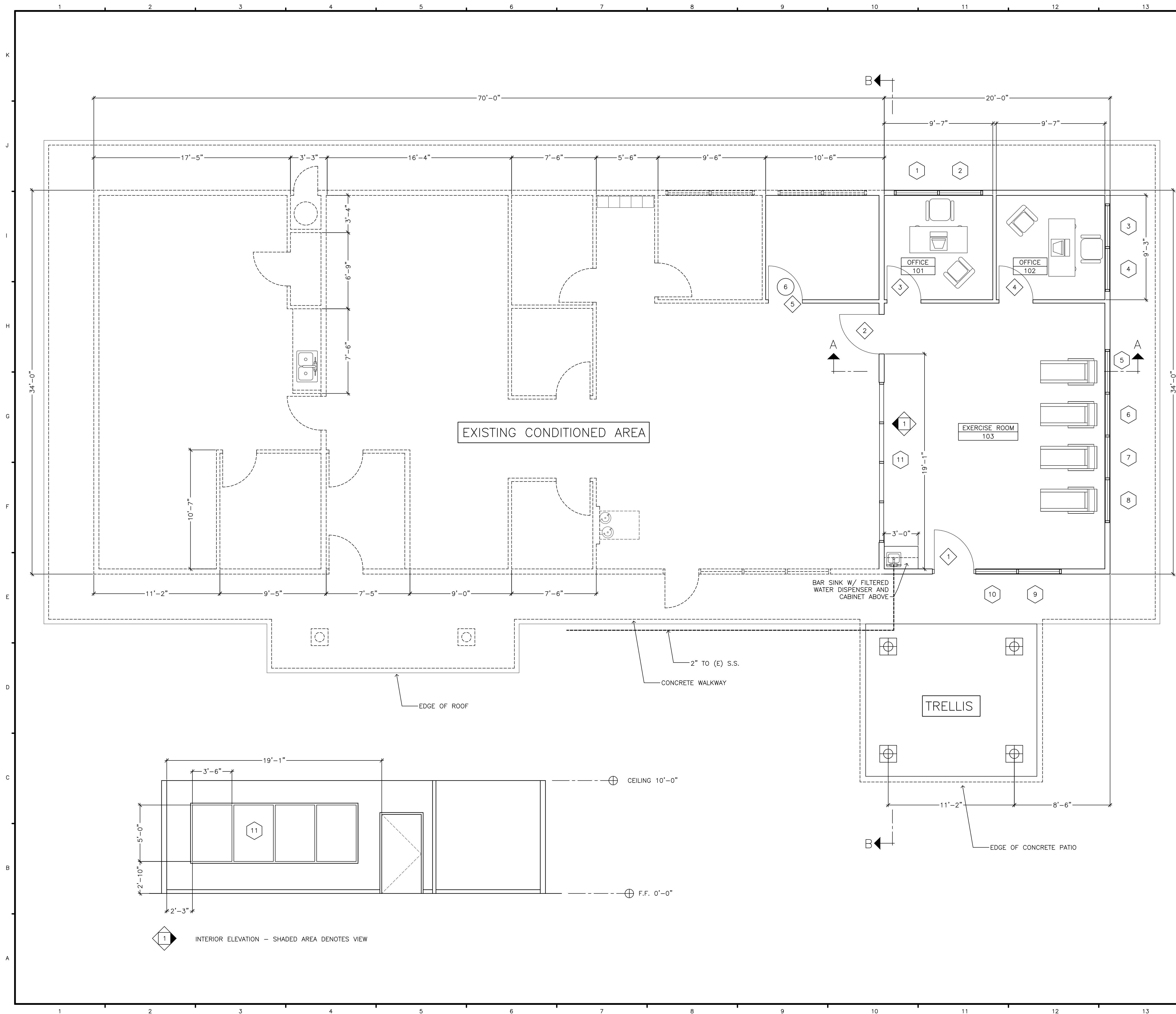
DATE: 5-18-2016

SHEET: 1 OF 1

REVISION:



E:\Construction Documents\Drawings-Active\Tribal Health - Spa\A2 Floor plan.dwg, 2/25/2019 10:39:55 AM



SCOPE OF WORK

1. ALL DIM'S SHOWN ARE TO FACE OF FRAMING.
2. ADD 20' X 34' (680 S.F.) BUILDING EXTENSION ONTO EXISTING.
3. RELOCATE EXISTING TRELLIS AND PROVIDE CONCRETE PATIO BELOW.
4. REMOVE EXISTING SOUTH FACING DOOR/WINDOW ASSEMBLY AND REUSE AT OTHER LOCATIONS.
5. ALL FINISHES TO MATCH EXISTING.
6. CLOSE IN WITH NEW WALL AND DOOR.

FLOOR FINISH

RESILIENT FLOOR TILE:
12"x12"x1/8" VINYL COMPOSITION TILE
ARMSTRONG: IMPERIAL TEXTURE STANDARD EXCELON
RESILIENT BASE:
ROPPE, 4" RUBBER BASE, P154 SALEM BLUE

PAINT

DUNN-EDWARDS, SP-205 SUN SEEKER

DOOR SCHEDULE

NO.	SIZE	LOCKSETS
1	3670 1 LITE	ENTRY W/ DEADBOLT
2	3670 SOLID	KEYED
3	3070	KEYED
4	3070	KEYED
5	3070	KEYED

DOOR #1 FROM EXISTING SOUTH WALL

WINDOW SCHEDULE

NO.	SIZE	REMARKS
1 *	3650 FIXED	DUAL GLAZED - GREEN TINT GLASS
2 *		
3 *		
4 *		
5	MATCH EXISTING	
6		
7		
8		
9		
10		
11	(4) 3650 FIXED	

* WINDOWS 1 THRU FOUR FROM SOUTH WALL

SYMBOLS

- SECTION A
- 1 INTERIOR ELEVATION - SHADED AREA DENOTES VIEW
- 1 DOORS
- 1 WINDOWS
- 1 BUILDING NOTES

ROOM	ROOM NAME
101	ROOM ID

FLOOR PLAN

HEALTH CENTER
LAKE COUNTY TRIBAL HEALTH

VINCENT PRICE DESIGN GROUP

BUILDING DESIGNER - CONSULTANT
3720 MAIN STREET KELSEYVILLE, CA 95451
PHONE (707)278-2525 CELL (707)489-9766 - vpdg@pacific.net

REVIEW	INITIAL	DATE	DATE:FEB 2019
PRELIMINARY			
PLANNING			
BLDG PERMIT			
GENERAL BID			SCALE: 1/4"=1"
PERMIT REV'S			JOB: 02122019
CONSTRUCTION			SHEET 4 OF 15

DRAWING NOT VALID
UNLESS STAMPED

A2



CITY OF LAKEPORT COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

DATE: July 10, 2019

FILE NO: ZC 19-02/CE 19-06

OWNER: All properties through-out
the City of Lakeport

APPLICANT: City of Lakeport
225 Park Street
Lakeport, CA 95453

LOCATION: City wide

STAFF CONTACT: Daniel D. Chance, Associate Planner *DC*

REQUESTED ACTION: The Planning Commission is being asked to review and make a recommendation to the City Council to Approve a Telecommunication Ordinance for the City of Lakeport. The adoption of the Telecommunication Ordinance would not only require the adoption of the ordinance, it would also include zoning changes to each zoning designations and specific criteria in Title 17 Zoning Ordinance. The purpose of the Telecommunication Ordinance is to replace an Urgency Ordinance that was approved by the City Council on April 2, 2019.

PROJECT DESCRIPTION: On April 2, 2019, the City Council adopted an Urgency Ordinance for wireless Communication Facilities for the City of Lakeport (17.41). The Ordinance established a procedure to meet all new Federal Communication Commission (FCC) regulations to address wireless communication facilities, colocation, modification to wireless facilities and small wireless facilities.

On May 8, 2019, the Planning Commission and Community Development Department staff reviewed the urgency ordinance and had comments on the ordinance that may need to be addressed. At that time, the Community Development Department staff and the Planning Commission discussed procedural and content issues that would need to be addressed, that include inconsistencies with the General Plan and Zoning Ordinance. The discussion also included developing the ordinance to work seamlessly with the City's Zoning Ordinance. Those Planning Commission comments and notes are addressed below.

ZONING ORDINANCE CHANGES: The purpose of the Telecommunication Urgency Ordinance, adopted by the City Council in April, is to create standards whereby the City can address aesthetic and general locating of proposed wireless communication facilities consistent with Federal regulations. Most importantly, the urgency ordinance includes a framework for the review and regulation of the aesthetic impact of small wireless communication facilities not currently addressed in the Lakeport Municipal Code.

At the request of the City Council, the Lakeport Planning Commission reviewed the urgency ordinance in May to make any necessary recommendations to the urgency ordinance to be consistent with other areas of the Zoning Ordinance. Of greatest concern to both the Planning Commission and staff is the urgency ordinance's establishment of a standalone "Wireless Permit" category. At the Commission's recommendation staff is proposing that the urgency ordinance be amended to permit various wireless communication facilities through the use of the existing Zoning Permit and Use Permit processes outlined in the Zoning Ordinance. To accomplish this staff is recommending the addition of a Zoning Permit and Use Permit use category to the following zoning designations: (PCU) Public and Civic Uses, (OS) Open Space, (I) Industrial, (CB) Central Business, (C-3) Service Commercial, (C-2) Major Retail, (C-1) Light Retail, (PO) Professional Office, (R-5) Resort/High Density Residential, (R-3) High Density Residential, (R-2) Medium Density Residential, (R-1) Low Density Residential and UR, Urban Reserve.

The Use Permit would be required for all new wireless facilities, while a Zoning Permit would be required for all changes to existing facilities, colocation and small wireless facilities. Under these standards the Planning Commission would be responsible for all new facilities, while the Community Development Director would be responsible for all others. Under the Zoning Permit criteria, the Community Development Director may refer the item to the Planning Commission if determined that the wireless facilities may have a significant or detrimental impacts on the community or neighborhoods. An example of these amendments to the Zoning Ordinance is modeled below showing how this language would appear in the C-2, Major Retail Zoning District:

- Add subsection J to Section 17.10.040, Uses subject to the issuance of a zoning permit—"**Small Wireless Facilities, Modifications to existing Wireless Communication Facilities and Collocation of Wireless Communication Facilities subject to the regulations set forth in Chapter 17.41.**"
- Add subsection N to Section 17.10.050, Uses subject to the issuance of a use permit—"**Wireless Communication Facilities subject to the regulations set forth in Chapter 17.41.**"

Staff also recommends changes Title 17, Section 17.28.010 H & L in the Performance Standards which would exempt wireless facilities from 17.28.010.H. (Public Utilities Facilities) and 17.28.010.L. (Special Height Restrictions). Those issues listed in the Performance Standards would be addressed as part of the wireless or small wireless standards. Revised language would read as follows:

- 17.28.010.H: Public Utility Facilities. Public utility distribution and transportation lines, towers and poles, and underground facilities for the distribution of gas, water, communication, and electrical facilities shall be allowed in all zoning districts except for the CBD district. **This provision does not apply to Wireless Communication Facilities subject to the regulations outlined in Chapter 17.41.** All

proposed routes for these transmission lines shall be submitted to the city planning commission for review and recommendation to the city council for their approval. Such approval shall be made prior to the acquisition of necessary right-of-way or easements.

- 17.28.010.L: Special Height Restrictions. Chimneys, silos, flag poles, monuments, radio towers, water tanks, church steeples, and similar structures or mechanical appurtenances may exceed the thirty-five foot height limit within the city upon approval of a use permit. ***This provision does not apply to Wireless Communication Facilities subject to the regulations outlined in Chapter 17.41.***

TELECOMMUNICATION/WIRELESS AND SMALL WIRELESS FACILITIES: The proposed ordinance takes the urgency ordinance, and establishes an ordinance that reflects the development standards, consistent with the existing development standards in the Title 17 Zoning Ordinance. The primary changes consist of removing the "Wireless Permit" and establishing development standards for the wireless facilities with a Use Permit or a Zoning Permit.

During the May review of the Urgency Ordinance, the Planning Commission noted that the provision and regulations for small wireless communication facilities was difficult to understand. Staff believes this is largely due to the fact that the standards for small wireless communication facilities are located within an entirely separate section of the urgency ordinance (17.41.090) that that of the standards for other facilities. To address this staff is recommending Section 17.41.090 be broken up and distributed throughout the entire ordinance, similar to the format in the ordinance used for all other typed of wireless communication facilities. In addition, to alleviating confusion, staff believes this will reduce repetition and redundancy within the ordinance ultimately making it more understandable by the general public.

In addition to the removal of the term "Wireless Permit" from the ordinance and the redistribution of 17.41.090 addressing small wireless facilities standards, staff is also recommending some other small modifications consistent with concerns addressed by the Planning Commission in May. All of the revision and changes to the urgency ordinance are listed below:

17.41.010 – Purpose and Intent. A thru D okay, no changes required.

17.41.020 – Definitions. Change the numbering for small wireless facility. *(Staff comments: This change reflects a numbering correction).*

17.41.030 – Applicable Facilities.

- Add Section C. Small Wireless Facilities (include Description 17.41.090.A.1 & 2)
- Change Section C to D for Exemptions. *(Staff comments: This change reflects combining the small wireless, with all other wireless facilities as part of applicable facilities)*

17.41.040 - Application Procedure.

- Change Section A. Change Wireless Facility Permit to Use Permit.
- Change Section B. from Wireless Facility Permit to Use Permit/Zoning Permit.
- Add Section C. Small Wireless Facility with wording for Zoning Permit.

- Change to Section D. All wireless communication facilities for which applications were received Change to Section E. Exemptions. *(Staff comments: This reflects the change from a Wireless Permit to a Use permit or Zoning Permit. This change reflects combining the small wireless, with all other wireless facilities as part of application procedure)*

17.41.050 - Wireless facility and small wireless facility Permit application content.

- Section A. remove Permits.
- Note: Add Section E. (at the end) Small Wireless Facility Include the wording in 17.41.090.3. a thru j (with added wording to end of sentence 17.41.090.A.3.d.v. the plans for the original tower).
- Discuss 17.41.090.3.d.vii the site plans and elevation shall include a stealth design for the small wireless facility that reflects the design of the immediate area. *(Staff comments: This change reflects eliminating Wireless Permit; combining the small wireless, with all other wireless facilities as part of application content; and adding some wording for the design process for the small wireless facilities; as part of the application content).*

17.41.060 – Required findings of approval for wireless permits and small wireless facilities.

- Add 17.41.090.A.4 & 5 as Section D.
- Change to Section E and change Section D. 1 thru 3. (private tower, private base and public right of way for tower and base). *(Staff comments: Removing the Wireless Permit; change reflects combining the small wireless, with the emphasis of timing associated with the review and approval of the small wireless facilities; Combining Section D, reducing from three to one for those standards for minor modifications to eliminate redundancy).*

17.41.070 – Standards for wireless facilities and small wireless facilities. Adding 17.41.070.T Standards for Small Wireless Facilities with those standards identified as 17.41.090.A.6. a thru c) *(Staff comments: This change reflects adding small wireless facilities as part of the standards).*

17.41.080 - Standard conditions of approval. Add Section 17.41.080.M. which includes 17.41.090.A.7.a thru i. Conditions for small wireless facilities. or 17.41.120. *(Staff comments: This change reflects adding small wireless facilities as part of the standard condition of approval)*

17.41.090.Denial without prejudice for small wireless facilities. 17.41.090.8.A. a thru d, which includes Small wireless Facility Permit Denial Without prejudice. *(Staff comments: 17.41.090 was the section originally dealing with small wireless facilities. Since the all of the sections have been removed and distributed throughout the entire ordinance. This section would relate to those regulations that do not fit easily in other sections, which in this case would be denial without prejudice for small wireless facilities).*

17.41.100. Appeals. Section E, first sentence add "design" to read, modify, the design made by the director.....*(Staff comments: This change reflects a wording correction).*

17.41.110. Independent consultant review. This section would address small wireless facility consultant review, as defined in 17.41.090.A.3.c. *(Staff comments: This change*

reflects adding small wireless facilities criteria for independent consultant review to the wireless facility section for independent consultant review)

17.41.120. Maintenance. No changes required.

17.41.130. Removal of abandoned facilities. No changes required. With the changes to the ordinance, abandonment of small wireless facilities would be addressed.

17.41.140. Ownership transfer. No changes required. With the changes to the ordinance, change of ownership associated with small wireless facilities would be addressed.

17.41.150. Revocation of a wireless facility permit. Note : change City Manager to Director to revoke permit. Change the reference from Wireless Permit to Use Permit and Zoning Permit. With the changes to the ordinance, revocation of permits for small wireless facilities would be addressed.

17.41.160. Exception from standards.

- Add Section A. For wireless facilities.
- Add 17.41.090.8. B and C which includes: 17.41.160.B For small wireless: Nothing in these sections would modify the existing standards for non-small wireless facility applications; and 17.41.160.C For small wireless: Nothing in this section shall limit the city's authority to negotiate different standards for small wireless facility applications. *(Staff comments: This reflects the changes to include small wireless, with all other wireless facilities as part of exception from standards).*

17.41.170. Violations. No changes required. With the changes to the ordinance, violations of small wireless facilities would be addressed.

17.41.180. Severability. No changes required.

REVIEW OF PLANNING COMMISSION COMMENTS FROM MAY 2019: May 8, 2019, the Planning Commission and Community Development Department staff reviewed the urgency ordinance and had following comments:

- Need to clarify difference between *substantial* and *minor modification* *(Staff comments: With the changes any substantial modification is similar to the criteria as set forth in the Zoning Ordinance).*
- Consider amending appeals section to be consistent with other Zoning Ordinance provisions *(Staff comments: This could remain or by eliminating the appeals section, and referring to the Appeals Section 17.31 in the Title 17 Zoning Ordinance).*
- What are the RF standards for towers that are 30' or less. *(Staff comments: The RF standards are set by the FCC, The City can use an Independent consultant to confirm the facility meets the FCC standards).*
- CEQA Cumulative Impact analysis (impact of multiple towers throughout town) *(Staff comments: At this time, a cumulative impact analysis would be infeasible).*

- Add General Plan Environmentally Sensitive Areas (Figure 16) View corridors to simulation requirements section. *(Staff comments: The environmental sensitive areas have been incorporated into the ordinance).*
- Does 17.41.090 require adequate design criteria for small wireless facilities *(Staff comments: The addition of wording in Section 17.41.050 requiring stealth design, as well as design of the immediate area).*
- Can we require a mandatory pre-application meeting prior to the submittal of a permit. *(Staff comments: The City does not have any legal authority to require a pre-application meeting, and can only require pre-application meeting out of courtesy).*
- Not clear whether small wireless facilities discussed in 17.41.090 must conform with standards outlined in 17.41.040, 050, 060 and 070. *(Staff comments: Resolved with ordinance modifications above).*
- Consider requiring visual simulations on 8 compass points rather than just 4. *(Staff comments: At this time we would rely on the 4 compass points, however, if special circumstances warrant additional views staff may require additional visual simulations).*
- Ordinance needs to clearly state that small wireless facilities adhere to stealth design criteria. *(Staff comments: The addition of wording in Section 17.41.050 requiring stealth design, as well as, design of the immediate area).*
- Definitions section is clear but maybe some additional verbage should be considered within the body of the ordinance. *(Staff comments: Staff would need further direction on the need for more verbage).*
- Consider noting facility types and level of review within each zoning district. *(Staff comments: The revised Section 17.41 would be consistent with the criteria required in the Zoning Ordinance. Any evaluation based on zoning districts could be inconsistent with FCC regulations. Staff would refer this issue to the City's Attorney).*
- Identify review timing for each facility development type. *(Staff comments: The timing for approval of a new facility is 150 days, a modification and colocation is 90 days, and a small wireless is 60 days. Since our review period under State law is 30 days, the City should be able to meet. The 10 day review period is for small wireless facilities consistent with our Zoning Permit timing).*
- Resolve whether or not a 500' or a 300' notification should be required. *(Staff comments: The 300' notification has been determined adequate).*

- Consider changing terminology of wireless facility permit to use permit. *(Staff comments: The revised ordinance changes to Use Permit and Zoning Permit).*
- Add language to Section 17.41.040 Application procedures in general to include the mention of small wireless facilities. *(Staff comments: The revised ordinance addresses the inclusion of the Small Wireless Facilities in all of the 17.41 Wireless Facilities procedures).*
- Review applicability of existing Zoning Ordinance regulations outlined in 17.28.010 H & L. *(Staff comments: The revised ordinance would exempt wireless facilities from 17.28. 010.H & L, Public Utility Facilities and Special Height Restrictions).*
- Review 17.41.130 regarding removal of abandoned facilities so as to be more implementable. *(Staff comments: The requirement for the removable of abandoned wireless facilities would be a condition of approval, as well as addressed as part of the application submittal).*
- Clarify procedures for co-location. It is not clear as to what the level of review is for the Co-location of wireless facilities throughout the ordinance. *(Staff comments: The revised ordinance would require a Zoning Permit, unless the Community Development Director determines the co-location is significant and a Use Permit would be required).*
- Clarify review authority for renewal of facility after 10 years, 17.41.080.H. *(Staff comments: The revised ordinance would be conditioned to require a renewal of the facility after 10 years).*
- Consider modifications to the ordinance structure to be consistent with other performance standard related ordinances (very repetitive currently—a lot of the standards can be combined into one section).

ENVIRONMENTAL REVIEW: The proposed Zoning Ordinance for telecommunication wireless communication is categorically exempt of the California Environmental Quality Act. The proposed revisions to the Lakeport Zoning Ordinance are categorically exempt from CEQA pursuant to CEQA Guidelines §15061(b)(3) and 15378(b)(5) as the adoption of the zoning ordinance, is a government document and would not represent a project or represent a significant effect on the environment pursuant to CEQA Guidelines §15061(b)(3).

REQUIRED FINDINGS: Section 17.32.010.B requires the Planning Commission to evaluate and adopt specific criteria for the Zoning application, as well as changes to the Zoning Ordinance text (Section 17-41, Telecommunication Facilities). Staff reviewed all of the criteria applicable to this project and has determined that the proposed improvements are in compliance with the Zoning as set forth in the Municipal Code and recommends the following findings be made:

Finding 1: The proposed zoning ordinance and zoning text amendment is in the public interest. The citywide telecommunication ordinance and zoning text amendment addresses a lack of current standards and regulations in the municipal code for wireless facilities and the potential liabilities and negative consequences for noncompliance with state and federal regulations. The implementation of the Telecommunication Ordinance is necessary to preserve and protect public health, safety and welfare. Those changes, including the Telecommunication Ordinance and Zoning Text Change were reviewed for consistency with the 2009 General Plan. The project as proposed is in conformance with the goals of the General Plan and consistent with the Lakeport Zoning Ordinance, and is in the public interest with the streamlining the process of new wireless facilities, modifications, collocating and deploying small wireless facilities necessary to support the 5G network infrastructure.

Finding 2: The proposed Ordinance and change to Zoning text is consistent with the Lakeport General Plan. The project establishment of a telecommunication Ordinance and zoning amendments is consistent with the goals, policies and actions of the General Plan 2025 as well as implementing the General Plan's visions and desire for the community, is adopted in the public's interest, and is otherwise consistent with federal and state law.

Finding 3: The proposed Ordinance and change to Zoning text amendments will not be detrimental to the community's health, safety, and welfare. The project of establishing a Telecommunication Ordinance and Zoning text amendments were reviewed for consistency with the General Plan 2025. The Telecommunication Ordinance and Zoning text amendments will not be detrimental to the community's health, safety, and welfare.

CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS:

Finding 4: The proposed Ordinance and change to Zoning text amendments complies with the California Government Code. The proposed actions are in compliance with the provisions of the California Environmental Quality Act (CEQA) because this project is categorically exempt from environmental review in accordance with section 21084 of the California Environmental Quality Act (CEQA) pursuant to section 15061(b)(3) of the CEQA Guidelines and because the proposed action is not a project under section 15378(b)(5) of the CEQA Guidelines. A Notice of Exemption is prepared and will be filed in accordance with the CEQA guidelines.

CONCLUSION AND DECISION: Based on the information provided by City staff, findings are made telecommunication ordinance and zoning text amendment is consistent with the Section 17.32 (Zoning Amendments). The proposed project has been determined to be exempt from the provisions of the California Environmental Quality Act according to Sections 15061(b)(3) and 15378(b)(5) of the 2018 CEQA guidelines. This section defines exemptions of a project, based on government administrative that will not result in a potentially significant physical impact on the environment.

Staff recommends that the Planning Commission adopt the Categorical Exemption and recommend the City Council approve the Telecommunication Ordinance and Zone Text Amendments outlined in the staff report (ZC 19-02) in order to establish regulations for various wireless communication facilities throughout the City of Lakeport.

SAMPLE MOTION

Categorical Exemption Adoption

I move that the Planning Commission find that ZC 19-02 as applied for by City of Lakeport for a telecommunication ordinance and zoning text amendment categorically exempt pursuant to Sections 15061(b)(3) and 15378(b)(5) of the 2018 CEQA Guidelines.

Zone Change Approval

Move that the Planning Commission recommend that the City Council approve revisions to the Telecommunication Urgency Ordinance 921 (2019) and zoning text amendment applied for by City of Lakeport for the all properties in the City (ZC 19-02), subject to the findings listed in the staff report dated July 10, 2019.

The Planning Commission's approval of the applications shall be subject to the conditions of approval specified in the staff report and/or as amended by the Planning Commission at the public hearing.

Attachment A: Telecommunication Ordinance with Proposed Revisions
Attachment B: Urgency Ordinance (adopted by the City Council on April 2, 2019)

Attachment A:
Telecommunication Ordinance
with Proposed Revisions

ORDINANCE NO. _____(2019)

~~AN URGENCY~~ **ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKEPORT
ADDING MODIFYING CHAPTER 17.41 OF TITLE 17 OF THE LAKEPORT MUNICIPAL
CODE ESTABLISHING REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES**

WHEREAS, Government Code sections 36934 and 36937 permit the City Council by a four-fifths vote to adopt an urgency ordinance for the immediate preservation of the public peace, health, or safety;

WHEREAS, the City Council finds that the lack of current standards and regulations in the Municipal Code for wireless facilities and the potential liabilities and negative consequences for noncompliance with state and federal regulations (including, without limitation, automatic approvals) present current and immediate threat to the public health, safety and welfare. The City Council further finds and declares that the immediate implementation of the Ordinance is necessary to preserve and protect public health, safety and welfare;

WHEREAS, section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub.L No. 112-96, 126 Stat. 156, codified at 47 U.S.C. § 1455) provides that the City “may not deny, and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.” (47 U.S.C. § 1455, subd. (a)(1));

WHEREAS, on September 26, 2018, the Federal Communications Commission adopted a Declaratory Ruling and Report and Order (FCC 18-133) adopting 47 C.F.R. section 1.6001 et seq.;

WHEREAS, 47 C.F.R. section 1.6001 et seq. implements 47 U.S.C. sections 332(c)(7) and 1455, regulating the collocation, modification, and deployment of wireless facilities;

WHEREAS, FCC 18-133 is intended to streamline the process of collocating and deploying small wireless facilities necessary to support the 5G network infrastructure;

WHEREAS, FCC 18-133 shortens the shot clock for reviewing small wireless facility permit applications, limits the amount of fees that can be assessed for the review, and regulates aesthetic requirements, among others;

WHEREAS, FCC 18-133 took effect on January 14, 2019, and preempts any and all conflicting local ordinances and regulations;

WHEREAS, FCC 18-133 requires cities to have small cell facility regulations in place by April 15, 2019

WHEREAS, given the short time period before the enforcement date of the new regulations, which require that the City approve applications for small wireless facilities, time is of the essence to review, evaluate, and approve if warranted, applications for small wireless communications facilities;

WHEREAS, the immediate adoption of an administrative regulatory process to review, evaluate, and approve if warranted, applications for wireless communications facilities is

necessary to protect the public's health, safety, and welfare by complying with federal law, namely section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 and the Federal Communications Commission's implementing regulations, thereby preserving to the maximum extent possible the City's ability to regulate modifications to existing wireless communications facilities;

WHEREAS, the City Council finds that this Zoning Ordinance Amendment is consistent with the goals, policies, and actions of the General Plan and will not conflict with the General Plan;

WHEREAS, this Zoning Ordinance Amendment implements the General Plan's visions and desire for the community, is adopted in the public's interest, and is otherwise consistent with federal and state law;

WHEREAS, the City Council finds that this Zoning Ordinance Amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City;

WHEREAS, the proposed actions are in compliance with the provisions of the California Environmental Quality Act (CEQA) because this project is categorically exempt from environmental review in accordance with section 21084 of the California Environmental Quality Act (CEQA) pursuant to section 15061(b)(3) of the CEQA Guidelines and because the proposed action is not a project under section 15378(b)(5) of the CEQA Guidelines. A Notice of Exemption is prepared and will be filed in accordance with the CEQA guidelines.

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

Section 1. Recitals Made Findings.

The City Council of the City of Lakeport hereby declares the above recitals to be true and correct.

Section 2. Wireless Communication Facilities Ordinance.

Chapter 17.41 of Title 17 of the Lakeport Municipal Code is hereby added to read as follows:

- 17.41.010 Purpose and intent.**
- 17.41.020 Definitions.**
- 17.41.030 Applicable facilities.**
- 17.41.040 Application procedure in general.**
- 17.41.050 Wireless facility permit facilities and small wireless facilities application content.**
- 17.41.060 Required findings of approval for wireless permits facilities and small wireless facilities.**
- 17.41.070 Standards for wireless facilities and small wireless facilities.**
- 17.41.080 Standard conditions of approval.**

- 17.41.090** ~~Provisions applicable to~~ **Denial without prejudice of** small wireless facilities.
- 17.41.100** Appeals.
- 17.41.110** Independent consultant review.
- 17.41.120** Maintenance.
- 17.41.130** Removal of abandoned facilities.
- 17.41.140** Ownership transfers.
- 17.41.150.** Revocation of a wireless facility permit.
- 17.41.160.** Exception from standards.
- 17.41.170** Violations.
- 17.41.180** Severability.

17.41.010 Purpose and intent.

- A. The purpose of this chapter is to promote and protect the public health, safety and welfare, preserve the aesthetic character of the Lakeport community, and to reasonably regulate the development and operation of wireless communication facilities within the city to the extent permitted under state and federal law.
- B. This chapter establishes clear guidelines and standards and an orderly process for expedited permit application review intended to facilitate the orderly deployment of wireless transmission equipment to provide advanced communication services to the city, its residents, businesses, and community at large.
- C. The regulations in this city are specifically not intended to, and shall not be interpreted or applied to: (1) prohibit or effectively prohibit the provision of personal wireless services; (2) unreasonably discriminate among functionally equivalent service providers; or (3) regulate wireless communications facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission hereinafter also referred to as "FCC".
- D. This chapter shall be interpreted and applied so as to be consistent with the Communications Act of 1996, section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, applicable state laws, and administrative and court decisions and determinations relating to same.

17.41.020 Definitions.

This section shall be construed in light of the following definitions:

"Accessory equipment" means any equipment installed, mounted, operated or maintained in close proximity to a wireless communication facility to provide power to the wireless

communication facility or to receive, transmit or store signals or information received by or sent from a wireless communication facility.

“Antenna structure” means any antenna, any structure designed specifically to support an antenna or any appurtenances mounted on such a structure or antenna.

“Base station” means the equipment and non-tower supporting structure at a fixed location that enable FCC-licensed or authorized wireless communications between user equipment and a communications network.

“City” means the City of Lakeport.

“Collocation” means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

“Director” means the City of Lakeport Community Development Director or his or her designee.

“Equipment cabinet” means any transmission or other equipment other than an antenna housed within a protective case. An equipment cabinet may be indoors or outdoors, large or small, movable or immovable. Any equipment case with a heat sink or other cooling mechanism for the equipment inside qualifies as an equipment cabinet.

“Non-tower support structure” means any structure (whether built for wireless purposes or not) that supports wireless transmission equipment under a valid permit at the time the applicant submits its application.

“Open space” includes (1) land which is designated as an open space district, as defined in Chapter 17.14, (2) land in residential zones upon which structures may not be developed by virtue of a restriction on title, (3) all common areas, public and private parks, slope easements, recreational areas and open portions of recreational facilities, and (4) any other area owned by a homeowners association or similar entity.

“Personal communication service” means commercial mobile services provided under a license issued by the FCC. “RF” means radio frequency.

“Significant gap” as applied to an applicant’s personal communication service or the coverage of its wireless communication facilities is intended to be defined in this section consistently with the use of that term in the Communications Act of 1996 and case law construing that statute. Provided that neither that Act nor case law construing it requires otherwise, the following guidelines shall be used to identify such a significant gap:

1. A significant gap may be demonstrated by in-kind call testing.
2. The commission shall accept evidence of call testing by the applicant and any other interested person and shall not give greater weight to such evidence based on the identity of the person who provides it but shall consider (i) the number of calls conducted in the call test, (ii) whether the calls were taken on multiple days, at various times, and under differing weather and vehicular traffic conditions, and (iii) whether calls could be successfully initiated, received and maintained in the area within which a significant gap is claimed.

3. A significant gap may be measured by:
 - a. The number of people affected by the asserted gap in service;
 - b. Whether a wireless communication facility is needed to merely improve weak signals or to fill a complete void in coverage; and
 - c. Whether the asserted gap affects a state highway or an arterial street which carries significant amounts of traffic.

“Small Wireless Facility” refers to a small wireless facility as defined by the FCC and that meets the following requirements:

1. The small wireless facilities:
 - A. Are mounted on structures 50 feet or less in height including their antennas, or
 - B. Are mounted on structures no more than 10 percent taller than other adjacent structures, or
 - C. Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
2. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume;
3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment, is no more than 28 cubic feet in volume;
4. The facilities do not require antenna structure registration under 47 C.F.R. section 17.1 et seq.;
5. The facilities are not located on Tribal lands; and
6. The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. section 1.1307(b).

“Stealth facility” means a wireless communication facility designed and constructed to be integrated into a building or other structure, or placed on or within a building or other structure, so that no portion of any equipment cabinet, transmission equipment, or any other apparatus associated with facility’s function is visible from publicly accessible areas.

“Transmission equipment” means any equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply.

“Wireless” means any FCC-authorized wireless communications service.

“Wireless communication facility” or “wireless facility” or “facility” means any facility that transmits and/or receives electromagnetic waves, including, but not limited to, commercial wireless communications antennas and other types of transmission equipment for the transmission or receipt of such signals, towers or similar structures supporting said equipment,

equipment cabinets and connectors, pedestals, meters, tunnels, vaults, splice box, surface location marker, equipment, equipment buildings, parking areas and other related improvements used, or designed to be used, to provide wireless transmission of voice, data, images or other information. The term also means any facility or transmission equipment used to provide any FCC-authorized wireless communications service including, but not limited to, personal wireless services defined by the Communications Act of 1996 and licensed by the FCC, including, but not limited to, the types commonly known as cellular, personal communications services ("PCS"), specialized mobile radio ("SMR"), enhanced specialized mobile radio ("ESMR"), paging, ground based repeaters for satellite radio services, micro-cell antennas, distributed antenna systems ("DAS") and similar systems.

"Wireless tower" means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities.

17.41.030 Applicable facilities.

This section applies to all proposed new or modified wireless communication facilities, as follows:

A. New facilities. All permit applications received after the effective date of the ordinance codified in this chapter must comply with this chapter.

B. Changes to existing facilities. All permit applications which in any manner whatsoever seek approval to modify a previously approved facility received after the effective date of the ordinance codified in this chapter must comply with this chapter.

C. Small wireless facilities. Requirements for Small Wireless Facilities Permits. This subsection governs applications for small wireless facilities permits.

1. Purpose. This subsection is intended to comply with the city's obligations under 47 C.F.R. section 1.6001 et seq., which implements 47 U.S.C. sections 332(c)(7) and 1455. This subsection creates a process for the city to review an application for a small wireless facility permit submitted by an applicant who asserts that a proposed collocation of a small wireless facility using an existing structure or the deployment of a small wireless facility using a new structure, and the modifications of such small wireless facilities, is covered by federal law and to determine whether the city must approve the proposed collocation or deployment.

2. Applicability. An applicant seeking approval of a collocation to a structure or a deployment to a new structure which the applicant contends is within the protection of 47 U.S.C. section 1455 shall apply for the following at the same time: (i) a small wireless facility permit; (ii) an encroachment permit from the public works department (if required by applicable provisions of this code); and (iii) any other permit required by applicable provisions of this code including a building permit, an electrical permit, or a tree report under chapter 17.21.

D. Exemptions. This section shall not apply to:

1. City-owned municipal wireless communications facilities.

2. Amateur radio facilities that are under seventy (70) feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive-only antennas.
3. Over-the-air receiving devices, as defined by the FCC at 47 C.F.R. section 1.4000, with a maximum diameter of one meter (thirty-nine (39) inches) for residential installations, and two (2) meters (seventy-eight (78) inches) for nonresidential installations, and designed, installed, and maintained in compliance with the FCC and the California Public Utilities Commission (hereinafter referred to as the "CPUC") regulations.

17.41.040 Application procedures in general.

This chapter applies to all proposed new or modified wireless communication facilities, as follows:

- A. **New Facilities.** All applications for approval of the installation of new wireless communication facilities in the city must be approved by a wireless facility ~~permit~~ **facilities Use Permit** by the planning commission at a public hearing in compliance with this chapter and upon recommendation from the director. No new wireless communication facility shall be installed until the applicant or operator has obtained: (1) a wireless facility ~~permit~~ **facilities** in compliance with this chapter; (2) an encroachment permit from the public works department (if applicable); and (3) any other permit required by applicable provisions of this code.
- B. **Changes to Existing Facilities.** All ~~permit~~ **facilities** applications which in any manner whatsoever seek approval to modify a previously approved facility received after the effective date of the ordinance codified in this chapter must be approved by a **Use Permit or Zoning Permit** by the planning commission at a public hearing for substantial modifications, or the director for minor modifications, in compliance with this chapter. All modifications to an existing personal wireless communications facility shall be subject to the approval of: (1) a wireless facility permit; in addition to (2) an encroachment permit from the public works department (if applicable); and (3) any other permit required by applicable provisions of this code.
- C. **Small Wireless Facilities applications must be approved by a Zoning Permit by the director for minor modifications, in compliance with the Zoning Permit requirements. All modifications to an existing personal wireless communications facility shall be subject to the approval of: (1) a wireless facility permit; in addition to (2) an encroachment permit from the public works department (if applicable); and (3) any other permit required by applicable provisions of this code.**
- D. **All wireless communication facilities for which applications were received by the city but not approved prior to the effective date of the ordinance codified in this chapter shall comply with the regulations and guidelines of this chapter.**
- E. **Exemptions.** This chapter shall not apply to any city-owned municipal wireless communications facilities.

17.41.050 Wireless ~~permit~~ **facilities and small wireless facilities application content.**

A. Applications for the approval of wireless facilities permits for wireless communication facilities shall include, but are not necessarily limited to, an application fee and the following information:

1. A clear and complete written analysis that explains how the proposed design complies with the applicable design standards under this chapter to the maximum extent feasible. A complete design justification must identify all applicable standards under this chapter and provide a factually detailed reason why the proposed design either complies or the requirement is preempted by applicable state or federal law; and
2. Scaled visual simulations showing the proposed facility superimposed on photographs of the site and surroundings, to assist the commission in assessing the visual impacts of the proposed facility and its compliance with the provisions of this chapter; and
3. For new facilities, the plans shall include (in plan view and elevations) a scaled depiction of the maximum permitted increase as authorized by section 6409(a) of the 2012 Middle Class Jobs and Tax Relief Act, Title 47, United States Code, section 1455 using the proposed project as a baseline; and
4. A siting analysis which identifies a minimum of two other feasible locations within or without the city which could serve the area intended to be served by the facility, unless the applicant provides compelling technical reasons for providing fewer than the minimum. The alternative site analysis shall include at least one collocation site; and
5. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, in that it will not cause members of the general public to be exposed to RF levels that exceed the levels deemed safe by the FCC; and
6. A statement signed by a person with legal authority to bind the applicant attesting under penalty of perjury to the accuracy of the information provided in the application; and
7. A noise study, prepared by a qualified engineer, for the proposed wireless communication facility including, but not limited to, equipment, such as air conditioning units and back-up generators; and
8. A written statement of the applicant's willingness to allow other carriers to collocate on the proposed wireless communication facility wherever technically and economically feasible and aesthetically desirable; and
9. Such other information as the director shall establish from time to time pursuant to the Permit Streamlining Act, Government Code section 65940, or to respond to changes in law or technology.

B. An application for a wireless communication facility in a public right-of-way for which the applicant claims entitlement under Public Utilities Code section 7901 shall be accompanied by evidence satisfactory to the director that the applicant is a telephone corporation or has written authorization to act as an agent for a telephone corporation.

C. Applications for the approval of wireless communication facilities within the public right-of-way shall include certification that the facility is for the use of a telephone corporation

or state 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 CPUC, it shall provide a copy of its CPCN.

D. Minor Modification Application Content. All applications for a wireless facility permit for a proposed minor modification to an existing wireless facility which the applicant contends is subject to Title 47, United States Code, section 1455 must include the following items.

1. Application Form. The city's standard application form, available on the city's website or from the Planning Department, as may be amended.
2. Application Fee. An application fee as established by the city council by resolution.
3. Independent Consultant Deposit. An independent consultant fee deposit, if required by the city council by resolution, to reimburse the city for its costs to retain an independent consultant to review the technical aspects of the application.
4. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.
 - a. A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
 - b. A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
 - c. A depiction of all existing and proposed utility runs and points of contact.
 - d. A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.
 - e. For proposed collocations or modifications to wireless towers, the plans must include scaled plan views and all four elevations that depict the physical dimensions of the wireless tower as it existed on February 22, 2012 or as approved if constructed after February 22, 2012. For proposed collocations or modifications to base stations, the plans must include scaled plan views and all four elevations that depict the physical dimensions of the base station as it existed on February 22, 2012 or as approved if constructed after February 22, 2012.
 - f. A demolition plan.
5. Visual Simulations. A visual analysis that includes: (a) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four angles, together with a map that shows the location of each view angle; (b) a color and finished material palette for proposed screening materials; and (c) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.
6. Statement Asserting that Section 6409 Applies. A written statement asserting that the proposed collocation or modification is an "eligible facilities request" and does not result in

a substantial change in the physical dimensions of the facility's wireless tower or base station, as defined by section 6409, Title 47, United States Code, section 1455, and justifying that assertion. The written statement shall identify and discuss each required finding for approval of a wireless facility minor modification permit and explain the facts that justify the request for the director to make each finding.

7. Prior Permits. True and correct copies of all previously issued permits, including all required conditions of approval and a certification by the applicant that the proposal will not violate any previous permit or conditions of approval or why any violated permit or conditions does not prevent approval under Title 47, United States Code, section 1455 and the FCC's regulations implementing this federal law.

8. Affirmation of Radio Frequency Standards Compliance. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, because it will not cause members of the general public to be exposed to RF levels that exceed the levels deemed safe by the FCC.

9. Structural Analysis. A structural analysis, prepared, signed, and sealed by a California-licensed engineer that assesses whether the proposed wireless communications facility complies with all applicable building codes.

10. Noise Study. A noise study, prepared, signed, and sealed by a California-licensed engineer, for the proposed wireless communication facility including, but not limited to, equipment, such as air conditioning units and back-up generators.; or a written statement signed and sealed by a California-licensed engineer indicating that the proposed modification(s) will not alter the existing noise levels or operational equipment which creates noise.

11. Other Permits. An application for a wireless facility minor modification permit shall include all permit applications with all required application materials for each and every separate permit required by the city for the proposed collocation or modification to an existing personal wireless communications facility, including a building permit, an encroachment permit (if applicable), and an electrical permit (if applicable).

12. Other Information. Such other information as the city may require, as specified in publicly available materials, including information required as stated on the city's website.

E. Applications for the approval of small wireless facilities shall include, but are not necessarily limited to, an application fee and the following information:

1. Application Form. The city's standard application form, available on the city's website or from the planning and building department, as may be amended.
2. Application Fee. An application fee as established by the city council by resolution.
3. Independent Consultant Deposit. An independent consultant fee deposit, if required by the city council by resolution, to reimburse the city for its costs to retain an independent consultant to review the technical aspects of the application.

4. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.

- i. A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
- ii. A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
- iii. A depiction of all existing and proposed utility runs and points of contact.
- iv. A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.
- v. For proposed collocation or deployment to wireless towers, the plans must include scaled plan views and all four (4) elevations that depict the physical dimensions of the wireless tower as it existed on the plans for the original tower.
- vi. A demolition plan.
- vii. The site plans and elevation shall include a stealth design for the small wireless facility that reflecting the design of the immediate area.

5. Visual Simulations. A visual analysis that includes: (1) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four (4) angles, together with a map that shows the location of each view angle; (2) a color and finished material palate for proposed screening materials; and (3) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.

6. Statement Asserting that 47 C.F.R. Section 1.6001 et seq. Applies. A written statement asserting that the proposed collocation or deployment is subject to 47 C.F.R. section 1.6001 et seq.

7. Prior Permits. True and correct copies of all previously issued permits, including all required conditions of approval and a certification by the applicant that the proposal will not violate any previous permit or conditions of approval or why any violated permit or conditions does not prevent approval under 47 U.S.C. section 1455 and the FCC's regulation implementing this federal law.

8. Affirmation of Radio Frequency Standards Compliance. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, because it will not cause members of the general public to be exposed to RF levels that exceed the MPE levels deemed safe by the FCC. A copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the

application. All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power."

9. Structural Analysis. A structural analysis, prepared, signed, and sealed by a California-licensed engineer, for the proposed small wireless facility including, but not limited to, equipment, such as air conditioning units and back-up generators; or a written statement signed and sealed by a California-licensed engineer indicating that the proposed facility will not alter the existing noise levels or operational equipment which creates noise.

10. Other Permits. An application for a small wireless facility permit shall include all permit applications with all required application materials for each and every separate permit required by the city for the proposed collocation or deployment, including a building permit, an encroachment permit (if applicable) and an electrical permit (if applicable).

17.41.060 Required findings of approval for wireless permits facilities and small wireless facilities.

A. Wireless Facility Permit Findings for New or Substantially Modified Wireless Facility Permits. No wireless facility permit for a proposed new or substantial modification to a wireless communication facility may be approved unless the planning commission finds, at a public hearing for which notice was provided under the standards set forth in Government Code section 65090 and 65091, as follows:

1. The applicant has demonstrated by clear and convincing evidence that the new or substantially modified wireless facility is necessary to close a significant gap in the applicant's wireless service coverage. Such evidence shall include in-kind call testing of existing facilities within the area the applicant contends is a significant gap in coverage to be served by the facility.
2. The applicant has demonstrated by clear and convincing evidence that no feasible alternate site exists that would close a significant gap in the operator's wireless service coverage which alternative site is a more appropriate location for the facility under the standards of this section.
3. The proposed new or substantially modified wireless facility complies with all design standards and other requirements of this section, including the requirement that new or substantially modified facilities be camouflaged.
4. The proposed new or substantially modified wireless facility is consistent with the General Plan and any other applicable provisions of this code.
5. Public notice of the proposed facility was provided under the standards set forth in Government Code sections 65090 and 65091.

B. Additional Findings for New or Substantially Modified Wireless Facility Permits in the Public Rights of Way. In addition to the findings required in subsection (A)(1) above, no proposed new or substantially modified wireless communication facility within a public right-of way may be approved unless the following findings are made by the planning commission:

1. The proposed facility has been designed to blend with the surrounding environment, with minimal visual impact on the public right-of-way.
2. The proposed facility will not have an adverse impact on the use of the public right-of-way, including but not limited to, the safe movement and visibility of vehicles and pedestrians.

C. Application Review Periods. Under federal and state law, the city must act on an application for a wireless facility permit for new facilities within 150 days, and must act on an application for a wireless facility permit for substantial modifications to existing facilities which the applicant does not contend are protected by Title 47, United States Code, section 1455, within 90 days, after the applicant submits the application for a wireless facility permit, unless tolled due to issuance of any notice of incomplete filing or by mutual agreement between the city and the applicant. Under federal and state law, failure to act on a wireless facility permit application within these timelines, excluding tolling periods, may result in the permit being deemed granted by operation of law. In that case, the applicant must still comply with the standard conditions of approval in this section.

D. Findings Required for Approval of Minor Modifications to Existing Wireless Facilities. An applicant seeking approval of a collocation or modification to an existing wireless communication facility which the applicant contends is within the protection of Title 47, United States Code, section 1455, and qualifies as a minor or not substantial modification, must apply for and receive approval of a wireless facility permit for a minor modification in compliance with this section. This subsection is intended to comply with the city's obligations under federal law, which provides that the city "may not deny, and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." (47 U.S.C. § 1455, subd. (a)(1), adopted as section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub.L No. 112-96, 126 Stat. 156.) This subsection sets forth standards for the city to review an application for a wireless facility minor modification permit submitted by an applicant who asserts that a proposed collocation or modification to an existing personal wireless communications facility is covered by this federal law. The city's review of these applications is structured to comply with the requirements of Title 47, United States Code, section 1455 and the FCC's regulations implementing this federal law, adopted on December 17, 2014 and codified at 47 C.F.R. §§ 1.40001, et seq. This subsection is intended to promote the public's health, safety, and welfare, and shall be interpreted consistent with the Federal Communications Act of 1996 (Pub.L. No. 104-104, 110 Stat. 56), Title 47, United States Code, section 1455, and applicable FCC regulations and court decisions considering these laws and regulations. Under federal law, the city must approve or deny an application for a wireless facility permit for a minor modification, together with any other city permits required for a proposed wireless facility minor modification, within sixty (60) days after the applicant submits the application for a wireless facility permit which the applicant contends is protected by Title 47, United States Code, section 1455, unless tolled due to issuance of any notice of incomplete filing or by mutual agreement between the city and the applicant. Under federal law, failure to act on a wireless facility permit application for a minor modification within the sixty (60) day review period, excluding tolling period, may result in the permit being deemed granted by operation of law. In

that case, the applicant must still comply with the standard conditions of approval in this section.

~~1. The director must approve an application for a wireless facility permit for a minor modification that is a collocation or modification to an existing wireless tower on private property which the applicant contends is within the protection of Title 47, United States Code, section 1455 only if each of the following findings can be made:~~

~~a. The applicant proposes a collocation or modification to a structure constructed and maintained with all necessary permits in good standing for the sole or primary purpose of supporting any FCC licensed or authorized antennas and their associated facilities;~~

~~b. The proposed collocation or modification does not increase the height of the existing wireless communication facility above its lowest height on February 22, 2012 or as approved if constructed after February 22, 2012 by more than ten percent (10%) or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater;~~

~~c. The proposed collocation or modification does not increase the width of the facility by more than twenty (20) feet or the width of the tower at the level of the appurtenance, whichever is greater;~~

~~d. The proposed collocation or modification does not involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four;~~

~~e. The proposed collocation or modification does not involve any excavation outside the lease or license area of the facility, including any access or utility easements;~~

~~f. The proposed collocation or modification does not defeat any existing concealment, stealth, or camouflage elements of the support structure; and~~

~~g. The proposed collocation or modification does not violate any prior conditions of approval, except as may be preempted by section 6409, Title 47, United States Code, section 1455, subdivision (a).~~

~~2. The director must approve an application for a wireless facility permit for a minor modification that is a collocation or modification to an existing base station on private property which the applicant contends is within the protection of Title 47, United States Code, section 1455 only if each of the following findings can be made:~~

~~a. The applicant proposes a collocation or modification to a structure constructed and maintained with all necessary permits in good standing, whether built for the sole or primary purpose of supporting any FCC licensed or authorized antennas and their associated facilities or not, that currently supports existing wireless transmission equipment;~~

~~b. The proposed collocation or modification does not increase the height of the existing wireless communication facility above its lowest height on February 22, 2012 or~~

as approved if constructed after February 22, 2012 by more than ten percent (10%) or ten (10) feet, whichever is greater;

~~c. The proposed collocation or modification does not increase the width of the facility by more than six (6) feet;~~

~~d. The proposed collocation or modification does not involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four;~~

~~e. The proposed collocation or modification does not involve any excavation outside the lease or license area of the facility, including any access and utility easements;~~

~~f. The proposed collocation or modification does not defeat any existing concealment, stealth, or camouflage elements of the support structure; and~~

~~g. The proposed collocation or modification does not violate any prior conditions of approval, except as may be preempted by section 6409, Title 47, United States Code, section 1455, subdivision (a).~~

3. The director must approve an application for a wireless facility permit for a minor modification that is a collocation or modification to an existing wireless tower or base station in the public right of way only which the applicant contends is within the protection of Title 47, United States Code, section 1455 if each of the following findings can be made:

a. The applicant proposes a collocation or modification to either (i) a structure constructed and maintained with all necessary permits in good standing for the sole or primary purpose of supporting any FCC licensed or authorized antennas and their associated facilities or (ii) a structure constructed and maintained with all necessary permits in good standing, whether built for the sole or primary purpose of supporting any FCC licensed or authorized antennas and their associated facilities or not, that currently supports existing wireless transmission equipment;

b. The proposed collocation or modification does not increase the height of the existing wireless communication facility above its lowest height on February 22, 2012 or as approved if constructed after February 22, 2012 by more than ten percent (10%) or ten (10) feet, whichever is greater. **Antennas on private property by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater;**

c. The proposed collocation or modification does not increase the width of the facility by more than six (6) feet. **Antennas on private property shall not increase the width of the facility by more than twenty (20) feet or the width of the tower at the level of the appurtenance, whichever is greater;**

d. The proposed collocation or modification does not involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four;

- e. **On public right of way** the proposed collocation or modification does not involve either (i) the installation of any new equipment cabinets on the ground, if none already exist, or (ii) the installation of ground equipment cabinets that are more than ten percent (10%) larger in height or overall volume than any existing ground cabinets;
- f. The proposed collocation or modification does not involve any excavation outside the area in proximity to the existing ground-mounted equipment in the public right of way;
- g. The proposed collocation or modification does not defeat any existing concealment, stealth, or camouflage elements of the existing structure; and
- h. The proposed collocation or modification does not violate any prior conditions of approval, except as may be preempted by section 6409, Title 47, United States Code, section 1455, subdivision (a).

E. Required findings for small wireless facilities.

- 1. **Application Review.** Each application for a new or modified small wireless facility permit shall be reviewed by the director. The city must approve or deny an application for a small wireless facility permit, together with any other city permits required for a proposed small wireless facility, within sixty (60) days after the applicant submits an application to collocate a small wireless facility using an existing structure, and within ninety (90) days after the applicant submits an application to deploy a small wireless facility using a new structure. The director shall provide written notice to all property owners within ~~500~~ 300 feet of the site of a proposed small wireless facility upon approval of an application for a small wireless facility permit.
- 2. **Tolling Period.** Unless a written agreement between the applicant and the city provides otherwise, the application is tolled when the city notifies the applicant within ten (10) days of the applicant's submission of the application that the application is materially incomplete and identifies the missing documents or information. The shot clock may again be tolled if the city provides notice within ten (10) days of the application's resubmittal that it is materially incomplete and identifies the missing documents or information. For an application to deploy small wireless facilities, if the city notifies the applicant on or before the tenth (10th) day after submission that the application is materially incomplete, and identifies the missing documents or information and the rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation will restart at zero on the date the applicant submits a completed application.

17.41.070. Standards for wireless facilities and small wireless facilities.

- A. All new wireless facilities shall be concealed. The installation of an uncamouflaged wireless facility is prohibited. All new facilities and substantial changes to existing facilities shall include appropriate stealth and concealment techniques given the proposed location, design, visual environment, and nearby uses and structures. Stealth and concealment techniques do

not include incorporating faux-tree designs of a kind substantially different than the surrounding live trees. All new architectural features proposed to conceal transmission equipment shall be designed to mimic the existing underlying structure, shall be proportional to the existing underlying structure, and shall use materials in similar quality, finish, color, and texture as the existing underlying structure.

B. All vents, exhausts and similar features for undergrounded equipment shall be flush to grade to the maximum extent feasible; all above-grade vents, exhausts or similar features shall be designed to blend with the environment to maximum extent feasible.

C. All wireless facility antennas, mounting hardware, and cabling shall be covered or painted to match the color and texture of the building, tower, or pole on which it is mounted. Equipment cabinets, service panels, and service connections shall be screened by solid walls, landscaping, or berms. Screening shall blend with or enhance the surrounding context in terms of scale, form, texture, materials, and color. Any wireless facility shall be concealed as much as possible by blending into the natural and physical environment. All gates shall be opaque.

D. Wireless facilities should be collocated with existing wireless facilities, if within one thousand five hundred (1,500) feet of an existing visible wireless facility, unless the city determines that the particular design proposed would not create excessive visual clutter or would otherwise create harms the city cannot ameliorate.

E. A wireless facility located in the public rights-of-way:

1. Shall, with respect to its pole-mounted components, be located in a concealed manner on an existing or replaced utility pole; or
2. Shall be located in a concealed wireless facility consistent with other existing natural or manmade features in the rights-of-way near the location where the wireless facility is to be located; or
3. Shall, with respect to its pole-mounted components, be located in a concealed wireless facility on a new utility pole, if there are no reasonable alternatives, and the applicant is authorized to construct new utility poles.

F. The ground-mounted components of a wireless facility shall, whether in or outside of the rights-of-way:

1. To the extent the structures are utility boxes within the meaning of this code, be reviewed and subject to the same approvals as utility boxes installed by other communications companies; and
2. Shall be located flush to grade where necessary to avoid incommoding the public or creating a hazard; and
3. To the extent permitted aboveground, shall otherwise be appropriately screened, landscaped and camouflaged to blend in with the surroundings, and nonreflective paints shall be used. All ground-mounted outdoor transmission equipment and associated enclosures or shelters shall be screened. All wires, cables, and any other connections shall be completely concealed from public view to the maximum extent feasible.

G. Unless it is determined by the city that there is no less intrusive alternative available to close a significant gap in the service provided by a wireless facility; or it is determined that the city is legally required to approve an application, the director may not approve an application for a wireless facility where the application proposes a design that would require extensions from any support structure inconsistent in size with the extensions otherwise permitted under the code.

H. A wireless facility and all subsequent modifications shall be designed and located to minimize the impact on the surrounding neighborhood, and to maintain the character and appearance of the city, consistent with other provisions of the code. To that end, wireless facilities should:

1. Employ the least intrusive design for the proposed location in terms of size, mass, visual and physical impact, and effects on properties from which the wireless facility is visible; and
2. Accommodate collocation consistent with the other design requirements of this section; and
3. Be consistent with the general plan.

I. Without limiting the foregoing, all portions of a wireless facility affixed to a support structure shall be designed to blend in or be screened from view in a manner consistent with the support structure's architectural style, color and materials when viewed from any part of the city. Wireless facilities shall be covered, painted and textured or otherwise camouflaged to match the color and texture of the support structure on which they are mounted. Where the support structure is a building, the wireless facility, including without limitation base station cabinets, remote transmitters and receivers, and antenna amplifiers, shall be placed within the building or mounted behind a parapet screened from public view unless that is not feasible. If the director determines that such in-building placement is not feasible, the equipment shall be roof-mounted in an enclosure or otherwise screened from public view as approved by the community development director.

J. Wireless facilities shall not be lighted except with the authorization of the director. The director may permit lighting at the lowest intensity necessary:

1. For proximity-triggered or timer-controlled security lighting; or
2. To comply with regulations for the illumination of any flag attached to a wireless facility; or
3. Where such lighting is required by the director to protect public health or welfare, or as part of the camouflage for a particular design which includes street or decorative lighting as integral to the design and as approved by the director.

K. No facilities may bear any signage or advertisement(s) other than signage required by law or expressly permitted or required by the city. No advertising signage shall be displayed on any wireless facility except for government-required signs shown in the wireless facility permit application. Additionally site identification, address, warning and similar information plates may be permitted where approved by the director.

- L. The wireless facility shall not incommode the public (including, without limitation, persons with disabilities) in its use of any structure, or any portion of the rights-of-way.
- M. All new facilities and substantial changes to existing facilities shall comply with the applicable height limit for the facility's zone.
- N. At no time shall transmission equipment or any other associated equipment (including but not limited to heating and air conditioning units) at any wireless communication facility emit noise that exceeds the applicable limit(s) established in this code.
- O. All facilities shall at all times comply with all applicable federal, state, and local building codes, electrical codes, fire codes, and any other code related to public health and safety.
- P. All wireless towers shall be designed and situated in a manner that utilizes existing natural or man-made features (including but not limited to topography, vegetation, buildings, or other structures) to visually conceal the wireless tower to the maximum extent feasible.
- Q. All accessory equipment associated with the operation of a wireless communication facility shall be located within a building enclosure or underground vault that complies with the development standards of the zoning district in which the accessory equipment is located.
- R. Ground-mounted equipment shall be located so as not to cause: (i) any physical or visual obstruction to pedestrian or vehicular traffic; (ii) inconvenience to the public's use of a public right-of-way; or (iii) safety hazards to pedestrians and motorists. In no case shall ground-mounted equipment, walls, or landscaping be less than eighteen (18) inches from the front of the curb.
- S. No facility shall be built so as to cause the right-of-way in which the facility is located to fail to comply with the Americans with Disabilities Act.
- T. Standards Governing Approval of small wireless facilities by Director
- a. The director shall approve or deny an application to collocate a small wireless facility using an existing structure by evaluating the following standards:
 - i. The existing structure was constructed and maintained with all necessary permits in good standing.
 - ii. The existing structure is fifty (50) feet or less in height, including any antennas, or the existing structure is no more than ten (10) percent taller than other adjacent structures.
 - iii. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume.
 - iv. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment serving the facility, is no more than twenty-eight (28) cubic feet in volume.

- v. The small wireless facilities do not extend the existing structure on which they are located to a height of more than fifty (50) feet or by more than ten (10) percent, whichever is greater.
 - vi. The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.
 - vii. The small wireless facility is not located on Tribal lands, as defined under 36 C.F.R. section 800.16(x).
 - viii. For collocations not located within the public right-of-way, the proposed collocation shall be consistent with the standards of sections 17.41.070 and 17.41.080.
 - ix. For collocation located within the public right-of-way, the proposed collocation shall be consistent with the standards of sections 17.41.070 and 17.41.080, except that sections 17.41.070(D), and 17.41.080(I) and (J) do not apply.
 - x. The proposed collocation would be in the most preferred location and configuration within two-hundred and fifty (250) feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location or configuration within two-hundred and fifty (250) feet would be technically infeasible, applying the preference standards of this section.
 - xi. The proposed collocation is designed as a stealth facility, to the maximum feasible extent.
- b. The director must approve an application to deploy a small wireless facility using a new structure only if each of the following findings can be made:
- i. The new structure was constructed and maintained with all necessary permits in good standing;
 - ii. The new structure is fifty (50) feet or less in height, including any antennas, or the new structure is no more than ten (10) percent taller than other adjacent structures;
 - iii. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume;
 - iv. All other wireless equipment associated with the facility, including the wireless equipment associated with the antenna and any pre-existing equipment associated with the facility, is no more than twenty-eight (28) cubic feet in volume;
 - v. The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.

- vi. The small wireless facility is not located on Tribal lands, as defined under 36 C.F.R. section 800.16(x);
 - vii. For new structures not located within the public right-of-way, the proposed facility shall be consistent with the standards of sections 17.41.070 and 17.41.080.
 - viii. For new structures located within the public right-of-way, the proposed facility shall be consistent with sections 17.41.070 and 17.41.080, except that sections 17.41.070 (D), and 17.41.080(I) and (J) do not apply.
 - ix. The proposed project would be in the most preferred location and configuration within two-hundred and fifty (250) feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location or configuration within two-hundred and fifty (250) feet would be technically infeasible, applying the preference standards of this section.
 - x. The proposed project is designed as a stealth facility, to the maximum feasible extent.
- c. **Small Cell Location and Configuration Preferences.** The city prefers that small wireless facilities in the public right of way or in the equivalent right of way on homeowners' association owned lands and private streets be configured on the following support structures, in order of preference from most to least preferred: (1) existing or replacement street light standard; (2) existing or replacement concrete or steel utility pole; (3) existing or replacement wood utility pole; (4) new street light standard; (5) new utility pole. The city prefers that small wireless facilities outside the public right of way be configured on the following support structures, in order of preference from most to least preferred: (1) on existing, approved wireless facility support structures operating in compliance with this code; (2) on existing buildings or non-tower structures; (3) on existing or replacement utility poles or towers; (4) in new towers meeting the height requirements of the applicable FCC regulations.

17.41.080 Standard conditions of approval.

All facilities subject to a wireless facility permit approved under this chapter, including any facilities for which a wireless facility permit is deemed approved by operation of law, shall be subject to the following conditions:

- A. Facilities shall not bear any signs or advertising devices other than legally required certification, warning, or other required seals or signage, or as expressly authorized by the City.
- B. Abandonment.
 - 1. Wireless communication facilities that are no longer operating shall be removed at the expense of the applicant, operator, or owner no later than ninety (90) days after the

discontinuation of use. Disuse for ninety (90) days or more shall also constitute a voluntary termination by the applicant of any land use entitlement under this code or any predecessor to this code.

2. The director shall send a written notice of the determination of non-operation to the owner and operator of the wireless communication facility, who shall be entitled to a hearing on that determination before the city manager or a hearing officer appointed by the city manager, provided that written request for such a hearing is received by the city clerk within ten (10) days of the date of the notice. No further appeal from the decision of the city manager may be had other than pursuant to Code of Civil Procedure section 1094.5. Upon a final decision of the city manager or the running of the time for a request for a hearing without such a request, the operator shall have ninety (90) days to remove the facility.

3. The operator of a facility shall notify the city in writing of its intent to abandon a permitted site. Removal shall comply with applicable health and safety regulations. Upon completion of abandonment, the site shall be restored to its original condition at the expense of the applicant, operator, or owner.

4. All facilities not removed within the required ninety (90)-day period shall be in violation of this code. In the event the city removes a disused facility upon the failure of the applicant, operator, or owner to timely do so, the applicant, operator, and owner shall be jointly and severally liable for the payment of all costs and expenses the city incurs for the removal of the facilities, including legal fees and costs.

C. The applicant, operator of a facility and property owner (when applicable) shall defend, indemnify and hold the city and its elective and appointed boards, commissions, officers, agents, consultants and employees harmless from and against all demands, liabilities, costs (including attorneys' fees), or damages arising from the city's review and approval of the design, construction, operation, location, inspection or maintenance of the facility.

D. Removal of Unsafe Facilities. If, at any time after ten (10) years of the issuance of a building permit or encroachment permit, or any shorter period permitted by Government Code section 65964(b), any wireless communication facility becomes incompatible with public health, safety or welfare, the applicant or operator of the facility shall, upon notice from the city and at the applicant's or operator's own expense, remove that facility. Written notice of a determination pursuant to this subsection shall be sent to the owner and operator of the wireless communication facility, who shall be entitled to a hearing on that determination before the city manager or a hearing officer appointed by the city manager, provided that written request for such a hearing is received by the city clerk within ten (10) days of the date of the notice. No further appeal from the decision of the city manager may be had other than pursuant to Code of Civil Procedure section 1094.5. Upon a final decision of the city manager or the running of the time for a request for a hearing without such a request, the operator shall have ninety (90) days to remove the facility.

E. Prior to the issuance of a building permit or encroachment permit, the applicant or owner/operator of the facility shall pay for and provide a performance bond, which shall be in

effect until all facilities are fully and completely removed and the site reasonably returned to its original condition. The purpose of this bond is to cover the applicant's or owner/operator of the facility's obligation under the conditions of approval and the city code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping obligations. The amount of the performance bond shall be set by the director on a case-specific basis and in an amount reasonably related to the obligations required under this code and all conditions of approval, and shall be specified in the conditions of approval.

F. An applicant shall not transfer a permit to any person or entity prior to completion of construction of a wireless communication facility.

G. The applicant shall submit as-built photographs of the facility within ninety (90) days of installation of the facility, detailing the installed equipment.

H. A wireless communication facility approved by a wireless facility permit may operate only until the 10th anniversary of the date it is first placed into service, unless that sunset date is extended by additional term(s) not to exceed ten (10) years pursuant to a wireless facility permit issued. There is no limit to the number of times the sunset date for a facility may be extended.

I. Any approved wireless communication facility within a public right-of-way shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the public works director to: (1) protect the public health, safety, and welfare; (2) prevent interference with pedestrian and vehicular traffic; or (3) prevent damage to a public right-of-way or any property adjacent to it. Before the director of public works imposes conditions, changes, or limitations pursuant to this subsection, he or she shall notify the applicant or operator, in writing, by mail to the address set forth in the application or such other address as may be on file with the city. Such change, new limitation or condition shall be effective twenty-four (24) hours after deposit of the notice in the United States mail.

J. The applicant or operator of a wireless communication facility in the public rights-of-way shall not move, alter, temporarily relocate, change, or interfere with any existing public facility, structure or improvement without the prior written consent of the city, and the owner in the circumstance where the owner is not the city. No structure, improvement or facility owned by the city shall be moved to accommodate a wireless communication facility unless: (1) the city determines, in its sole and absolute discretion, that such movement will not adversely affect the city or surrounding residents or businesses; and (2) the applicant or operator pays all costs and expenses related to the relocation of the city's facilities. Every applicant or operator of any wireless communication facility shall assume full liability for damage or injury caused to any property or person by his, her, or its facility. Before commencement of any work pursuant to an encroachment permit issued for any wireless communication facility within a public right-of-way, an applicant shall provide the city with documentation establishing to the city's satisfaction that the applicant has the legal right to use or interfere with any other facilities within the public right-of-way to be affected by applicant's facilities.

K. In addition to any other conditions of approval permitted under federal and state law and this code that the director deems appropriate or required under this code, all wireless

facility permits for minor modifications subject to Title 47, United States Code, section 1455, including any minor modifications for which a wireless facility permit is deemed approved by operation of law, shall include the following conditions of approval:

1. No Automatic Renewal. The grant or approval of a wireless facility minor modification permit shall not renew or extend the underlying permit term.
2. Compliance with Previous Approvals. The grant or approval of a wireless facility minor modification permit shall be subject to the conditions of approval of the underlying permit, except as may be preempted by section 6409(a) of the 2012 Middle Class Jobs and Tax Relief Act, Title 47, United States Code, section 1455.
3. As-Built Plans. The applicant shall submit to the director an as-built set of plans and photographs depicting the entire personal wireless communications facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.
4. Indemnification. To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless city, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the wireless facility minor modification permit and the issuance of any permit or entitlement in connection therewith. The applicant shall pay such obligations as they are incurred by city, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the city reasonably determines necessary to protect the city from exposure to fees, costs or liability with respect to such claim or lawsuit.
5. Compliance with Applicable Laws. The applicant shall comply with all applicable provisions of this code, any permit issued under this code, and all other applicable federal, state, and local laws. Any failure by the city to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.
6. Compliance with Approved Plans. The proposed project shall be built in compliance with the approved plans on file with the Planning Department.
7. Violations. The facility shall be developed, maintained, and operated in full compliance with the conditions of the wireless facility minor modification permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this code, the conditions of approval for the wireless facility minor modification permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this chapter shall be

cumulative and the city may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

8. In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, Title 47, United States Code, section 1455, such that such statute would not mandate approval for the collocation or modification granted or deemed granted under a wireless facility minor modification permit, such permit shall automatically expire twelve (12) months from the date of that opinion.

9. The grant, deemed-grant or acceptance of wireless facility minor modification permit shall not waive and shall not be construed or deemed to waive the City's standing in a court of competent jurisdiction to challenge Title 47, United States Code, section 1455 or any wireless facility minor modification permit issued pursuant to Title 47, United States Code, section 1455 or this code.

L. Annual Monitoring Fee. The owner or operator of a facility subject to a permit under this chapter shall pay to the city an annual monitoring fee as established in the city's Master Fee Schedule. The fee shall be used to recover the city's costs to inspect, review, and monitor compliance with the conditions of the permit.

M. Standard Conditions of Approval for Small Wireless Facility Permits. In addition to any other conditions of approval permitted under federal and state law and this code that the director deems appropriate or required under this code, all small wireless facility permits under this subsection shall include the following conditions of approval:

- a. No Automatic Renewal. The grant or approval of a small wireless facility permit shall not renew or extend the underlying permit term.
- b. Compliance with Previous Approvals. The grant or approval of a small wireless facility permit shall be subject to the conditions of approval of the underlying permit.
- c. As-Built Plans. The applicant shall submit to the director an as-built set of plans and photographs depicting the entire small wireless facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.
- d. Indemnification. To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless the city, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the wireless facility minor modification permit and the issuance of any permit or entitlement in connection therewith. The applicant shall pay such obligations as they are incurred by the city, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a

deposit in such amount as the city reasonably determines necessary to protect the city from exposure to fees, costs or liability with respect to such claim or lawsuit.

e. Compliance with Applicable Laws. The applicant shall comply with all applicable provisions of this code, any permit issued under this code, and all other applicable federal, state, and local laws. Any failure by the city to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.

f. Compliance with Approved Plans. The proposed project shall be built in compliance with the approved plans on file with the planning and building department.

g. Violations. The small wireless facility shall be developed, maintained, and operated in full compliance with the conditions of the small wireless facility permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this code, the conditions of approval for the wireless facility minor modification permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this section shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

h. In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, 47 U.S.C. section 1455, such that such statute would not mandate approval for the collocation or deployment granted or deemed granted under a wireless facility minor modification permit, such permit shall automatically expire twelve (12) months from the date of that opinion.

i. The grant, deemed-grant or acceptance of a small wireless facility permit shall not waive and shall not be construed or deemed to waive the city's standing in a court of competent jurisdiction to challenge 47 U.S.C. section 1455 or any small wireless facility permit issued pursuant to 47 U.S.C. section 1455 or this code.

17.41.090 Provisions ~~applicable to~~ for Denial Without Prejudice of small wireless facilities.

~~Unless modified by this section, all provisions of this chapter shall apply to small wireless facilities.~~

~~A. Requirements for Small Wireless Facilities Permits. This subsection governs applications for small wireless facilities permits.~~

~~1. Purpose. This subsection is intended to comply with the city's obligations under 47 C.F.R. section 1.6001 et seq., which implements 47 U.S.C. sections 332(c)(7) and 1455. This subsection creates a process for the city to review an application for a small wireless facility permit submitted by an applicant who asserts that a proposed collocation of a small wireless facility using an existing structure or the deployment of a small wireless facility using a new structure, and the modifications of such small wireless facilities, is~~

covered by federal law and to determine whether the city must approve the proposed collocation or deployment.

3. ~~Applicability. An applicant seeking approval of a collocation to a structure or a deployment to a new structure which the applicant contends is within the protection of 47 U.S.C. section 1455 shall apply for the following at the same time: (i) a small wireless facility permit; (ii) an encroachment permit from the public works department (if required by applicable provisions of this code); and (iii) any other permit required by applicable provisions of this code including a building permit, an electrical permit, or a tree report under chapter 17.21.~~

4. ~~Application Content: All applications for a small wireless facility permit must include the following items:~~

a. ~~Application Form. The city's standard application form, available on the city's website or from the planning and building department, as may be amended.~~

b. ~~Application Fee. An application fee as established by the city council by resolution.~~

c. ~~Independent Consultant Deposit. An independent consultant fee deposit, if required by the city council by resolution, to reimburse the city for its costs to retain an independent consultant to review the technical aspects of the application.~~

d. ~~Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.~~

i. ~~A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.~~

ii. ~~A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.~~

iii. ~~A depiction of all existing and proposed utility runs and points of contact.~~

iv. ~~A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.~~

v. ~~For proposed collocation or deployment to wireless towers, the plans must include scaled plan views and all four (4) elevations that depict the physical dimensions of the wireless tower as it existed on~~

vi. ~~A demolition plan.~~

e. ~~Visual Simulations. A visual analysis that includes: (1) scaled visual simulations that show unobstructed before and after construction daytime and clear-weather views from at least four (4) angles, together with a map that shows the location of each view angle; (2) a color and finished material palette for proposed screening materials; and (3) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.~~

f. ~~Statement Asserting that 47 C.F.R. Section 1.6001 et seq. Applies. A written statement asserting that the proposed collocation or deployment is subject to 47 C.F.R. section 1.6001 et seq.~~

g. ~~Prior Permits. True and correct copies of all previously issued permits, including all required conditions of approval and a certification by the applicant that the proposal will not violate any previous permit or conditions of approval or why any violated permit or conditions does not prevent approval under 47 U.S.C. section 1455 and the FCC's regulation implementing this federal law.~~

h. ~~Affirmation of Radio Frequency Standards Compliance. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, because it will not cause members of the general public to be exposed to RF levels that exceed the MPE levels deemed safe by the FCC. A copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the application. All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power."~~

i. ~~Structural Analysis. A structural analysis, prepared, signed, and sealed by a California-licensed engineer, for the proposed small wireless facility including, but not limited to, equipment, such as air conditioning units and back-up generators; or a written statement signed and sealed by a California-licensed engineer indicating that the proposed facility will not alter the existing noise levels or operational equipment which creates noise.~~

j. ~~Other Permits. An application for a small wireless facility permit shall include all permit applications with all required application materials for each and every separate permit required by the city for the proposed collocation or deployment, including a building permit, an encroachment permit (if applicable) and an electrical permit (if applicable).~~

5. ~~Application Review. Each application for a new or modified small wireless facility permit shall be reviewed by the director. The city must approve or deny an application for a small wireless facility permit, together with any other city permits required for a proposed small wireless facility, within sixty (60) days after the applicant submits an application to collocate a small wireless facility using an existing structure, and within ninety (90) days after the applicant submits an application to deploy a small wireless facility using a new structure. The director shall provide written notice to all property owners within 500 feet of the site of a proposed small wireless facility upon approval of an application for a small wireless facility permit.~~

~~6. Tolling Period. Unless a written agreement between the applicant and the city provides otherwise, the application is tolled when the city notifies the applicant within ten (10) days of the applicant's submission of the application that the application is materially incomplete and identifies the missing documents or information. The shot clock may again be tolled if the city provides notice within ten (10) days of the application's resubmittal that it is materially incomplete and identifies the missing documents or information. For an application to deploy small wireless facilities, if the city notifies the applicant on or before the tenth (10th) day after submission that the application is materially incomplete, and identifies the missing documents or information and the rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation will restart at zero on the date the applicant submits a completed application.~~

~~7. Standards Governing Approval by Director~~

~~a. The director shall approve or deny an application to collocate a small wireless facility using an existing structure by evaluating the following standards:~~

- ~~i. The existing structure was constructed and maintained with all necessary permits in good standing.~~
- ~~ii. The existing structure is fifty (50) feet or less in height, including any antennas, or the existing structure is no more than ten (10) percent taller than other adjacent structures.~~
- ~~iii. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume.~~
- ~~iv. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment serving the facility, is no more than twenty-eight (28) cubic feet in volume.~~
- ~~v. The small wireless facilities do not extend the existing structure on which they are located to a height of more than fifty (50) feet or by more than ten (10) percent, whichever is greater.~~
- ~~vi. The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.~~
- ~~vii. The small wireless facility is not located on Tribal lands, as defined under 36 C.F.R. section 800.16(x).~~
- ~~viii. For collocations not located within the public right of way, the proposed collocation shall be consistent with the standards of sections 17.41.070 and 17.41.080.~~
- ~~ix. For collocation located within the public right of way, the proposed collocation shall be consistent with the standards of sections 17.41.070 and 17.41.080, except that sections 17.41.070(D), and 17.41.080(I) and (J) do not apply.~~

- x. ~~The proposed collocation would be in the most preferred location and configuration within two hundred and fifty (250) feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more preferred location or configuration within two hundred and fifty (250) feet would be technically infeasible, applying the preference standards of this section.~~
 - xi. ~~The proposed collocation is designed as a stealth facility, to the maximum feasible extent.~~
- b. ~~The director must approve an application to deploy a small wireless facility using a new structure only if each of the following findings can be made:~~
- i. ~~The new structure was constructed and maintained with all necessary permits in good standing;~~
 - ii. ~~The new structure is fifty (50) feet or less in height, including any antennas, or the new structure is no more than ten (10) percent taller than other adjacent structures;~~
 - iii. ~~Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume;~~
 - iv. ~~All other wireless equipment associated with the facility, including the wireless equipment associated with the antenna and any pre-existing equipment associated with the facility, is no more than twenty-eight (28) cubic feet in volume;~~
 - v. ~~The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.~~
 - vi. ~~The small wireless facility is not located on Tribal lands, as defined under 36 C.F.R. section 800.16(x);~~
 - vii. ~~For new structures not located within the public right of way, the proposed facility shall be consistent with the standards of sections 17.41.070 and 17.41.080.~~
 - viii. ~~For new structures located within the public right of way, the proposed facility shall be consistent with sections 17.41.070 and 17.41.080, except that sections 17.41.070 (D), and 17.41.080(I) and (J) do not apply.~~
 - ix. ~~The proposed project would be in the most preferred location and configuration within two hundred and fifty (250) feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more preferred location or configuration within two hundred and fifty (250) feet would be technically infeasible, applying the preference standards of this section.~~
 - x. ~~The proposed project is designed as a stealth facility, to the maximum feasible extent.~~

c. ~~Small Cell Location and Configuration Preferences. The city prefers that small wireless facilities in the public right of way or in the equivalent right of way on homeowners' association owned lands and private streets be configured on the following support structures, in order of preference from most to least preferred: (1) existing or replacement street light standard; (2) existing or replacement concrete or steel utility pole; (3) existing or replacement wood utility pole; (4) new street light standard; (5) new utility pole. The city prefers that small wireless facilities outside the public right of way be configured on the following support structures, in order of preference from most to least preferred: (1) on existing, approved wireless facility support structures operating in compliance with this code; (2) on existing buildings or non-tower structures; (3) on existing or replacement utility poles or towers; (4) in new towers meeting the height requirements of the applicable FCC regulations.~~

8. ~~Conditions of Approval for Small Wireless Facility Permits. In addition to any other conditions of approval permitted under federal and state law and this code that the director deems appropriate or required under this code, all small wireless facility permits under this subsection shall include the following conditions of approval:~~

a. ~~No Automatic Renewal. The grant or approval of a small wireless facility permit shall not renew or extend the underlying permit term.~~

b. ~~Compliance with Previous Approvals. The grant or approval of a small wireless facility permit shall be subject to the conditions of approval of the underlying permit.~~

c. ~~As-Built Plans. The applicant shall submit to the director an as-built set of plans and photographs depicting the entire small wireless facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.~~

d. ~~Indemnification. To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless the city, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the wireless facility minor modification permit and the issuance of any permit or entitlement in connection therewith. The applicant shall pay such obligations as they are incurred by the city, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the city reasonably determines necessary to protect the city from exposure to fees, costs or liability with respect to such claim or lawsuit.~~

e. ~~Compliance with Applicable Laws. The applicant shall comply with all applicable provisions of this code, any permit issued under this code, and all other applicable federal, state, and local laws. Any failure by the city to enforce compliance with any~~

~~applicable laws shall not relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.~~

~~f. — Compliance with Approved Plans. The proposed project shall be built in compliance with the approved plans on file with the planning and building department.~~

~~g. — Violations. The small wireless facility shall be developed, maintained, and operated in full compliance with the conditions of the small wireless facility permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this code, the conditions of approval for the wireless facility minor modification permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this section shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.~~

~~h. — In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, 47 U.S.C. section 1455, such that such statute would not mandate approval for the collocation or deployment granted or deemed granted under a wireless facility minor modification permit, such permit shall automatically expire twelve (12) months from the date of that opinion.~~

~~i. — The grant, deemed grant or acceptance of a small wireless facility permit shall not waive and shall not be construed or deemed to waive the city's standing in a court of competent jurisdiction to challenge 47 U.S.C. section 1455 or any small wireless facility permit issued pursuant to 47 U.S.C. section 1455 or this code.~~

Small Wireless Facility Permit Denial Without Prejudice.

j. Grounds for Denial without Prejudice. The director may deny without prejudice an application for a small wireless facility permit in any of the following circumstances:

- i. The director cannot make all findings required for approval of a small wireless facility permit;
- ii. The proposed collocation or deployment would cause the violation of an objective, generally applicable law protecting public health or safety;
- iii. the proposed collocation or deployment involves the removal and replacement of an existing facility's entire supporting structure; or
- iv. the proposed collocation or deployment does not qualify for mandatory approval under 47 U.S.C. section 1455, as may be amended or superseded, and as may be interpreted by any order of the FCC or any court of competent jurisdiction.

k. Procedures for Denial without Prejudice. All small wireless facility permit application denials shall be in writing and shall include: (i) the decision date; (ii) a

statement that the city denies the permit without prejudice; (iii) a short and plain statement of the basis for the denial; and (iv) that the applicant may submit the same or substantially the same permit application in the future.

l. Submittal after Denial without Prejudice. After the director denies a small wireless facility permit application, and subject to the generally applicable permit application submittal provisions in this chapter, an applicant shall be allowed to:

- i. submit a new small wireless facility permit application for the same or substantially the same proposed collocation or deployment; or
- ii. submit an appeal of the director's decision to the city council in accordance with section 17.41.100 of this code.

m. Costs to Review a Denied Permit. The city shall be entitled to recover the reasonable costs for its review of any small wireless facility permit application. In the event that the director denies a small wireless facility permit application, the city shall return any unused deposit fees within sixty (60) days after a written request from the applicant. An applicant shall not be allowed to submit a small wireless facility permit application for the same or substantially the same proposed modification unless all costs for the previously denied permit application are paid in full.

~~2. Nothing in this section shall modify the existing standards for non-small wireless facility applications.~~

~~3. Nothing in this section shall limit the city's authority to negotiate different standards for small wireless facility applications.~~

17.41.100. Appeals.

A. Within fifteen (15) calendar days following the date of any decision by the director or planning commission on a wireless facility permit application, any person or entity may appeal the decision to the city council. The city council may call for the review of a decision by the director or planning commission by a majority vote.

B. Where an appeal is timely filed, the city manager shall prepare a staff report regarding the original decision and shall submit the report to the city council along with the written notice of appeal submitted by the appellant, and shall make the written record available to the city council.

C. The appeal before the city council shall be a public hearing and shall be appropriately noticed. The appellant shall bear all costs for the appeal.

D. The city council shall hear the appeal at a regular city council meeting or at a special meeting of the city council called for the purpose of hearing the appeal, after allowing for sufficient time for the city manager to prepare the written report and compile the written record. To prevent applicants from withholding information or otherwise abusing the appeal process, the city council has the discretion but is not required to hear additional evidence, and may decide the matter solely on the record that was before the director or planning commission.

E. The city council may accept or reject, wholly or in part, or may modify, the design made by the director or planning commission. If the decision of the city council regarding the wireless facility permit appeal is to deny the wireless facility permit or conditionally approve the wireless facility permit, the city council shall direct the city manager to prepare written findings referencing substantial evidence in the city's written administrative record and such written finding shall be provided to the city council for adoption. The applicant and any appellant on the application shall receive a copy of the final written decision approved by the city council.

17.41.110 Independent consultant review.

A. Selection by Director. The director may select and retain with the approval of the city manager one or more independent consultants with expertise in communications satisfactory to the director and the city manager in connection with any permit review and evaluation.

B. Scope. The independent consultant shall review the project aspects that involve technical or specialized knowledge and may address:

1. Whether the applicant submitted a complete and accurate application;
2. Whether the facts and materials presented in a particular application tend to support certain statements or analyses in the application;
3. Compliance with any applicable regulations;
4. Any other specific technical or specialized issues requested by the city; and/or
5. Presence or absence of a significant gap in service coverage, as appropriate.

C. Independent Consultant Fee Deposit. The applicant shall pay the cost for any independent consultant fees, along with applicable overhead recovery, through a deposit, estimated by the director, paid at the time the applicant submits an application. The applicant shall pay all consultant fees before the city may act on a permit application. In the event that such costs or fees do not exceed the deposit amount, the city shall refund any unused portion within sixty (60) days after the final building permit is released or, if no final building permit is released, within sixty (60) days after the city receives a written request from the applicant.

17.41.120. Maintenance.

A. All wireless communication facilities must comply with all standards and regulations of the FCC, and any other state or federal government agency with the authority to regulate wireless communication facilities.

B. The site and the wireless communication facility, including all landscaping, fencing, and related transmission equipment must be maintained in a neat and clean manner and in accordance with all approved plans.

C. All graffiti on wireless communication facilities must be removed at the sole expense of the permittee within forty-eight (48) hours of notification.

D. A wireless communication facility located in the public right-of-way may not unreasonably interfere with the use of any city property or the public right-of-way by the city,

by the general public or by other persons authorized to use or be present in or upon the public right-of-way. Unreasonable interference includes disruption to vehicular or pedestrian traffic, and interference with any other city or public utilities.

E. If any FCC, CPUC or other required license or approval to provide communication services is ever revoked, the permittee must inform the director of the revocation within ten (10) days of receiving notice of such revocation.

17.41.130. Removal of abandoned facilities.

A. Any facility whose permit has expired or whose permit has been terminated by the city or that is not operated for a continuous period of one-hundred and eighty (180) days shall be deemed abandoned, and the owner of the facility shall remove the facility within ninety (90) days of receipt of notice from the director notifying the owner of the abandonment.

B. If the facility is not removed within the ninety (90) day period, the director may remove the facility at the permittee's, facility owner's, or landowner's expense pursuant to the city's abatement procedures.

C. If there are two or more users of the permitted facility, this provision shall not become effective until all applicable permits have expired or have terminated or all users cease using the facility.

D. As a condition of approval for permit issuance, the applicant shall provide a separate demolition bond for the duration of the permit, and in the form and manner of surety as determined by the director and approved as to form by the city attorney, with provision for inspection and city removal of the facility in the event of failure to perform by the responsible parties as defined by this chapter.

17.41.140. Ownership transfers.

Upon transfer of an approved wireless communication facility or any rights under the applicable permit or approval, the permittee of the facility must within thirty (30) days of such transfer provide written notification to the director of the date of the transfer and the identity of the transferee. The director may require submission of any supporting materials or documentation necessary to determine that the facility is in compliance with the existing permit or approval and all of its conditions including, but not limited to, statements, photographs, plans, drawings, and analysis by a qualified engineer demonstrating compliance with all applicable regulations and standards of the city, FCC, and CPUC.

17.41.150. Revocation of a wireless facility permit.

A. A wireless facility permit may be revoked if the permittee is not in compliance with permit conditions, if the permit conditions are not enforceable, or for a failure to comply with any provision of the code relating to the permit, or relating to the wireless facility associated with the permit ("default event"). By way of example and not limitation, a refusal to timely remove facilities located in the rights-of-way where required in connection with a public works project would be a default event.

- B. The city manager may revoke a wireless facility permit only after:
1. Written notice of the default event has been provided to the wireless facility permit holder.
 2. The wireless facility permit holder has been afforded a reasonable opportunity to cure and comply with its permit, or demonstrate that no default event occurred.
 3. If the wireless facility permit holder fails to cure, the city council, or designee, shall conduct a noticed public hearing where the wireless facility permit holder shall be afforded an opportunity to speak and be heard and to provide written material prior to the hearing. If the city council or its designee, after the public hearing, finds that the wireless facility or the wireless facility permit holder has violated any law regulating the wireless facility or has failed to comply with the requirements of this chapter, the wireless facility permit, any applicable agreement or any condition of approval, the city council may revoke the permit.
 4. Upon revocation, the city council may require the removal of the wireless facility or take any other legally permissible action or combination of actions necessary to protect the health and welfare of the city.

17.41.160. Exception from standards.

A. Exception from standards for wireless facilities:

- a. Notwithstanding the provisions of this chapter, one or more specific exceptions to the standards contained within this chapter may be granted if a denial of an exception would prohibit or have the effect of prohibiting the provision of wireless communications services by the applicant within the meaning of Title 47, United States Code section 332, subdivision (c)(7) or if the denial of the exception is otherwise preempted or prohibited by state or federal law or regulations. The city may grant an exception, on such terms as the city may deem appropriate, in cases where the city determines that the grant of an exception is necessary to comply with state and federal law or regulations. Prior to the issuance of an exception, the applicant shall be required to submit to the director a written explanation setting forth clear and convincing evidence that the location or locations and the design of the facility is necessary to close a significant gap in service coverage, that there is no feasible alternate location or locations, or design, that would close this significant gap in coverage or reduce this significant gap in coverage to less than significant, and that the facility is the least intrusive means to close a significant gap or to reduce it to less than a significant gap in coverage. Exceptions shall be subject to the review and approval by the planning commission at noticed public hearings. The burden is on the applicant to prove significant gaps and least intrusive means as required herein.

B. Exception from standards for small wireless facilities;

- a. Nothing in this section shall modify the existing standards for non-small wireless facility applications.

- b. Nothing in this section shall limit the city's authority to negotiate different standards for small wireless facility applications.**

17.41.170 Violations.

It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. Any person, firm, partnership, or corporation violating any provision of this chapter or failing to comply with any of its requirements will be deemed guilty of an infraction and upon conviction thereof will be punished by fine not exceeding \$1,000.00. Each such person, firm, partnership, or corporation will be deemed guilty of a separate offense for each and every day or any portion thereof during which any violation of any of the provisions of this chapter is committed, continued or permitted by such person, firm, partnership, or corporation, and will be deemed punishable therefor as provided in this chapter. The remedies specified in this chapter shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

17.41.180 Severability.

In the event that a court of competent jurisdiction holds any section, subsection, paragraph, sentence, clause, or phrase in this chapter unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this chapter and shall not affect the validity of the remaining portions of this chapter. The city hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause, or phrase in this chapter irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses, or phrases in this chapter might be declared unconstitutional, preempted, or otherwise invalid.

Section 3. CEQA.

The adoption of this Ordinance is exempt from review under the California Environmental Quality Act (CEQA). Pursuant to section 15061(b)(3) of the CEQA Guidelines, CEQA applies only to projects which have the potential for causing a significant effect on the environment. This policy will not result in a significant foreseeable environmental impact. To the extent this Ordinance is determined to be a project within the meaning of CEQA, it is categorically exempt under CEQA Guidelines section 15301 (Existing Facilities) and CEQA Guidelines section 15311 (Accessory Structures).

Section 4. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The city council hereby declares that it would have passed this and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional on their face or as applied.

Section 5. Declaration of Urgency.

This Ordinance is hereby declared to be an urgency measure necessary for the immediate protection of the public health, safety and welfare and shall take effect immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the city council under Government Code section 36937.

Section 6. Posting.

The city clerk shall cause this ordinance to be published and/or posted within fifteen (15) days after its adoption.

This Ordinance was introduced, passed, approved, and adopted by the City Council of the City of Lakeport at a regular meeting thereof on the __ day of __, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINING:

TIM BARNES, Mayor

ATTEST:

KELLY BUENDIA, City Clerk

Attachment B:
Urgency Ordinance (adopted by
the City Council on April 2,
2019)

ORDINANCE NO. 921 (2019)

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKEPORT ADDING CHAPTER 17.41 OF TITLE 17 OF THE LAKEPORT MUNICIPAL CODE ESTABLISHING REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES

WHEREAS, Government Code sections 36934 and 36937 permit the City Council by a four-fifths vote to adopt an urgency ordinance for the immediate preservation of the public peace, health, or safety;

WHEREAS, the City Council finds that the lack of current standards and regulations in the Municipal Code for wireless facilities and the potential liabilities and negative consequences for noncompliance with state and federal regulations (including, without limitation, automatic approvals) present current and immediate threat to the public health, safety and welfare. The City Council further finds and declares that the immediate implementation of the Ordinance is necessary to preserve and protect public health, safety and welfare;

WHEREAS, section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub.L No. 112-96, 126 Stat. 156, codified at 47 U.S.C. § 1455) provides that the City “may not deny, and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.” (47 U.S.C. § 1455, subd. (a)(1));

WHEREAS, on September 26, 2018, the Federal Communications Commission adopted a Declaratory Ruling and Report and Order (FCC 18-133) adopting 47 C.F.R. section 1.6001 et seq.;

WHEREAS, 47 C.F.R. section 1.6001 et seq. implements 47 U.S.C. sections 332(c)(7) and 1455, regulating the collocation, modification, and deployment of wireless facilities;

WHEREAS, FCC 18-133 is intended to streamline the process of collocating and deploying small wireless facilities necessary to support the 5G network infrastructure;

WHEREAS, FCC 18-133 shortens the shot clock for reviewing small wireless facility permit applications, limits the amount of fees that can be assessed for the review, and regulates aesthetic requirements, among others;

WHEREAS, FCC 18-133 took effect on January 14, 2019, and preempts any and all conflicting local ordinances and regulations;

WHEREAS, FCC 18-133 requires cities to have small cell facility regulations in place by April 15, 2019

WHEREAS, given the short time period before the enforcement date of the new regulations, which require that the City approve applications for small wireless facilities, time is of the essence to review, evaluate, and approve if warranted, applications for small wireless communications facilities;

WHEREAS, the immediate adoption of an administrative regulatory process to review, evaluate, and approve if warranted, applications for wireless communications facilities is

necessary to protect the public's health, safety, and welfare by complying with federal law, namely section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 and the Federal Communications Commission's implementing regulations, thereby preserving to the maximum extent possible the City's ability to regulate modifications to existing wireless communications facilities;

WHEREAS, the City Council finds that this Zoning Ordinance Amendment is consistent with the goals, policies, and actions of the General Plan and will not conflict with the General Plan;

WHEREAS, this Zoning Ordinance Amendment implements the General Plan's visions and desire for the community, is adopted in the public's interest, and is otherwise consistent with federal and state law;

WHEREAS, the City Council finds that this Zoning Ordinance Amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City;

WHEREAS, the proposed actions are in compliance with the provisions of the California Environmental Quality Act (CEQA) because this project is categorically exempt from environmental review in accordance with section 21084 of the California Environmental Quality Act (CEQA) pursuant to section 15061(b)(3) of the CEQA Guidelines and because the proposed action is not a project under section 15378(b)(5) of the CEQA Guidelines. A Notice of Exemption is prepared and will be filed in accordance with the CEQA guidelines.

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

Section 1. Recitals Made Findings.

The City Council of the City of Lakeport hereby declares the above recitals to be true and correct.

Section 2. Wireless Communication Facilities Ordinance.

Chapter 17.41 of Title 17 of the Lakeport Municipal Code is hereby added to read as follows:

- 17.41.010 Purpose and intent.**
- 17.41.020 Definitions.**
- 17.41.030 Applicable facilities.**
- 17.41.040 Application procedure in general.**
- 17.41.050 Wireless facility permit application content.**
- 17.41.060 Required findings of approval for wireless permits.**
- 17.41.070 Standards for wireless facilities.**
- 17.41.080 Standard conditions of approval.**
- 17.41.090 Provisions applicable to small wireless facilities.**
- 17.41.100 Appeals.**

- 17.41.110 Independent consultant review.
- 17.41.120 Maintenance.
- 17.41.130 Removal of abandoned facilities.
- 17.41.140 Ownership transfers.
- 17.41.150. Revocation of a wireless facility permit.
- 17.41.160. Exception from standards.
- 17.41.170 Violations.
- 17.41.180 Severability.

17.41.010 Purpose and intent.

- A. The purpose of this chapter is to promote and protect the public health, safety and welfare, preserve the aesthetic character of the Lakeport community, and to reasonably regulate the development and operation of wireless communication facilities within the city to the extent permitted under state and federal law.
- B. This chapter establishes clear guidelines and standards and an orderly process for expedited permit application review intended to facilitate the orderly deployment of wireless transmission equipment to provide advanced communication services to the city, its residents, businesses, and community at large.
- C. The regulations in this city are specifically not intended to, and shall not be interpreted or applied to: (1) prohibit or effectively prohibit the provision of personal wireless services; (2) unreasonably discriminate among functionally equivalent service providers; or (3) regulate wireless communications facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission hereinafter also referred to as "FCC".
- D. This chapter shall be interpreted and applied so as to be consistent with the Communications Act of 1996, section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, applicable state laws, and administrative and court decisions and determinations relating to same.

17.41.020 Definitions.

This section shall be construed in light of the following definitions:

"Accessory equipment" means any equipment installed, mounted, operated or maintained in close proximity to a wireless communication facility to provide power to the wireless communication facility or to receive, transmit or store signals or information received by or sent from a wireless communication facility.

"Antenna structure" means any antenna, any structure designed specifically to support an antenna or any appurtenances mounted on such a structure or antenna.

“Base station” means the equipment and non-tower supporting structure at a fixed location that enable FCC-licensed or authorized wireless communications between user equipment and a communications network.

“City” means the City of Lakeport.

“Collocation” means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

“Director” means the City of Lakeport Community Development Director or his or her designee.

“Equipment cabinet” means any transmission or other equipment other than an antenna housed within a protective case. An equipment cabinet may be indoors or outdoors, large or small, movable or immovable. Any equipment case with a heat sink or other cooling mechanism for the equipment inside qualifies as an equipment cabinet.

“Non-tower support structure” means any structure (whether built for wireless purposes or not) that supports wireless transmission equipment under a valid permit at the time the applicant submits its application.

“Open space” includes (1) land which is designated as an open space district, as defined in Chapter 17.14, (2) land in residential zones upon which structures may not be developed by virtue of a restriction on title, (3) all common areas, public and private parks, slope easements, recreational areas and open portions of recreational facilities, and (4) any other area owned by a homeowners association or similar entity.

“Personal communication service” means commercial mobile services provided under a license issued by the FCC. “RF” means radio frequency.

“Significant gap” as applied to an applicant’s personal communication service or the coverage of its wireless communication facilities is intended to be defined in this section consistently with the use of that term in the Communications Act of 1996 and case law construing that statute. Provided that neither that Act nor case law construing it requires otherwise, the following guidelines shall be used to identify such a significant gap:

1. A significant gap may be demonstrated by in-kind call testing.
2. The commission shall accept evidence of call testing by the applicant and any other interested person and shall not give greater weight to such evidence based on the identity of the person who provides it but shall consider (i) the number of calls conducted in the call test, (ii) whether the calls were taken on multiple days, at various times, and under differing weather and vehicular traffic conditions, and (iii) whether calls could be successfully initiated, received and maintained in the area within which a significant gap is claimed.
3. A significant gap may be measured by:
 - a. The number of people affected by the asserted gap in service;

- b. Whether a wireless communication facility is needed to merely improve weak signals or to fill a complete void in coverage; and
- c. Whether the asserted gap affects a state highway or an arterial street which carries significant amounts of traffic.

“Small Wireless Facility” refers to a small wireless facility as defined by the FCC and that meets the following requirements:

- 2. The small wireless facilities:
 - a. Are mounted on structures 50 feet or less in height including their antennas, or
 - b. Are mounted on structures no more than 10 percent taller than other adjacent structures, or
 - c. Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- 3. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume;
- 4. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment, is no more than 28 cubic feet in volume;
- 5. The facilities do not require antenna structure registration under 47 C.F.R. section 17.1 et seq.;
- 6. The facilities are not located on Tribal lands; and
- 7. The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. section 1.1307(b).

“Stealth facility” means a wireless communication facility designed and constructed to be integrated into a building or other structure, or placed on or within a building or other structure, so that no portion of any equipment cabinet, transmission equipment, or any other apparatus associated with facility’s function is visible from publicly accessible areas.

“Transmission equipment” means any equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply.

“Wireless” means any FCC-authorized wireless communications service.

“Wireless communication facility” or “wireless facility” or “facility” means any facility that transmits and/or receives electromagnetic waves, including, but not limited to, commercial wireless communications antennas and other types of transmission equipment for the transmission or receipt of such signals, towers or similar structures supporting said equipment, equipment cabinets and connectors, pedestals, meters, tunnels, vaults, splice box, surface location marker, equipment, equipment buildings, parking areas and other related improvements used, or designed to be used, to provide wireless transmission of voice, data,

images or other information. The term also means any facility or transmission equipment used to provide any FCC-authorized wireless communications service including, but not limited to, personal wireless services defined by the Communications Act of 1996 and licensed by the FCC, including, but not limited to, the types commonly known as cellular, personal communications services ("PCS"), specialized mobile radio ("SMR"), enhanced specialized mobile radio ("ESMR"), paging, ground based repeaters for satellite radio services, micro-cell antennas, distributed antenna systems ("DAS") and similar systems.

"Wireless tower" means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities.

17.41.030 Applicable facilities.

This section applies to all proposed new or modified wireless communication facilities, as follows:

- A. New facilities. All permit applications received after the effective date of the ordinance codified in this chapter must comply with this chapter.
- B. Changes to existing facilities. All permit applications which in any manner whatsoever seek approval to modify a previously approved facility received after the effective date of the ordinance codified in this chapter must comply with this chapter.
- C. Exemptions. This section shall not apply to:
 - 1. City-owned municipal wireless communications facilities.
 - 2. Amateur radio facilities that are under seventy (70) feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive-only antennas.
 - 3. Over-the-air receiving devices, as defined by the FCC at 47 C.F.R. section 1.4000, with a maximum diameter of one meter (thirty-nine (39) inches) for residential installations, and two (2) meters (seventy-eight (78) inches) for nonresidential installations, and designed, installed, and maintained in compliance with the FCC and the California Public Utilities Commission (hereinafter referred to as the "CPUC") regulations.

17.41.040 Application procedures in general.

This chapter applies to all proposed new or modified wireless communication facilities, as follows:

- A. New Facilities. All applications for approval of the installation of new wireless communication facilities in the city must be approved by a wireless facility permit by the planning commission at a public hearing in compliance with this chapter and upon recommendation from the director. No new wireless communication facility shall be installed until the applicant or operator has obtained: (1) a wireless facility permit in compliance with this chapter; (2) an encroachment permit from the public works department (if applicable); and (3) any other permit required by applicable provisions of this code.

B. Changes to Existing Facilities. All permit applications which in any manner whatsoever seek approval to modify a previously approved facility received after the effective date of the ordinance codified in this chapter must be approved by a wireless facility permit by the planning commission at a public hearing for substantial modifications, or the director for minor modifications, in compliance with this chapter. All modifications to an existing personal wireless communications facility shall be subject to the approval of: (1) a wireless facility permit; in addition to (2) an encroachment permit from the public works department (if applicable); and (3) any other permit required by applicable provisions of this code.

C. All wireless communication facilities for which applications were received by the city but not approved prior to the effective date of the ordinance codified in this chapter shall comply with the regulations and guidelines of this chapter.

D. Exemptions. This chapter shall not apply to any city-owned municipal wireless communications facilities.

17.41.050 Wireless facility permit application content.

A. Applications for the approval of wireless facility permits for wireless communication facilities shall include, but are not necessarily limited to, an application fee and the following information:

1. A clear and complete written analysis that explains how the proposed design complies with the applicable design standards under this chapter to the maximum extent feasible. A complete design justification must identify all applicable standards under this chapter and provide a factually detailed reason why the proposed design either complies or the requirement is preempted by applicable state or federal law; and
2. Scaled visual simulations showing the proposed facility superimposed on photographs of the site and surroundings, to assist the commission in assessing the visual impacts of the proposed facility and its compliance with the provisions of this chapter; and
3. For new facilities, the plans shall include (in plan view and elevations) a scaled depiction of the maximum permitted increase as authorized by section 6409(a) of the 2012 Middle Class Jobs and Tax Relief Act, Title 47, United States Code, section 1455 using the proposed project as a baseline; and
4. A siting analysis which identifies a minimum of two other feasible locations within or without the city which could serve the area intended to be served by the facility, unless the applicant provides compelling technical reasons for providing fewer than the minimum. The alternative site analysis shall include at least one collocation site; and
5. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, in that it will not cause members of the general public to be exposed to RF levels that exceed the levels deemed safe by the FCC; and
6. A statement signed by a person with legal authority to bind the applicant attesting under penalty of perjury to the accuracy of the information provided in the application; and

7. A noise study, prepared by a qualified engineer, for the proposed wireless communication facility including, but not limited to, equipment, such as air conditioning units and back-up generators; and
 8. A written statement of the applicant's willingness to allow other carriers to collocate on the proposed wireless communication facility wherever technically and economically feasible and aesthetically desirable; and
 9. Such other information as the director shall establish from time to time pursuant to the Permit Streamlining Act, Government Code section 65940, or to respond to changes in law or technology.
- B. An application for a wireless communication facility in a public right-of-way for which the applicant claims entitlement under Public Utilities Code section 7901 shall be accompanied by evidence satisfactory to the director that the applicant is a telephone corporation or has written authorization to act as an agent for a telephone corporation.
- C. Applications for the approval of wireless communication facilities within the public right-of-way shall include certification that the facility is for the use of a telephone corporation or state 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 CPUC, it shall provide a copy of its CPCN.
- D. Minor Modification Application Content. All applications for a wireless facility permit for a proposed minor modification to an existing wireless facility which the applicant contends is subject to Title 47, United States Code, section 1455 must include the following items.
1. Application Form. The city's standard application form, available on the city's website or from the Planning Department, as may be amended.
 2. Application Fee. An application fee as established by the city council by resolution.
 3. Independent Consultant Deposit. An independent consultant fee deposit, if required by the city council by resolution, to reimburse the city for its costs to retain an independent consultant to review the technical aspects of the application.
 4. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.
 - a. A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
 - b. A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
 - c. A depiction of all existing and proposed utility runs and points of contact.
 - d. A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.

e. For proposed collocations or modifications to wireless towers, the plans must include scaled plan views and all four elevations that depict the physical dimensions of the wireless tower as it existed on February 22, 2012 or as approved if constructed after February 22, 2012. For proposed collocations or modifications to base stations, the plans must include scaled plan views and all four elevations that depict the physical dimensions of the base station as it existed on February 22, 2012 or as approved if constructed after February 22, 2012.

f. A demolition plan.

5. Visual Simulations. A visual analysis that includes: (a) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four angles, together with a map that shows the location of each view angle; (b) a color and finished material palette for proposed screening materials; and (c) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.

6. Statement Asserting that Section 6409 Applies. A written statement asserting that the proposed collocation or modification is an “eligible facilities request” and does not result in a substantial change in the physical dimensions of the facility’s wireless tower or base station, as defined by section 6409, Title 47, United States Code, section 1455, and justifying that assertion. The written statement shall identify and discuss each required finding for approval of a wireless facility minor modification permit and explain the facts that justify the request for the director to make each finding.

7. Prior Permits. True and correct copies of all previously issued permits, including all required conditions of approval and a certification by the applicant that the proposal will not violate any previous permit or conditions of approval or why any violated permit or conditions does not prevent approval under Title 47, United States Code, section 1455 and the FCC’s regulations implementing this federal law.

8. Affirmation of Radio Frequency Standards Compliance. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, because it will not cause members of the general public to be exposed to RF levels that exceed the levels deemed safe by the FCC.

9. Structural Analysis. A structural analysis, prepared, signed, and sealed by a California-licensed engineer that assesses whether the proposed wireless communications facility complies with all applicable building codes.

10. Noise Study. A noise study, prepared, signed, and sealed by a California-licensed engineer, for the proposed wireless communication facility including, but not limited to, equipment, such as air conditioning units and back-up generators.; or a written statement signed and sealed by a California-licensed engineer indicating that the proposed modification(s) will not alter the existing noise levels or operational equipment which creates noise.

11. Other Permits. An application for a wireless facility minor modification permit shall include all permit applications with all required application materials for each and every separate permit required by the city for the proposed collocation or modification to an existing personal wireless communications facility, including a building permit, an encroachment permit (if applicable), and an electrical permit (if applicable).

12. Other Information. Such other information as the city may require, as specified in publicly available materials, including information required as stated on the city's website.

17.41.060 Required findings of approval for wireless permits.

A. Wireless Facility Permit Findings for New or Substantially Modified Wireless Facility Permits. No wireless facility permit for a proposed new or substantial modification to a wireless communication facility may be approved unless the planning commission finds, at a public hearing for which notice was provided under the standards set forth in Government Code section 65090 and 65091, as follows:

1. The applicant has demonstrated by clear and convincing evidence that the new or substantially modified wireless facility is necessary to close a significant gap in the applicant's wireless service coverage. Such evidence shall include in-kind call testing of existing facilities within the area the applicant contends is a significant gap in coverage to be served by the facility.
2. The applicant has demonstrated by clear and convincing evidence that no feasible alternate site exists that would close a significant gap in the operator's wireless service coverage which alternative site is a more appropriate location for the facility under the standards of this section.
3. The proposed new or substantially modified wireless facility complies with all design standards and other requirements of this section, including the requirement that new or substantially modified facilities be camouflaged.
4. The proposed new or substantially modified wireless facility is consistent with the General Plan and any other applicable provisions of this code.
5. Public notice of the proposed facility was provided under the standards set forth in Government Code sections 65090 and 65091.

B. Additional Findings for New or Substantially Modified Wireless Facility Permits in the Public Rights of Way. In addition to the findings required in subsection (A)(1) above, no proposed new or substantially modified wireless communication facility within a public right-of-way may be approved unless the following findings are made by the planning commission:

1. The proposed facility has been designed to blend with the surrounding environment, with minimal visual impact on the public right-of-way.
2. The proposed facility will not have an adverse impact on the use of the public right-of-way, including but not limited to, the safe movement and visibility of vehicles and pedestrians.

C. Application Review Periods. Under federal and state law, the city must act on an application for a wireless facility permit for new facilities within 150 days, and must act on an application for a wireless facility permit for substantial modifications to existing facilities which the applicant does not contend are protected by Title 47, United States Code, section 1455, within 90 days, after the applicant submits the application for a wireless facility permit, unless tolled due to issuance of any notice of incomplete filing or by mutual agreement between the city and the applicant. Under federal and state law, failure to act on a wireless facility permit application within these timelines, excluding tolling periods, may result in the permit being deemed granted by operation of law. In that case, the applicant must still comply with the standard conditions of approval in this section.

D. Findings Required for Approval of Minor Modifications to Existing Wireless Facilities. An applicant seeking approval of a collocation or modification to an existing wireless communication facility which the applicant contends is within the protection of Title 47, United States Code, section 1455, and qualifies as a minor or not substantial modification, must apply for and receive approval of a wireless facility permit for a minor modification in compliance with this section. This subsection is intended to comply with the city's obligations under federal law, which provides that the city "may not deny, and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." (47 U.S.C. § 1455, subd. (a)(1), adopted as section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub.L No. 112-96, 126 Stat. 156.) This subsection sets forth standards for the city to review an application for a wireless facility minor modification permit submitted by an applicant who asserts that a proposed collocation or modification to an existing personal wireless communications facility is covered by this federal law. The city's review of these applications is structured to comply with the requirements of Title 47, United States Code, section 1455 and the FCC's regulations implementing this federal law, adopted on December 17, 2014 and codified at 47 C.F.R. §§ 1.40001, et seq. This subsection is intended to promote the public's health, safety, and welfare, and shall be interpreted consistent with the Federal Communications Act of 1996 (Pub.L. No. 104-104, 110 Stat. 56), Title 47, United States Code, section 1455, and applicable FCC regulations and court decisions considering these laws and regulations. Under federal law, the city must approve or deny an application for a wireless facility permit for a minor modification, together with any other city permits required for a proposed wireless facility minor modification, within sixty (60) days after the applicant submits the application for a wireless facility permit which the applicant contends is protected by Title 47, United States Code, section 1455, unless tolled due to issuance of any notice of incomplete filing or by mutual agreement between the city and the applicant. Under federal law, failure to act on a wireless facility permit application for a minor modification within the sixty (60) day review period, excluding tolling period, may result in the permit being deemed granted by operation of law. In that case, the applicant must still comply with the standard conditions of approval in this section.

1. The director must approve an application for a wireless facility permit for a minor modification that is a collocation or modification to an existing wireless tower on private

property which the applicant contends is within the protection of Title 47, United States Code, section 1455 only if each of the following findings can be made:

- a. The applicant proposes a collocation or modification to a structure constructed and maintained with all necessary permits in good standing for the sole or primary purpose of supporting any FCC licensed or authorized antennas and their associated facilities;
 - b. The proposed collocation or modification does not increase the height of the existing wireless communication facility above its lowest height on February 22, 2012 or as approved if constructed after February 22, 2012 by more than ten percent (10%) or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater;
 - c. The proposed collocation or modification does not increase the width of the facility by more than twenty (20) feet or the width of the tower at the level of the appurtenance, whichever is greater;
 - d. The proposed collocation or modification does not involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four;
 - e. The proposed collocation or modification does not involve any excavation outside the lease or license area of the facility, including any access or utility easements;
 - f. The proposed collocation or modification does not defeat any existing concealment, stealth, or camouflage elements of the support structure; and
 - g. The proposed collocation or modification does not violate any prior conditions of approval, except as may be preempted by section 6409, Title 47, United States Code, section 1455, subdivision (a).
2. The director must approve an application for a wireless facility permit for a minor modification that is a collocation or modification to an existing base station on private property which the applicant contends is within the protection of Title 47, United States Code, section 1455 only if each of the following findings can be made:
- a. The applicant proposes a collocation or modification to a structure constructed and maintained with all necessary permits in good standing, whether built for the sole or primary purpose of supporting any FCC licensed or authorized antennas and their associated facilities or not, that currently supports existing wireless transmission equipment;
 - b. The proposed collocation or modification does not increase the height of the existing wireless communication facility above its lowest height on February 22, 2012 or as approved if constructed after February 22, 2012 by more than ten percent (10%) or ten (10) feet, whichever is greater;
 - c. The proposed collocation or modification does not increase the width of the facility by more than six (6) feet;

- d. The proposed collocation or modification does not involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four;
 - e. The proposed collocation or modification does not involve any excavation outside the lease or license area of the facility, including any access and utility easements;
 - f. The proposed collocation or modification does not defeat any existing concealment, stealth, or camouflage elements of the support structure; and
 - g. The proposed collocation or modification does not violate any prior conditions of approval, except as may be preempted by section 6409, Title 47, United States Code, section 1455, subdivision (a).
3. The director must approve an application for a wireless facility permit for a minor modification that is a collocation or modification to an existing wireless tower or base station in the public right of way only which the applicant contends is within the protection of Title 47, United States Code, section 1455 if each of the following findings can be made:
- a. The applicant proposes a collocation or modification to either (i) a structure constructed and maintained with all necessary permits in good standing for the sole or primary purpose of supporting any FCC licensed or authorized antennas and their associated facilities or (ii) a structure constructed and maintained with all necessary permits in good standing, whether built for the sole or primary purpose of supporting any FCC licensed or authorized antennas and their associated facilities or not, that currently supports existing wireless transmission equipment;
 - b. The proposed collocation or modification does not increase the height of the existing wireless communication facility above its lowest height on February 22, 2012 or as approved if constructed after February 22, 2012 by more than ten percent (10%) or ten (10) feet, whichever is greater;
 - c. The proposed collocation or modification does not increase the width of the facility by more than six (6) feet;
 - d. The proposed collocation or modification does not involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four;
 - e. The proposed collocation or modification does not involve either (i) the installation of any new equipment cabinets on the ground, if none already exist, or (ii) the installation of ground equipment cabinets that are more than ten percent (10%) larger in height or overall volume than any existing ground cabinets;
 - f. The proposed collocation or modification does not involve any excavation outside the area in proximity to the existing ground-mounted equipment in the public right of way;

- g. The proposed collocation or modification does not defeat any existing concealment, stealth, or camouflage elements of the existing structure; and
- h. The proposed collocation or modification does not violate any prior conditions of approval, except as may be preempted by section 6409, Title 47, United States Code, section 1455, subdivision (a).

17.41.070. Standards for wireless facilities.

- A. All new wireless facilities shall be concealed. The installation of an uncamouflaged wireless facility is prohibited. All new facilities and substantial changes to existing facilities shall include appropriate stealth and concealment techniques given the proposed location, design, visual environment, and nearby uses and structures. Stealth and concealment techniques do not include incorporating faux-tree designs of a kind substantially different than the surrounding live trees. All new architectural features proposed to conceal transmission equipment shall be designed to mimic the existing underlying structure, shall be proportional to the existing underlying structure, and shall use materials in similar quality, finish, color, and texture as the existing underlying structure.
- B. All vents, exhausts and similar features for undergrounded equipment shall be flush to grade to the maximum extent feasible; all above-grade vents, exhausts or similar features shall be designed to blend with the environment to maximum extent feasible.
- C. All wireless facility antennas, mounting hardware, and cabling shall be covered or painted to match the color and texture of the building, tower, or pole on which it is mounted. Equipment cabinets, service panels, and service connections shall be screened by solid walls, landscaping, or berms. Screening shall blend with or enhance the surrounding context in terms of scale, form, texture, materials, and color. Any wireless facility shall be concealed as much as possible by blending into the natural and physical environment. All gates shall be opaque.
- D. Wireless facilities should be collocated with existing wireless facilities, if within one thousand five hundred (1,500) feet of an existing visible wireless facility, unless the city determines that the particular design proposed would not create excessive visual clutter or would otherwise create harms the city cannot ameliorate.
- E. A wireless facility located in the public rights-of-way:
 - 1. Shall, with respect to its pole-mounted components, be located in a concealed manner on an existing or replaced utility pole; or
 - 2. Shall be located in a concealed wireless facility consistent with other existing natural or manmade features in the rights-of-way near the location where the wireless facility is to be located; or
 - 3. Shall, with respect to its pole-mounted components, be located in a concealed wireless facility on a new utility pole, if there are no reasonable alternatives, and the applicant is authorized to construct new utility poles.
- F. The ground-mounted components of a wireless facility shall, whether in or outside of the rights-of-way:

1. To the extent the structures are utility boxes within the meaning of this code, be reviewed and subject to the same approvals as utility boxes installed by other communications companies; and
2. Shall be located flush to grade where necessary to avoid incommoding the public or creating a hazard; and
3. To the extent permitted aboveground, shall otherwise be appropriately screened, landscaped and camouflaged to blend in with the surroundings, and nonreflective paints shall be used. All ground-mounted outdoor transmission equipment and associated enclosures or shelters shall be screened. All wires, cables, and any other connections shall be completely concealed from public view to the maximum extent feasible.

G. Unless it is determined by the city that there is no less intrusive alternative available to close a significant gap in the service provided by a wireless facility; or it is determined that the city is legally required to approve an application, the director may not approve an application for a wireless facility where the application proposes a design that would require extensions from any support structure inconsistent in size with the extensions otherwise permitted under the code.

H. A wireless facility and all subsequent modifications shall be designed and located to minimize the impact on the surrounding neighborhood, and to maintain the character and appearance of the city, consistent with other provisions of the code. To that end, wireless facilities should:

1. Employ the least intrusive design for the proposed location in terms of size, mass, visual and physical impact, and effects on properties from which the wireless facility is visible; and
2. Accommodate collocation consistent with the other design requirements of this section; and
3. Be consistent with the general plan.

I. Without limiting the foregoing, all portions of a wireless facility affixed to a support structure shall be designed to blend in or be screened from view in a manner consistent with the support structure's architectural style, color and materials when viewed from any part of the city. Wireless facilities shall be covered, painted and textured or otherwise camouflaged to match the color and texture of the support structure on which they are mounted. Where the support structure is a building, the wireless facility, including without limitation base station cabinets, remote transmitters and receivers, and antenna amplifiers, shall be placed within the building or mounted behind a parapet screened from public view unless that is not feasible. If the director determines that such in-building placement is not feasible, the equipment shall be roof-mounted in an enclosure or otherwise screened from public view as approved by the community development director.

J. Wireless facilities shall not be lighted except with the authorization of the director. The director may permit lighting at the lowest intensity necessary:

1. For proximity-triggered or timer-controlled security lighting; or

2. To comply with regulations for the illumination of any flag attached to a wireless facility;
or
 3. Where such lighting is required by the director to protect public health or welfare, or as part of the camouflage for a particular design which includes street or decorative lighting as integral to the design and as approved by the director.
- K. No facilities may bear any signage or advertisement(s) other than signage required by law or expressly permitted or required by the city. No advertising signage shall be displayed on any wireless facility except for government-required signs shown in the wireless facility permit application. Additionally site identification, address, warning and similar information plates may be permitted where approved by the director.
- L. The wireless facility shall not incommode the public (including, without limitation, persons with disabilities) in its use of any structure, or any portion of the rights-of-way.
- M. All new facilities and substantial changes to existing facilities shall comply with the applicable height limit for the facility's zone.
- N. At no time shall transmission equipment or any other associated equipment (including but not limited to heating and air conditioning units) at any wireless communication facility emit noise that exceeds the applicable limit(s) established in this code.
- O. All facilities shall at all times comply with all applicable federal, state, and local building codes, electrical codes, fire codes, and any other code related to public health and safety.
- P. All wireless towers shall be designed and situated in a manner that utilizes existing natural or man-made features (including but not limited to topography, vegetation, buildings, or other structures) to visually conceal the wireless tower to the maximum extent feasible.
- Q. All accessory equipment associated with the operation of a wireless communication facility shall be located within a building enclosure or underground vault that complies with the development standards of the zoning district in which the accessory equipment is located.
- R. Ground-mounted equipment shall be located so as not to cause: (i) any physical or visual obstruction to pedestrian or vehicular traffic; (ii) inconvenience to the public's use of a public right-of-way; or (iii) safety hazards to pedestrians and motorists. In no case shall ground-mounted equipment, walls, or landscaping be less than eighteen (18) inches from the front of the curb.
- S. No facility shall be built so as to cause the right-of-way in which the facility is located to fail to comply with the Americans with Disabilities Act.

17.41.080 Standard conditions of approval.

All facilities subject to a wireless facility permit approved under this chapter, including any facilities for which a wireless facility permit is deemed approved by operation of law, shall be subject to the following conditions:

- A. Facilities shall not bear any signs or advertising devices other than legally required certification, warning, or other required seals or signage, or as expressly authorized by the City.

B. Abandonment.

1. Wireless communication facilities that are no longer operating shall be removed at the expense of the applicant, operator, or owner no later than ninety (90) days after the discontinuation of use. Disuse for ninety (90) days or more shall also constitute a voluntary termination by the applicant of any land use entitlement under this code or any predecessor to this code.
2. The director shall send a written notice of the determination of non-operation to the owner and operator of the wireless communication facility, who shall be entitled to a hearing on that determination before the city manager or a hearing officer appointed by the city manager, provided that written request for such a hearing is received by the city clerk within ten (10) days of the date of the notice. No further appeal from the decision of the city manager may be had other than pursuant to Code of Civil Procedure section 1094.5. Upon a final decision of the city manager or the running of the time for a request for a hearing without such a request, the operator shall have ninety (90) days to remove the facility.
3. The operator of a facility shall notify the city in writing of its intent to abandon a permitted site. Removal shall comply with applicable health and safety regulations. Upon completion of abandonment, the site shall be restored to its original condition at the expense of the applicant, operator, or owner.
4. All facilities not removed within the required ninety (90)-day period shall be in violation of this code. In the event the city removes a disused facility upon the failure of the applicant, operator, or owner to timely do so, the applicant, operator, and owner shall be jointly and severally liable for the payment of all costs and expenses the city incurs for the removal of the facilities, including legal fees and costs.

C. The applicant, operator of a facility and property owner (when applicable) shall defend, indemnify and hold the city and its elective and appointed boards, commissions, officers, agents, consultants and employees harmless from and against all demands, liabilities, costs (including attorneys' fees), or damages arising from the city's review and approval of the design, construction, operation, location, inspection or maintenance of the facility.

D. Removal of Unsafe Facilities. If, at any time after ten (10) years of the issuance of a building permit or encroachment permit, or any shorter period permitted by Government Code section 65964(b), any wireless communication facility becomes incompatible with public health, safety or welfare, the applicant or operator of the facility shall, upon notice from the city and at the applicant's or operator's own expense, remove that facility. Written notice of a determination pursuant to this subsection shall be sent to the owner and operator of the wireless communication facility, who shall be entitled to a hearing on that determination before the city manager or a hearing officer appointed by the city manager, provided that written request for such a hearing is received by the city clerk within ten (10) days of the date of the notice. No further appeal from the decision of the city manager may be had other than pursuant to Code of Civil Procedure section 1094.5. Upon a final decision of the city manager or

the running of the time for a request for a hearing without such a request, the operator shall have ninety (90) days to remove the facility.

E. Prior to the issuance of a building permit or encroachment permit, the applicant or owner/operator of the facility shall pay for and provide a performance bond, which shall be in effect until all facilities are fully and completely removed and the site reasonably returned to its original condition. The purpose of this bond is to cover the applicant's or owner/operator of the facility's obligation under the conditions of approval and the city code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping obligations. The amount of the performance bond shall be set by the director on a case-specific basis and in an amount reasonably related to the obligations required under this code and all conditions of approval, and shall be specified in the conditions of approval.

F. An applicant shall not transfer a permit to any person or entity prior to completion of construction of a wireless communication facility.

G. The applicant shall submit as-built photographs of the facility within ninety (90) days of installation of the facility, detailing the installed equipment.

H. A wireless communication facility approved by a wireless facility permit may operate only until the 10th anniversary of the date it is first placed into service, unless that sunset date is extended by additional term(s) not to exceed ten (10) years pursuant to a wireless facility permit issued. There is no limit to the number of times the sunset date for a facility may be extended.

I. Any approved wireless communication facility within a public right-of-way shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the public works director to: (1) protect the public health, safety, and welfare; (2) prevent interference with pedestrian and vehicular traffic; or (3) prevent damage to a public right-of-way or any property adjacent to it. Before the director of public works imposes conditions, changes, or limitations pursuant to this subsection, he or she shall notify the applicant or operator, in writing, by mail to the address set forth in the application or such other address as may be on file with the city. Such change, new limitation or condition shall be effective twenty-four (24) hours after deposit of the notice in the United States mail.

J. The applicant or operator of a wireless communication facility in the public rights-of-way shall not move, alter, temporarily relocate, change, or interfere with any existing public facility, structure or improvement without the prior written consent of the city, and the owner in the circumstance where the owner is not the city. No structure, improvement or facility owned by the city shall be moved to accommodate a wireless communication facility unless: (1) the city determines, in its sole and absolute discretion, that such movement will not adversely affect the city or surrounding residents or businesses; and (2) the applicant or operator pays all costs and expenses related to the relocation of the city's facilities. Every applicant or operator of any wireless communication facility shall assume full liability for damage or injury caused to any property or person by his, her, or its facility. Before commencement of any work pursuant to an encroachment permit issued for any wireless communication facility within a public right-of-way, an applicant shall provide the city with documentation establishing to the city's

satisfaction that the applicant has the legal right to use or interfere with any other facilities within the public right-of-way to be affected by applicant's facilities.

K. In addition to any other conditions of approval permitted under federal and state law and this code that the director deems appropriate or required under this code, all wireless facility permits for minor modifications subject to Title 47, United States Code, section 1455, including any minor modifications for which a wireless facility permit is deemed approved by operation of law, shall include the following conditions of approval:

1. No Automatic Renewal. The grant or approval of a wireless facility minor modification permit shall not renew or extend the underlying permit term.
2. Compliance with Previous Approvals. The grant or approval of a wireless facility minor modification permit shall be subject to the conditions of approval of the underlying permit, except as may be preempted by section 6409(a) of the 2012 Middle Class Jobs and Tax Relief Act, Title 47, United States Code, section 1455.
3. As-Built Plans. The applicant shall submit to the director an as-built set of plans and photographs depicting the entire personal wireless communications facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.
4. Indemnification. To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless city, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the wireless facility minor modification permit and the issuance of any permit or entitlement in connection therewith. The applicant shall pay such obligations as they are incurred by city, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the city reasonably determines necessary to protect the city from exposure to fees, costs or liability with respect to such claim or lawsuit.
5. Compliance with Applicable Laws. The applicant shall comply with all applicable provisions of this code, any permit issued under this code, and all other applicable federal, state, and local laws. Any failure by the city to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.
6. Compliance with Approved Plans. The proposed project shall be built in compliance with the approved plans on file with the Planning Department.
7. Violations. The facility shall be developed, maintained, and operated in full compliance with the conditions of the wireless facility minor modification permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development

or activity on the site. Failure of the applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this code, the conditions of approval for the wireless facility minor modification permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this chapter shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

8. In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, Title 47, United States Code, section 1455, such that such statute would not mandate approval for the collocation or modification granted or deemed granted under a wireless facility minor modification permit, such permit shall automatically expire twelve (12) months from the date of that opinion.

9. The grant, deemed-grant or acceptance of wireless facility minor modification permit shall not waive and shall not be construed or deemed to waive the City's standing in a court of competent jurisdiction to challenge Title 47, United States Code, section 1455 or any wireless facility minor modification permit issued pursuant to Title 47, United States Code, section 1455 or this code.

L. Annual Monitoring Fee. The owner or operator of a facility subject to a permit under this chapter shall pay to the city an annual monitoring fee as established in the city's Master Fee Schedule. The fee shall be used to recover the city's costs to inspect, review, and monitor compliance with the conditions of the permit.

17.41.090 Provisions applicable to small wireless facilities.

Unless modified by this section, all provisions of this chapter shall apply to small wireless facilities.

A. Requirements for Small Wireless Facilities Permits. This subsection governs applications for small wireless facilities permits.

1. Purpose. This subsection is intended to comply with the city's obligations under 47 C.F.R. section 1.6001 et seq., which implements 47 U.S.C. sections 332(c)(7) and 1455. This subsection creates a process for the city to review an application for a small wireless facility permit submitted by an applicant who asserts that a proposed collocation of a small wireless facility using an existing structure or the deployment of a small wireless facility using a new structure, and the modifications of such small wireless facilities, is covered by federal law and to determine whether the city must approve the proposed collocation or deployment.

2. Applicability. An applicant seeking approval of a collocation to a structure or a deployment to a new structure which the applicant contends is within the protection of 47 U.S.C. section 1455 shall apply for the following at the same time: (i) a small wireless facility permit; (ii) an encroachment permit from the public works department (if required by applicable provisions of this code); and (iii) any other permit required by applicable

provisions of this code including a building permit, an electrical permit, or a tree report under chapter 17.21.

3. Application Content: All applications for a small wireless facility permit must include the following items:

- a. Application Form. The city's standard application form, available on the city's website or from the planning and building department, as may be amended.
- b. Application Fee. An application fee as established by the city council by resolution.
- c. Independent Consultant Deposit. An independent consultant fee deposit, if required by the city council by resolution, to reimburse the city for its costs to retain an independent consultant to review the technical aspects of the application.
- d. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.
 - i. A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
 - ii. A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
 - iii. A depiction of all existing and proposed utility runs and points of contact.
 - iv. A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.
 - v. For proposed collocation or deployment to wireless towers, the plans must include scaled plan views and all four (4) elevations that depict the physical dimensions of the wireless tower as it existed on
 - vi. A demolition plan.
- e. Visual Simulations. A visual analysis that includes: (1) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four (4) angles, together with a map that shows the location of each view angle; (2) a color and finished material palate for proposed screening materials; and (3) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.
- f. Statement Asserting that 47 C.F.R. Section 1.6001 et seq. Applies. A written statement asserting that the proposed collocation or deployment is subject to 47 C.F.R. section 1.6001 et seq.
- g. Prior Permits. True and correct copies of all previously issued permits, including all required conditions of approval and a certification by the applicant that the proposal will not violate any previous permit or conditions of approval or why any

violated permit or conditions does not prevent approval under 47 U.S.C. section 1455 and the FCC's regulation implementing this federal law.

h. Affirmation of Radio Frequency Standards Compliance. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, because it will not cause members of the general public to be exposed to RF levels that exceed the MPE levels deemed safe by the FCC. A copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the application. All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power."

i. Structural Analysis. A structural analysis, prepared, signed, and sealed by a California-licensed engineer, for the proposed small wireless facility including, but not limited to, equipment, such as air conditioning units and back-up generators; or a written statement signed and sealed by a California-licensed engineer indicating that the proposed facility will not alter the existing noise levels or operational equipment which creates noise.

j. Other Permits. An application for a small wireless facility permit shall include all permit applications with all required application materials for each and every separate permit required by the city for the proposed collocation or deployment, including a building permit, an encroachment permit (if applicable) and an electrical permit (if applicable).

4. Application Review. Each application for a new or modified small wireless facility permit shall be reviewed by the director. The city must approve or deny an application for a small wireless facility permit, together with any other city permits required for a proposed small wireless facility, within sixty (60) days after the applicant submits an application to collocate a small wireless facility using an existing structure, and within ninety (90) days after the applicant submits an application to deploy a small wireless facility using a new structure. The director shall provide written notice to all property owners within 500 feet of the site of a proposed small wireless facility upon approval of an application for a small wireless facility permit.

5. Tolling Period. Unless a written agreement between the applicant and the city provides otherwise, the application is tolled when the city notifies the applicant within ten (10) days of the applicant's submission of the application that the application is materially incomplete and identifies the missing documents or information. The shot clock may again be tolled if the city provides notice within ten (10) days of the application's resubmittal that it is materially incomplete and identifies the missing documents or information. For an application to deploy small wireless facilities, if the city notifies the applicant on or before the tenth (10th) day after submission that the application is materially incomplete, and

identifies the missing documents or information and the rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation will restart at zero on the date the applicant submits a completed application.

6. Standards Governing Approval by Director

- a. The director shall approve or deny an application to collocate a small wireless facility using an existing structure by evaluating the following standards:
 - i. The existing structure was constructed and maintained with all necessary permits in good standing.
 - ii. The existing structure is fifty (50) feet or less in height, including any antennas, or the existing structure is no more than ten (10) percent taller than other adjacent structures.
 - iii. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume.
 - iv. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment serving the facility, is no more than twenty-eight (28) cubic feet in volume.
 - v. The small wireless facilities do not extend the existing structure on which they are located to a height of more than fifty (50) feet or by more than ten (10) percent, whichever is greater.
 - vi. The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.
 - vii. The small wireless facility is not located on Tribal lands, as defined under 36 C.F.R. section 800.16(x).
 - viii. For collocations not located within the public right-of-way, the proposed collocation shall be consistent with the standards of sections 17.41.070 and 17.41.080.
 - ix. For collocation located within the public right-of-way, the proposed collocation shall be consistent with the standards of sections 17.41.070 and 17.41.080, except that sections 17.41.070(D), and 17.41.080(I) and (J) do not apply.
 - x. The proposed collocation would be in the most preferred location and configuration within two-hundred and fifty (250) feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location or configuration within two-hundred and fifty (250) feet would be technically infeasible, applying the preference standards of this section.

- xi. The proposed collocation is designed as a stealth facility, to the maximum feasible extent.
- b. The director must approve an application to deploy a small wireless facility using a new structure only if each of the following findings can be made:
- i. The new structure was constructed and maintained with all necessary permits in good standing;
 - ii. The new structure is fifty (50) feet or less in height, including any antennas, or the new structure is no more than ten (10) percent taller than other adjacent structures;
 - iii. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume;
 - iv. All other wireless equipment associated with the facility, including the wireless equipment associated with the antenna and any pre-existing equipment associated with the facility, is no more than twenty-eight (28) cubic feet in volume;
 - v. The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.
 - vi. The small wireless facility is not located on Tribal lands, as defined under 36 C.F.R. section 800.16(x);
 - vii. For new structures not located within the public right-of-way, the proposed facility shall be consistent with the standards of sections 17.41.070 and 17.41.080.
 - viii. For new structures located within the public right-of-way, the proposed facility shall be consistent with sections 17.41.070 and 17.41.080, except that sections 17.41.070 (D), and 17.41.080(I) and (J) do not apply.
 - ix. The proposed project would be in the most preferred location and configuration within two-hundred and fifty (250) feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location or configuration within two-hundred and fifty (250) feet would be technically infeasible, applying the preference standards of this section.
 - x. The proposed project is designed as a stealth facility, to the maximum feasible extent.
- c. Small Cell Location and Configuration Preferences. The city prefers that small wireless facilities in the public right of way or in the equivalent right of way on homeowners' association owned lands and private streets be configured on the following support structures, in order of preference from most to least preferred: (1) existing or replacement street light standard; (2) existing or replacement concrete or steel utility pole; (3) existing or replacement wood utility pole; (4) new street light

standard; (5) new utility pole. The city prefers that small wireless facilities outside the public right of way be configured on the following support structures, in order of preference from most to least preferred: (1) on existing, approved wireless facility support structures operating in compliance with this code; (2) on existing buildings or non-tower structures; (3) on existing or replacement utility poles or towers; (4) in new towers meeting the height requirements of the applicable FCC regulations.

7. Conditions of Approval for Small Wireless Facility Permits. In addition to any other conditions of approval permitted under federal and state law and this code that the director deems appropriate or required under this code, all small wireless facility permits under this subsection shall include the following conditions of approval:

- a. No Automatic Renewal. The grant or approval of a small wireless facility permit shall not renew or extend the underlying permit term.
- b. Compliance with Previous Approvals. The grant or approval of a small wireless facility permit shall be subject to the conditions of approval of the underlying permit.
- c. As-Built Plans. The applicant shall submit to the director an as-built set of plans and photographs depicting the entire small wireless facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.
- d. Indemnification. To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless the city, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the wireless facility minor modification permit and the issuance of any permit or entitlement in connection therewith. The applicant shall pay such obligations as they are incurred by the city, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the city reasonably determines necessary to protect the city from exposure to fees, costs or liability with respect to such claim or lawsuit.
- e. Compliance with Applicable Laws. The applicant shall comply with all applicable provisions of this code, any permit issued under this code, and all other applicable federal, state, and local laws. Any failure by the city to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.
- f. Compliance with Approved Plans. The proposed project shall be built in compliance with the approved plans on file with the planning and building department.
- g. Violations. The small wireless facility shall be developed, maintained, and operated in full compliance with the conditions of the small wireless facility permit, any

other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this code, the conditions of approval for the wireless facility minor modification permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this section shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

h. In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, 47 U.S.C. section 1455, such that such statute would not mandate approval for the collocation or deployment granted or deemed granted under a wireless facility minor modification permit, such permit shall automatically expire twelve (12) months from the date of that opinion.

i. The grant, deemed-grant or acceptance of a small wireless facility permit shall not waive and shall not be construed or deemed to waive the city's standing in a court of competent jurisdiction to challenge 47 U.S.C. section 1455 or any small wireless facility permit issued pursuant to 47 U.S.C. section 1455 or this code.

8. Small Wireless Facility Permit Denial Without Prejudice.

a. Grounds for Denial without Prejudice. The director may deny without prejudice an application for a small wireless facility permit in any of the following circumstances:

- i. The director cannot make all findings required for approval of a small wireless facility permit;
- ii. The proposed collocation or deployment would cause the violation of an objective, generally applicable law protecting public health or safety;
- iii. the proposed collocation or deployment involves the removal and replacement of an existing facility's entire supporting structure; or
- iv. the proposed collocation or deployment does not qualify for mandatory approval under 47 U.S.C. section 1455, as may be amended or superseded, and as may be interpreted by any order of the FCC or any court of competent jurisdiction.

b. Procedures for Denial without Prejudice. All small wireless facility permit application denials shall be in writing and shall include: (i) the decision date; (ii) a statement that the city denies the permit without prejudice; (iii) a short and plain statement of the basis for the denial; and (iv) that the applicant may submit the same or substantially the same permit application in the future.

c. Submittal after Denial without Prejudice. After the director denies a small wireless facility permit application, and subject to the generally applicable permit application submittal provisions in this chapter, an applicant shall be allowed to:

- i. submit a new small wireless facility permit application for the same or substantially the same proposed collocation or deployment; or
 - ii. submit an appeal of the director's decision to the city council in accordance with section 17.41.100 of this code.
- d. **Costs to Review a Denied Permit.** The city shall be entitled to recover the reasonable costs for its review of any small wireless facility permit application. In the event that the director denies a small wireless facility permit application, the city shall return any unused deposit fees within sixty (60) days after a written request from the applicant. An applicant shall not be allowed to submit a small wireless facility permit application for the same or substantially the same proposed modification unless all costs for the previously denied permit application are paid in full.
- B. Nothing in this section shall modify the existing standards for non-small wireless facility applications.
- C. Nothing in this section shall limit the city's authority to negotiate different standards for small wireless facility applications.

17.41.100. Appeals.

- A. Within fifteen (15) calendar days following the date of any decision by the director or planning commission on a wireless facility permit application, any person or entity may appeal the decision to the city council. The city council may call for the review of a decision by the director or planning commission by a majority vote.
- B. Where an appeal is timely filed, the city manager shall prepare a staff report regarding the original decision and shall submit the report to the city council along with the written notice of appeal submitted by the appellant, and shall make the written record available to the city council.
- C. The appeal before the city council shall be a public hearing and shall be appropriately noticed. The appellant shall bear all costs for the appeal.
- D. The city council shall hear the appeal at a regular city council meeting or at a special meeting of the city council called for the purpose of hearing the appeal, after allowing for sufficient time for the city manager to prepare the written report and compile the written record. To prevent applicants from withholding information or otherwise abusing the appeal process, the city council has the discretion but is not required to hear additional evidence, and may decide the matter solely on the record that was before the director or planning commission.
- E. The city council may accept or reject, wholly or in part, or may modify, the made by the director or planning commission. If the decision of the city council regarding the wireless facility permit appeal is to deny the wireless facility permit or conditionally approve the wireless facility permit, the city council shall direct the city manager to prepare written findings referencing substantial evidence in the city's written administrative record and such written

finding shall be provided to the city council for adoption. The applicant and any appellant on the application shall receive a copy of the final written decision approved by the city council.

17.41.110 Independent consultant review.

A. Selection by Director. The director may select and retain with the approval of the city manager one or more independent consultants with expertise in communications satisfactory to the director and the city manager in connection with any permit review and evaluation.

B. Scope. The independent consultant shall review the project aspects that involve technical or specialized knowledge and may address:

1. Whether the applicant submitted a complete and accurate application;
2. Whether the facts and materials presented in a particular application tend to support certain statements or analyses in the application;
3. Compliance with any applicable regulations;
4. Any other specific technical or specialized issues requested by the city; and/or
5. Presence or absence of a significant gap in service coverage, as appropriate.

C. Independent Consultant Fee Deposit. The applicant shall pay the cost for any independent consultant fees, along with applicable overhead recovery, through a deposit, estimated by the director, paid at the time the applicant submits an application. The applicant shall pay all consultant fees before the city may act on a permit application. In the event that such costs or fees do not exceed the deposit amount, the city shall refund any unused portion within sixty (60) days after the final building permit is released or, if no final building permit is released, within sixty (60) days after the city receives a written request from the applicant.

17.41.120. Maintenance.

A. All wireless communication facilities must comply with all standards and regulations of the FCC, and any other state or federal government agency with the authority to regulate wireless communication facilities.

B. The site and the wireless communication facility, including all landscaping, fencing, and related transmission equipment must be maintained in a neat and clean manner and in accordance with all approved plans.

C. All graffiti on wireless communication facilities must be removed at the sole expense of the permittee within forty-eight (48) hours of notification.

D. A wireless communication facility located in the public right-of-way may not unreasonably interfere with the use of any city property or the public right-of-way by the city, by the general public or by other persons authorized to use or be present in or upon the public right-of-way. Unreasonable interference includes disruption to vehicular or pedestrian traffic, and interference with any other city or public utilities.

E. If any FCC, CPUC or other required license or approval to provide communication services is ever revoked, the permittee must inform the director of the revocation within ten (10) days of receiving notice of such revocation.

17.41.130. Removal of abandoned facilities.

A. Any facility whose permit has expired or whose permit has been terminated by the city or that is not operated for a continuous period of one-hundred and eighty (180) days shall be deemed abandoned, and the owner of the facility shall remove the facility within ninety (90) days of receipt of notice from the director notifying the owner of the abandonment.

B. If the facility is not removed within the ninety (90) day period, the director may remove the facility at the permittee's, facility owner's, or landowner's expense pursuant to the city's abatement procedures.

C. If there are two or more users of the permitted facility, this provision shall not become effective until all applicable permits have expired or have terminated or all users cease using the facility.

D. As a condition of approval for permit issuance, the applicant shall provide a separate demolition bond for the duration of the permit, and in the form and manner of surety as determined by the director and approved as to form by the city attorney, with provision for inspection and city removal of the facility in the event of failure to perform by the responsible parties as defined by this chapter.

17.41.140. Ownership transfers.

Upon transfer of an approved wireless communication facility or any rights under the applicable permit or approval, the permittee of the facility must within thirty (30) days of such transfer provide written notification to the director of the date of the transfer and the identity of the transferee. The director may require submission of any supporting materials or documentation necessary to determine that the facility is in compliance with the existing permit or approval and all of its conditions including, but not limited to, statements, photographs, plans, drawings, and analysis by a qualified engineer demonstrating compliance with all applicable regulations and standards of the city, FCC, and CPUC.

17.41.150. Revocation of a wireless facility permit.

A. A wireless facility permit may be revoked if the permittee is not in compliance with permit conditions, if the permit conditions are not enforceable, or for a failure to comply with any provision of the code relating to the permit, or relating to the wireless facility associated with the permit ("default event"). By way of example and not limitation, a refusal to timely remove facilities located in the rights-of-way where required in connection with a public works project would be a default event.

B. The city manager may revoke a wireless facility permit only after:

1. Written notice of the default event has been provided to the wireless facility permit holder.

2. The wireless facility permit holder has been afforded a reasonable opportunity to cure and comply with its permit, or demonstrate that no default event occurred.
3. If the wireless facility permit holder fails to cure, the city council, or designee, shall conduct a noticed public hearing where the wireless facility permit holder shall be afforded an opportunity to speak and be heard and to provide written material prior to the hearing. If the city council or its designee, after the public hearing, finds that the wireless facility or the wireless facility permit holder has violated any law regulating the wireless facility or has failed to comply with the requirements of this chapter, the wireless facility permit, any applicable agreement or any condition of approval, the city council may revoke the permit.
4. Upon revocation, the city council may require the removal of the wireless facility or take any other legally permissible action or combination of actions necessary to protect the health and welfare of the city.

17.41.160. Exception from standards.

Notwithstanding the provisions of this chapter, one or more specific exceptions to the standards contained within this chapter may be granted if a denial of an exception would prohibit or have the effect of prohibiting the provision of wireless communications services by the applicant within the meaning of Title 47, United States Code section 332, subdivision (c)(7) or if the denial of the exception is otherwise preempted or prohibited by state or federal law or regulations. The city may grant an exception, on such terms as the city may deem appropriate, in cases where the city determines that the grant of an exception is necessary to comply with state and federal law or regulations. Prior to the issuance of an exception, the applicant shall be required to submit to the director a written explanation setting forth clear and convincing evidence that the location or locations and the design of the facility is necessary to close a significant gap in service coverage, that there is no feasible alternate location or locations, or design, that would close this significant gap in coverage or reduce this significant gap in coverage to less than significant, and that the facility is the least intrusive means to close a significant gap or to reduce it to less than a significant gap in coverage. Exceptions shall be subject to the review and approval by the planning commission at noticed public hearings. The burden is on the applicant to prove significant gaps and least intrusive means as required herein.

17.41.170 Violations.

It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. Any person, firm, partnership, or corporation violating any provision of this chapter or failing to comply with any of its requirements will be deemed guilty of an infraction and upon conviction thereof will be punished by fine not exceeding \$1,000.00. Each such person, firm, partnership, or corporation will be deemed guilty of a separate offense for each and every day or any portion thereof during which any violation of any of the provisions of this chapter is committed, continued or permitted by such person, firm, partnership, or corporation, and will be deemed punishable therefor as provided in this chapter. The remedies specified in this chapter shall be cumulative and the city may resort to

any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

17.41.180 Severability.

In the event that a court of competent jurisdiction holds any section, subsection, paragraph, sentence, clause, or phrase in this chapter unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this chapter and shall not affect the validity of the remaining portions of this chapter. The city hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause, or phrase in this chapter irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses, or phrases in this chapter might be declared unconstitutional, preempted, or otherwise invalid.

Section 3. CEQA.

The adoption of this Ordinance is exempt from review under the California Environmental Quality Act (CEQA). Pursuant to section 15061(b)(3) of the CEQA Guidelines, CEQA applies only to projects which have the potential for causing a significant effect on the environment. This policy will not result in a significant foreseeable environmental impact. To the extent this Ordinance is determined to be a project within the meaning of CEQA, it is categorically exempt under CEQA Guidelines section 15301 (Existing Facilities) and CEQA Guidelines section 15311 (Accessory Structures).

Section 4. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The city council hereby declares that it would have passed this and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional on their face or as applied.

Section 5. Declaration of Urgency.

This Ordinance is hereby declared to be an urgency measure necessary for the immediate protection of the public health, safety and welfare and shall take effect immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the city council under Government Code section 36937.

Section 6. Posting.

The city clerk shall cause this ordinance to be published and/or posted within fifteen (15) days after its adoption.

This Ordinance was introduced, passed, approved, and adopted by the City Council of the City of Lakeport at a regular meeting thereof on the 2nd day of April, 2019, by the following vote:

AYES: Mayor Pro Tem Spurr, Council Members Mattina, Parlet, and Turner

NOES: None


ABSENT: Mayor Barnes

ABSTAINING: None



GEORGE SPURR, Mayor Pro Tem

ATTEST:



KELLY BUENDIA, City Clerk

PLANNING PROJECTS PENDING
as of
July 3, 2019

No.	Staff Assigned	File No./Name	Date Received	Progress	Next Action	PC / Staff Level
1.	Dan	GPA & Zoning Inconsistencies	6/2/2016	Staff currently preparing required exhibit maps and ordinance language for recommended General Plan and Zone changes.	C.C. review (July / August)	P.C. Approved 8/15/2018
2.	Dan	Roberto Villanueva – VM 18-01 / CE 18-04 1230 & 1250 Sixth St.	3/20/2018	Voluntary Merger of two lots.	Waiting on further items from Applicant.	Staff
3.	Dan	California High Class, Inc. (Previously J & J Pharm Inc.) – CAN 19-01 215 Peckham Ct.	2/26/2019	Application for a cannabis micro-business.		City Mgr. Review
4.	Dan	California High Class, Inc. (Previously J & J Pharm Inc.) – UP 19-02 & CE 19-05 215 Peckham Ct.	2/26/2019	Application for a Use Permit & Categorical Exemption for cannabis micro-business.	P.C. Review	PC Review 5/8/2019
5.	Kevin / Dan	City of Lakeport – OA 18-02, ER 18-03 1387 Scotts Valley Road		Photovoltaic solar generation facilities and related structures.	County of Lake P.C. Review (May).	Approved 4/24/2019
6.	Kevin / Dan	City of Lakeport – Telecommunications Urgency Ordinance No. 921- ZC 19-02	4/2/2019	Urgency ordinance to comply with recent FCC regulations.	P.C. Review	PC Review 7/10/2019
7.	Kevin / Dan	Element 7 Lakeport LLC – UP 19-03, CE 19-07 1775 S. Main St.	4/24/2019	Application for a Use Permit and Categorical Exemption for a cannabis micro-business.	Waiting on further items from Applicant.	P.C.
8.	Kevin / Dan	Element 7 Lakeport LLC – CAN 19-02 1775 S. Main St.	4/24/2019	Application for a cannabis micro-business.	Waiting on further items from Applicant.	City Mgr. Review
9.	Kevin / Dan	CIM Group Inc. – AR 19-04, CE 19-09	5/7/2019	Application for Architectural and Design review and Categorical Exemption for a Wells Fargo ATM machine.	Staff approved June 21, 2019	Staff

10.	Kevin / Dan	Lake County Tribal Health – AR 19-03 & CE 19-08 925 Bevins Ct.	5/1/2019	Application for Architectural and Design review and Categorical Exemption for a 700 square foot addition.	P.C. Review	PC Review 7/10/2019
11.	Kevin / Dan	North Coast Dining – ZP 19-02 & CE 19-10 350 N. Main St.	7/2/2019	Application for a Zoning Permit for outdoor seating area in front of restaurant.	Send out request for reviews.	Staff