



CITY OF MORRO BAY CITY COUNCIL AGENDA

The City of Morro Bay provides essential public services and infrastructure to maintain a safe, clean and healthy place for residents and visitors to live, work and play.

Regular Meeting – Tuesday, March 26, 2019 Veterans Memorial Hall - 5:30 P.M. 209 Surf St., Morro Bay, CA

ESTABLISH QUORUM AND CALL TO ORDER

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION

CLOSED SESSION REPORT

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

PRESENTATIONS

- Climate Change Presentation, by Scot Graham, Community Development Director

PUBLIC COMMENT PERIOD

Members of the audience wishing to address the Council on City business matters not on the agenda may do so at this time. For those desiring to speak on items on the agenda, but unable to stay for the item, may also address the Council at this time.

Public comment is an opportunity for members of the public to provide input to the governing body. To increase the effectiveness of the Public Comment Period, the City respectfully requests the following guidelines and expectations be followed:

- Those desiring to speak are asked to complete a speaker slip, which are located at the entrance, and submit it to the City Clerk. However, speaker slips are not required to provide public comment.
- When recognized by the Mayor, please come forward to the podium to speak. Though not required, it is helpful if you state your name, city of residence and whether you represent a business or group. Unless otherwise established by the Mayor, comments are to be limited to three minutes.
- All remarks should be addressed to Council, as a whole, and not to any individual member thereof.
- The Council respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, commission and/or staff.
- Please refrain from public displays or outbursts such as unsolicited applause, comments or cheering.
- Any disruptive activities that substantially interfere with the ability of the City Council to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in City Council meetings is welcome and your courtesy will be appreciated.
- The Council in turn agrees to abide by its best practices of civility and civil discourse according to Resolution No. 07-19.

A. CONSENT AGENDA

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

- A-1 APPROVAL OF MINUTES FOR THE FEBRUARY 26, 2019, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 APPROVAL OF MINUTES FOR THE FEBRUARY 26, 2019, CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-3 APPROVAL OF MINUTES FOR THE MARCH 11, 2019, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-4 SECOND QUARTER INVESTMENT REPORT (JULY THROUGH DECEMBER 2018) FOR FISCAL YEAR 2018/19; (FINANCE)

RECOMMENDATION: Receive and file.

- A-5 ADOPTION OF RESOLUTION NO. 20-19 APPROVING AMENDMENT #1 TO THE MASTER LEASE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND 725 EMBARCADERO LLC FOR LEASE SITE 82-85/82W-85W, LOCATED AT 725 EMBARCADERO, AND COMMONLY KNOWN AS "ROSE'S LANDING," TO PROVIDE FOR PARKING REPLACEMENT IF CITY DISPLACES LEASE-PROVIDED PARKING; (HARBOR)

RECOMMENDATION: City Council adopt Resolution No. 20-19 approving Amendment #1 to the Master Lease Agreement for Lease Site 82-85/82W-85W, as proposed.

- B. PUBLIC HEARINGS - None.

C. BUSINESS ITEMS

- C-1 PROVIDE INPUT FOR DEVELOPMENT OF THE COASTAL DEVELOPMENT PERMIT FOR THE WATER RECLAMATION FACILITY; (PUBLIC WORKS)

RECOMMENDATION: City Council receive comment regarding the Coastal Development Permit for the Water Reclamation Facility and provide input as appropriate.

- C-2 CONSIDERATION OF A REGULAR ORDINANCE AND URGENCY ORDINANCE TO ALLOW AND REGULATE WIRELESS TELECOMMUNICATION FACILITIES IN THE PUBLIC RIGHT-OF-WAY; CONSIDERATION OF A RESOLUTION ADOPTING ADDITIONAL REGULATIONS FOR WIRELESS TELECOMMUNICATIONS FACILITIES; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Council:

1. **Introduce for first reading by title only, and waive further reading, Ordinance No. 621 (Attachment 1) to add Chapter 12.12 to the Municipal**

- Code, to regulate wireless telecommunication facilities in the public right-of-way, and determine the project is not subject to the California Environmental Quality Act; and
2. Adopt, by title only and waive further reading, the attached urgency Ordinance No. 620 (Attachment 2) to add Chapter 12.12 to the Municipal Code, to regulate wireless telecommunication facilities in the public right-of-way, and determine the project is not subject to the California Environmental Quality Act; and
 3. Adopt the attached Resolution No. 21-19 (Attachment 3) to approve the corresponding City Council Policy for additional regulations applicable to small wireless facilities (SWFs) in the public right-of-way and direct staff to promptly publish the Policy on the City's webpage; and
 4. Direct Public Works staff to bring back an amendment to the master fee schedule to establish application fees and penalty fees.

C-3 REPORT ON WASHINGTON D.C. MEETINGS BOTH FOR C-MANC'S ANNUAL "WASHINGTON WEEK" CONFERENCE AS WELL AS CONCERNING THE WATER RECLAMATION FACILITY PROJECT (WRF); (HARBOR/PUBLIC WORKS)

RECOMMENDATION: Receive and file.

C-4 ADOPT RESOLUTION NO. 19-19 APPROVING THE CITY OF MORRO BAY'S REVENUE AND EXPENDITURE POLICIES; (FINANCE)

RECOMMENDATION: City Council adopt Resolution No. 19-19.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, April 9, 2019 at 5:30 p.m.** at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

THIS AGENDA IS SUBJECT TO AMENDMENT UP TO 72 HOURS PRIOR TO THE DATE AND TIME SET FOR THE MEETING. PLEASE REFER TO THE AGENDA POSTED AT CITY HALL FOR ANY REVISIONS OR CALL THE CLERK'S OFFICE AT 772-6205 FOR FURTHER INFORMATION.

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL LOCATED AT 595 HARBOR STREET; MORRO BAY LIBRARY LOCATED AT 625 HARBOR STREET; AND MILL'S COPY CENTER LOCATED AT 495 MORRO BAY BOULEVARD DURING NORMAL BUSINESS HOURS.

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK'S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

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MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
FEBRUARY 26, 2019 – 3:00 P.M.
CITY HALL CONFERENCE ROOM

AGENDA NO: A-1
MEETING DATE: March 26, 2019

PRESENT:	John Headding	Mayor
	Dawn Addis	Council Member
	Robert Davis	Council Member
	Jeff Heller	Council Member
	Marlys McPherson	Council Member
STAFF:	Scott Collins	City Manager
	Chris Neumeyer	City Attorney
	Brian Wright-Bushman	Assistant City Attorney
	Scot Graham	Community Development Director
	Eric Endersby	Harbor Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 3:00 p.m. with all members present.

SUMMARY OF CLOSED SESSION ITEMS – The Mayor read a summary of Closed Session items.

CLOSED SESSION PUBLIC COMMENT – Mayor Headding opened public comment for items on the agenda; seeing none, the public comment period was closed.

The City Council moved to Closed Session and heard the following items:

CS-1 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: One Matter

RECONVENE IN OPEN SESSION – The City Council reconvened in Open Session at 3:40 p.m. to accept Public Comment regarding Item CS-2.

George Leage, GAFCO, Inc., stated documents exist that make GAFCO exempt from Measure “D” requirements and offered to answer any questions the Council may have.

The City Council moved to Closed Session at 3:43 p.m.

CS-2 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: One Matter involving GAFCO, Inc., Lease Sites 110W-112W, 1205 Embarcadero

RECONVENE IN OPEN SESSION – The City Council reconvened in Open Session. City Attorney Neumeyer reported the Council took reportable action in Closed Session, authorizing litigation against the property owner at 320 Orcas Street to seek a receivership petition.

ADJOURNMENT - The meeting adjourned at 4:07 p.m.

Recorded by:

Dana Swanson
City Clerk

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MINUTES - MORRO BAY CITY COUNCIL
SPECIAL MEETING – FEBRUARY 26, 2019
VETERANS MEMORIAL HALL
209 SURF STREET – 4:30 P.M.

AGENDA NO: A-2
MEETING DATE: March 26, 2019

PRESENT:	John Headding	Mayor
	Dawn Addis	Council Member
	Robert Davis	Council Member
	Jeff Heller	Council Member
	Marlys McPherson	Council Member
STAFF:	Scott Collins	City Manager
	Chris Neumeyer	City Attorney
	Dana Swanson	City Clerk
	Jennifer Callaway	Finance Director
	Rob Livick	Public Works Director
	Scot Graham	Community Development Director
	Matt Vierra	Fire Marshal
	Jody Cox	Police Chief
	Eric Endersby	Harbor Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding established a quorum and called the meeting to order at 4:30 p.m. with all members present.

PUBLIC COMMENT FOR ITEMS ON THE AGENDA

<https://youtu.be/kYIsGr0LZA8?t=38>

Tim Mahoney, Southern California Gas Co., addressed questions from community members to ease angst regarding the potential impacts of the Diablo Canyon Power Plant closure. He stated the Gas Company is pursuing indigenous natural gas resources and moving toward electrification for a balanced energy approach.

The public comment period was closed.

SPECIAL MEETING AGENDA ITEM:

I. TEN-YEAR FINANCIAL FORECAST STUDY SESSION

<https://youtu.be/kYIsGr0LZA8?t=303>

Finance Director Callaway presented the staff report and responded to Council inquiries.

Mayor Headding reopened public comment.

<https://youtu.be/kYIsGr0LZA8?t=2874>

Homer Alexander, Morro Bay, believes projected revenues for property tax, sales tax, and transient occupancy tax in the 10-year forecast had been understated and was confident the City's financial future will not be as bleak as the report suggested.

Barbara Spagnola, Morro Bay, suggested the formula on which pensions are based be considered during employee negotiations.

The public comment period was closed.

The Council provided individual comments and agreed it would be beneficial to have a community forum to discuss and receive public input on new or increased revenue opportunities including, tax measures, cannabis revenue opportunities, etc., that would help address the CalPERS liability issue and capital improvement needs.

ADJOURNMENT

The meeting adjourned at 5:29 p.m.

Recorded by:

Dana Swanson
City Clerk

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
MARCH 11, 2019 – 3:30 P.M.
CITY HALL CONFERENCE ROOM

AGENDA NO: A-3
MEETING DATE: March 26, 2019

PRESENT: John Headding Mayor
Dawn Addis Council Member
Robert Davis Council Member
Jeff Heller Council Member
Marlys McPherson Council Member

STAFF: Scott Collins City Manager
Chris Neumeyer City Attorney
Rob Livick Public Works Director
Scot Graham Community Development Director
Eric Endersby Harbor Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 3:30 p.m. with all members present.

SUMMARY OF CLOSED SESSION ITEMS – The Mayor read a summary of Closed Session items.

CLOSED SESSION PUBLIC COMMENT – Mayor Headding opened public comment for items on the agenda.

Doug Redican, Rose’s Landing, provided background information regarding his project and asked the City to amend language in the lease agreement to resolve parking issues.

The City Council moved to Closed Session and heard the following items:

CS-1 GOVERNMENT CODE SECTION 54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR:

Property: Lease Sites 63-64/63W-64W (Gray’s Inn & Gallery, 561 Embarcadero)
Property Negotiators: Todd and Tamara Baston
Agency Negotiators: Scott Collins, City Manager; Eric Endersby, Harbor Director; Chris Neumeyer, City Attorney; and Joseph Pannone, Special Legal Counsel
Negotiation: Price and Terms of Payment

CS-2 GOVERNMENT CODE SECTION 54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR:

Property: Lease Sites 82-85/82W-85W (Rose’s Landing)
Property Negotiators: Doug Redican
Agency Negotiators: Scott Collins, City Manager; Eric Endersby, Harbor Director; Chris Neumeyer, City Attorney; and Joseph Pannone, Special Legal Counsel
Negotiation: Price and Terms of Payment

CS-3 GOVERNMENT CODE SECTION 54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR:

Property: Lease Sites 89/89W & 90/90W, Boatyard/Otter Rock, 845/885 Embarcadero
Property Negotiators: Cliff Branch and Paul Parker
Agency Negotiators: Scott Collins, City Manager; Eric Endersby, Harbor Director; Chris Neumeyer, City Attorney; and Joseph Pannone, Special Legal Counsel
Negotiation: Price and Terms of Payment

CS-4 GOVERNMENT CODE SECTION 54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR:

Property: 170 Atascadero Road
Property Negotiators: Cayucos Sanitary District
Agency Negotiators: Scott Collins, City Manager and Chris Neumeyer, City Attorney
Negotiation: Price and Terms of Payment

CS-5 GOVERNMENT CODE SECTION 54956.8 – CONFERENCE WITH REAL PROPERTY NEGOTIATOR:

Property: Dynegy Morro Bay, LLC Power Plant, 1290 Embarcadero Road

Property Negotiators: Dynegy Morro Bay, LLC

Agency Negotiators: Scott Collins, City Manager and Chris Neumeyer, City Attorney

Negotiation: Price and Terms of Payment

CS-6 CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Paragraph (1) of subdivision (d) of Section 54956.9

Name of Case: CITY OF MORRO BAY VS. CENTRAL COAST INVESTMENTS, ET AL., SAN LUIS OBISPO SUPERIOR COURT CASE NO. 18CV-0595

RECONVENE IN OPEN SESSION – The City Council reconvened in Open Session. The Council did not take any reportable action in accordance with the Brown Act.

ADJOURNMENT - The meeting adjourned at 5:10 p.m.

Recorded by:

Dana Swanson
City Clerk



AGENDA NO: A-4

MEETING DATE: March 26, 2019

Staff Report

TO: Honorable Mayor and City Council **DATE:** March 18, 2019
FROM: Jennifer Callaway, Finance Director
SUBJECT: Second Quarter Investment Report (July through December 2018) for Fiscal Year 2018/19

RECOMMENDATION

Council receive and file the attached Second Quarter Investment Report (July through December 2018) for Fiscal Year 2018/19.

FISCAL IMPACT

There is no fiscal impact associated with this recommendation.

DISCUSSION

Attached for your consideration is the Second Quarter Investment Report for FY 2018/19.

As of December 31, 2018, the City's weighted portfolio yield of 1.524% was below the Local Agency Investment Fund (LAIF) yield of 2.4%. Several investments matured at the end of 2018 and as a result in January staff purchased four new CDs, total value of just under one million. Staff will be purchasing additional CDs for a total value of \$2,000,000 in February and transferring \$1.5 million to \$2 million into LAIF from the sweep account. Interest recorded through December 31, 2018 totaled \$144,662.

During the quarter, yields have generally been increasing, anticipating continued economic growth. Staff have been cautioned that the rates are likely to flatten out or decrease and longer-term investments may be optimal at this time. Staff's focus is to monitor account balances and transfer funds into the highest earning account (LAIF).

This report was reviewed by the Citizens Finance Advisory Committee on March 19, 2019 and approved for presentation to the City Council.

CONCLUSION

Staff recommends that the Council receive the Second Quarter Investment Report (July through December 2018) for Fiscal Year 2018/19.

ATTACHMENT

1. Second Quarter Investment Report for FY 2018/19 (July through December 2018)

Prepared By: JC

Dept Review: _____

City Manager Review: SC

City Attorney Review: CN

**CITY OF MORRO BAY
 QUARTERLY PORTFOLIO PERFORMANCE
 12/31/2018**

INVESTMENT OR CUSIP NUMBER	INSTITUTION	PURCHASE PRICE	MARKET VALUE	COUPON INTEREST RATE	PURCHASE DATE	MATURITY DATE	DAYS TO MATURITY
LAIF	LOCAL AGENCY INVESTMENT FUND	\$ 10,368,771	\$ 10,368,771	2.40%	DAILY	DAILY	1
MONEY MARKET ACCOUNT:							
MM	RABOBANK - MONEY MARKET	2,320,573	2,320,573	0.20%	DAILY	DAILY	1
SWEEP	RABOBANK - SWEEP	7,647,114	7,647,114	0.05%	DAILY	DAILY	1
MM	OPUS BANK	5,113,383	5,113,383	2.35%	DAILY	DAILY	1
Government Agency							
3134G8PD5	FHLM Corp	500,003	497,548	1.350%	3/30/2016	9/30/2019	
CERTIFICATES OF DEPOSIT:							
1404202A7	ZION BANK - CAPITAL ONE BANK	250,005	252,772	2.400%	4/12/2017	4/12/2022	1,198
902856	TBK BANK	250,000	250,000	2.050%	1/24/2017	1/11/2019	11
4100093030	LEADER BANK	250,000	250,000	1.551%	1/6/2014	1/6/2019	6
38148PGK7	ZION BANK - GOLDMAN SACHS BANK	250,003	245,243	1.550%	8/3/2016	8/3/2021	946
3090683803	STATE FARM BANK	250,000	250,000	3.050%	10/24/2018	10/24/2023	1,758
4923509568	PENTAGON FEDERAL CREDIT UNION	250,000	250,000	3.000%	2/5/2014	2/5/2019	36
		<u>\$ 27,449,852</u>	<u>\$ 27,445,404</u>				
					% OF LIQUID PORTFOLIO HOLDINGS	WEIGHTED AVERAGE RATE OF EARNINGS	WEIGHTED AVERAGE MATURITY
					<u>92.714%</u>	<u>1.524%</u>	<u>37</u>

Portfolio holdings as of the second quarter ended December 31, 2018, are in compliance with the current Investment Policy. With 92.714%

of the portfolio held in liquid instruments, the City's portfolio is well above the 65% to 70% target liquidity rate approved by the City Council in March 2018.



AGENDA NO: A-5

MEETING DATE: March 26, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: March 13, 2019

FROM: Eric Endersby, Harbor Director

SUBJECT: Adoption of Resolution No. 20-19 Approving Amendment #1 to the Master Lease Agreement Between the City of Morro Bay and 725 Embarcadero LLC for Lease Site 82-85/82W-85W, Located at 725 Embarcadero, and Commonly Known as “Rose’s Landing,” to provide for parking replacement if City displaces lease-provided parking

RECOMMENDATION

City Council adopt Resolution No. 20-19 approving Amendment #1 to the Master Lease Agreement for Lease Site 82-85/82W-85W, as proposed.

ALTERNATIVES

Council may elect not to approve Resolution No. 20-19 for the Master Lease Agreement (MLA) as-proposed, and direct staff accordingly.

FISCAL IMPACT

There is no fiscal impact to this action.

BACKGROUND

Doug Redican has owned and operated the Rose’s Landing lease site since 1988, when the site was on an antiquated “County” lease. In exchange for early retirement of that lease, in 2002, Mr. Redican proposed and completed a major site redevelopment project, in exchange for a new long-term lease under modern terms and rents. That redevelopment was completed in the mid-2000’s.

Mr. Redican recently received Concept Plan approval from the Planning Commission and City Council for a significant project to convert the upstairs area of the building from restaurant use to hotel rooms, and to include other public improvements. On September 25, 2018, a new MLA for the site was approved that incorporated the hotel room conversion and other improvements into the lease.

Section 13.04(B) of the lease was provision for ten parking spaces, necessary for any hotel operation, dedicated to Rose’s hotel customer users from afternoon to morning hours in the City’s public lot at the northeast corner of Market Avenue and Pacific Street, including payment of a fee for exclusive use of those spaces.

Also included in this section was provision for the City to impose changes to the parking space use, or rescind the use altogether, upon 120-days written notice. The intent of the rescission clause was in the event the City needed the parking lot for another use, such as a potential future “Market Plaza” project, the City will be able use the parking lot. A copy of the applicable lease section is

Prepared By: EE

Dept Review: EE

City Manager Review: SC

City Attorney Review: CN

included with this staff report as Attachment 1.

DISCUSSION & CONCLUSION

Inadvertently left out of Section 13.04(B) was provision to replace the leased parking spaces in a different location should the City act to rescind Rose's Landing's use of the Market and Pacific lot per the agreement. This was noted as a significant problem for the value of the property by an appraiser assessing the property for lending purposes, for a loan Mr. Redican is seeking to complete the hotel room conversion project.

Included as Attachment 2 to this report is Amendment #1 to the MLA for Lease Site 82-85/82W-85W, correcting the omission by adding language the City and tenant will work to relocate the parking should it be displaced, in addition to other clarifying language.

Staff recommends the City Council approve Resolution No. 20-19, included with this staff report as Attachment #3, approving Amendment #1 to the Rose's Landing lease site.

ATTACHMENTS

1. Existing Section 13.04(B) of the Master Lease Agreement for Lease Site 82-85/82W-85W.
2. Amendment #1 to the Master Lease Agreement for Lease Site 82-85/82W-85W.
3. Resolution No. 20-19.

Section 13.04 Valet Parking Rent Credit and Hotel Parking Spaces

A. Rent Credit for Valet Services. CITY agrees to credit up to \$25,000, annually, against Rent otherwise due to assist TENANT with paying for parking valet services for Parking Patrons' vehicles to be parked in the Parking Spaces (Rent Credit). The Rent Credit shall be reduced by any revenues received by TENANT for valet parking fees or charges to hotel customers. TENANT shall, on a regular basis as reasonably requested by CITY'S Harbor Director, provide reports, financial data and other information for CITY'S Financial Director to determine the total amount of Rent Credit to be allowed for that current year. CITY'S City Council shall also annually review this provision. That review will be to determine if changes are warranted and required. If after consultation with TENANT, CITY determines changes are required and TENANT does not agree with those changes, then CITY may impose the changes, including rescission of some of all of the rent credit, upon 120-days' written notice to TENANT. Unless extended by an amendment to this Lease, the provisions of this Paragraph A. shall terminate on the fifth full calendar year after the Commencement Date.

B. Parking Spaces. CITY shall reserve ten spaces at CITY'S parking lot located at the northeast corner of Pacific Street and Market Avenue (Parking Spaces) exclusively for overnight parking of vehicles of patrons staying at the hotel on the Premises (Parking Patrons) during the hours of 3:00 p.m. and 11:00 a.m. TENANT shall pay CITY \$4,262.50 per year for that exclusive use of the Parking Spaces. The Parking Spaces shall be designated by signs (and standards/poles to attach the signs), all provided by TENANT, at its costs, indicating the Parking Spaces are so reserved for Parking Patrons. The signage and standards shall be approved by CITY'S Community Development Director and installed by CITY employees at no additional cost to TENANT. Annually, CITY'S City Council shall review this provision and determine if changes are required to best serve the general public and TENANT. If after consultation with TENANT, CITY determines changes are warranted and required and TENANT does not agree with those changes, then CITY may impose the changes, including rescission of permission to use the Parking Spaces, upon 120-days' written notice to TENANT.

**AMENDMENT #1 TO THE LEASE AGREEMENT FOR
LEASE SITE 82-85/82W-85W,
LOCATED AT 725 EMBARCADERO**

This Amendment ("Amendment #1") is made and entered into as of this ___ day of _____, 2019, by and among the City of Morro Bay, a municipal corporation of the State of California, hereinafter called "City," and 725 Embarcadero, LLC, a California limited liability company, hereinafter called "Tenant." (Collectively, City and Tenant are sometimes referred to herein as the "Parties.")

WHEREAS, this Amendment #1 is to that certain Lease, which was signed on behalf of the Parties and is effective as of September 26, 2018 (the "Master Lease");

WHEREAS, Tenant has received Concept Plan approval from the Planning Commission and City Council for conversion of the second story restaurant space to ten transient occupancy hotel units, and including other public access improvements as-proposed;

WHEREAS, Tenant agreed to complete the hotel room conversion project in exchange for a new 50-year master lease agreement; and

WHEREAS, the Parties desire to amend the Master Lease so the hotel room conversion project will receive financing needed to proceed.

NOW THEREFORE, Tenant and City agree, as follows:

1. Subsection 13.04 B of the Master Lease is hereby amended and restated in its entirety to read as follows:

B. Parking Spaces. CITY shall reserve ten spaces at CITY'S parking lot located at the northeast corner of Pacific Street and Market Avenue (Parking Spaces) exclusively for overnight parking of vehicles of patrons staying at the hotel on the Premises (Hotel Patrons) between the hours of 3:00 p.m. and 11:00 a.m., seven days a week. TENANT shall pay CITY \$4,262.50 per year for such exclusive use of the Parking Spaces. The Parking Spaces shall be designated by signs (and standards/poles to attach the signs), all provided by TENANT, at its costs, indicating the Parking Spaces are so reserved for Hotel Patrons and violators are subject to enforcement. The signage and standards shall be approved by CITY'S Community Development Director and installed by CITY employees at no additional cost to TENANT. Annually, CITY'S City Council shall review this provision and determine if changes are required to best serve the general public and TENANT, including possible relocation of the area where ten parking spaces may be provided for use as discussed above. If after consultation with TENANT, CITY reasonably determines changes are required and TENANT does not agree with those changes, then CITY may determine to rescind this provision; provided, that if the rescission is due to the CITY'S determination of the need to relocate the Parking Spaces, then CITY and TENANT shall work in good faith to determine another reasonably acceptable location for ten parking spaces for TENANT to pay for and the Hotel Patrons to have use of as described above. If CITY decides to rescind TENANT'S use of the specific Parking Spaces and CITY and TENANT do not agree to a relocation site for ten parking spaces to be used and paid for as described above, then such decision of change and relocation to parking spaces within reasonable proximity of the location of the specific Parking Spaces may be implemented by CITY, upon no less than 120-days' written notice to TENANT.

2. Except as expressly stated herein, all provisions of the Master Lease shall remain in full force and effect.
3. The effective date of this Amendment #1 is the date first written above.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment #1 as of the date written above.

CITY OF MORRO BAY

725 Embarcadero LLC
a Limited Liability Company

By: _____
John Heading, Mayor

By: _____
Doug Redican, Manager

APPROVED AS TO FORM:

Chris F. Neumeyer, City Attorney

ATTEST:

Dana Swanson, City Clerk

RESOLUTION NO. 20-19

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING AMENDMENT #1 TO THE MASTER LEASE AGREEMENT
FOR LEASE SITE 82-85/82W-85W BETWEEN THE CITY OF MORRO BAY
AND 725 EMBARCADERO, LLC, LOCATED AT 725 EMBARCADERO**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the City of Morro Bay is the lessor of certain properties on the Morro Bay Waterfront described as City Tidelands leases and properties; and

WHEREAS, 725 Embarcadero, LLC (Doug Redican) has been the lessee of Lease Site 82-85/82W-85W since 1988, and is a tenant in good standing; and

WHEREAS, 725 Embarcadero, LLC was granted approval of a new Master Lease Agreement ("Lease") on September 25, 2018 for the proposed lease site redevelopment project consisting of conversion of the upstairs building space to hotel rooms, public access and other improvements; and

WHEREAS, the new Master Lease Agreement has provision for ten public parking spaces being leased to 725 Embarcadero, LLC for exclusive hotel patron use, but failed to make provision for relocating those parking spaces should they get displaced per the terms of the agreement; and

WHEREAS, lessor and lessee now desire to amend the Lease, to provide for replacement of the leased parking spaces in a different location, should per the terms of the Lease the City acts to displace said parking spaces.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, as follows:

1. The attached Amendment #1 to the Master Lease Agreement for Lease Site 82-85/82W-85W is hereby approved.
2. The Mayor is hereby authorized to execute said Master Lease Agreement.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 26th day of March, 2019 on the following vote:

AYES:
NOES:
ABSENT:

John Headding, Mayor

ATTEST:

Dana Swanson, City Clerk



AGENDA NO: C-1

MEETING DATE: March 26, 2019

Staff Report

TO: Honorable Mayor and City Council **DATE:** March 21, 2019

FROM: Rob Livick, PE/PLS – Public Works Director/City Engineer
Eric Casares, PE – Water Reclamation Facility (WRF) Program Manager

SUBJECT: Provide Input for Development of the Coastal Development Permit for the Water Reclamation Facility

RECOMMENDATION

City Council receive public comment regarding the Coastal Development Permit for the Water Reclamation Facility and provide input as appropriate.

ALTERNATIVES

No alternatives are recommended.

FISCAL IMPACT

No additional fiscal impact is proposed within this update. All work is proceeding within the City's Fiscal Year 2018/19 budget for the WRF Project.

BACKGROUND

At the August 14, 2018, City Council meeting, under a public hearing, the City Council adopted Resolution No. 61-18. Prior to Council's action and at a joint meeting held on July 3, 2018, the City's Planning Commission and Water Reclamation Facility Citizen's Advisory Committee (WRFCAC) reviewed the Final Environmental Impact Report (FEIR) and recommended the City Council certify it as being in compliance with California Environmental Quality Act and the State CEQA Guidelines (collectively, hereinafter CEQA) requirements. The FEIR is available online at the following link: <http://www.morrobayca.gov/DocumentCenter/Index/659>. Through Resolution No. 61-18, Council took the following actions for the Water Reclamation Facility (WRF) Project:

- Certification of the FEIR;
- Adoption of Findings of Fact, a Mitigation Monitoring and Reporting Program and a Statement of Overriding Considerations;
- Approval of the WRF Project; and
- Directing staff to pursue obtaining all necessary governmental permits, real property interests, financing, design, construction activities, and other related actions for the WRF Project.

Certification of the FEIR allowed Council to approve the WRF Project and initiate the formal permitting process. Through Resolution No. 71-18, City Council adopted water and sewer surcharges to support the development and construction of the WRF Project improvements on September 11, 2018 after holding a duly noticed public hearing and in accordance with the Proposition 218 process. The approved surcharges, which go into effect in July 2019, provide the necessary water and sewer funds to finance up to \$126 Million for the WRF Project.

Prepared By: EC/RL Dept Review: RL
City Manager Review: SC City Attorney Review: JWP

Project Description

The WRF Project will be located approximately a quarter mile north of the South Bay Boulevard exit and State Highway 1 within the unincorporated portion of the County, with the remaining infrastructure of the WRF Project located within the City. The WRF Project will provide wastewater treatment services for the City's community. The existing wastewater treatment facility will be replaced by the proposed WRF Project together with a new treatment facility planned by the Cayucos Sanitary District (CSD), located adjacent to Toro Creek Road. The FEIR addresses all components of the proposed WRF Project, including the on-site facility and all associated pumping and conveyance off-site facilities, as well as production and beneficial reuse of advanced treated recycled water that will meet or exceed all treatment requirements of the California State Water Resources Control Board (SWRCB) Division of Drinking Water (DDW). The FEIR also analyzed environmental impacts that could result from decommissioning and demolition of the current wastewater treatment plant. The beneficial end use for the advanced treated recycled water is indirect potable reuse (IPR) through groundwater replenishment.

As stated in previous staff reports, during the process of implementing all the necessary steps for the important WRF Project to come to fruition, future CEQA analysis may be needed. Whether that is required will be determined on a decision-by-decision basis and in full accordance with CEQA.

Project Evolution

Since certification of the FEIR, the City has executed a design-build agreement for the WRF Project, completed the preliminary design of the conveyance facilities, and continued the final design of the WRF Project. As the design of those two major components of the WRF Project has progressed, several elements have evolved. Changes to significant public works projects are not uncommon and are usually encountered on a project of the size and complexity of the WRF Project. Those changes include:

- Re-route of the pipeline alignment around Lila Keiser Park;
- Addition of a second pump station near the corner of Main Street and Highway 1;
- Modification of the pipeline near South Bay Boulevard (avoidance of a trenchless crossing of Highway 1); and
- Re-route of the potable reuse pipeline in Atascadero Road to accommodate the east injection location.

Those changes were made following certification of the FEIR, in order to avoid culturally sensitive areas and reduce capital and operating costs of the WRF Project.

City staff and the WRF Program Manager have been working with Environmental Science Associates, Inc. (ESA) to develop the appropriate and legally necessary CEQA documentation regarding the above-described changes to the WRF Project. At this time, ESA does not anticipate the proposed modifications to the project description will result in any new impacts or require additional mitigations. Staff also anticipates the proposed changes will not cause any negative impacts to the WRF Project budget or schedule.

Consolidated California Coastal Development Permitting Approach

The City has been working with County of San Luis Obispo (County) planning staff since 2016 regarding a California Coastal Commission (CCC) Coastal Development Permit (CDP) for the WRF Project located at the South Bay Boulevard site. The WRF Project-site, which will be located on 27.6 acres of an approximately 400-acre parcel owned by Tri W, is located outside the City's corporate boundaries within the area regulated by the County. While the City intends to annex the WRF Project-site into the City limits before the WRF Project is completed, the annexation will not, and does not need to be completed prior to the completion of the land use permitting process or the anticipated start of construction for the WRF.

The nature of the City's discharge to the jointly-owned ocean outfall will also be changing in the future. Since average flows to the new WRF will undergo advanced treatment and be injected into the Lower Morro Groundwater Basin, the City's contribution to the outfall will be approximately 0.23 million gallons per day (mpg) (compared to the total average flow of 0.97 mgd for the City). The dry weather discharges will be limited to the reverse osmosis concentrate resulting from the advanced treatment process. The environmental impact report prepared for the construction of the CSD new wastewater facility also included consideration of a new outfall to dispose of the CSD's treated effluent. With those changes to the flows in the outfall, minor modifications to the outfall's diffusers as well as inspection and routine maintenance of the outfall may be required. The City is planning to complete a study analyzing the future operation of the outfall following completion of the WRF Project in the next several months. The outfall is located within the CCC's original jurisdiction.

The City anticipated acquiring the CDP for the WRF Project through the County. However, considering the WRF Project lies within three separate permitting jurisdictions and after a number of discussions with the County and CCC staff, the City is pursuing a consolidated permit through the CCC that will cover all aspects of the WRF Project, including the advanced treatment facility, conveyance facilities, and recycled water facilities. That approach was presented to the City Council on January 22, 2019. Council provided staff with direction to pursue a consolidated CDP. Due to the WRF Project being a public facility to be owned and operated by the City and based on the law of comity between public agencies, the City does not need any land use entitlements or building permits from the County.

Since January 2019, City staff and the WRF Program Manager have been preparing the CDP permit application. Application components are currently being reviewed by CCC staff and the City has been in regular contact with CCC staff over the last several months to answer questions and provide additional information necessary for preparation of the CCC staff report. Based on the recommendation of CCC staff, the City is also holding this public input opportunity to allow for community and City Council input into the CDP process. While the City has provided numerous opportunities for community input throughout the development of the WRF Project, preparation of the environmental document and the Proposition 218 process, this public input opportunity will allow for further public comment on the WRF Project. Members of CCC staff and SLO County Planning staff will be in attendance, as observers. Information gathered by CCC staff at the public hearing will be used to help develop their staff report and ultimately the conditions of the City's CDP for the WRF Project.

CCC tentatively staff plans to agendize the permit for the May 2019 CCC meeting. If the item is placed on the CCC May agenda, the permit hearing will be held between May 8th and 10th at the Oxnard City Council Chambers.

The following related documents are available on the City website:

1. [CDP Application-Main](#)
2. [Geotechnical Report - Nov 2017](#)
3. [MOU Tri W Fully Executed 201610251534](#)
4. [City Council Resolution 61-18 WRF EIR](#)
5. [WRF Draft EIR - March 2018](#)
6. [WRF Final EIR - June 2018](#)
7. [WRF Final EIR Appendices](#)
8. [Biological Resources Assessment - Apr 2017](#)
9. [Morro Bay Water Reclamation Facility Project Questions](#)

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AGENDA NO: C-2

MEETING DATE: March 26, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: March 18, 2019

FROM: Scot Graham, Community Development Director

SUBJECT: Consideration of a Regular Ordinance and Urgency Ordinance to Allow and Regulate Wireless Telecommunication Facilities in the Public Right-of-Way; Consideration of a Resolution Adopting Additional Regulations for Wireless Telecommunications Facilities

RECOMMENDATIONS

Council:

1. Introduce for first reading by title only, and waive further reading, Ordinance No. 621 (Attachment 1) to add Chapter 12.12 to the Municipal Code, to regulate wireless telecommunication facilities in the public right-of-way, and determine the project is not subject to the California Environmental Quality Act; and
2. Adopt, by title only and waive further reading, the attached urgency Ordinance No. 620 (Attachment 2) to add Chapter 12.12 to the Municipal Code, to regulate wireless telecommunication facilities in the public right-of-way, and determine the project is not subject to the California Environmental Quality Act; and
3. Adopt the attached Resolution No. 21-19 (Attachment 3) to approve the corresponding City Council Policy for additional regulations applicable to small wireless facilities (SWFs) in the public right-of-way and direct staff to promptly publish the Policy on the City's webpage; and
4. Direct Public Works staff to bring back an amendment to the master fee schedule to establish application fees and penalty fees.

ALTERNATIVES

Council could elect not to move forward with the ordinances and resolution, or to move forward with revised versions of the ordinances and resolution.

FISCAL IMPACT

No fiscal impacts are associated with the ordinances or resolution. However, installation of wireless facilities would be subject to cost recovery fees, and yield (if not in the public right-of-way) potential lease revenue. Staff will bring to City Council a proposed Master License Agreement for use of City infrastructure in the public right-of-way and a fee resolution for any fees associated with these applications at a later date.

ENVIRONMENTAL IMPACT

The ordinances are not projects within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because they have no potential for resulting in physical change in the environment, directly or indirectly. Most of the terms and scope of City

Prepared By: SG

Dept Review: SG

City Manager Review: SC

City Attorney Review: CN

discretion are guided by existing State and Federal law. The ordinances create an administrative process to process requests for wireless facilities in the public right-of-way and the City's discretion, under federal and state law, with these applications is limited. The ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Alternatively, the ordinances are exempt from CEQA because the City Council's adoption of the ordinances is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment (State CEQA Guidelines, § 15061(b)(3)). Installations, if any, would further be exempt from CEQA review in accordance with either State CEQA Guidelines Section 15302 (replacement or reconstruction), State CEQA Guidelines Section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines Section 15304 (minor alterations to land), as these facilities are allowed under Federal and State law, are by their nature smaller when placed in the public right-of-way and subject to various siting and design preferences to prevent aesthetic impact to the extent feasible.

BACKGROUND

- Wireless Technology

In prior decades, wireless antennas and equipment were primarily installed on large towers or "macro-cells". In recent years, however, carriers increasingly seek to place wireless facilities in the City's public right-of-way ("PROW") on utility poles, streetlights and new poles. The demand for such wireless installations, particularly small wireless facilities (or "SWFs"), is expected to grow exponentially over the next several years given the expansion of home streaming video, social media, drones, self-driving cars and the Internet of Things (IoT) serving homes and businesses. To accommodate this expansion, the telecommunications industry is starting to look for small cell 5G (fifth generation) technology. 5G technology is distinguished from the present 4G (fourth generation) service by use of low power transmitters with coverage radius of approximately 400 feet. 5G thus requires close spacing of antennas and more of them. PROW street light poles and other poles are, therefore, suited for 5G SWFs.

- Federal Communications Commission Order and April 14, 2019 Deadline

The City's existing Municipal Code contains outdated standards for dealing with SWFs. This is particularly true in light of significant changes in law implemented by the Federal Communications Commission ("FCC"). On September 27, 2018, the FCC released a Declaratory Ruling and Third Report and Order (the "FCC Order") significantly limiting state and local management of SWFs in the PROW (and, in a limited way, SWFs on private property). In short, the FCC Order does the following:

- Defines SWFs as wireless facilities up to 50 feet in height, including antennas, or mounted on structures no more than 10% taller than other adjacent structures; or that 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; each antenna is no more than 3 cubic feet in volume, and the total associated wireless equipment on one structure is no more than 28 cubic feet in volume.
- Caps all fees that local governments can charge to the actual and reasonable cost of providing service. This limitation applies to fees for SWFs located on private property as well.

- Imposes mandatory timelines for processing and considering applications (or “shot clocks”) of 60 days for SWFs added to existing structures (regardless of whether the structure already supports a wireless service) and 90 days for SWFs proposing a new structure. The shortened shot clocks also apply to applications for SWFs on private property.
- Preempts all aesthetic requirements for SWFs in the PROW unless they are (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployments; (3) objective; and (4) published in advance. (Effective April 14, 2019.) It is currently unclear whether this preemption applies to applications for SWFs on private property and this issue is the subject of on-going litigation.

- Urgency Ordinance

This report introduces an ordinance to provide the regulatory framework and standards for permitting the installation of SWFs within the City’s PROW. The report also includes the same ordinance in the form of an urgency ordinance, which requires a 4/5ths vote for adoption and will become effective immediately if adopted. The urgency ordinance is presented to ensure the City’s regulations are effective before April 14, 2019 (given a regular ordinance - after introduction – typically will not be effective until roughly 45 days later), and the regular ordinance is presented to provide for a “backstop” allowing for routine ordinance adoption.

- Aesthetics and Eligible Facilities Requests

Finally, this report includes a resolution that would adopt aesthetics requirements that reasonably comply with the FCC Order. Staff has been working with the City Attorney’s office to draft these ordinances and the resolution. The proposed ordinance also addresses “eligible facilities requests” - a category of “by-right” installations that were established by the FCC several years ago but are not acknowledged in the current Municipal Code.

DISCUSSION

The City does not currently have a comprehensive ordinance regulating wireless telecommunications facilities in the PROW. The City’s Draft Zoning code does include a Telecommunications policy in section 17.31.250.

The Federal Telecommunications Act is intended to ensure that the public has sufficient access to telecommunication services. Based on this Federal law, a local government shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

Further, no State or local government may dictate, or even consider, wireless entitlements based on “the environmental (health) effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.” A zoning authority’s mere consideration of health effects, including potential effects on property values due to potential radio frequency emissions, may not serve as “substantial evidence” for purposes of denying a wireless facility. The City’s role in the siting and design of WCFs is generally limited to aesthetics.

Wireless telecommunications providers are treated as telephone companies under their State franchise conferred in California Public Utilities Code Section 7901, and thus are entitled to use the PROW to deploy their equipment. However, even with their right to occupy the PROW, under Section 7901 providers may *not* “unreasonably subject the public use to inconvenience or

discomfort; to unreasonably trouble, annoy, molest, embarrass, inconvenience; to unreasonably hinder, impede, or obstruct the public use.” These limitations in Section 7901 have been interpreted broadly enough to include concerns related to “the appearance of a facility,” and thus Section 7901 allows cities to condition a wireless permit on (i) aesthetic concerns, (ii) restricting the location of proposed facilities due to public safety reasons or other local concerns or even deny applications in appropriate circumstances, and (iii) to exercise reasonable control over the time, place and manner of “when, where, and how telecommunications service providers gain entry to the public rights-of-way,” including the need for encroachment permits. (See Public Utilities Code § 7901.)

The new FCC Order significantly changes Federal law to shorten time frames and other requirements on local review of SWFs in the PROW. Now, if a city does not render a decision on a SWF application within a specified time period (60 days for installations on existing structures, and 90 days for new structures), *the failure to meet the deadline for action will be presumed to violate federal law*. The presumption is rebuttable.

Regarding aesthetics, spacing restrictions, and undergrounding requirements, the FCC declares that such requirements will not be preempted if they are reasonable, no more burdensome than those applied to other types of infrastructure deployments, objective and published in advance.

In essence, this new standard for aesthetic conditions means that cities can impose aesthetic requirements to the extent they are “technically feasible” for the provider. This is a significant departure from the “least intrusive means” analysis that developed in the Ninth Circuit over the last few decades. The FCC Order purports to overturn the “least intrusive means” standard entirely, with the new standards taking effect on April 15, 2019. Note that while the legal validity of the FCC Order is being litigated, the effectiveness of the order has not been stayed. Further, another FCC order that was released in August 2018 prohibits cities from imposing a moratorium on wireless installations, which means that there can be no pause in accepting or processing applications to allow a city to study and address potential issues.

Aesthetic standards implementing the FCC Order must be reasonable, objective, *and published ahead of time*. If a city does not have “published” design standards, then it does not appear that any standards can be enforced.

It is therefore very important that the City update its ordinance with new standards and procedures by April 14, 2019 or shortly thereafter (hence the urgency ordinance).

Staff therefore recommends the Council adopt an ordinance setting out the permitting procedures for SWFs in the PROW. The proposed ordinance seeks to balance the community’s need for wireless services, the industry’s need to deploy quickly, and the City’s obligation to maintain safety and protect the aesthetic qualities of our neighborhoods. As drafted, the proposed ordinance would:

- Add a new Chapter 12.12 to the Municipal Code entitled “Wireless Telecommunications Facilities in the Public Right-of-Way.” For all wireless facility installations in the PROW, the ordinance provides, among other regulations, the permit and review procedures, as well as the operation and maintenance standards. The ordinance treats wireless installations in the PROW similar to other installations in the ROW by requiring an encroachment permit. Once the encroachment permit is

issued, the carrier may still need to obtain traffic control plans, construction permits and if necessary, a license to attach to City infrastructure.

- The substantially shorter (than prior) “shot clocks” established by the FCC Order render discretionary review by the planning commission (or any other hearing body) much more difficult, if not logistically impossible. To this end, the proposed ordinance presents an entirely new administrative review process for SWF applications, with public works taking the lead of administratively reviewing SWF applications.
- The new ordinance recognizes, and establishes procedures and standards for, “eligible facility requests” pursuant to Federal law. These are ministerial modifications and collocations that must be approved by-right, which provisions are not included in the current Municipal Code, despite since 2012 being the law.
- Given the short time that the City has to act on these applications under Federal law, the ordinance only allows for a short, two-day appeal period, and provides that the appeal will be heard by an independent hearing officer, who can hold hearings on short notice within the short time frame. Doing so also provides an independent level of oversight over the decisions before they become final and subject to challenge in court.
- The ordinance contains a comprehensive list of permit conditions that will apply to wireless encroachment permits, including insurance requirements, indemnity, performance bond for removal upon abandonment, and maintenance and inspection requirements. The permits are in effect for a term of 10 years, which stems from a State law that allows the City to limit the permits to 10 years; compared to utility poles, for example, which are erected in perpetuity.
- Staff sensed the importance of public awareness and involvement for wireless facilities. The ordinance thus requires applicants to provide mailed notices to owners, occupants within 300 feet of proposed SWFs and major facilities before they are approved.
- Finally, the ordinance allows the flexibility needed in the face of rapidly changing wireless laws and technology. Rather than publish SWF design standards in the ordinance, staff proposes that such standards should be adopted as administrative regulations that may be readily and quickly adapted given the frequency of substantial changes in law and technology surrounding wireless installations.

To accompany the new ordinance, staff has also prepared a separate City Council Small Wireless Facilities Policy for adoption through Resolution No. 21-19 that will provide the industry with direction on the City’s aesthetic, location, and design requirements. For example, the proposed design standards recommend that when there is a choice in location, carriers should choose to site on a pole or street light that is between structures and not immediately adjacent to a structure, that paint and design should blend with surrounding structures, that signage should be limited, and that lighting be prohibited unless required by the Federal Aviation Administration. This draft document is provided as part of Attachment 3 to this report and once approved by the Council, will be promptly published by staff on the City’s website as required by the FCC Order. Proposed Council Small Wireless Facilities Policy is provided as Attachment 3 to this report for City Council consideration or

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approval; staff recommends that the City Council adopt the design standards with the ordinance.

CONCLUSION

The proposed ordinance and design standards will bring the City into compliance with laws governing wireless telecommunications facilities and allow the City to impose aesthetic and other design requirements on such facilities.

ATTACHMENTS

- 1) Ordinance No. 621
- 2) Urgency Ordinance No. 620
- 3) Resolution No. 21-19, including Council Small Wireless Facilities Policy

ORDINANCE NO. 621

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, ADDING CHAPTER 12.12 TO TITLE 12 OF THE MORRO BAY MUNICIPAL CODE, ENTITLED “WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY”

A. The City Council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.

B. Significant changes in Federal and State law that affect local authority over wireless communications facilities (“WCFs”) have occurred, including but not limited to the following:

- i. On November 18, 2009, the Federal Communications Commission (“FCC”) adopted a declaratory ruling (the “2009 Shot Clock”), which established presumptively reasonable timeframes for State and local governments to act on applications for WCFs.
- ii. On February 22, 2012, Congress adopted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act (“Section 6409(a)”), which mandated that State and local governments approve certain modifications and collocations to existing WCFs, known as eligible facilities requests.
- iii. On October 17, 2014, the FCC adopted a report and order that, among other things, implemented new limitations on how State and local governments review applications covered by Section 6409(a), established an automatic approval for such applications when the local reviewing authority fails to act within 60 days, and also further restricted generally applicable procedural rules under the 2009 Shot Clock.
- iv. On October 9, 2015, California adopted Assembly Bill No. 57 (Quirk), which deemed approved any WCF applications when the local reviewing authority fails to act within the 2009 Shot Clock timeframes.
- v. On August 2, 2018, the FCC adopted a declaratory ruling that formally prohibited express and de facto moratoria for all telecommunications services and facilities under 47 U.S.C. § 253(a).
- vi. On September 26, 2018, the FCC adopted a declaratory ruling and report and order that, among other things, creates a new regulatory classification for small wireless facilities (“SWFs”), requires State and local governments to process applications for small wireless facilities within 60 days or 90 days, establishes a national standard for an effective prohibition and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition.

C. In addition to the changes described above, new Federal laws and regulations that drastically alter local authority over WCFs are currently pending, including without limitation, the following:

- i. On March 30, 2017, the FCC issued a Notice of Proposed Rulemaking (WT Docket No. 17-79, WC Docket No. 17-84) and has acted on some of the noticed issues referenced above, but may adopt forthcoming rulings and/or orders that further limit local authority over wireless facilities deployment.
- ii. On June 28, 2018, United States Senator John Thune introduced and referred to the Senate Committee on Commerce, Science and Transportation the “STREAMLINE Small Cell Deployment Act” (S. 3157) that, among other things, would apply specifically to small cell WCFs and require local governments to review applications based on objective standards, shorten the 2009 Shot Clock timeframes, require all proceedings to occur within the 2009 Shot Clock timeframes, and provide a “deemed granted” remedy for failure to act within the applicable 2009 Shot Clock.

D. Given the rapid and significant changes in Federal and State law, the actual and effective prohibition on moratoria to amend local policies in response to such changes and the significant adverse consequences for noncompliance with Federal and State law, the City Council desires to add Chapter 12.12 to Title 12 of the Morro Bay Municipal Code, entitled “WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY” (the “Ordinance”) to allow greater flexibility and responsiveness to the new Federal and State laws while still preserving the City’s traditional authority to the maximum extent practicable.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The facts set forth in the recitals in this Ordinance are true and correct and incorporated by reference. The recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in the Ordinance.

SECTION 2. The Ordinance is consistent with the City’s General Plan, Municipal Code, Zoning Code and applicable Federal and State law.

SECTION 3. The Ordinance will not be detrimental to the public interest, health, safety, convenience, or welfare.

SECTION 4. The Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City’s boundaries. The Ordinance is further exempt from CEQA because the

City Council’s adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment (State CEQA Guidelines, § 15061(b)(3)). Installations, if any, would be exempt from CEQA review in accordance with either State CEQA Guidelines Section 15302 (replacement or reconstruction), State CEQA Guidelines Section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines Section 15304 (minor alterations to land).

SECTION 5. The Ordinance is hereby adopted by the addition of a new Chapter 12.12, “WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY” in Title 12 of the Morro Bay Municipal Code to read in its entirety as shown in Exhibit “A” attached hereto and incorporated herein by this reference.

SECTION 6. If the provisions in this Ordinance conflict in whole or in part with any other City regulation or ordinance adopted prior to the effective date of this section, the provisions in this Ordinance will control.

SECTION 7. If any subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional or otherwise unenforceable, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declare that they would have passed each subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more subsection, subdivision, paragraph, sentence, clause, or phrase be declared unconstitutional or otherwise unenforceable.

SECTION 8. This Ordinance shall take effect 30 days after its adoption.

SECTION 9. The City Clerk shall certify as to the passage and adoption of this Ordinance and shall cause the same to be posted at the designated locations in the City of Morro Bay.

ADOPTED, PASSED and APPROVED this __ day of _____, 2019.

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO)
CITY OF MORRO BAY)

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO
HEREBY CERTIFY that the foregoing Ordinance Number _____ was duly adopted by the City
Council of the City of Morro Bay at a regular meeting of said Council on the __ day of _____,
2019, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

City Clerk, Dana Swanson

EXHIBIT A

Chapter 12.12 – WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

12.12.010 – PURPOSE.

The purpose and intent of this chapter is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the city’s public right-of-way. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This chapter provides standards necessary (1) for the preservation of the public right-of-way (“PROW”) in the city for the maximum benefit and use of the public, (2) to promote and protect public health and safety, community welfare, visual resources and the aesthetic quality of the city consistent with the goals, objectives and policies of the general plan, and (3) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules and regulations, including those regulations of the Federal Communications Commission (“FCC”) and California Public Utilities Commission (“CPUC”), and (4) to ensure that the use and enjoyment of the PROW is not inconvenienced by the use of the PROW for the placement of wireless facilities. The city recognizes the importance of wireless facilities to provide high-quality communications service to the residents and businesses within the city, and the city also recognizes its obligation to comply with applicable federal and state laws. This chapter shall be constructed and applied in consistency with the provisions of state and federal laws, and the rules and regulations of FCC and CPUC. In the event of any inconsistency between any such laws, rules, and regulations and this chapter, the laws, rules, and regulations shall control.

12.12.020 – DEFINITIONS.

- A. “Accessory equipment” means any and all on-site equipment, including, without limitation, back-up generators and power supply units, cabinets, coaxial and fiber optic cables, connections, equipment buildings, shelters, radio transceivers, transmitters, pedestals, splice boxes, fencing and shielding, surface location markers, meters, regular power supply units, fans, air conditioning units, cables and wiring, to which an antenna is attached in order to facilitate the provision of wireless telecommunication services.
- B. “Antenna” means that specific device for transmitting and/or receiving radio frequency or other signals for purposes of wireless telecommunications services. “Antenna” is specific to the antenna portion of a wireless telecommunications facility.
- C. “Antenna array” shall mean two or more antennas having active elements extending in one or more directions, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.
- D. “Base station” shall have the meaning as set forth in Title 47 Code of Federal Regulations (C.F.R.) Section 1.40001(b)(1), or any successor provision. This means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network (regardless of the technological configuration,

and encompassing DAS and small cells). “Base station” does not encompass a tower or any equipment associated with a tower. Base station includes, without limitation:

1. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small cells).
3. Any structure other than a tower that, at the time the relevant application is filed with the city under this chapter, supports or houses equipment described in paragraphs 1 and 2 of this definition that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.
4. “Base station” does not include any structure that, at the time the relevant application is filed under this chapter, does not support or house equipment described in paragraphs 1 and 2 of this definition. Other structures that do not host wireless telecommunications facilities are not “base stations.”

As an illustration and not a limitation, the FCC’s definition of “base station” refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles, light standards or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

- E. “Cellular” means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.
- F. “City” means the City of Morro Bay.
- G. “Code” means the City of Morro Bay Municipal Code.
- H. “Collocation” bears the following meanings:
 1. For the purposes of any eligible facilities request, the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as “[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.” As an illustration and not a limitation, the FCC’s definition means to add transmission equipment to an existing facility and does not necessarily refer to two or more different facility operators in the same location; and
 2. For all other purposes, the same as defined in 47 CFR 1.6002(g)(1) and (2), as may be amended, which defines that term as (1) Mounting or installing an antenna facility on a pre-existing structure, and/or (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

- I. “Collocation facility” means the eligible support structure on, or immediately adjacent to, which a collocation is proposed, or a wireless telecommunications facility that includes collocation facilities. (*See*, Gov. Code, § 65850.6(d).)
- J. “COW” means a “cell on wheels,” which is a portable, self-contained wireless telecommunications facility that can be moved to a location and set up to provide wireless telecommunication services, which facility is temporarily rolled in, or temporarily installed, at a location. Under this chapter, the maximum time a facility can be installed to be considered a COW is five (5) days. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.
- K. “Distributed antenna system” or “DAS” means a network of spatially separated antennas (nodes) connected to a common source (a hub) via a transport medium (often fiber optics) that provide wireless telecommunications service within a specific geographic area or building. DAS includes the transport medium, the hub, and any other equipment to which the DAS network or its antennas or nodes are connected to provide wireless telecommunication services.
- L. “Eligible facilities request” means any request for modification to an existing eligible support structure that does not substantially change the physical dimensions of such structure, involving:
 - 1. Collocation of new transmission equipment;
 - 2. Removal of transmission equipment;
 - 3. Replacement of transmission equipment (replacement does not include completely replacing the underlying support structure); or
 - 4. Hardening through structural enhancement where such hardening is necessary to accomplish the eligible facilities request, but does not include replacement of the underlying support structure.
- M. “Eligible facilities request” does not include modifications or replacements when an eligible support structure was constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. “Eligible facilities request” does include collocation facilities satisfying all the requirements for a non-discretionary collocation facility pursuant to Government Code Section 65850.6.
- N. “Eligible support structure” means any support structure located in the PROW that is existing at the time the relevant application is filed with the city under this chapter.
- O. “Existing” means a support structure, wireless telecommunications facility, or accessory equipment that has been reviewed and approved under the city’s applicable zoning or siting process, or under another applicable state or local regulatory review process, and lawfully constructed prior to the time the relevant application is filed under this chapter. However, a support structure, wireless telecommunications facility, or accessory equipment that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is “existing” for purposes of this chapter. “Existing” does not apply to any structure that (1) was illegally constructed without all proper local agency approvals, or (2) was constructed in noncompliance with such approvals. “Existing” does not apply where an existing

support structure is proposed to be replaced in furtherance of the proposed wireless telecommunications facility.

- P. “Facility(ies)” means wireless telecommunications facility(ies).
- Q. “FCC” means the Federal Communications Commission.
- R. “Ground-mounted” means mounted to a pole, tower or other freestanding structure which is specifically constructed for the purpose of supporting an antenna or wireless telecommunications facility and placed directly on the ground at grade level.
- S. “Lattice tower” means an open framework structure used to support one or more antennas, typically with three or four support legs.
- T. “Located within (or in) the public right-of-way” includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the PROW.
- U. “Modification” means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. “Modification” does not include repair, replacement or maintenance if those actions do not involve whatsoever any expansion, alteration, enlargement, intensification, reduction, or augmentation of an existing wireless telecommunications facility.
- V. “Monopole” means a structure composed of a pole or tower used to support antennas or related equipment. A monopole also includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole (e.g. water tower).
- W. “Mounted” means attached or supported.
- X. “OTARD antennas” means antennas covered by the “over-the-air reception devices” rule in 47 C.F.R. sections 1.4000 et seq. as may be amended or replaced from time to time.
- Y. “Permittee” means any person or entity granted a WTFP pursuant to this chapter.
- Z. “Personal wireless services” shall have the same meaning as set forth in 47 United States Code Section 332(c)(7)(C)(i).
- AA. “Planning director” means the community development director, or his or her designee.
- BB. “Pole” means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this code.
- CC. “Public works director” means the director of public works, or his or her designee.
- DD. “Public right-of-way” or “PROW” means a strip of land acquired by reservation, dedication, prescription, condemnation, or easement that allows for the passage of people and goods. The PROW includes, but is not necessarily limited to, streets, curbs, gutters, sidewalks,

roadway medians, and parking strips. The PROW does not include lands owned, controlled or operated by the city for uses unrelated to streets or the passage of people and goods, such as, without limitation, parks, city hall and community center lands, city yards, and lands supporting reservoirs, water towers, police or fire facilities and non-publicly accessible utilities.

EE. “Replacement” refers only to replacement of transmission equipment, wireless telecommunications facilities or eligible support structures where the replacement structure will be of like-for-like kind to resemble the appearance and dimensions of the structure or equipment replaced, including size, height, color, landscaping, materials and style.

1. In the context of determining whether an application qualifies as an eligible facilities request, the term “replacement” relates only to the replacement of transmission equipment and does not include replacing the support structure on which the equipment is located.
2. In the context of determining whether a SWF application qualifies as being placed upon a new eligible support structure or qualifies as a collocation, an application proposing the “replacement” of the underlying support structure qualifies as a new pole proposal.

FF. “RF” means radio frequency.

GG. “Small cell” means a low-powered antenna (node) that has a range of 10 meters to two kilometers. The nodes of a “small cell” may or may not be connected by fiber. “Small,” for purposes of “small cell,” refers to the area covered, not the size of the facility. “Small cell” includes, but is not limited to, devices generally known as microcells, picocells and femtocells.

HH. “Small cell network” means a network of small cells.

II. “Spectrum Act” means Section 6409(a) of the Middle Class Tax Relief Act and Job Creation Act of 2012, 47 U.S.C. §1455(a).

JJ. “Substantial change” has the same meaning as “substantial change” as defined by the FCC at 47 C.F.R. 1.40001(b)(7). Notwithstanding the definition above, if an existing pole-mounted cabinet is proposed to be replaced with an underground cabinet at a facility where there are no pre-existing ground cabinets associated with the structure, such modification may be deemed a non-substantial change, in the discretion of the public works director and based upon his/her reasonable consideration of the cabinet’s proximity to residential view sheds, interference to public views and/or degradation of concealment elements. If undergrounding the cabinet is technologically infeasible such that it is materially inhibitive to the project, the public works director may allow for a ground mounted cabinet. A modification or collocation results is a “substantial change” to the physical dimensions of an eligible support structure if it does any of the following:

1. It increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
2. It involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

3. It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets. However, for towers and base stations located in the public rights-of-way, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
4. It entails any excavation or deployment outside the current site. For purposes of this Subsection, excavation outside the current site occurs where excavation more than twelve feet from the eligible support structure is proposed;
5. It defeats the concealment or stealthing elements of the eligible support structure; or
6. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs 1 through 4 of this definition.
7. For all proposed collocations and modifications, a substantial change occurs when:
 - a. The proposed collocation or modification involves more than the standard number of new equipment cabinets for the technology involved, but not to exceed four equipment cabinets;
 - b. The proposed collocation or modification would defeat the concealment elements of the support structure; or
 - c. The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval that is inconsistent with the thresholds for a substantial change described in this Section.

The thresholds and conditions for a “substantial change” described in this Section are disjunctive such that the violation of any individual threshold or condition results in a substantial change. The height and width thresholds for a substantial change described in this Section are cumulative for each individual support structure. The cumulative limit is measured from the physical dimensions of the original structure for base stations, and for all other facilities sites in the PROW from the smallest physical dimensions that existed on or after February 22, 2012, inclusive of originally approved-appurtenances and any modifications that were approved prior to that date.

KK. “Support structure” means a tower, pole, base station or other structure used to support a wireless telecommunications facility.

LL. “SWF” means a “small wireless facility” as defined by the FCC in 47 C.F.R. 1.6002(l) as may be amended, which are personal wireless services facilities that meet all the following conditions that, solely for convenience, have been set forth below:

1. The facilities:

- a. Is mounted on an existing or proposed structure 50 feet or less in height, including antennas, as defined in Title 47 C.F.R. Section 1.1320(d); or
 - b. Is mounted on an existing or proposed structure no more than 10 percent taller than other adjacent structures, or
 - c. Does not extend an existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
2. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;
 3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
 4. The facility does not require antenna structure registration under 47 C.F.R. Part 17;
 5. The facility is not located on Tribal lands, as defined under Title 36 C.F.R. Section 800.16(x); and
 6. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Title 47 C.F.R. Section 1.1307(b).

MM. “SWF Regulations” means those regulations adopted by the City Council Resolution 21-19 implementing the provisions of this chapter applicable to SWFs and further regulations and standards applicable to SWFs.

NN. “Telecommunications tower” or “tower” bears the meaning ascribed to wireless towers by the FCC in 47 C.F.R. § 1.40001(b)(9), including without limitation a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

OO. “Transmission equipment” means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

PP. “Utility pole” means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission. A telecommunications tower is not a utility pole.

QQ. “Wireless telecommunications facility” means equipment and network components such as antennas, accessory equipment, support structures, and emergency power systems that are integral to providing wireless telecommunications services. Exceptions: The term “wireless telecommunications facility” does not apply to the following:

1. Government-owned and operated telecommunications facilities.
2. Emergency medical care provider-owned and operated telecommunications facilities.
3. Mobile services providing public information coverage of news events of a temporary nature.
4. Any wireless telecommunications facilities exempted from this code by federal law or state law.

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

SS. “WTFP” means a “wireless telecommunications facility permit” required by this chapter, which may be categorized as either a Major WTFP or an Administrative WTFP.

12.12.030 – APPLICABILITY.

- A. This chapter applies to the siting, construction or modification of any and all wireless telecommunications facilities proposed to be located in the public right-of-way.
- B. Pre-existing Facilities in the PROW. Nothing in this chapter shall validate any existing illegal or unpermitted wireless facilities. All existing wireless facilities shall comply with and receive a wireless encroachment permit, when applicable, to be considered legal and conforming.
- C. This chapter does not apply to the following:
 1. Amateur radio facilities;
 2. OTARD antennas;
 3. Facilities owned and operated by the city for its use or for public safety purposes;
 4. Any entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement, excepting that to the extent such the terms of state or federal law, or franchise agreement, are preemptive of the terms of this chapter, then the terms of this chapter shall be severable to the extent of such preemption and all remaining regulations shall remain in full force and effect.
 5. Installation of a COW or a similar structure for a temporary period in connection with an emergency or event at the discretion of the public works director, but no longer than

required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.

- D. Public use. Except as otherwise provided by state or federal law, any use of the PROW authorized pursuant to this chapter will be subordinate to the city's use and use by the public.

12.12.040 – WIRELESS TELECOMMUNICATIONS FACILITY PERMIT REQUIREMENTS.

- A. Administration. Unless a matter is referred to the planning director as provided below, the public works director is responsible for administering this chapter. As part of the administration of this chapter, the public works director may:

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

- B. Administrative Wireless Telecommunications Facilities Permits (“Administrative WTFP”).
1. An Administrative WTFP, subject to the public works director’s approval, may be issued for wireless telecommunications facilities, collocations, modifications or replacements to an eligible support structure that meet the following criteria:
 - a. The proposal is determined to be for a SWF; or
 - b. The proposal is determined to be an eligible facilities request; or
 - c. Both.
 2. In the event that the public works director determines that any application submitted for an Administrative WTFP does not meet the administrative permit criteria of this chapter, the public works director shall convert the application to a Major WTFP and refer it to the planning director for a planning commission hearing pursuant to subsection C.
 3. Except in the case of an eligible facilities request, the public works director may refer, in his/her discretion, any application for an Administrative WTFP to the planning director, who shall have discretion to further refer the application to planning commission for hearing. If the planning director determines not to present the Administrative WTFP application to the planning commission for hearing, the application shall be relegated back to the public works director for processing. This exercise of discretion shall not apply to an eligible facilities request.
- C. Major Wireless Telecommunications Facilities Permit (“Major WTFP”). All other new wireless telecommunications facilities or replacements, collocations, or modifications to a wireless telecommunications facility that are *not* qualified for an Administrative WTFP shall require a Major WTFP subject to planning commission hearing and approval unless otherwise provided for in this chapter.
- D. Special Provisions for SWFs; SWF Regulations. Notwithstanding any other provision of this chapter as provided herein, all SWFs are subject to a permit as specified in the SWF Regulations, which are adopted and may be amended by city council resolution. All SWFs, shall comply with the SWF Regulations, as they may be amended from time to time.
1. The SWF Regulations are intended to be constructed in consistency with, and addition to, the terms and provisions of this chapter. To the extent general provisions of this chapter are lawfully applicable to SWFs, such terms shall apply unless in contradiction to more specific terms set forth in the SWF Regulations, in which case the more specific terms of the SWF Regulations shall control.
- E. Other Permits Required. In addition to any permit that may be required under this chapter, the applicant must obtain all other required prior permits or other approvals from other city departments, or state or federal agencies. Any permit granted under this chapter is subject to the conditions and/or requirements of other required prior permits or other approvals from other city departments, state or federal agencies. Building and encroachment permits, and all city standards and requirements therefor, are applicable.

- F. Eligible Applicants. Only applicants who have been granted the right to enter the PROW pursuant to state or federal law, or who have entered into a franchise agreement with the city permitting them to use the PROW, shall be eligible for a WTFP pursuant to this chapter.

12.12.050 – APPLICATION FOR WIRELESS TELECOMMUNICATIONS FACILITY PERMITS.

- A. Generally. Unless the SWF Regulations specifically provide otherwise, the applicant shall submit a paper copy and an electronic copy of any application, amendments, or supplements to a WTFP application, or responses to requests for information regarding a WTFP, in accordance with the provisions of this section. SWF applications shall be governed by any additional terms set forth in the SWF Regulations, and in the event of an inconsistency between the provisions of this Section and the terms of the SWF Regulations, the Regulations shall control.
1. All applications for WTFPs shall be initially submitted to the public works director. In addition to the information required of an applicant for an encroachment permit or any other permit required by this code, each applicant shall fully and completely submit to the city a written application on a form prepared by the public works director and published on the city's website.
 2. Application Submittal Appointment. All WTFP applications must be submitted to the public works director at a pre-scheduled application submission appointment. City staff will endeavor to provide applicants with an appointment within five business days after receipt of a written request. A WTFP application will only be reviewed upon submission of a complete application therefor.
 3. If the wireless telecommunications facility will also require the installation of fiber, cable or coaxial cable, such cable installations shall be included within the application form and processed in conjunction with the proposal for vertical support structure(s). Applicants shall simultaneously request fiber installation or other cable installation when seeking to install antennas in the PROW. Standalone applications for the installation of fiber, cable or coaxial cable, or accessory equipment designed to serve an antenna must include all features of the wireless telecommunications facility proposed.
- B. Application Contents—Administrative WTFPs. The content of the application form for facilities subject to an Administrative WTFP shall be determined by the public works director, but at a minimum shall include the following:
1. The name of the applicant, its telephone number and contact information, and if the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider that will be using the wireless facility.
 2. The name of the owner of the structure, if different from the applicant, and a signed and notarized owner's authorization for use of the structure.
 3. A complete description of the proposed wireless telecommunications facility and any and all work that will be required to install or modify it, including, but not limited to, detail regarding proposed excavations, if any; detailed site plans showing the location

of the wireless telecommunications facility, and dimensioned drawings with specifications for each element of the wireless facility, clearly describing the site and all structures and facilities at the site before and after installation or modification; and a dimensioned map identifying and describing the distance to the nearest residential dwelling unit and any historical structure within 500 feet of the facility. Before and after 360 degree photo simulations must be provided.

4. Documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the Municipal Code and the FCC's radio frequency emissions standards.
 5. A copy of the lease or other agreement, if any, between the applicant and the owner of the property to which the proposed facility will be attached.
 6. If the application is for a SWF, the application shall state as such and shall explain why the proposed facility meets the definition of a SWF.
 7. If the application is for an eligible facilities request, the application shall state as such and must contain information sufficient to show that the application qualifies as an eligible facilities request, which information must demonstrate that the eligible support structure was not constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. This shall include copies of all applicable local permits in-effect and as-built drawings of the current site. Before and after 360 degree photo simulations must be provided, as well as documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the Municipal Code and the FCC's radio frequency emissions standards.
 8. For SWFs, the application must contain all additional application information, if any, required by the SWF Regulations.
 9. The Administrative WTFP applicant shall submit a fee for noticing, consistent with the City's adopted fee schedule to provide notice all properties and record owners of properties within 300 feet of the project location.
 10. If the applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all information on which the applicant relies on in support of that claim. Applicants are not permitted to supplement this showing if doing so would prevent the city from complying with any deadline for action on an application.
- C. Application Contents—Major WTFPs. The public works director shall develop an application form and make it available to applicants upon request and post the application form on the city's website. The application form for a Major WTFP shall require the following information, in addition to all other information determined necessary by the public works director:

1. The name, address and telephone number of the applicant, owner and the operator of the proposed wireless telecommunication facility.
2. If the applicant does not, or will not, own the support structure, the applicant shall provide a duly-executed letter of authorization from the owner of the structure. If the owner of the support structure is the applicant, but such owner/applicant will not directly provide wireless telecommunications services, the owner/applicant shall provide a duly-executed letter of authorization from the person(s) or entity(ies) that will provide those services.
3. A full written description of the proposed wireless telecommunications facility and its purpose.
4. Detailed engineering plans of the proposed wireless telecommunications facility and related report prepared by a professional engineer registered in the state documenting the following:
 - a. Height/elevation, diameter, layout and design of the facility, including technical engineering specifications, economic and other pertinent factors governing selection of the proposed design, together with evidence that demonstrates that the proposed facility has been designed to be the least intrusive equipment within the particular technology available to the carrier for deployment.
 - b. A photograph and model name and number of each piece of the facility or proposed antenna array and accessory equipment included.
 - c. Power output and operating frequency for the proposed antenna array (including any antennas existing as of the date of the application serving the carrier identified in the application).
 - d. Total anticipated capacity of the wireless telecommunications facility for the subject carrier, indicating the number and types of antennas and power and frequency ranges, which can be accommodated.
 - e. Sufficient evidence of the structural integrity of the support structure as required by the city.
5. A written description identifying the geographic service area to be served by the proposed WTFP, plus geographic or propagation maps showing applicant's service area objectives.
6. A justification study which includes the rationale for selecting the proposed wireless telecommunication facility design, support structure and location. A detailed explanation of the applicant's coverage objectives that the proposal would serve, and how the proposed use is the least intrusive means for the applicant to cover such objectives. This shall include:
 - a. A meaningful comparative analysis that includes the factual reasons why the proposed location and design deviates is the least noncompliant or intrusive

location and design necessary to reasonably achieve the applicant's reasonable objectives of covering an established significant gap (as established under state and federal law).

- b. Said study shall include all eligible support structures and/or alternative sites evaluated for the proposed WTFP, and why said alternatives are not reasonably available, technically feasible options that most closely conform to the local values. The alternative site analysis must include the consideration of at least two eligible support structures; or, if no eligible support facilities are analyzed as alternatives, why no eligible support facilities are reasonably available or technically feasible.
 - c. If a portion of the proposed facility lies within a jurisdiction other than the city's jurisdiction, the applicant must demonstrate that alternative options for locating the project fully within one jurisdiction or the other is not a viable option. Applicant must demonstrate that it has obtained all approvals from the adjacent jurisdiction for the installation of the extra-jurisdictional portion of the project.
7. Site plan(s) to scale, specifying and depicting the exact proposed location of the proposed wireless telecommunications facility, location of accessory equipment in relation to the support structure, access or utility easements, existing utilities, adjacent land uses, and showing compliance with all design and safety requirements set forth in this chapter.
8. A completed environmental assessment application, or in the alternative any and all documentation identifying the proposed WTFP as exempt from environmental review (under the California Environmental Quality Act, Public Resources Code 21000–21189, the National Environmental Policy Act, 42 U.S.C. §4321 *et seq.*, or related environmental laws). Notwithstanding any determination of environmental exemption issued by another governmental entity, the city reserves its right to exercise its rights as a responsible agency to review *de novo* the environmental impacts of any WTFP application.
9. An accurate visual impact analysis showing the maximum silhouette, view-shed analysis, color and finish palette and proposed screening for the wireless telecommunications facility, including scaled photo simulations from at least three different angles.
10. Completion of the radio frequency (RF) emissions exposure guidelines checklist contained in Appendix A to the FCC's "Local Government Official's Guide to Transmitting Antenna RF Emission Safety" to determine whether the facility will be "categorically excluded" as that term is used by the FCC.
11. For a facility that is not categorically excluded under the FCC regulations for RF emissions, the applicant shall submit an RF exposure compliance report prepared and certified by an RF engineer acceptable to the city that certifies that the proposed facility, as well as any facilities that contribute to the cumulative exposure in the subject area, will comply with applicable federal RF exposure standards and exposure

limits. The RF report must include the actual frequency and power levels (in watts effective radio power “ERP”) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

12. Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the proposed wireless telecommunications facility.
 13. A noise study prepared by a qualified acoustic engineer documenting that the level of noise to be emitted by the proposed wireless telecommunications facility will comply with this code, including Chapter 8.28 (Noise) of this code.
 14. A traffic control plan when the proposed installation is on any street in a non-residential zone. The city shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g. crane).
 15. A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the wireless telecommunication facility.
 16. Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.
 17. Evidence that the proposed wireless facility qualifies as a “personal wireless services facility” as defined in United States Code, Title 47, Section 332(c)(7)(C)(ii).
 18. Address labels for use by the city in noticing all property owners within 500 feet of the proposed wireless telecommunication facility and, if applicable, all public hearing information required by the municipal code for public noticing requirements.
 19. Any other information and/or studies reasonably determined to be necessary by the public works or planning director(s) may be required.
- D. Fees and Deposits Submitted with Application(s). For all WTFPs, application fee(s) shall be required to be submitted with any application, as established by city council resolution and in accordance with California Government Code Section 50030. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a WTFP unless paid as a refundable deposit.
- E. Independent Expert. The public works and/or planning director, as applicable, is authorized to retain on behalf of the city one or more independent, qualified consultant(s) to review any

WTFP application. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility and shall include, but not be limited to, application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards.

- F. **Costs.** Reasonable costs of city staff, consultant and attorney time (including that of the city attorney) pertaining to the review, processing, noticing and hearing procedures directly attributable to a WTFP shall be reimbursable to the city. To this end, the public works and/or planning director, as applicable, may require applicants to enter a trust/deposit reimbursement agreement, in a form approved by the city attorney, or other established trust/deposit accounting mechanism for purposes of obtaining an applicant deposit from which the direct costs of city processing of an application may be drawn-down.
- G. **Effect of State or Federal Law on Application Process.** In the event a state or federal law prohibits the collection of any information or application conditions required by this Section, the public works director is authorized to omit, modify or add to that request from the city's application form in consultation with the city attorney. Requests for waivers from any application requirement of this Section shall be made in writing to the public works director or his or her designee. The public works director may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the city will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the WTFP sought. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored to minimize deviation from the requirements of the municipal code.
- H. **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, any application governed under this chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the city on any application within thirty (30) calendar days after the application is deemed incomplete in a written notice to the applicant. The public works or planning director (as applicable) may, in his/her discretion, grant a written extension for up to an additional thirty (30) calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension.
- I. **Waiver of Applications Superseded by Submission of New Project.** If an applicant submits a WTFP application, but substantially revises the proposed facility during the application process prior to any city hearing or decision on such application, the substantially revised application shall be deemed a new application for all processing purposes, including federal shot clocks, and the prior submittals deemed waived and superseded by the substantially revised application. For purposes of this subparagraph, "substantially revised" means that the project as initially-proposed has been alternately proposed for a location 300 feet or more from the original proposal or constitutes a substantial change in the dimensions or equipment that was proposed in the original WTFP application.
- J. **Rejection for Incompleteness.** WTFPs will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is incomplete, it may be rejected by the public works director by notifying the applicant in writing and specifying the material omitted from the application.

12.12.060 – REVIEW PROCEDURE.

- A. Generally. Wireless telecommunications facilities shall be installed and modified in a manner that minimizes risks to public safety and utilizes installation of new support structures or equipment cabinets in the PROW only after all existing and replacement structure options have been exhausted, and where feasible, places equipment underground, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the PROW; and ensures that the city bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the PROW, or hinder the ability of the city or other government agencies to improve, modify, relocate, abandon, or vacate the PROW or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the PROW.
- B. Collocation Encouraged. Where the facility site is capable of accommodating a collocated facility upon the same site in a manner consistent with the permit conditions for the existing facility, the owner and operator of the existing facility shall allow collocation of third-party facilities, provided the parties can mutually agree upon reasonable terms and conditions.
- C. Findings Required for Approval.
 - 1. Administrative WTFP Applications for SWFs. For WTFP applications proposing a SWF, the public works director or planning director, as the case may be, shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:
 - a. The facility qualifies as a SWF; and
 - b. The facility meets all standards, requirements and further findings as may be specified in the SWF Regulations; and
 - c. The facility is not detrimental to the public health, safety, and welfare; and
 - d. The facility meets applicable requirements and standards of state and federal law.
 - 2. Administrative WTFP Applications for Eligible Facility Requests. For WTFP applications proposing an eligible facilities request, the public works director shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:
 - a. That the application qualifies as an eligible facilities request; and
 - b. That the proposed facility will comply with all generally-applicable laws.
 - 3. Major WTFP Applications. No Major WTFP shall be granted unless all of the following findings are made by the applicable decision-maker:

- a. If applicable, all notices required for the proposed WTFP have been given, including the inclusion, or placement on-site, of photo simulations for the proposed facility.
 - b. The proposed wireless telecommunications facility has been designed and located in compliance with all applicable provisions of this chapter.
 - c. If applicable, the applicant has demonstrated its inability to locate on an eligible support structure.
 - d. The applicant has provided sufficient evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise agreement with the city permitting them to use the public right-of-way.
 - e. The applicant has demonstrated the proposed installation is designed such that the proposed installation represents the least intrusive means possible, supported by factual evidence and a meaningful comparative analysis to show that all alternative locations and designs identified in the application review process were technically infeasible or not reasonably available.
- D. Notice; Decisions. The provisions in this Section describe the procedures for the approval process, any required notice and public hearings for a WTFP application.
- 1. Administrative WTFPs: Notice of a WTFP application for a SWF shall be mailed to owners and occupants of real property surrounding the proposed SWF site in the manner specified in the SWF Regulations. Applications qualifying for eligible facilities requests shall not require notice.
 - 2. Major WTFP Applications. Any Major WTFP application shall require notice and a public hearing. Notice of such hearing shall be provided in accordance with Government Code Section 65091. Public notices shall include color photo simulations from three different angles depicting the wireless telecommunication facility as proposed to be considered by the planning commission. If the application proposes the use of an existing or replacement eligible support structure, such simulations shall be posted upon the proposed support structure for a period of at least thirty (30) days prior to the date of approval; such posted simulations shall remain in-place until final decision on the application is reached.
 - 3. Written Decision Required for All WTFP Determinations. Unless otherwise specified for SWF's in the SWF Regulations, all final decisions made pursuant to this chapter, including those for administratively-processed permits and eligible facilities requests, shall be in writing and based on substantial evidence in the written administrative record. Within five days after any decision to grant, approve, deny or conditionally grant a WTFP application, the public works director or planning director, as applicable, shall provide written notice including the following:

- a. A general explanation of the decision, including the findings required for the decision, if any, and how those findings were supported or not supported by substantial evidence;
 - b. A general description of the property involved;
 - c. Information about applicable rights to appeal the decision and explanation of how that right may be exercised; and
 - d. To be given by first class mail to:
 - (i) The project applicant and property owner,
 - (ii) Any person who submitted written comments concerning the WTFP,
 - (iii) Any person who has filed a written request with the city to receive such notice, and
 - (iv) Any homeowner association on file with the city that has jurisdiction over the WTFP site.
4. Once a WTFP is approved, no changes shall be made to the approved plans without review and approval in accordance with this chapter.

E. Appeals.

1. Administrative WTFP Appeals. Any person claiming to be adversely affected by an administrative decision pursuant to this chapter may appeal such decision. The appeal will be considered by a hearing officer appointed by the city manager. The hearing officer may decide the issues de novo and his/her written decision will be the final decision of the city. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless facility. Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, appeals of the administrative decision premised on the environmental effects of radio frequency emissions will not be considered.
 - a. Where the administrative decision grants an application based on a finding that denial would result in a prohibition or effective prohibition under applicable federal law, the decision shall be automatically appealed to the hearing officer. All appeals must be filed within two (2) business days of the written administrative decision, unless the public works director extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law.
 - b. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law. For SWFs, the appeal shall be conducted in accordance with any procedures adopted in the SWF Regulations.

2. Appeals on Major WTFPs shall proceed as provided in accordance with the appeal provisions in Title 17 of the Municipal Code, Sections 17.58.100 and 17.60.130 (Appeals). The appellate authority may hear the appeal de ovo.

F. Notice of Shot Clock Expiration. The city acknowledges there are federal and state shot clocks which may be applicable to a proposed wireless telecommunications facility. That is, federal and state law provide time periods in which the city must approve or deny a proposed wireless telecommunications facility. As such, the applicant is required to provide the city written notice of the expiration of any shot clock, which the applicant shall ensure is received by the city (e.g. overnight mail) no later than 20 days prior to the expiration.

12.12.070 – DESIGN AND DEVELOPMENT STANDARDS.

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

B. Eligible Facilities Request Design and Development Standards. Approved eligible facilities requests for which the findings set forth in Section 12.12.060 have been made are subject to the following conditions, unless modified by the approving authority:

1. WTFP subject to conditions of underlying permit. Any WTFP granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit and all such conditions that were applicable to the facility prior to approval of the subject eligible facility request.

2. No permit term extension. The city's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the city's grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall have the same term as the underlying permit or other regulatory approval for the subject tower or base station.

3. No waiver of standing. The city's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the city to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

C. Major WTFP Design and Development Standards. All wireless telecommunications facilities subject to a Major WTFP that are located within the PROW shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following standards:

1. General Guidelines.
 - a. The applicant shall employ screening, undergrounding and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is as visually screened as possible, to prevent the facility from dominating the surrounding area and to minimize significant view impacts from surrounding properties and public views, all in a manner that achieves compatibility with the community and in compliance with this code.
 - b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.
 - c. Wireless telecommunications facilities shall be located consistent with Section 12.12.080 (Location Restrictions) unless an exception is granted.
2. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.
3. Blending Methods. All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area, infrastructure and structures.
4. Equipment. The applicant shall use the least visible equipment for the provision of wireless telecommunications services that is technically feasible. Antenna elements shall be flush mounted, to the extent feasible, with all cables and wires clipped-up or otherwise out of public view. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless otherwise provided in this Section, antennas shall be situated as close to the ground as technically feasible.
5. Support Structures.
 - a. Pole-Mounted Only. Only pole-mounted antennas (excepting wooden poles per subparagraph 5.b below) shall be permitted in the public right-of-way. Mountings to all other forms of support structure in the public right-of-way are prohibited unless an exception pursuant to Section 12.12.080 is granted.
 - b. Utility Poles. Wireless telecommunications facilities shall not be located on wooden poles unless an exception pursuant to Section 12.12.080 is granted. The maximum height of any antenna shall not exceed 48 inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than 24 feet above any drivable road surface. All installations on utility poles shall fully comply with the California

Public Utilities Commission general orders, including, but not limited to, General Order 95, as may be revised or superseded.

- c. Light Poles. The maximum height of any antenna shall not exceed four feet above the existing height of a light pole. Any portion of the antenna or equipment mounted on a pole shall be no less than 16½ feet above any drivable road surface.
- d. Replacement Poles. If an applicant proposes to replace a pole that is an eligible support structure to accommodate the proposed facility, the replacement pole shall be designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials and style to the maximum extent feasible.
- e. Equipment mounted on a support structure shall not exceed four (4) cubic feet in dimension.
- f. No new guy wires shall be allowed unless required by other laws or regulations.
- g. An exception pursuant to Section 12.12.080 shall be required to erect any new support structure (non-eligible support structure) that is not the replacement of an existing eligible support structure.
- h. As applicable to all new support structures (non-eligible support structures), regardless of location, the following requirements shall apply:
 - (i) Such new support structure shall be designed to resemble existing support structures of the same type in the right-of-way near that location, including size, height, color, materials and style, with the exception of any existing structural designs that are scheduled to be removed and not replaced.
 - (ii) Such new support structures that are not replacement structures shall be located at least 90 feet from any eligible support structure to the extent feasible.
 - (iii) Such new support structures shall not adversely impact public view corridors, as defined in the General Plan & Local Coastal Program and shall be located to the extent feasible in an area where there is existing natural or other feature that obscures the view of the new support structure. The applicant shall further employ concealment techniques to blend the new support structure with said features including but not limited to the addition of vegetation if feasible.
 - (iv) A justification analysis shall be submitted for all new support structures that are not replacements to demonstrate why an eligible support facility cannot be utilized and demonstrating the new structure is the least intrusive means possible, including a demonstration that

the new structure is designed to be the minimum functional height and width required to support the proposed wireless telecommunications facility.

- i. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the support structure and shall be camouflaged or hidden to the fullest extent feasible. For all support structures wherein interior installation is infeasible, conduit and cables attached to the exterior shall be mounted flush thereto and painted to match the structure.
6. Space. Each facility shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.
7. Wind Loads. Each facility shall be properly engineered to withstand wind loads as required by this code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.
8. Obstructions. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, incommode the public's use of the right-of-way, or cause safety hazards to pedestrians and motorists.
9. Public Facilities. A facility shall not be located within any portion of the public right-of-way interfering with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility.
10. Screening. All ground-mounted facility, pole-mounted equipment, or walls, fences, landscaping or other screening methods shall be installed at least 18 inches from the curb and gutter flow line.
11. Accessory Equipment. Not including the electric meter, all accessory equipment shall be located underground, except as provided below:
 - a. Unless city staff determines that there is no room in the public right-of-way for undergrounding, or that undergrounding is not feasible, an exception pursuant to Section 12.12.080 shall be required in order to place accessory equipment above-ground and concealed with natural or manmade features to the maximum extent possible.
 - b. When above-ground is the only feasible location for a particular type of accessory equipment and will be ground-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five feet and a total footprint of 15 square feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be screened and/or camouflaged. Also, while pole-mounted equipment is generally the least favored installation, should pole-mounted equipment be sought, it shall be installed as required in this chapter.

- c. In locations where homes are only along one side of a street, above-ground accessory equipment shall not be installed directly in front of a residence. Such above-ground accessory equipment shall be installed along the side of the street with no homes.
- 12. Landscaping. Where appropriate, each facility shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs. Additional landscaping shall be planted, irrigated and maintained by applicant where such landscaping is deemed necessary by the city to provide screening or to conceal the facility.
- 13. Signage. No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the city.
- 14. Lighting.
 - a. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency.
 - b. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers and monopoles.
 - c. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhoods.
 - d. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The city may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need.
 - e. The applicant shall submit a lighting study which shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties. Should no lighting be proposed, no lighting study shall be required.
- 15. Noise.
 - a. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 p.m. and 7:00 a.m.
 - b. At no time shall equipment noise from any facility exceed the noise levels permitted by Chapter 9.28 of this code.
- 16. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would

result in hazardous situations, visual blight or attractive nuisances. The public works director or the approving city body, as applicable, may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance. Additionally, no lethal devices or elements shall be installed as a security device.

17. Modification. Consistent with current state and federal laws and if permissible under the same, at the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.
18. The installation and construction approved by a wireless telecommunications facility permit shall begin within one year after its approval or it will expire without further action by the city.
19. Conditions of Approval. All Major WTFPs shall be subject to such conditions of approval as reasonably imposed by the public works director or the approving city body, as applicable, as well as any modification of the conditions of approval deemed necessary by the public works director or the approving city body.

12.12.080 – LOCATION RESTRICTIONS; EXCEPTIONS FOR NON-COMPLIANT MAJOR WIRELESS TELECOMMUNICATIONS FACILITIES.

- A. Locations Requiring an Exception. Major WTFPs are strongly disfavored in certain areas and on certain support structures. Therefore the following locations are permitted only when an exception has been granted pursuant to subsection B hereof:
 1. Public right-of-way within those zones identified in the general plan as residential;
 2. Public right-of-way within 100 feet of designated historic buildings;
- B. Required Findings for an Exception on Major WTFPs. For any Major WTFP requiring an “exception” under this chapter, no such exception shall be granted unless all the following requirements are satisfied:
 1. The proposed wireless facility qualifies as a "personal wireless services facility" as defined in United States Code, Title 47, Section 332(c)(7)(C)(ii);
 2. The applicant has provided the city with clear and convincing evidence a clearly defined significant gap (as established under state and federal law) and a clearly defined potential site search area.
 - a. In the event the applicant seeks to install a wireless telecommunications facility to address service coverage concerns, the applicant shall provide the city with full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent wireless telecommunications facilities without the proposed

1. After discovery of the need by the permittee, owner, operator or any designated maintenance agent; or
 2. After permittee, owner, operator or any designated maintenance agent receives notification from the city.
- C. Insurance. The permittee shall obtain and maintain throughout the term of the permit a type and amount of insurance as specified by city's risk management. The relevant policy(ies) shall name the city, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insured. The permittee shall use its best efforts to provide thirty (30) days prior notice to the public works director of to the cancellation or material modification of any applicable insurance policy.
- D. Indemnities. The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the city, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the city or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the city's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the city becomes aware of any such actions or claims the city shall promptly notify the permittee and, if applicable, the private property owner and shall reasonably cooperate in the defense. The city shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the city's defense, and the property owner and/or Permittee (as applicable) shall reimburse the city for any costs and expenses directly and necessarily incurred by the city in the course
- E. Performance Bond. Prior to issuance of a wireless encroachment permit, the permittee shall file with the city, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to 100% of the cost of removal of the facility as specified in the application for the WTFP or as that amount may be modified by the public works director in in the permit based on the characteristics of the installation. The permittee shall reimburse the city for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the city council. Reimbursement shall be paid when the security is posted and during each administrative review.
- F. Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility. All facilities, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the use of the PROW, impede the flow of vehicular or pedestrian traffic, impair the primary use and purpose of poles/signs/traffic signals or other infrastructure, interfere with

outdoor dining areas or emergency facilities, or otherwise obstruct the accessibility of the PROW.

- G. Contact Information. Each permittee of a wireless telecommunications facility shall provide the public works director with the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility (“contact information”). Contact information shall be updated within seven days of any change.
- H. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:
 - 1. Subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems (water, sewer, storm drains, gas, oil, electrical, etc.) that result from any activities performed in connection with the installation and/or maintenance of a wireless facility in the PROW.
 - 2. General dirt and grease;
 - 3. Chipped, faded, peeling, and cracked paint;
 - 4. Rust and corrosion;
 - 5. Cracks, dents, and discoloration;
 - 6. Missing, discolored or damaged artificial foliage or other camouflage;
 - 7. Graffiti, bills, stickers, advertisements, litter and debris. All graffiti on facilities must be removed at the sole expense of the permittee within forty eight (48) hours after notification from the city.
 - 8. Broken and misshapen structural parts; and
 - 9. Any damage from any cause.
- I. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in neat, safe and good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the public works director.
- J. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.
- K. Each facility shall be operated and maintained to comply at all conditions of approval. The permittee, when directed by the city, must perform an inspection of the facility and submit a

report to the public works director on the condition of the facility to include any identified concerns and corrective action taken. Additionally, as the city performs maintenance on city-owned infrastructure, additional maintenance concerns may be identified. These will be reported to the permittee. The city shall give the permittee thirty (30) days to correct the identified maintenance concerns after which the city reserves the right to take any action it deems necessary, which could include revocation of the permit. The burden is on the Permittee to demonstrate that it complies with the requirements herein. Prior to issuance of a permit under this Chapter, the owner of the facility shall sign an affidavit attesting to understanding the city's requirement for performance of annual inspections and reporting.

- L. All facilities permitted pursuant to this chapter shall comply with the Americans with Disabilities Act.
- M. The permittee is responsible for obtaining power to the facility and for the cost of electrical usage.
- N. Failure to comply with the city's adopted noise standard after written notice and reasonable opportunity to cure have been given shall be grounds for the city to revoke the permit.
- O. Interference.
 - 1. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the city shall be moved to accommodate a permitted activity or encroachment, unless the city determines that such movement will not adversely affect the city or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the city's structure, improvement, or property. Prior to commencement of any work pursuant to a wireless encroachment permit, the permittee shall provide the city with documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the PROW or city utility easement to be affected by permittee's facilities.
 - 2. The facility shall not damage or interfere in any way with city property, the city's operations or the operations of prior-existing, third party installations. The city will reasonably cooperate with the permittee and/or carrier to carry out such activities as are necessary to correct the interference.
 - a. Signal Interference. The permittee shall correct any such interference within 24 hours of written notification of the interference. Upon the expiration of the 24-hour cure period and until the cause of the interference is eliminated, the permittee shall cease operation of any facility causing such interference until such interference is cured.
 - b. Physical Interference. The city shall give the permittee thirty (30) days to correct the interference after which the city reserves the right to take any action it deems necessary, which could include revocation of the permit.

3. The city at all times reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the sites. Such actions may temporarily interfere with the operation of the facility. The city will in all cases, other than emergencies, give the applicant 30 days written notification of such planned, non-emergency actions.
- P. RF Exposure Compliance. All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, the permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC Office of Engineering and Technology Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.
1. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
- Q. Records. The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the city, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.
- R. Attorney's Fees. In the event the city determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the city, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the city should otherwise agree with permittee to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.

12.12.100 – NO DANGEROUS CONDITION OR OBSTRUCTIONS ALLOWED.

No person shall install, use or maintain any wireless telecommunications facility that in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

12.12.110 – NONEXCLUSIVE GRANT; NO POSSESSORY INTERESTS.

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

12.12.120 – PERMIT EXPIRATION; ABANDONMENT OF APPLICATIONS.

- A. Permit Term. Unless Government Code Section 65964, as may be amended, authorizes the city to issue a permit with a shorter term, a permit for any wireless telecommunications facility shall be valid for a period of ten (10) years, unless pursuant to another provision of this code it lapses sooner or is revoked. At the end of ten (10) years from the date of issuance, such permit shall automatically expire.
- B. A permittee may apply for a new permit within 180 days prior to expiration. Said application and proposal shall comply with the city's current code requirements for wireless telecommunications facilities.
- C. Timing of Installation. The installation and construction authorized by a WTFP shall begin within one (1) year after its approval, or it will expire without further action by the city. The installation and construction authorized by a WTFP shall conclude, including any necessary post-installation repairs and/or restoration to the PROW, within thirty (30) days following the day construction commenced.
- D. Commencement of Operations. The operation of the approved facility shall commence no later than ninety (90) days after the completion of installation, or the WTFP will expire without further action by the city. The permittee shall provide the public works director notice that operations have commenced by the same date.

12.12.130 – CESSATION OF USE OR ABANDONMENT.

- A. A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for 90

or more consecutive days unless the permittee has obtained prior written approval from the director which shall not be unreasonably denied. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.

- B. The operator of a facility shall notify the public works director in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the public works director of any discontinuation of operations of 30 days or more.
- C. Failure to inform the public works director of cessation or discontinuation of operations of any existing facility as required by this Section shall constitute a violation of any approvals and be grounds for:
 - 1. Litigation;
 - 2. Revocation or modification of the permit;
 - 3. Acting on any bond or other assurance required by this article or conditions of approval of the permit;
 - 4. Removal of the facilities by the city in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
 - 5. Any other remedies permitted under this code or by law.

12.12.140 – REMOVAL AND RESTORATION—PERMIT EXPIRATION, REVOCATION OR ABANDONMENT.

- A. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the WTFP or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to the condition it was in prior to the granting of the WTFP, except for retaining the landscaping improvements and any other improvements at the discretion of the city. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the city. Expired, terminated or revoked wireless telecommunications facility equipment shall be removed from the site at no cost or expense to the city.
- B. Failure of the permittee, owner or operator to promptly remove its facility and restore the property within 90 days after expiration, earlier termination or revocation of the WTFP, or abandonment of the facility, shall be a violation of this code. Upon a showing of good cause, an extension may be granted by the public works director where circumstances are beyond the control of the permittee after expiration. Further failure to abide by the timeline provided in this Section shall be grounds for:
 - 1. Prosecution;
 - 2. Acting on any security instrument required by this chapter or conditions of approval of permit;

3. Removal of the facilities by the city in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
 4. Any other remedies permitted under this code or by law.
- C. **Summary Removal.** In the event any city director or city engineer determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), such director or city engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within 60 days, the facility shall be treated as abandoned property.
- D. **Removal of Facilities by City.** In the event the city removes a wireless telecommunications facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the city for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the city may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this code. Unless otherwise provided herein, the city has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the city destroys any such facility not timely removed by the permittee, owner or operator after notice, or removal by the city due to exigent circumstances.

12.12.150 – EFFECT ON OTHER ORDINANCES.

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

12.12.160 – STATE OR FEDERAL LAW.

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

12.12.170 – LEGAL NONCONFORMING WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY.

- A. Legal nonconforming wireless telecommunications facilities are those facilities that existed but did not conform to this chapter on the date this chapter became effective.

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

- C. An aggrieved person may file an appeal to the city council of any decision of the public works director or other deciding body made pursuant to this Section. In the event of an appeal alleging that the ten-year amortization period is not reasonable as applied to a particular property, the city council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property.

ORDINANCE NO. 620

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, ADDING CHAPTER 12.12 TO TITLE 12 OF THE MORRO BAY MUNICIPAL CODE, ENTITLED “WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY”

A. The City Council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws. Further, Government Code Section 36937(b) authorizes the adoption of an urgency ordinance for the immediate preservation of the public peace, health or safety.

B. Significant changes in Federal and State law that affect local authority over wireless communications facilities (“WCFs”) have occurred, including but not limited to the following:

- i. On November 18, 2009, the Federal Communications Commission (“FCC”) adopted a declaratory ruling (the “2009 Shot Clock”), which established presumptively reasonable timeframes for State and local governments to act on applications for WCFs.
- ii. On February 22, 2012, Congress adopted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act (“Section 6409(a)”), which mandated that State and local governments approve certain modifications and collocations to existing WCFs, known as eligible facilities requests.
- iii. On October 17, 2014, the FCC adopted a report and order that, among other things, implemented new limitations on how State and local governments review applications covered by Section 6409(a), established an automatic approval for such applications when the local reviewing authority fails to act within 60 days, and also further restricted generally applicable procedural rules under the 2009 Shot Clock.
- iv. On October 9, 2015, California adopted Assembly Bill No. 57 (Quirk), which deemed approved any WCF applications when the local reviewing authority fails to act within the 2009 Shot Clock timeframes.
- v. On August 2, 2018, the FCC adopted a declaratory ruling that formally prohibited express and de facto moratoria for all telecommunications services and facilities under 47 U.S.C. § 253(a).
- vi. On September 26, 2018, the FCC adopted a declaratory ruling and report and order (hereafter, the “FCC Ruling”) that, among other things, (1) creates a new regulatory classification for small wireless facilities (“SWFs”), (2) requires State and local governments to process applications for SWFs within 60 days or 90 days, (3) establishes a national standard for an effective prohibition, (4) provides that a failure to act

within the applicable timeframe presumptively constitutes an effective prohibition, and (5) limits the fees that can be charged for the facilities.

C. In addition to the changes described above, new Federal laws and regulations that drastically alter local authority over WCFs are currently pending, including without limitation, the following:

- i. On March 30, 2017, the FCC issued a Notice of Proposed Rulemaking (WT Docket No. 17-79, WC Docket No. 17-84) and has acted on some of the noticed issues referenced above, but may adopt forthcoming rulings and/or orders that further limit local authority over wireless facilities deployment.
- ii. On June 28, 2018, United States Senator John Thune introduced and referred to the Senate Committee on Commerce, Science and Transportation the “STREAMLINE Small Cell Deployment Act” (S. 3157) that, among other things, would apply specifically to small cell WCFs and require local governments to review applications based on objective standards, shorten the 2009 Shot Clock timeframes, require all proceedings to occur within the 2009 Shot Clock timeframes, and provide a “deemed granted” remedy for failure to act within the applicable 2009 Shot Clock.

D. Given the rapid and significant changes in Federal and State law, the actual and effective prohibition on moratoria to amend local policies in response to such changes and the significant adverse consequences for noncompliance with Federal and State law, the City Council desires to add Chapter 12.12 to Title 12 of the Morro Bay Municipal Code, entitled “WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY” (the “Ordinance”) to allow greater flexibility and responsiveness to the new Federal and State laws while still preserving the City’s traditional authority to the maximum extent practicable.

E. The City Council of the City of Morro Bay deems it necessary to adopt an urgency ordinance pursuant to Government Code Section 36937(b) to add regulations to the Morro Bay Municipal Code to regulate the placement of SWFs and WCFs in the public rights-of-way, finding the urgency to do so based upon the following facts:

- i. The global wireless telecommunications industry has developed and is starting to install SWFs primarily in public rights-of-way. SWFs are designed to accommodate “5G” technology. Wireless telecommunications providers have made inquiries with many California cities about installing SWFs in municipal rights-of-way, and some California cities are already receiving applications for such facilities.
- ii. The Federal Telecommunications Act of 1996 preempts and declares invalid all state and local rules that restrict entry or limit competition in both local and long-distance telephone service, and the FCC has adopted regulations for the implementation of that Act.

- iii. Section 7901 of the California Public Utilities Code authorizes telephone and telegraph corporations to construct telephone or telegraph lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers, or abatements for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.
- iv. Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner and may involve the imposition of fees.
- v. The FCC adopted its FCC Ruling expressly to “reduce regulatory barriers to the deployment of wireless infrastructure and to ensure that our nation remains the leader in advanced wireless services and wireless technology.” (FCC Ruling, ¶29.) The FCC Ruling is intended to facilitate the spread, growth, and accumulation of SWFs over a short period of time in order to enable deployment of technology that the FCC Ruling claims will enable increased competition in healthcare, Internet of Things applications, lifesaving car technologies, and creation of jobs.
- vi. SWFs are primarily installed within public rights-of-way and as such create significant and far-reaching local concerns about traffic and pedestrian safety, land use conflicts and incompatibilities including excessive height of poles and towers; creation of visual and aesthetic blights arising from excessive size, heights, noise or lack of camouflaging of wireless facilities including the associated pedestals, meters, equipment and power generators, and protection and preservation of public property, all of which may negatively impact the unique quality and character of the City and the public health, safety and welfare thereof. Accordingly, regulating the installation of SWFs in the public right-of-way is necessary to protect and preserve the aesthetics in the community, as well as the values of properties within the City.
- vii. The FCC Ruling sets forth new standards for state and local government regulations of SWFs, which standards restrict the aesthetic requirements that localities can imposed upon such facilities. Any aesthetic standard adopted by cities must be: (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.
- viii. That portion of the FCC Ruling requiring aesthetic standards for SWFs to be reasonable, no more burdensome than on other infrastructure, and objective and pre-published, goes into effect April 15, 2019. Standards that are not published in advance of that date will not be enforceable as to

any application incoming to the City until proper standards are published. Ad hoc aesthetic standards are not enforceable. Cities that have aesthetic, spacing, or undergrounding standards currently in place may continue to judge applications against their current standards. However, by April 15, cities may only enforce aesthetic, undergrounding and spacing standards that are reasonable, no more burdensome than those applied to other types of infrastructure deployments, and objective and published in advance.

- ix. Without the immediate implementation through an urgency ordinance of regulations specific to the siting of SWFs in the public right-of-way, the City Council will be unable to adopt and implement such regulations before the April 15, 2019 effective date for design standards. SWFs could therefore be approved that are inconsistent with the regulations being developed by the City as permitted by federal and state laws.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The facts set forth in the recitals in this Ordinance are true and correct and incorporated by reference. The recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in the Ordinance.

SECTION 2. The Ordinance is consistent with the City’s General Plan, Municipal Code, Zoning Code, and applicable Federal and State law.

SECTION 3. The Ordinance will not be detrimental to the public interest, health, safety, convenience or welfare.

SECTION 4. The Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City’s boundaries. The Ordinance is further exempt from CEQA because the City Council’s adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment (State CEQA Guidelines, § 15061(b)(3)). Installations, if any, would be exempt from CEQA review in accordance with either State CEQA Guidelines Section 15302 (replacement or reconstruction), State CEQA Guidelines Section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines Section 15304 (minor alterations to land).

SECTION 5. The Ordinance is hereby adopted by the addition of a new Chapter 12.12, “WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY” in Title 12 of the Morro Bay Municipal Code to read in its entirety as shown in Exhibit “A” attached hereto and incorporated herein by this reference.

SECTION 6. Based on the foregoing recitals and all facts of record stated before the City Council, the City Council finds and determines that the immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 36937(b), and take effect immediately upon adoption.

- x. SWFs are primarily installed within public rights-of-way and as such create significant and far-reaching local concerns about traffic and pedestrian safety, land use conflicts and incompatibilities including excessive height of poles and towers; creation of visual and aesthetic blights arising from excessive size, heights, noise or lack of camouflaging of wireless facilities including the associated pedestals, meters, equipment and power generators, and protection and preservation of public property, all of which may negatively impact the unique quality and character of the City and the public health, safety and welfare thereof.
- xi. Accordingly, regulating the installation of SWFs in the public right-of-way is necessary to protect and preserve the aesthetics in the community, as well as the values of properties within the City.
- xii. However, that portion of the FCC Ruling requiring aesthetic standards for SWFs to be reasonable, no more burdensome than on other infrastructure, and objective and pre-published, goes into effect April 15, 2019. Standards that are not published in advance of that date will not be enforceable as to any application incoming to the City until proper standards are published.
- xiii. Furthermore, pursuant to the FCC Ruling, new shortened Shot-Clocks have already taken effect with respect to SWFs (either 60 or 90 days for full determination upon each application, including all notice periods, supplemental permits, and appeal periods). These shorter timeframes leave the City with inadequate time and resources to timely process incoming SWF applications under federal law absent significant streamlining of the City's current practices and procedures. Therefore, it is of utmost need for the City to immediately establish a streamlined process for SWF application review.

Therefore, this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared.

SECTION 7. If the provisions in this Ordinance conflict in whole or in part with any other City regulation or ordinance adopted prior to the effective date of this section, the provisions in this Ordinance will control.

SECTION 8. If any subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional or otherwise unenforceable, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declare that they would have passed each

subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more subsection, subdivision, paragraph, sentence, clause, or phrase be declared unconstitutional or otherwise unenforceable.

SECTION 9. This Ordinance is hereby declared to be an urgency measure and shall become effective immediately upon adoption by at least a four-fifths (4/5) vote of the City Council pursuant to Government Code section 36937(b).

SECTION 10. The City Clerk shall certify as to the passage and adoption of this Ordinance and shall cause the same to be posted at the designated locations in the City of Morro Bay.

ADOPTED, PASSED and APPROVED this ___ day of _____, 2019.

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO)
CITY OF MORRO BAY)

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance Number _____ was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the 26th day of March, 2019, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

City Clerk, Dana Swanson

EXHIBIT A

Chapter 12.12 – WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

12.12.010 – PURPOSE.

The purpose and intent of this chapter is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the city’s public right-of-way. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This chapter provides standards necessary (1) for the preservation of the public right-of-way (“PROW”) in the city for the maximum benefit and use of the public, (2) to promote and protect public health and safety, community welfare, visual resources and the aesthetic quality of the city consistent with the goals, objectives and policies of the general plan, and (3) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules and regulations, including those regulations of the Federal Communications Commission (“FCC”) and California Public Utilities Commission (“CPUC”), and (4) to ensure that the use and enjoyment of the PROW is not inconvenienced by the use of the PROW for the placement of wireless facilities. The city recognizes the importance of wireless facilities to provide high-quality communications service to the residents and businesses within the city, and the city also recognizes its obligation to comply with applicable federal and state laws. This chapter shall be constructed and applied in consistency with the provisions of state and federal laws, and the rules and regulations of FCC and CPUC. In the event of any inconsistency between any such laws, rules, and regulations and this chapter, the laws, rules, and regulations shall control.

12.12.020 – DEFINITIONS.

- A. “Accessory equipment” means any and all on-site equipment, including, without limitation, back-up generators and power supply units, cabinets, coaxial and fiber optic cables, connections, equipment buildings, shelters, radio transceivers, transmitters, pedestals, splice boxes, fencing and shielding, surface location markers, meters, regular power supply units, fans, air conditioning units, cables and wiring, to which an antenna is attached in order to facilitate the provision of wireless telecommunication services.
- B. “Antenna” means that specific device for transmitting and/or receiving radio frequency or other signals for purposes of wireless telecommunications services. “Antenna” is specific to the antenna portion of a wireless telecommunications facility.
- C. “Antenna array” shall mean two or more antennas having active elements extending in one or more directions, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.
- D. “Base station” shall have the meaning as set forth in Title 47 Code of Federal Regulations (C.F.R.) Section 1.40001(b)(1), or any successor provision. This means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network (regardless of the technological configuration,

and encompassing DAS and small cells). “Base station” does not encompass a tower or any equipment associated with a tower. Base station includes, without limitation:

1. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small cells).
3. Any structure other than a tower that, at the time the relevant application is filed with the city under this chapter, supports or houses equipment described in paragraphs 1 and 2 of this definition that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.
4. “Base station” does not include any structure that, at the time the relevant application is filed under this chapter, does not support or house equipment described in paragraphs 1 and 2 of this definition. Other structures that do not host wireless telecommunications facilities are not “base stations.”

As an illustration and not a limitation, the FCC’s definition of “base station” refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles, light standards or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

- E. “Cellular” means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.
- F. “City” means the City of Morro Bay.
- G. “Code” means the City of Morro Bay Municipal Code.
- H. “Collocation” bears the following meanings:
 1. For the purposes of any eligible facilities request, the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as “[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.” As an illustration and not a limitation, the FCC’s definition means to add transmission equipment to an existing facility and does not necessarily refer to two or more different facility operators in the same location; and
 2. For all other purposes, the same as defined in 47 CFR 1.6002(g)(1) and (2), as may be amended, which defines that term as (1) Mounting or installing an antenna facility on a pre-existing structure, and/or (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

- I. “Collocation facility” means the eligible support structure on, or immediately adjacent to, which a collocation is proposed, or a wireless telecommunications facility that includes collocation facilities. (*See*, Gov. Code, § 65850.6(d).)
- J. “COW” means a “cell on wheels,” which is a portable, self-contained wireless telecommunications facility that can be moved to a location and set up to provide wireless telecommunication services, which facility is temporarily rolled in, or temporarily installed, at a location. Under this chapter, the maximum time a facility can be installed to be considered a COW is five (5) days. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.
- K. “Distributed antenna system” or “DAS” means a network of spatially separated antennas (nodes) connected to a common source (a hub) via a transport medium (often fiber optics) that provide wireless telecommunications service within a specific geographic area or building. DAS includes the transport medium, the hub, and any other equipment to which the DAS network or its antennas or nodes are connected to provide wireless telecommunication services.
- L. “Eligible facilities request” means any request for modification to an existing eligible support structure that does not substantially change the physical dimensions of such structure, involving:
 - 1. Collocation of new transmission equipment;
 - 2. Removal of transmission equipment;
 - 3. Replacement of transmission equipment (replacement does not include completely replacing the underlying support structure); or
 - 4. Hardening through structural enhancement where such hardening is necessary to accomplish the eligible facilities request, but does not include replacement of the underlying support structure.
- M. “Eligible facilities request” does not include modifications or replacements when an eligible support structure was constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. “Eligible facilities request” does include collocation facilities satisfying all the requirements for a non-discretionary collocation facility pursuant to Government Code Section 65850.6.
- N. “Eligible support structure” means any support structure located in the PROW that is existing at the time the relevant application is filed with the city under this chapter.
- O. “Existing” means a support structure, wireless telecommunications facility, or accessory equipment that has been reviewed and approved under the city’s applicable zoning or siting process, or under another applicable state or local regulatory review process, and lawfully constructed prior to the time the relevant application is filed under this chapter. However, a support structure, wireless telecommunications facility, or accessory equipment that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is “existing” for purposes of this chapter. “Existing” does not apply to any structure that (1) was illegally constructed without all proper local agency approvals, or (2) was constructed in noncompliance with such approvals. “Existing” does not apply where an existing

support structure is proposed to be replaced in furtherance of the proposed wireless telecommunications facility.

- P. “Facility(ies)” means wireless telecommunications facility(ies).
- Q. “FCC” means the Federal Communications Commission.
- R. “Ground-mounted” means mounted to a pole, tower or other freestanding structure which is specifically constructed for the purpose of supporting an antenna or wireless telecommunications facility and placed directly on the ground at grade level.
- S. “Lattice tower” means an open framework structure used to support one or more antennas, typically with three or four support legs.
- T. “Located within (or in) the public right-of-way” includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the PROW.
- U. “Modification” means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. “Modification” does not include repair, replacement or maintenance if those actions do not involve whatsoever any expansion, alteration, enlargement, intensification, reduction, or augmentation of an existing wireless telecommunications facility.
- V. “Monopole” means a structure composed of a pole or tower used to support antennas or related equipment. A monopole also includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole (e.g. water tower).
- W. “Mounted” means attached or supported.
- X. “OTARD antennas” means antennas covered by the “over-the-air reception devices” rule in 47 C.F.R. sections 1.4000 et seq. as may be amended or replaced from time to time.
- Y. “Permittee” means any person or entity granted a WTFP pursuant to this chapter.
- Z. “Personal wireless services” shall have the same meaning as set forth in 47 United States Code Section 332(c)(7)(C)(i).
- AA. “Planning director” means the community development director, or his or her designee.
- BB. “Pole” means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this code.
- CC. “Public works director” means the director of public works, or his or her designee.
- DD. “Public right-of-way” or “PROW” means a strip of land acquired by reservation, dedication, prescription, condemnation, or easement that allows for the passage of people and goods. The PROW includes, but is not necessarily limited to, streets, curbs, gutters, sidewalks,

roadway medians, and parking strips. The PROW does not include lands owned, controlled or operated by the city for uses unrelated to streets or the passage of people and goods, such as, without limitation, parks, city hall and community center lands, city yards, and lands supporting reservoirs, water towers, police or fire facilities and non-publicly accessible utilities.

EE. “Replacement” refers only to replacement of transmission equipment, wireless telecommunications facilities or eligible support structures where the replacement structure will be of like-for-like kind to resemble the appearance and dimensions of the structure or equipment replaced, including size, height, color, landscaping, materials and style.

1. In the context of determining whether an application qualifies as an eligible facilities request, the term “replacement” relates only to the replacement of transmission equipment and does not include replacing the support structure on which the equipment is located.
2. In the context of determining whether a SWF application qualifies as being placed upon a new eligible support structure or qualifies as a collocation, an application proposing the “replacement” of the underlying support structure qualifies as a new pole proposal.

FF. “RF” means radio frequency.

GG. “Small cell” means a low-powered antenna (node) that has a range of 10 meters to two kilometers. The nodes of a “small cell” may or may not be connected by fiber. “Small,” for purposes of “small cell,” refers to the area covered, not the size of the facility. “Small cell” includes, but is not limited to, devices generally known as microcells, picocells and femtocells.

HH. “Small cell network” means a network of small cells.

II. “Spectrum Act” means Section 6409(a) of the Middle Class Tax Relief Act and Job Creation Act of 2012, 47 U.S.C. §1455(a).

JJ. “Substantial change” has the same meaning as “substantial change” as defined by the FCC at 47 C.F.R. 1.40001(b)(7). Notwithstanding the definition above, if an existing pole-mounted cabinet is proposed to be replaced with an underground cabinet at a facility where there are no pre-existing ground cabinets associated with the structure, such modification may be deemed a non-substantial change, in the discretion of the public works director and based upon his/her reasonable consideration of the cabinet’s proximity to residential view sheds, interference to public views and/or degradation of concealment elements. If undergrounding the cabinet is technologically infeasible such that it is materially inhibitive to the project, the public works director may allow for a ground mounted cabinet. A modification or collocation results is a “substantial change” to the physical dimensions of an eligible support structure if it does any of the following:

1. It increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
2. It involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

3. It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets. However, for towers and base stations located in the public rights-of-way, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
4. It entails any excavation or deployment outside the current site. For purposes of this Subsection, excavation outside the current site occurs where excavation more than twelve feet from the eligible support structure is proposed;
5. It defeats the concealment or stealthing elements of the eligible support structure; or
6. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs 1 through 4 of this definition.
7. For all proposed collocations and modifications, a substantial change occurs when:
 - a. The proposed collocation or modification involves more than the standard number of new equipment cabinets for the technology involved, but not to exceed four equipment cabinets;
 - b. The proposed collocation or modification would defeat the concealment elements of the support structure; or
 - c. The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval that is inconsistent with the thresholds for a substantial change described in this Section.

The thresholds and conditions for a “substantial change” described in this Section are disjunctive such that the violation of any individual threshold or condition results in a substantial change. The height and width thresholds for a substantial change described in this Section are cumulative for each individual support structure. The cumulative limit is measured from the physical dimensions of the original structure for base stations, and for all other facilities sites in the PROW from the smallest physical dimensions that existed on or after February 22, 2012, inclusive of originally approved-appurtenances and any modifications that were approved prior to that date.

KK. “Support structure” means a tower, pole, base station or other structure used to support a wireless telecommunications facility.

LL. “SWF” means a “small wireless facility” as defined by the FCC in 47 C.F.R. 1.6002(l) as may be amended, which are personal wireless services facilities that meet all the following conditions that, solely for convenience, have been set forth below:

1. The facilities:

- a. Is mounted on an existing or proposed structure 50 feet or less in height, including antennas, as defined in Title 47 C.F.R. Section 1.1320(d); or
 - b. Is mounted on an existing or proposed structure no more than 10 percent taller than other adjacent structures, or
 - c. Does not extend an existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
2. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;
 3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
 4. The facility does not require antenna structure registration under 47 C.F.R. Part 17;
 5. The facility is not located on Tribal lands, as defined under Title 36 C.F.R. Section 800.16(x); and
 6. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Title 47 C.F.R. Section 1.1307(b).

MM. “SWF Regulations” means those regulations adopted by the City Council Resolution 21-19 implementing the provisions of this chapter applicable to SWFs and further regulations and standards applicable to SWFs.

NN. “Telecommunications tower” or “tower” bears the meaning ascribed to wireless towers by the FCC in 47 C.F.R. § 1.40001(b)(9), including without limitation a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

OO. “Transmission equipment” means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

PP. “Utility pole” means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission. A telecommunications tower is not a utility pole.

QQ. “Wireless telecommunications facility” means equipment and network components such as antennas, accessory equipment, support structures, and emergency power systems that are integral to providing wireless telecommunications services. Exceptions: The term “wireless telecommunications facility” does not apply to the following:

1. Government-owned and operated telecommunications facilities.
2. Emergency medical care provider-owned and operated telecommunications facilities.
3. Mobile services providing public information coverage of news events of a temporary nature.
4. Any wireless telecommunications facilities exempted from this code by federal law or state law.

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

SS. “WTFP” means a “wireless telecommunications facility permit” required by this chapter, which may be categorized as either a Major WTFP or an Administrative WTFP.

12.12.030 – APPLICABILITY.

- A. This chapter applies to the siting, construction or modification of any and all wireless telecommunications facilities proposed to be located in the public right-of-way.
- B. Pre-existing Facilities in the PROW. Nothing in this chapter shall validate any existing illegal or unpermitted wireless facilities. All existing wireless facilities shall comply with and receive a wireless encroachment permit, when applicable, to be considered legal and conforming.
- C. This chapter does not apply to the following:
 1. Amateur radio facilities;
 2. OTARD antennas;
 3. Facilities owned and operated by the city for its use or for public safety purposes;
 4. Any entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement, excepting that to the extent such the terms of state or federal law, or franchise agreement, are preemptive of the terms of this chapter, then the terms of this chapter shall be severable to the extent of such preemption and all remaining regulations shall remain in full force and effect.
 5. Installation of a COW or a similar structure for a temporary period in connection with an emergency or event at the discretion of the public works director, but no longer than

required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.

- D. Public use. Except as otherwise provided by state or federal law, any use of the PROW authorized pursuant to this chapter will be subordinate to the city's use and use by the public.

12.12.040 – WIRELESS TELECOMMUNICATIONS FACILITY PERMIT REQUIREMENTS.

- A. Administration. Unless a matter is referred to the planning director as provided below, the public works director is responsible for administering this chapter. As part of the administration of this chapter, the public works director may:

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

- B. Administrative Wireless Telecommunications Facilities Permits (“Administrative WTFP”).
1. An Administrative WTFP, subject to the public works director’s approval, may be issued for wireless telecommunications facilities, collocations, modifications or replacements to an eligible support structure that meet the following criteria:
 - a. The proposal is determined to be for a SWF; or
 - b. The proposal is determined to be an eligible facilities request; or
 - c. Both.
 2. In the event that the public works director determines that any application submitted for an Administrative WTFP does not meet the administrative permit criteria of this chapter, the public works director shall convert the application to a Major WTFP and refer it to the planning director for a planning commission hearing pursuant to subsection C.
 3. Except in the case of an eligible facilities request, the public works director may refer, in his/her discretion, any application for an Administrative WTFP to the planning director, who shall have discretion to further refer the application to planning commission for hearing. If the planning director determines not to present the Administrative WTFP application to the planning commission for hearing, the application shall be relegated back to the public works director for processing. This exercise of discretion shall not apply to an eligible facilities request.
- C. Major Wireless Telecommunications Facilities Permit (“Major WTFP”). All other new wireless telecommunications facilities or replacements, collocations, or modifications to a wireless telecommunications facility that are *not* qualified for an Administrative WTFP shall require a Major WTFP subject to planning commission hearing and approval unless otherwise provided for in this chapter.
- D. Special Provisions for SWFs; SWF Regulations. Notwithstanding any other provision of this chapter as provided herein, all SWFs are subject to a permit as specified in the SWF Regulations, which are adopted and may be amended by city council resolution. All SWFs, shall comply with the SWF Regulations, as they may be amended from time to time.
1. The SWF Regulations are intended to be constructed in consistency with, and addition to, the terms and provisions of this chapter. To the extent general provisions of this chapter are lawfully applicable to SWFs, such terms shall apply unless in contradiction to more specific terms set forth in the SWF Regulations, in which case the more specific terms of the SWF Regulations shall control.
- E. Other Permits Required. In addition to any permit that may be required under this chapter, the applicant must obtain all other required prior permits or other approvals from other city departments, or state or federal agencies. Any permit granted under this chapter is subject to the conditions and/or requirements of other required prior permits or other approvals from other city departments, state or federal agencies. Building and encroachment permits, and all city standards and requirements therefor, are applicable.

- F. Eligible Applicants. Only applicants who have been granted the right to enter the PROW pursuant to state or federal law, or who have entered into a franchise agreement with the city permitting them to use the PROW, shall be eligible for a WTFP pursuant to this chapter.

12.12.050 – APPLICATION FOR WIRELESS TELECOMMUNICATIONS FACILITY PERMITS.

- A. Generally. Unless the SWF Regulations specifically provide otherwise, the applicant shall submit a paper copy and an electronic copy of any application, amendments, or supplements to a WTFP application, or responses to requests for information regarding a WTFP, in accordance with the provisions of this section. SWF applications shall be governed by any additional terms set forth in the SWF Regulations, and in the event of an inconsistency between the provisions of this Section and the terms of the SWF Regulations, the Regulations shall control.
1. All applications for WTFPs shall be initially submitted to the public works director. In addition to the information required of an applicant for an encroachment permit or any other permit required by this code, each applicant shall fully and completely submit to the city a written application on a form prepared by the public works director and published on the city's website.
 2. Application Submittal Appointment. All WTFP applications must be submitted to the public works director at a pre-scheduled application submission appointment. City staff will endeavor to provide applicants with an appointment within five business days after receipt of a written request. A WTFP application will only be reviewed upon submission of a complete application therefor.
 3. If the wireless telecommunications facility will also require the installation of fiber, cable or coaxial cable, such cable installations shall be included within the application form and processed in conjunction with the proposal for vertical support structure(s). Applicants shall simultaneously request fiber installation or other cable installation when seeking to install antennas in the PROW. Standalone applications for the installation of fiber, cable or coaxial cable, or accessory equipment designed to serve an antenna must include all features of the wireless telecommunications facility proposed.
- B. Application Contents—Administrative WTFPs. The content of the application form for facilities subject to an Administrative WTFP shall be determined by the public works director, but at a minimum shall include the following:
1. The name of the applicant, its telephone number and contact information, and if the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider that will be using the wireless facility.
 2. The name of the owner of the structure, if different from the applicant, and a signed and notarized owner's authorization for use of the structure.
 3. A complete description of the proposed wireless telecommunications facility and any and all work that will be required to install or modify it, including, but not limited to, detail regarding proposed excavations, if any; detailed site plans showing the location

of the wireless telecommunications facility, and dimensioned drawings with specifications for each element of the wireless facility, clearly describing the site and all structures and facilities at the site before and after installation or modification; and a dimensioned map identifying and describing the distance to the nearest residential dwelling unit and any historical structure within 500 feet of the facility. Before and after 360 degree photo simulations must be provided.

4. Documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the Municipal Code and the FCC's radio frequency emissions standards.
 5. A copy of the lease or other agreement, if any, between the applicant and the owner of the property to which the proposed facility will be attached.
 6. If the application is for a SWF, the application shall state as such and shall explain why the proposed facility meets the definition of a SWF.
 7. If the application is for an eligible facilities request, the application shall state as such and must contain information sufficient to show that the application qualifies as an eligible facilities request, which information must demonstrate that the eligible support structure was not constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. This shall include copies of all applicable local permits in-effect and as-built drawings of the current site. Before and after 360 degree photo simulations must be provided, as well as documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the Municipal Code and the FCC's radio frequency emissions standards.
 8. For SWFs, the application must contain all additional application information, if any, required by the SWF Regulations.
 9. The Administrative WTFP applicant shall submit a fee for noticing, consistent with the City's adopted fee schedule to provide notice all properties and record owners of properties within 300 feet of the project location.
 10. If the applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all information on which the applicant relies on in support of that claim. Applicants are not permitted to supplement this showing if doing so would prevent the city from complying with any deadline for action on an application.
- C. Application Contents—Major WTFPs. The public works director shall develop an application form and make it available to applicants upon request and post the application form on the city's website. The application form for a Major WTFP shall require the following information, in addition to all other information determined necessary by the public works director:

1. The name, address and telephone number of the applicant, owner and the operator of the proposed wireless telecommunication facility.
2. If the applicant does not, or will not, own the support structure, the applicant shall provide a duly-executed letter of authorization from the owner of the structure. If the owner of the support structure is the applicant, but such owner/applicant will not directly provide wireless telecommunications services, the owner/applicant shall provide a duly-executed letter of authorization from the person(s) or entity(ies) that will provide those services.
3. A full written description of the proposed wireless telecommunications facility and its purpose.
4. Detailed engineering plans of the proposed wireless telecommunications facility and related report prepared by a professional engineer registered in the state documenting the following:
 - a. Height/elevation, diameter, layout and design of the facility, including technical engineering specifications, economic and other pertinent factors governing selection of the proposed design, together with evidence that demonstrates that the proposed facility has been designed to be the least intrusive equipment within the particular technology available to the carrier for deployment.
 - b. A photograph and model name and number of each piece of the facility or proposed antenna array and accessory equipment included.
 - c. Power output and operating frequency for the proposed antenna array (including any antennas existing as of the date of the application serving the carrier identified in the application).
 - d. Total anticipated capacity of the wireless telecommunications facility for the subject carrier, indicating the number and types of antennas and power and frequency ranges, which can be accommodated.
 - e. Sufficient evidence of the structural integrity of the support structure as required by the city.
5. A written description identifying the geographic service area to be served by the proposed WTFP, plus geographic or propagation maps showing applicant's service area objectives.
6. A justification study which includes the rationale for selecting the proposed wireless telecommunication facility design, support structure and location. A detailed explanation of the applicant's coverage objectives that the proposal would serve, and how the proposed use is the least intrusive means for the applicant to cover such objectives. This shall include:
 - a. A meaningful comparative analysis that includes the factual reasons why the proposed location and design deviates is the least noncompliant or intrusive

location and design necessary to reasonably achieve the applicant's reasonable objectives of covering an established significant gap (as established under state and federal law).

- b. Said study shall include all eligible support structures and/or alternative sites evaluated for the proposed WTFP, and why said alternatives are not reasonably available, technically feasible options that most closely conform to the local values. The alternative site analysis must include the consideration of at least two eligible support structures; or, if no eligible support facilities are analyzed as alternatives, why no eligible support facilities are reasonably available or technically feasible.
 - c. If a portion of the proposed facility lies within a jurisdiction other than the city's jurisdiction, the applicant must demonstrate that alternative options for locating the project fully within one jurisdiction or the other is not a viable option. Applicant must demonstrate that it has obtained all approvals from the adjacent jurisdiction for the installation of the extra-jurisdictional portion of the project.
7. Site plan(s) to scale, specifying and depicting the exact proposed location of the proposed wireless telecommunications facility, location of accessory equipment in relation to the support structure, access or utility easements, existing utilities, adjacent land uses, and showing compliance with all design and safety requirements set forth in this chapter.
8. A completed environmental assessment application, or in the alternative any and all documentation identifying the proposed WTFP as exempt from environmental review (under the California Environmental Quality Act, Public Resources Code 21000–21189, the National Environmental Policy Act, 42 U.S.C. §4321 *et seq.*, or related environmental laws). Notwithstanding any determination of environmental exemption issued by another governmental entity, the city reserves its right to exercise its rights as a responsible agency to review *de novo* the environmental impacts of any WTFP application.
9. An accurate visual impact analysis showing the maximum silhouette, view-shed analysis, color and finish palette and proposed screening for the wireless telecommunications facility, including scaled photo simulations from at least three different angles.
10. Completion of the radio frequency (RF) emissions exposure guidelines checklist contained in Appendix A to the FCC's "Local Government Official's Guide to Transmitting Antenna RF Emission Safety" to determine whether the facility will be "categorically excluded" as that term is used by the FCC.
11. For a facility that is not categorically excluded under the FCC regulations for RF emissions, the applicant shall submit an RF exposure compliance report prepared and certified by an RF engineer acceptable to the city that certifies that the proposed facility, as well as any facilities that contribute to the cumulative exposure in the subject area, will comply with applicable federal RF exposure standards and exposure

limits. The RF report must include the actual frequency and power levels (in watts effective radio power “ERP”) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

12. Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the proposed wireless telecommunications facility.
 13. A noise study prepared by a qualified acoustic engineer documenting that the level of noise to be emitted by the proposed wireless telecommunications facility will comply with this code, including Chapter 8.28 (Noise) of this code.
 14. A traffic control plan when the proposed installation is on any street in a non-residential zone. The city shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g. crane).
 15. A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the wireless telecommunication facility.
 16. Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.
 17. Evidence that the proposed wireless facility qualifies as a “personal wireless services facility” as defined in United States Code, Title 47, Section 332(c)(7)(C)(ii).
 18. Address labels for use by the city in noticing all property owners within 500 feet of the proposed wireless telecommunication facility and, if applicable, all public hearing information required by the municipal code for public noticing requirements.
 19. Any other information and/or studies reasonably determined to be necessary by the public works or planning director(s) may be required.
- D. Fees and Deposits Submitted with Application(s). For all WTFPs, application fee(s) shall be required to be submitted with any application, as established by city council resolution and in accordance with California Government Code Section 50030. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a WTFP unless paid as a refundable deposit.
- E. Independent Expert. The public works and/or planning director, as applicable, is authorized to retain on behalf of the city one or more independent, qualified consultant(s) to review any

WTFP application. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility and shall include, but not be limited to, application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards.

- F. **Costs.** Reasonable costs of city staff, consultant and attorney time (including that of the city attorney) pertaining to the review, processing, noticing and hearing procedures directly attributable to a WTFP shall be reimbursable to the city. To this end, the public works and/or planning director, as applicable, may require applicants to enter a trust/deposit reimbursement agreement, in a form approved by the city attorney, or other established trust/deposit accounting mechanism for purposes of obtaining an applicant deposit from which the direct costs of city processing of an application may be drawn-down.
- G. **Effect of State or Federal Law on Application Process.** In the event a state or federal law prohibits the collection of any information or application conditions required by this Section, the public works director is authorized to omit, modify or add to that request from the city's application form in consultation with the city attorney. Requests for waivers from any application requirement of this Section shall be made in writing to the public works director or his or her designee. The public works director may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the city will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the WTFP sought. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored to minimize deviation from the requirements of the municipal code.
- H. **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, any application governed under this chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the city on any application within thirty (30) calendar days after the application is deemed incomplete in a written notice to the applicant. The public works or planning director (as applicable) may, in his/her discretion, grant a written extension for up to an additional thirty (30) calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension.
- I. **Waiver of Applications Superseded by Submission of New Project.** If an applicant submits a WTFP application, but substantially revises the proposed facility during the application process prior to any city hearing or decision on such application, the substantially revised application shall be deemed a new application for all processing purposes, including federal shot clocks, and the prior submittals deemed waived and superseded by the substantially revised application. For purposes of this subparagraph, "substantially revised" means that the project as initially-proposed has been alternately proposed for a location 300 feet or more from the original proposal or constitutes a substantial change in the dimensions or equipment that was proposed in the original WTFP application.
- J. **Rejection for Incompleteness.** WTFPs will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is incomplete, it may be rejected by the public works director by notifying the applicant in writing and specifying the material omitted from the application.

12.12.060 – REVIEW PROCEDURE.

- A. Generally. Wireless telecommunications facilities shall be installed and modified in a manner that minimizes risks to public safety and utilizes installation of new support structures or equipment cabinets in the PROW only after all existing and replacement structure options have been exhausted, and where feasible, places equipment underground, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the PROW; and ensures that the city bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the PROW, or hinder the ability of the city or other government agencies to improve, modify, relocate, abandon, or vacate the PROW or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the PROW.
- B. Collocation Encouraged. Where the facility site is capable of accommodating a collocated facility upon the same site in a manner consistent with the permit conditions for the existing facility, the owner and operator of the existing facility shall allow collocation of third-party facilities, provided the parties can mutually agree upon reasonable terms and conditions.
- C. Findings Required for Approval.
 - 1. Administrative WTFP Applications for SWFs. For WTFP applications proposing a SWF, the public works director or planning director, as the case may be, shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:
 - a. The facility qualifies as a SWF; and
 - b. The facility meets all standards, requirements and further findings as may be specified in the SWF Regulations; and
 - c. The facility is not detrimental to the public health, safety, and welfare; and
 - d. The facility meets applicable requirements and standards of state and federal law.
 - 2. Administrative WTFP Applications for Eligible Facility Requests. For WTFP applications proposing an eligible facilities request, the public works director shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:
 - a. That the application qualifies as an eligible facilities request; and
 - b. That the proposed facility will comply with all generally-applicable laws.
 - 3. Major WTFP Applications. No Major WTFP shall be granted unless all of the following findings are made by the applicable decision-maker:

- a. If applicable, all notices required for the proposed WTFP have been given, including the inclusion, or placement on-site, of photo simulations for the proposed facility.
 - b. The proposed wireless telecommunications facility has been designed and located in compliance with all applicable provisions of this chapter.
 - c. If applicable, the applicant has demonstrated its inability to locate on an eligible support structure.
 - d. The applicant has provided sufficient evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise agreement with the city permitting them to use the public right-of-way.
 - e. The applicant has demonstrated the proposed installation is designed such that the proposed installation represents the least intrusive means possible, supported by factual evidence and a meaningful comparative analysis to show that all alternative locations and designs identified in the application review process were technically infeasible or not reasonably available.
- D. Notice; Decisions. The provisions in this Section describe the procedures for the approval process, any required notice and public hearings for a WTFP application.
1. Administrative WTFPs: Notice of a WTFP application for a SWF shall be mailed to owners and occupants of real property surrounding the proposed SWF site in the manner specified in the SWF Regulations. Applications qualifying for eligible facilities requests shall not require notice.
 2. Major WTFP Applications. Any Major WTFP application shall require notice and a public hearing. Notice of such hearing shall be provided in accordance with Government Code Section 65091. Public notices shall include color photo simulations from three different angles depicting the wireless telecommunication facility as proposed to be considered by the planning commission. If the application proposes the use of an existing or replacement eligible support structure, such simulations shall be posted upon the proposed support structure for a period of at least thirty (30) days prior to the date of approval; such posted simulations shall remain in-place until final decision on the application is reached.
 3. Written Decision Required for All WTFP Determinations. Unless otherwise specified for SWF's in the SWF Regulations, all final decisions made pursuant to this chapter, including those for administratively-processed permits and eligible facilities requests, shall be in writing and based on substantial evidence in the written administrative record. Within five days after any decision to grant, approve, deny or conditionally grant a WTFP application, the public works director or planning director, as applicable, shall provide written notice including the following:

- a. A general explanation of the decision, including the findings required for the decision, if any, and how those findings were supported or not supported by substantial evidence;
 - b. A general description of the property involved;
 - c. Information about applicable rights to appeal the decision and explanation of how that right may be exercised; and
 - d. To be given by first class mail to:
 - (i) The project applicant and property owner,
 - (ii) Any person who submitted written comments concerning the WTFP,
 - (iii) Any person who has filed a written request with the city to receive such notice, and
 - (iv) Any homeowner association on file with the city that has jurisdiction over the WTFP site.
4. Once a WTFP is approved, no changes shall be made to the approved plans without review and approval in accordance with this chapter.

E. Appeals.

1. Administrative WTFP Appeals. Any person claiming to be adversely affected by an administrative decision pursuant to this chapter may appeal such decision. The appeal will be considered by a hearing officer appointed by the city manager. The hearing officer may decide the issues de novo and his/her written decision will be the final decision of the city. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless facility. Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, appeals of the administrative decision premised on the environmental effects of radio frequency emissions will not be considered.
 - a. Where the administrative decision grants an application based on a finding that denial would result in a prohibition or effective prohibition under applicable federal law, the decision shall be automatically appealed to the hearing officer. All appeals must be filed within two (2) business days of the written administrative decision, unless the public works director extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law.
 - b. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law. For SWFs, the appeal shall be conducted in accordance with any procedures adopted in the SWF Regulations.

2. Appeals on Major WTFPs shall proceed as provided in accordance with the appeal provisions in Title 17 of the Municipal Code, Sections 17.58.100 and 17.60.130 (Appeals). The appellate authority may hear the appeal de ovo.

F. Notice of Shot Clock Expiration. The city acknowledges there are federal and state shot clocks which may be applicable to a proposed wireless telecommunications facility. That is, federal and state law provide time periods in which the city must approve or deny a proposed wireless telecommunications facility. As such, the applicant is required to provide the city written notice of the expiration of any shot clock, which the applicant shall ensure is received by the city (e.g. overnight mail) no later than 20 days prior to the expiration.

12.12.070 – DESIGN AND DEVELOPMENT STANDARDS.

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

B. Eligible Facilities Request Design and Development Standards. Approved eligible facilities requests for which the findings set forth in Section 12.12.060 have been made are subject to the following conditions, unless modified by the approving authority:

1. WTFP subject to conditions of underlying permit. Any WTFP granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit and all such conditions that were applicable to the facility prior to approval of the subject eligible facility request.

2. No permit term extension. The city’s grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the city’s grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall have the same term as the underlying permit or other regulatory approval for the subject tower or base station.

3. No waiver of standing. The city’s grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the city to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

C. Major WTFP Design and Development Standards. All wireless telecommunications facilities subject to a Major WTFP that are located within the PROW shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following standards:

1. General Guidelines.
 - a. The applicant shall employ screening, undergrounding and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is as visually screened as possible, to prevent the facility from dominating the surrounding area and to minimize significant view impacts from surrounding properties and public views, all in a manner that achieves compatibility with the community and in compliance with this code.
 - b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.
 - c. Wireless telecommunications facilities shall be located consistent with Section 12.12.080 (Location Restrictions) unless an exception is granted.
2. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.
3. Blending Methods. All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area, infrastructure and structures.
4. Equipment. The applicant shall use the least visible equipment for the provision of wireless telecommunications services that is technically feasible. Antenna elements shall be flush mounted, to the extent feasible, with all cables and wires clipped-up or otherwise out of public view. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless otherwise provided in this Section, antennas shall be situated as close to the ground as technically feasible.
5. Support Structures.
 - a. Pole-Mounted Only. Only pole-mounted antennas (excepting wooden poles per subparagraph 5.b below) shall be permitted in the public right-of-way. Mountings to all other forms of support structure in the public right-of-way are prohibited unless an exception pursuant to Section 12.12.080 is granted.
 - b. Utility Poles. Wireless telecommunications facilities shall not be located on wooden poles unless an exception pursuant to Section 12.12.080 is granted. The maximum height of any antenna shall not exceed 48 inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than 24 feet above any drivable road surface. All installations on utility poles shall fully comply with the California

Public Utilities Commission general orders, including, but not limited to, General Order 95, as may be revised or superseded.

- c. Light Poles. The maximum height of any antenna shall not exceed four feet above the existing height of a light pole. Any portion of the antenna or equipment mounted on a pole shall be no less than 16½ feet above any drivable road surface.
- d. Replacement Poles. If an applicant proposes to replace a pole that is an eligible support structure to accommodate the proposed facility, the replacement pole shall be designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials and style to the maximum extent feasible.
- e. Equipment mounted on a support structure shall not exceed four (4) cubic feet in dimension.
- f. No new guy wires shall be allowed unless required by other laws or regulations.
- g. An exception pursuant to Section 12.12.080 shall be required to erect any new support structure (non-eligible support structure) that is not the replacement of an existing eligible support structure.
- h. As applicable to all new support structures (non-eligible support structures), regardless of location, the following requirements shall apply:
 - (i) Such new support structure shall be designed to resemble existing support structures of the same type in the right-of-way near that location, including size, height, color, materials and style, with the exception of any existing structural designs that are scheduled to be removed and not replaced.
 - (ii) Such new support structures that are not replacement structures shall be located at least 90 feet from any eligible support structure to the extent feasible.
 - (iii) Such new support structures shall not adversely impact public view corridors, as defined in the General Plan & Local Coastal Program and shall be located to the extent feasible in an area where there is existing natural or other feature that obscures the view of the new support structure. The applicant shall further employ concealment techniques to blend the new support structure with said features including but not limited to the addition of vegetation if feasible.
 - (iv) A justification analysis shall be submitted for all new support structures that are not replacements to demonstrate why an eligible support facility cannot be utilized and demonstrating the new structure is the least intrusive means possible, including a demonstration that

the new structure is designed to be the minimum functional height and width required to support the proposed wireless telecommunications facility.

- i. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the support structure and shall be camouflaged or hidden to the fullest extent feasible. For all support structures wherein interior installation is infeasible, conduit and cables attached to the exterior shall be mounted flush thereto and painted to match the structure.
6. Space. Each facility shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.
7. Wind Loads. Each facility shall be properly engineered to withstand wind loads as required by this code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.
8. Obstructions. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, incommode the public's use of the right-of-way, or cause safety hazards to pedestrians and motorists.
9. Public Facilities. A facility shall not be located within any portion of the public right-of-way interfering with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility.
10. Screening. All ground-mounted facility, pole-mounted equipment, or walls, fences, landscaping or other screening methods shall be installed at least 18 inches from the curb and gutter flow line.
11. Accessory Equipment. Not including the electric meter, all accessory equipment shall be located underground, except as provided below:
 - a. Unless city staff determines that there is no room in the public right-of-way for undergrounding, or that undergrounding is not feasible, an exception pursuant to Section 12.12.080 shall be required in order to place accessory equipment above-ground and concealed with natural or manmade features to the maximum extent possible.
 - b. When above-ground is the only feasible location for a particular type of accessory equipment and will be ground-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five feet and a total footprint of 15 square feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be screened and/or camouflaged. Also, while pole-mounted equipment is generally the least favored installation, should pole-mounted equipment be sought, it shall be installed as required in this chapter.

- c. In locations where homes are only along one side of a street, above-ground accessory equipment shall not be installed directly in front of a residence. Such above-ground accessory equipment shall be installed along the side of the street with no homes.
- 12. Landscaping. Where appropriate, each facility shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs. Additional landscaping shall be planted, irrigated and maintained by applicant where such landscaping is deemed necessary by the city to provide screening or to conceal the facility.
- 13. Signage. No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the city.
- 14. Lighting.
 - a. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency.
 - b. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers and monopoles.
 - c. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhoods.
 - d. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The city may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need.
 - e. The applicant shall submit a lighting study which shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties. Should no lighting be proposed, no lighting study shall be required.
- 15. Noise.
 - a. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 p.m. and 7:00 a.m.
 - b. At no time shall equipment noise from any facility exceed the noise levels permitted by Chapter 9.28 of this code.
- 16. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would

result in hazardous situations, visual blight or attractive nuisances. The public works director or the approving city body, as applicable, may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance. Additionally, no lethal devices or elements shall be installed as a security device.

17. Modification. Consistent with current state and federal laws and if permissible under the same, at the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.
18. The installation and construction approved by a wireless telecommunications facility permit shall begin within one year after its approval or it will expire without further action by the city.
19. Conditions of Approval. All Major WTFPs shall be subject to such conditions of approval as reasonably imposed by the public works director or the approving city body, as applicable, as well as any modification of the conditions of approval deemed necessary by the public works director or the approving city body.

12.12.080 – LOCATION RESTRICTIONS; EXCEPTIONS FOR NON-COMPLIANT MAJOR WIRELESS TELECOMMUNICATIONS FACILITIES.

- A. Locations Requiring an Exception. Major WTFPs are strongly disfavored in certain areas and on certain support structures. Therefore the following locations are permitted only when an exception has been granted pursuant to subsection B hereof:
 1. Public right-of-way within those zones identified in the general plan as residential;
 2. Public right-of-way within 100 feet of designated historic buildings;
- B. Required Findings for an Exception on Major WTFPs. For any Major WTFP requiring an “exception” under this chapter, no such exception shall be granted unless all the following requirements are satisfied:
 1. The proposed wireless facility qualifies as a "personal wireless services facility" as defined in United States Code, Title 47, Section 332(c)(7)(C)(ii);
 2. The applicant has provided the city with clear and convincing evidence a clearly defined significant gap (as established under state and federal law) and a clearly defined potential site search area.
 - a. In the event the applicant seeks to install a wireless telecommunications facility to address service coverage concerns, the applicant shall provide the city with full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent wireless telecommunications facilities without the proposed

facility, predicted service coverage levels from all adjacent facilities serving applicant with the proposed facility, and predicted service coverage levels from the proposed facility without all adjacent facilities.

- b. In the event the applicant seeks to address service capacity concerns, the applicant shall provide the city with a written explanation and propagation maps identifying the existing facilities with service capacity issues together with competent evidence to demonstrate the inability of those facilities to meet capacity demands.
 3. The applicant has provided the city with a meaningful comparative analysis that includes the factual reasons why any alternative location(s) or design(s) suggested by the city or otherwise identified in the administrative record, including but not limited to potential alternatives identified at any public meeting or hearing, are not technically feasible or reasonably available.
 4. The applicant has provided the city with a meaningful comparative analysis that includes the factual reasons why the proposed location and design deviates is the least noncompliant location and design necessary to reasonably achieve the applicant's reasonable objectives of covering an established significant gap (as established under state and federal law).
 5. The applicant has demonstrated that strict compliance with provisions in this chapter from which the applicant seeks to be exempt would effectively prohibit the provision of personal wireless services.
- C. **Scope.** The planning commission or public works director, as applicable, shall limit an exemption for a Major WTFP to the extent to which the applicant demonstrates such exemption is necessary to reasonably achieve its objectives of covering an established significant gap (as established under state and federal law). The planning commission or public works director, as applicable, may adopt conditions of approval as reasonably necessary to promote the purposes in this chapter and protect the public health, safety and welfare.

12.12.090 – OPERATION AND MAINTENANCE STANDARDS.

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

- A. The permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules, including, without limitation, those applying to use of the PROW. The permittee shall ensure that all equipment and other improvements to be constructed and/or installed in connection with the approved WTFP are maintained in a manner that is not detrimental or injurious to the public health, safety, and general welfare and that the aesthetic appearance is continuously preserved, and substantially the same as shown in the approved plans at all times relevant to the WTFP.
- B. Unless otherwise provided herein, all necessary repairs and restoration shall be completed by the permittee, owner, operator or any designated maintenance agent at its sole cost within 48 hours:

1. After discovery of the need by the permittee, owner, operator or any designated maintenance agent; or
 2. After permittee, owner, operator or any designated maintenance agent receives notification from the city.
- C. Insurance. The permittee shall obtain and maintain throughout the term of the permit a type and amount of insurance as specified by city's risk management. The relevant policy(ies) shall name the city, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insured. The permittee shall use its best efforts to provide thirty (30) days prior notice to the public works director of to the cancellation or material modification of any applicable insurance policy.
- D. Indemnities. The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the city, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the city or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the city's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the city becomes aware of any such actions or claims the city shall promptly notify the permittee and, if applicable, the private property owner and shall reasonably cooperate in the defense. The city shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the city's defense, and the property owner and/or Permittee (as applicable) shall reimburse the city for any costs and expenses directly and necessarily incurred by the city in the course
- E. Performance Bond. Prior to issuance of a wireless encroachment permit, the permittee shall file with the city, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to 100% of the cost of removal of the facility as specified in the application for the WTFP or as that amount may be modified by the public works director in in the permit based on the characteristics of the installation. The permittee shall reimburse the city for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the city council. Reimbursement shall be paid when the security is posted and during each administrative review.
- F. Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility. All facilities, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the use of the PROW, impede the flow of vehicular or pedestrian traffic, impair the primary use and purpose of poles/signs/traffic signals or other infrastructure, interfere with

outdoor dining areas or emergency facilities, or otherwise obstruct the accessibility of the PROW.

- G. Contact Information. Each permittee of a wireless telecommunications facility shall provide the public works director with the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility (“contact information”). Contact information shall be updated within seven days of any change.
- H. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:
 - 1. Subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems (water, sewer, storm drains, gas, oil, electrical, etc.) that result from any activities performed in connection with the installation and/or maintenance of a wireless facility in the PROW.
 - 2. General dirt and grease;
 - 3. Chipped, faded, peeling, and cracked paint;
 - 4. Rust and corrosion;
 - 5. Cracks, dents, and discoloration;
 - 6. Missing, discolored or damaged artificial foliage or other camouflage;
 - 7. Graffiti, bills, stickers, advertisements, litter and debris. All graffiti on facilities must be removed at the sole expense of the permittee within forty eight (48) hours after notification from the city.
 - 8. Broken and misshapen structural parts; and
 - 9. Any damage from any cause.
- I. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in neat, safe and good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the public works director.
- J. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.
- K. Each facility shall be operated and maintained to comply at all conditions of approval. The permittee, when directed by the city, must perform an inspection of the facility and submit a

report to the public works director on the condition of the facility to include any identified concerns and corrective action taken. Additionally, as the city performs maintenance on city-owned infrastructure, additional maintenance concerns may be identified. These will be reported to the permittee. The city shall give the permittee thirty (30) days to correct the identified maintenance concerns after which the city reserves the right to take any action it deems necessary, which could include revocation of the permit. The burden is on the Permittee to demonstrate that it complies with the requirements herein. Prior to issuance of a permit under this Chapter, the owner of the facility shall sign an affidavit attesting to understanding the city's requirement for performance of annual inspections and reporting.

- L. All facilities permitted pursuant to this chapter shall comply with the Americans with Disabilities Act.
- M. The permittee is responsible for obtaining power to the facility and for the cost of electrical usage.
- N. Failure to comply with the city's adopted noise standard after written notice and reasonable opportunity to cure have been given shall be grounds for the city to revoke the permit.
- O. Interference.
 - 1. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the city shall be moved to accommodate a permitted activity or encroachment, unless the city determines that such movement will not adversely affect the city or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the city's structure, improvement, or property. Prior to commencement of any work pursuant to a wireless encroachment permit, the permittee shall provide the city with documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the PROW or city utility easement to be affected by permittee's facilities.
 - 2. The facility shall not damage or interfere in any way with city property, the city's operations or the operations of prior-existing, third party installations. The city will reasonably cooperate with the permittee and/or carrier to carry out such activities as are necessary to correct the interference.
 - a. Signal Interference. The permittee shall correct any such interference within 24 hours of written notification of the interference. Upon the expiration of the 24-hour cure period and until the cause of the interference is eliminated, the permittee shall cease operation of any facility causing such interference until such interference is cured.
 - b. Physical Interference. The city shall give the permittee thirty (30) days to correct the interference after which the city reserves the right to take any action it deems necessary, which could include revocation of the permit.

3. The city at all times reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the sites. Such actions may temporarily interfere with the operation of the facility. The city will in all cases, other than emergencies, give the applicant 30 days written notification of such planned, non-emergency actions.
- P. RF Exposure Compliance. All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, the permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC Office of Engineering and Technology Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.
1. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
- Q. Records. The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the city, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.
- R. Attorney's Fees. In the event the city determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the city, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the city should otherwise agree with permittee to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.

12.12.100 – NO DANGEROUS CONDITION OR OBSTRUCTIONS ALLOWED.

No person shall install, use or maintain any wireless telecommunications facility that in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

12.12.110 – NONEXCLUSIVE GRANT; NO POSSESSORY INTERESTS.

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

12.12.120 – PERMIT EXPIRATION; ABANDONMENT OF APPLICATIONS.

- A. Permit Term. Unless Government Code Section 65964, as may be amended, authorizes the city to issue a permit with a shorter term, a permit for any wireless telecommunications facility shall be valid for a period of ten (10) years, unless pursuant to another provision of this code it lapses sooner or is revoked. At the end of ten (10) years from the date of issuance, such permit shall automatically expire.
- B. A permittee may apply for a new permit within 180 days prior to expiration. Said application and proposal shall comply with the city's current code requirements for wireless telecommunications facilities.
- C. Timing of Installation. The installation and construction authorized by a WTFP shall begin within one (1) year after its approval, or it will expire without further action by the city. The installation and construction authorized by a WTFP shall conclude, including any necessary post-installation repairs and/or restoration to the PROW, within thirty (30) days following the day construction commenced.
- D. Commencement of Operations. The operation of the approved facility shall commence no later than ninety (90) days after the completion of installation, or the WTFP will expire without further action by the city. The permittee shall provide the public works director notice that operations have commenced by the same date.

12.12.130 – CESSATION OF USE OR ABANDONMENT.

- A. A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for 90

or more consecutive days unless the permittee has obtained prior written approval from the director which shall not be unreasonably denied. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.

- B. The operator of a facility shall notify the public works director in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the public works director of any discontinuation of operations of 30 days or more.
- C. Failure to inform the public works director of cessation or discontinuation of operations of any existing facility as required by this Section shall constitute a violation of any approvals and be grounds for:
 - 1. Litigation;
 - 2. Revocation or modification of the permit;
 - 3. Acting on any bond or other assurance required by this article or conditions of approval of the permit;
 - 4. Removal of the facilities by the city in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
 - 5. Any other remedies permitted under this code or by law.

12.12.140 – REMOVAL AND RESTORATION—PERMIT EXPIRATION, REVOCATION OR ABANDONMENT.

- A. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the WTFP or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to the condition it was in prior to the granting of the WTFP, except for retaining the landscaping improvements and any other improvements at the discretion of the city. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the city. Expired, terminated or revoked wireless telecommunications facility equipment shall be removed from the site at no cost or expense to the city.
- B. Failure of the permittee, owner or operator to promptly remove its facility and restore the property within 90 days after expiration, earlier termination or revocation of the WTFP, or abandonment of the facility, shall be a violation of this code. Upon a showing of good cause, an extension may be granted by the public works director where circumstances are beyond the control of the permittee after expiration. Further failure to abide by the timeline provided in this Section shall be grounds for:
 - 1. Prosecution;
 - 2. Acting on any security instrument required by this chapter or conditions of approval of permit;

3. Removal of the facilities by the city in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
 4. Any other remedies permitted under this code or by law.
- C. **Summary Removal.** In the event any city director or city engineer determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), such director or city engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within 60 days, the facility shall be treated as abandoned property.
- D. **Removal of Facilities by City.** In the event the city removes a wireless telecommunications facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the city for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the city may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this code. Unless otherwise provided herein, the city has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the city destroys any such facility not timely removed by the permittee, owner or operator after notice, or removal by the city due to exigent circumstances.

12.12.150 – EFFECT ON OTHER ORDINANCES.

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

12.12.160 – STATE OR FEDERAL LAW.

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

12.12.170 – LEGAL NONCONFORMING WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY.

- A. Legal nonconforming wireless telecommunications facilities are those facilities that existed but did not conform to this chapter on the date this chapter became effective.

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

- C. An aggrieved person may file an appeal to the city council of any decision of the public works director or other deciding body made pursuant to this Section. In the event of an appeal alleging that the ten-year amortization period is not reasonable as applied to a particular property, the city council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property.

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RESOLUTION NO. 21-19

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MORRO BAY, CALIFORNIA, APPROVING CITY COUNCIL POLICY FOR
SMALL WIRELESS FACILITIES**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, Significant changes in federal law have recently been enacted, which affect local authority over small wireless facilities, as defined in 47 CFR 1.6002(1); and

WHEREAS, On March 26, 2019, the City adopted Urgency Ordinance No. 620, adding Chapter 12.12 to the Municipal Code, entitled Wireless Telecommunications Facilities in the Public Right-of-Way (Wireless Ordinance), which became effective immediately; and

WHEREAS, Section 12.12.040(D) of the Wireless Ordinance authorizes the City Council to adopt additional regulations regarding the permitting of small wireless facilities (SWFs); and

WHEREAS, In response to the changes in federal law, and as authorized by the Wireless Ordinance, the City proposes adoption of a new City Council Policy, which would establish requirements for permitting, operation, and maintenance of small wireless facilities within the City of Morro Bay; and

WHEREAS, The City Council Small Wireless Facilities Policy would provide the maximum amount of local control for small wireless facilities considering the revisions to federal law.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Morro Bay, California, as follows:

1. The above recitations are true and correct and incorporated herein by reference.
2. The City Council Small Wireless Facilities Policy, attached hereto as Exhibit A and incorporated herein by reference, is hereby approved, adopted and established as City policy.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting of the City Council held on _____, 2019, by the following vote:

AYES:
NOES:
ABSTAIN:

JOHN HEADDING, MAYOR

ATTEST:

DANA SWANSON, CITY CLERK

Exhibit A
COUNCIL POLICY
SMALL WIRELESS FACILITIES PER 47 CFR 1.6002(1)
“SWF REGULATIONS”

<u>SUBJECT:</u> Small Wireless Facilities (Administrative Approvals and Standards)	<u>AUTHORITY:</u> Resolution No. 21-19	<u>DATE ADOPTED:</u> March 26, 2019
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SECTION 1. GENERAL PROVISIONS

SECTION 1.1 PURPOSE AND INTENT

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

SECTION 1.2 GENERAL DEFINITIONS

- (a) **Undefined Terms.** Undefined phrases, terms or words in this Policy will have the meanings assigned to them in Chapter 12.12 of Title 12 of the Morro Bay Municipal Code, as may be amended or superseded, and, if not defined therein, will have their ordinary meanings. If any definition assigned to any phrase, term or word in this Policy conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.
- (b) **Defined Terms.**
- (1) **“approval authority”** means the City official responsible for reviewing applications for small cell permits and vested with the authority to approve, conditionally approve or deny such applications as provided in this Policy. The approval authority for applications in connection with small wireless facilities within the public rights-of-way shall be the Public Works Department.
 - (2) **“arterial road”** means a road designed primarily for long-distance travel with a typical curb-to-curb width of 50 feet, high traffic capacity and low accessibility from neighboring roads. The term “arterial road” as used in this Policy is defined in the City of Morro Bay General Plan, Circulation Element.
 - (3) **“collector road”** means a road designed primarily as a connection between local roads and arterials, with a typical curb-to-curb width of 44 feet, moderate to low traffic capacity and high accessibility from local roads. The term “collector road” as used in this Policy is defined in the City of Morro Bay General Plan, Circulation Element.
 - (4) **“concealed” or “concealment”** means camouflaging techniques that integrate the transmission equipment into the surrounding natural and/or built environment

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

- (5) **“decorative pole”** means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.
- (6) **“FCC Shot Clock”** means the presumptively reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended from time to time.
- (7) **“ministerial permit”** means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City's jurisdiction. Ministerial permits may include, without limitation, a building permit, construction permit, electrical permit, encroachment permit, excavation permit and/or traffic control permit.
- (8) **“personal wireless services”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.
- (9) **“personal wireless service facilities”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as facilities that provide personal wireless services.
- (10) **“RF”** means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.
- (11) **“Section 6409”** means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.
- (12) **“Small cell”** bears the same meaning as “small wireless facility” or “SWF” as used in Chapter 12.12 of the Municipal Code.

SECTION 2. SMALL WIRELESS FACILITIES

SECTION 2.1 APPLICABILITY; REQUIRED PERMITS AND APPROVALS

- (a) **Applicable Wireless Facilities.** Except as expressly provided otherwise in this Policy, the provisions in this Policy shall be applicable to all existing small wireless facilities (SWFs) and all applications and requests for authorization to construct, install, attach,

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operate, collocate, modify, reconstruct, relocate or otherwise deploy small wireless facilities within the City's jurisdictional and territorial boundaries within the public rights-of-way (PROW).

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

- (a) **Small Cell Permit Application Contents.** All applications for a SWF WTFP must include all the information and materials required in this subsection (a), unless exempted by the approval authority.
- (1) **Application Form.** The applicant shall submit a complete, duly executed SWF WTFP application on the then-current form prepared pursuant to Chapter 12.12 of the Municipal Code.
 - (2) **Application Fee.** The applicant shall submit the applicable SWF WTFP application fee established by City Council resolution. Batched applications must include the applicable application fee for each SWF in the batch.
 - (3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all structures within 200 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.
 - (4) **Site Survey.** For any SWF proposed to be located within the PROW, the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 200 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and

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permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.

- (5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed SWF in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point.
- (6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a SWF as defined by the FCC in 47 C.F.R. 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a structure as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a SWF permit as provided in Section 2.4.
- (7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed SWF, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- (8) **Public Notice.** Notice shall be mailed to all owners and occupants of real property, within 300 feet of the proposed SWF. The notice must contain: (1) a general project description; (2) the applicant's identification and contact information as provided on the application submitted to the City; (3) contact information for the approval authority; (4) a statement that the approval authority will act on the application without a public hearing but will accept written public comments that evaluate the application for compliance with the standards in this Policy; (5) a statement that the FCC requires the City to act on small cell permit applications, which includes any administrative appeals, in 60 days for attachments to existing structures and 90 days for new structures, unless the applicant voluntarily agrees to toll the timeframe for review; and (6) a deadline for submission of written public comments to the approval authority, which deadline shall not be less than thirty (30) days after mailing of said notice.

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- (9) **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the SWF proposed in the application.
- (10) **Site Agreement.** For any SWF proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant must enter into a site agreement prepared on a form prepared by the City and approved by the City Attorney that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the City's form site agreement except as may be indicated on the form itself. Any unpermitted changes to the City's form site agreement shall be deemed a basis to deem the application incomplete.
- (11) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by an engineer for the proposed SWF and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.
- (12) **Wind Load Analysis.** The applicant shall submit a wind load analysis with an evaluation of high wind load capacity and shall include the impact of modification of an existing facility.
- (13) **Environmental Data.** A completed environmental assessment application, or in the alternative any and all documentation identifying the proposed WTFP as exempt from environmental review (under the California Environmental Quality Act, Public Resources Code 21000–21189, the National Environmental Policy Act, 42 U.S.C. §4321 *et seq.*, or related environmental laws). Notwithstanding any determination of environmental exemption issued by another governmental entity, the city reserves its right to exercise its rights as a responsible agency to review *de novo* the environmental impacts of any WTFP application.
- (14) **FAA Documentation.** Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the proposed wireless telecommunications facility.
- (15) **Traffic Control Plan (TCP).** A traffic control plan when the proposed installation is on any street in a non-residential zone. The city shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g. crane).
- (16) **Landscape Plan.** A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed

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irrigation with a discussion of how the chosen material at maturity will screen the SWF and its accessory equipment.

- (17) **CPCN.** Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the PROW. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.
- (b) **Additional Requirements.** The City Council authorizes the approval authority to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the approval authority finds necessary, appropriate or useful for processing any application governed under this Policy. All such requirements and materials must be in written form and publicly stated to provide all interested parties with prior notice (or posted upon the City's website).

SECTION 2.3 SMALL CELL PERMIT APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

- (a) **Pre-Submittal Conferences.** For purposes of SWFs only, and notwithstanding any contrary provisions of Chapter 12.12, the City does not require pre-submittal appointments for the submission of SWF WTFPs. However, the City strongly encourages applicants to schedule and attend a pre-submittal conference with the approval authority for all proposed SWF projects, and particularly those that involve more than five SWFs. This voluntary pre-submittal conference does not cause the FCC Shot Clock to begin and is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The approval authority shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the services rendered in the pre-submittal conference.
- (b) **Batched Applications.** Applicants may submit up to five individual applications for a SWF permit in a batch; provided, however, that small wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each site in the batch. If any application in a batch is incomplete, the entire batch shall be deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch, the

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entire batch shall be deemed withdrawn. If any application in a batch fails to meet the required findings for approval, the entire batch shall be denied.

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

SECTION 2.4 ADDITIONAL FINDINGS FOR SWFs

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

SECTION 2.5 STANDARD CONDITIONS OF APPROVAL

- (a) **General Conditions.** In addition to all other conditions adopted by the approval authority and Chapter 12.12 for a SWF permit, all SWF WTFPs issued under this Policy shall be automatically subject to the conditions in this subsection (a).
 - (1) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a SWF approved or deemed-approved, the permittee shall provide the approval authority with documentation reasonably acceptable to the approval authority that the SWF has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
 - (2) **Adverse Impacts on Other Properties.** In addition to those requirements in Chapter 12.12 the permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal

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or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The approval authority may issue a stop work order for any activities that violates this condition in whole or in part.

- (3) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.
- (4) **Future Undergrounding Programs.** If other public utilities or communications providers in the PROW underground their facilities in the segment of the PROW where the permittee's SWF is located, the permittee must underground its equipment except the antennas and any other equipment that must be placed above ground to function. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. SWFs installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
- (5) **Electric Meter Upgrades.** If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
- (6) **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (i) change any street grade, width or location; (ii) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes

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without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (iii) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in the SWF permit. If the Public Works Director determines that any City work will require the permittee's SWF located in the PROW to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's SWF within a reasonable time after the Public Works Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's SWF without prior notice to permittee when the Public Works Director determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.

SECTION 2.6 LOCATION REQUIREMENTS

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

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

SECTION 2.7 DESIGN STANDARDS

- (a) **Visual & Other General Standards.** SWFs shall be designed in the least visible means possible and to be compatible with support structure/surroundings.

City Council Policy

- (1) **Noise.** SWFs and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations in Municipal Code Chapter 9.28, as may be amended or superseded, and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable district/zone.
- (2) **Lights.** SWFs shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection (a)(2) shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this Policy.
- (3) **Landscape Features.** SWFs shall not displace any existing landscape features unless: (A) such displaced landscaping is replaced with native and/or drought-resistant plants, trees or other landscape features approved by the approval authority and (B) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location.
 - (A) If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
 - (B) To preserve existing landscaping in the public rights-of-way, all work performed in connection with SWFs shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees at the site for the duration of the permit term.
- (4) **Site Security Measures.** SWFs may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The approval authority shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on SWFs shall be constructed from or coated with graffiti-resistant materials.
- (5) **Signage; Advertisements.** All SWFs shall contain a site identification sticker that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network

City Council Policy

operations center. SWFs may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, OSHA, Federal Aviation Administration or other United States governmental agencies for compliance with RF emissions regulations. Permittees shall:

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

City Council Policy

- (E) Integrating the installation into existing or replacement utility infrastructure;
 - (F) Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site.
 - (G) Antennas, brackets (mounting), PVC or steel risers and cabling shall match the color of the adjacent structure.
 - (H) Paint shall be of durable quality.
 - (I) Materials shall be non-flammable and non-reflective..
 - (J) Each individual antenna may not exceed three cubic feet in volume and all antennas may not exceed six cubic feet in volume.
- (3) **Accessory Equipment.**
- (A) **Installation Preferences.** SWF accessory equipment shall be enclosed in replacement poles or placed underground where technically feasible, and if not feasible, shall be as small, short and unobtrusive as possible. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically infeasible as supported by clear and convincing evidence in the written record.
 - (B) **Undergrounded Accessory Equipment.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Applicants shall not be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced.
- (c) **Streetlights.** Applicants that propose to install SWFs on an existing streetlight must remove and replace the existing streetlight with one substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment. To mitigate any material changes in the streetlighting patterns, the replacement pole must: (A) be located as close to the removed pole as possible; (B) be aligned with the other existing streetlights; and (C) include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. All antennas must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.
- (d) **Wood Utility Poles.** Applicants that propose to install SWFs on an existing wood utility pole must install all antennas above the pole unless the applicant demonstrates that

City Council Policy

mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the side-arm mount or extension arm. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.

- (e) **For Replacement Poles and Street Lights.** If an applicant proposes a replacement pole or street light to accommodate the SWF, the replacement shall be in the same location as the street light or pole being replaced; unless the replacement will not meet all applicable standards, then replacement may be located in an alternative location that complies with the requirements herein.
- (f) **New, Non-Replacement Poles.** Applicants that propose to install SWFs on a new, non-replacement pole must install a new streetlight substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome.
 - (1) The new pole must actually function for a purpose other than placement of a wireless facility (e.g. street light, utility pole, etc.).
 - (2) The design must match the dimensions and design of existing and similar types of poles and antennas in the surrounding areas.
- (g) **Encroachments over Private Property.** SWFs may not encroach onto or over any private or other property outside the PROW without the property owner's express written consent.
- (h) **Backup Power Sources.** Fossil-fuel based backup power sources shall not be permitted within the PROW; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.
- (i) **Obstructions; Public Safety.** Small wireless facilities and any associated equipment or improvements shall not physically interfere with or impede access to any:
 - (A) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors;
 - (B) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop;
 - (C) worker access to above-ground or underground infrastructure owned or operated by any public

City Council Policy

or private utility agency; (D) fire hydrant or water valve; (E) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or (F) access to any fire escape.

- (j) **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through and concealed from view within: (A) internal risers or conduits if on a concrete, composite or similar pole; or (B) a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
- (k) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
- (l) **Electric Meters.**
 - (1) SWFs shall use unmetered (flat rate) electric service, if allowed by the utility company, or use the narrowest, shrouded electric meter and disconnect available. Permittees shall ensure the meter and other enclosures are well maintained, including regular painting, and the use of a graffiti-resistant paint, and stack the disconnect switch above/below the meter, instead of attached to the side of the meter.
 - (2) Electrical meters, vaults and fans shall be located underground where feasible.
- (m) **Building-Mounted Small Wireless Facilities.**
 - (1) **Preferred Concealment Techniques.** All applicants must propose new non-tower SWFs that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, if the applicant demonstrates with clear and convincing evidence that integration with existing features is technically infeasible, the applicant may propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, steeples and chimneys).
 - (2) **Facade-Mounted Equipment.** When SWFs cannot be placed behind existing parapet walls or other existing screening elements, the approval authority may approve facade-mounted equipment in accordance with this Subsection. All

City Council Policy

facade-mounted equipment must be concealed behind screen walls and mounted flush to the facade. The approval authority may not approve “pop-out” screen boxes. Except in industrial zones, the approval authority may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade.

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

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AGENDA NO: C-3

MEETING DATE: March 26, 2019

Staff Report

TO: Honorable Mayor & City Council

DATE: March 14, 2019

FROM: Eric Endersby, Harbor Director
Rob Livick, Public Works Director

SUBJECT: Report on Washington D.C. Meetings both for C-MANC’s Annual “Washington Week” Conference as well as concerning the Water Reclamation Facility Project (WRF)

RECOMMENDATION

Staff recommends the Council receive and file this report.

ALTERNATIVES

Not applicable.

FISCAL IMPACT

The City has applied for an \$8,000 grant from the Central Coast Joint Cable Fisheries Liaison Committee, which will be used for reimbursement of actual travel, attendance and associated costs of attendance borne by the Harbor Fund for the Mayor’s and Harbor Director’s expenses. If additional funding is needed to cover travel and other costs, then staff will return to Council for a budget adjustment as those funds are not currently budgeted. As of the writing of this report, travel expenses from the City’s delegation are not yet reconciled, however, if the grant is received it should cover all costs. Expenses for the other attendees will be covered through the water and sewer funds.

BACKGROUND

On January 8, 2019, the City Council authorized five people, being Mayor Headding, City Manager Collins, Public Works Director Livick, Harbor Director Endersby and WRF Program Manager Casares (Carollo Engineers), as this year’s Morro Bay delegation to Washington, D.C. The intent of this trip was to meet with legislators and relevant federal agencies to discuss important harbor and working waterfront initiatives, offshore wind energy policy and Water Reclamation Facility (WRF) funding opportunities.

DISCUSSION

The City’s legislative advocates in Washington D.C. (Julie Minerva of Carpi and Clay for dredging and harbor issues; Mike Miller of the Ferguson Group for WRF issues), successfully arranged for numerous meetings, reported in brief with bulleted discussion items covered as-follows:

Monday, March 4 (Morro Bay-specific meetings)

Prepared By: <u>EE, RL</u>	Dept Review: <u>EE, RL</u>
City Manager Review: <u>SC</u>	City Attorney Review: <u>CN</u>

- A. Kimber Colton, Legislative Counsel to Congresswoman Chellie Pingree (ME-1)
Catherine Pomposi, PhD, Legislative Fellow to Senator Kamala Harris
Gavin Ross, Legislative Assistant to Congresswoman Julia Brownley (CA-26)
Christine Sur, Legislative Assistant to Congressman Jared Huffman (CA-2)
Matt Manning, Legislative Director to Congressman Jimmy Panetta (CA-20)
 - Army Corps of Engineers' dredging and dredge funding
 - Offshore wind energy support
 - WRF and WRF funding support
 - Fishery issues support
 - NEP funding support
 - Morro Bay Power Plant brownfield and reuse issues
 - Offshore oil and gas development opposition

- B. Zachary Michael, Associate Director, White House Office of Intergovernmental Affairs
 - WRF and WRF funding
 - Offshore wind energy/Department of Defense (DoD) issues

- C. Edna Primrose, Assistant Administrator for Water and Environmental Programs, USDA
Scott Barringer, Deputy Assistant Administrator for WEP, USDA
 - WRF and WRF funding
 - Population limitation relief
 - New regulation will provide loan guarantee at 50k (March 2020)
 - Possible changes in Ag appropriations 2020 – increase to 20k
 - USDA loan may be substituted for other government loans

- D. Sarah Jackson, Legislative Assistant to Speaker Nancy Pelosi (CA-12)
 - Offshore wind energy/DoD issues

- E. Congressman Salud Carbajal (CA-24)
 - WRF and WRF funding
 - Offshore wind energy/DoD issues

- F. Will Collier, Senior Legislative Assistant to Congressman Dave Loebsack (IA-2)
 - Offshore wind energy/DoD issues

- G. Brent Maier, Region 9 Liaison, EPA Office of Water
 - WRF and WRF funding

Tuesday, March 5 (Morro Bay-specific meetings)

- A. Bradd Schwichtenberg, PE, Deputy Chief, SPD and RITs, U.S. Army Corps of Engineers
 - WRF and WRF funding, specifically jurisdictional issues

- B. Peter Potochney, PDASD for Sustainment and Enterprise Solutions, DoD
Ron Tickle, Executive Director, DoD Siting Clearinghouse
 - Offshore wind energy/DoD issues

- C. Shelby Hagenauer, Deputy Commissioner – BOR, Department of Interior

Grayford Payne, Deputy Commissioner – Policy, Administration and Budget, Department of Interior

Jill Dale, Mid-Pacific Region Liaison, Department of Interior

- Offshore wind energy/DoD issues WRF and WRF funding, specifically Title XVI

D. Catherine Pomposi, PhD, Legislative Fellow to Senator Kamala Harris

- WRF and WRF funding
- Offshore wind energy support

E. John Watts, Legislative Counsel to Senator Dianne Feinstein

- WRF and WRF funding, support for Title XVI application
- Offshore wind energy support

Tuesday, March 5 (C-MANC group meetings)

A. C-MANC Group Conference Agenda

- Julie Minerva, Washington D.C. Update
- Elizabeth A. Eide, PhD, Senior Director, The National Academy of Sciences, Engineering and Medicine
- Helen Brohl, Executive Director, U.S. Committee on the Maritime Transportation System (CMTS)
- Lowry Crook, Partner, Environmental Law & Natural Resources, Best, Best & Krieger

B. U.S. Army Corps of Engineers Headquarters

- Ryan Fisher, Principle Assistant Secretary of the Army for Civil Works
- James Dalton, SES, Director of Civil Works
- Dr. Larry McCallister, PE, PMP, SES, Chief of Engineering and Construction
- Col. Kirk Gibbs, Chief of Staff
- Ada Benavides, Senior Policy Advisor
- Bradd Schwichtenberg, PE, Deputy Chief SPD and RITs

C. Trevor Higgins and Alexis Segal, Legislative Assistants to Senator Dianne Feinstein

- Army Corps of Engineers' work plans
- Army Corps of Engineers' funding

D. James Herz, Associate Director, Natural Resources, energy and Science, Office of Management of Budget

- Army Corps of Engineers' work plans and funding

E. Congressman Salud Carbajal (CA-24)

- Member of Committee on Transportation and Infrastructure

Wednesday, March 6 (C-MANC group meetings)

A. C-MANC Group Agenda/Meetings

- Logan Ferree, Deputy Chief of Staff to Congressman Jared Huffman (CA-2), Member of Committee on Transportation and Infrastructure
- Joe Sheehy, Legislative Director to Congresswoman Grace Napolitano (CA-32), Member of Committee on Transportation and Infrastructure
- Ike Kirby, Policy Advisor to Senator Kamala Harris

- Congresswoman Julia Brownley (CA-26), Member of Committee on Transportation and Infrastructure
- Robert Edmonson, Chief of Staff to Speaker Nancy Pelosi (CA-12)
- Congressman Alan Lowenthal (CA-47), Member of Committee on Transportation and Infrastructure, Co-Chair Congressional Ports Caucus
- Golden State Reception

Thursday, March 7 (Morro Bay-specific meetings)

- A. Bradd Schwichtenberg, PE, Deputy Chief, SPD and RITs, U.S. Army Corps of Engineers
 - Army Corps of Engineers' work plans and funding

- B. Congressman Salud Carbajal (CA-24)
 - Army Corps of Engineers' dredging and dredge funding
 - Offshore wind energy support
 - WRF and WRF funding support
 - Fishery issues support
 - NEP funding support
 - Morro Bay Power Plant brownfield and reuse issues
 - Offshore oil and gas development opposition
- C. Alexis Segal, Legislative Assistant to Senator Dianne Feinstein
 - Army Corps of Engineers' dredging and dredge funding
 - Offshore wind energy support
 - WRF and WRF funding support
 - Fishery issues support
 - NEP funding support
 - Morro Bay Power Plant brownfield and reuse issues
 - Offshore oil and gas development opposition

- D. Tim Williams, Deputy Director of External Affairs, Department of the Interior
 - Offshore wind energy/DoD issues

- E. Walter Cruickshank, Acting Director, Bureau of Ocean Energy Management (BOEM)
 James Schindler, Advisor, BOEM
 Michael Celata, Regional Director, BOEM
 James Bennett, Renewable Energy Program Manager, BOEM
 - Status of Central Coast wind farm proposal process
 - Offshore wind energy/DoD issues
 - Morro Bay CBA with Castle Wind
 - Fishermen Association CBA with Castle Wind

The City's "leave behind" papers, which explain City positions on key Harbor and WRF issues, are included with this staff report as Attachment 1.

CONCLUSION

Approximately 30 members were a part of this year's C-MANC delegation, bringing a unified and effective voice to Washington D.C. of the importance of all of California's ports and harbors as an integrated "system" to the national economy and security. This year's meetings were extensive and productive, with targeted and consistent messages across the spectrum of meetings. As a result,

the City is well situated to receive continued Corps dredging of the harbor, and our concerns and input on various issues were heard by key politicians and staffers.

The City made contact with several key agencies regarding offshore wind policy and development, and garnered support for that effort from our Congressional representatives.

In addition, the Morro Bay WRF contingent was well received by the Congressional delegation and legislative and agency staff. They were very supportive and encouraging of the Morro Bay WRF project and its goal of Indirect Potable Reuse for water security.

Agencies and legislators showed a genuine interest in the project, understood the financial impacts of the project to the community, and indicated their desire to see a successful WRF project. City staff will pursue all potential funding opportunities discussed by the agencies with urgency and report back progress to Council and the community. Specifically, the following items during regular WRF updates as appropriate:

- Secure support letters for WRF, including Title XVI
- Work with Rep. Carbajal for support at Committee level for USDA population waiver
- Request possible appropriations request submittal
- Coordinate with Army Corps LA office regarding WRF permitting in jurisdictional areas
- Contact Bureau Denver office – WRF WaterSmart and Title XVI grants
- Maintain ongoing communications with all contacts

ATTACHMENTS

1. Final “leave behind” papers from the Morro Bay delegation



CITY OF MORRO BAY

CITY HALL

595 Harbor Street
Morro Bay, CA 93442

March 4, 2019

Senator Dianne Feinstein
331 Hart Senate Office Building
Washington D.C. 20510

RE: MORRO BAY FEDERAL CONCERNS AND PRIORITIES

Dear Senator Feinstein,

Thank you for your continued leadership in the United States Senate. On behalf of the City of Morro Bay, we respectfully communicate to you our Federal concerns and priorities, detailed below:

Morro Bay Harbor Dredging and Army Corps of Engineers Funding:

- Annual harbor entrance dredging critical to maintaining safe navigation and commerce.
- Morro Bay the only all-weather harbor between Monterey and Santa Barbara.
- Army Corps dredge ship *Yaquina* funded \$2.94M in FY19 for harbor entrance dredging this Spring. *Thank you for supporting Congress's "plus-up" of the President's budget.* This amount now likely insufficient to fully dredge our harbor entrance after this stormy winter.
- **City of Morro Bay requests a minimum of \$3.0M in FY20 to enable full harbor entrance dredging next year.**
- Ensure FY20 appropriations sufficient to meet full capability of Army Corps work planning.

Offshore Wind Energy:

- Support sustainable and renewable energy.
- Multi-factor BOEM lease auction process properly designed to consider local stakeholder needs, impacts and roles should be employed.
- Benefits agreements such that Castle Wind has executed with the City of Morro Bay, and Morro Bay and Port San Luis commercial fishermen's organizations are the models to follow and should be items of consideration by way of a multi-factor lease auction process.
- Wind farm projects should properly mitigate impacts on communities and fisheries.
- Department of Defense needs and offshore wind farms can coexist.
- Floating offshore wind farms stand to create significant positive regional economic impacts.

Water Reclamation Facility:

- New Water Reclamation Facility to replace 65-year old Morro Bay-Cayucos Waste Water Treatment Plant.
- Fully operational by 2023.
- Total Project costs estimated at over \$126M.
- Residential water and sewer rates could be over \$191/month with conventional bond financing.
- Seeking Federal funding assistance.



CITY OF MORRO BAY

CITY HALL

595 Harbor Street
Morro Bay, CA 93442

Fishery Issues:

- NOAA funding needed for groundfish quota system observer/monitoring programs, or
- Audited electronic monitoring.
- Refinance the Pacific Coast Groundfish Buyback Loan program via Magnuson-Stevens.
- Marine Sanctuaries not to engage in fishery spacial or other management.
- Voice of commercial fishing communities and working waterfronts need to be heard.

National Estuary Program Funding:

- Continue to invest in coastal stewardship by funding National Estuary Program.
- NEP programs work collaboratively and effectively with local partners.
- Recommend \$700,000 for each of the nation's 28 NEP programs in FY20.

Morro Bay Power Plant:

- 60+ year-old power plant shut down in 2013.
- Developers of offshore wind and wave energy can utilize plant's connection to power grid.
- "Brownfield" concerns with site remediation and redevelopment or reuse.
- Site has the potential to be an economic game-changer for Morro Bay and the region if properly repurposed.

Offshore Oil and Gas Development:

- Ban on new West Coast drilling, fracking or related techniques.
- No new or expansion of existing oil or gas leases, and phase-out of all oil and gas extraction.
- Develop framework for responsible renewable energy development.
- Morro Bay City Council Resolution No. 07-18 opposing offshore oil exploration and development, submitted as official record to BOEM Federal Register Doc. No. 2018-00083.

Thank you for considering our input. If you have any specific questions or concerns on the issues outlined herein, or others, please let us know. We look forward to our visit to Washington DC and working through these issues with you and your staff.

Sincerely,

John Headding
Mayor

Scott Collins
City Manager

Eric Endersby
Harbor Director



CITY OF MORRO BAY

CITY HALL

595 Harbor Street
Morro Bay, CA 93442

March 4, 2019

Senator Kamala Harris
112 Hart Senate Office Building
Washington D.C. 20510

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595 Harbor Street
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- "Brownfield" concerns with site remediation and redevelopment or reuse.
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- No new or expansion of existing oil or gas leases, and phase-out of all oil and gas extraction.
- Develop framework for responsible renewable energy development.
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Thank you for considering our input. If you have any specific questions or concerns on the issues outlined herein, or others, please let us know. We look forward to our visit to Washington DC and working through these issues with you and your staff.

Sincerely,

John Headding
Mayor

Scott Collins
City Manager

Eric Endersby
Harbor Director



CITY OF MORRO BAY

CITY HALL

595 Harbor Street
Morro Bay, CA 93442

March 4, 2019

Honorable Congressman Salud Carbajal
2231 Rayburn House Office Building
Washington D.C. 20515

RE: MORRO BAY FEDERAL CONCERNS AND PRIORITIES

Dear Congressman Carbajal,

Thank you for your continued service in the United States Congress, and support of issues and priorities important to the Central Coast and City of Morro Bay. On behalf of the City, we respectfully communicate to you our Federal concerns, comments and priorities, outlined below:

Morro Bay Harbor Dredging and Army Corps of Engineers Funding:

- Annual harbor entrance dredging critical to maintaining safe navigation and commerce.
- Morro Bay the only all-weather harbor between Monterey and Santa Barbara.
- Army Corps dredge ship *Yaquina* funded \$2.94M in FY19 for harbor entrance dredging this Spring. ***Thank you for supporting Congress's "plus-up" of the President's budget.*** This amount now likely insufficient to fully dredge our harbor entrance after this stormy winter.
- **City of Morro Bay requests a minimum of \$3.0M in FY20 to enable full harbor entrance dredging next year.**
- Ensure FY20 appropriations sufficient to meet full capability of Army Corps work planning.

Offshore Wind Energy:

- Support sustainable and renewable energy.
- Multi-factor BOEM lease auction process properly designed to consider local stakeholder needs, impacts and roles should be employed.
- Benefits agreements such that Castle Wind has executed with the City of Morro Bay, and Morro Bay and Port San Luis commercial fishermen's organizations are the models to follow and should be items of consideration by way of a multi-factor lease auction process.
- Wind farm projects should properly mitigate impacts on communities and fisheries.
- Department of Defense needs and offshore wind farms can coexist.
- Floating offshore wind farms stand to create significant positive regional economic impacts.

Water Reclamation Facility:

- New Water Reclamation Facility to replace 65-year old Morro Bay-Cayucos Waste Water Treatment Plant.
- Fully operational by 2023.
- Total Project costs estimated at over \$126M.
- Residential water and sewer rates could be over \$191/month with conventional bond financing.
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CITY HALL

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National Estuary Program Funding:

- Continue to invest in coastal stewardship by funding National Estuary Program.
- NEP programs work collaboratively and effectively with local partners.
- Recommend \$700,000 for each of the nation's 28 NEP programs in FY20.

Morro Bay Power Plant:

- 60+ year-old power plant shut down in 2013.
- Developers of offshore wind and wave energy can utilize plant's connection to power grid.
- "Brownfield" concerns with site remediation and redevelopment or reuse.
- Site has the potential to be an economic game-changer for Morro Bay and the region if properly repurposed.

Offshore Oil and Gas Development:

- Ban on new West Coast drilling, fracking or related techniques.
- No new or expansion of existing oil or gas leases, and phase-out of all oil and gas extraction.
- Develop framework for responsible renewable energy development.
- Morro Bay City Council Resolution No. 07-18 opposing offshore oil exploration and development, submitted as official record to BOEM Federal Register Doc. No. 2018-00083.

Thank you for considering our input. If you have any specific questions or concerns on the issues outlined herein, or others, please let us know. We look forward to our visit to Washington DC and working through these issues with you and your staff.

Sincerely,

John Headding
Mayor

Scott Collins
City Manager

Eric Endersby
Harbor Director



CITY OF MORRO BAY

CITY HALL

595 Harbor Street
Morro Bay, CA 93442

March 4, 2019

Honorable Congressman Jared Huffman
1527 Longworth House Office Building
Washington D.C. 20515

RE: MORRO BAY FEDERAL CONCERNS AND PRIORITIES

Dear Congressman Huffman,

Thank you for your continued service in the United States Congress. On behalf of the City of Morro Bay, we respectfully communicate to you our Federal concerns, comments and priorities, outlined below:

Morro Bay Harbor Dredging and Army Corps of Engineers Funding:

- Annual harbor entrance dredging critical to maintaining safe navigation and commerce.
- Morro Bay the only all-weather harbor between Monterey and Santa Barbara.
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Sincerely,

John Headding
Mayor

Scott Collins
City Manager

Eric Endersby
Harbor Director



CITY OF MORRO BAY

CITY HALL

595 Harbor Street
Morro Bay, CA 93442

March 4, 2019

Honorable Congresswoman Julia Brownley
2262 Rayburn House Office Building
Washington D.C. 20515

RE: MORRO BAY FEDERAL CONCERNS AND PRIORITIES

Dear Congresswoman Brownley,

Thank you for your continued service in the United States Congress. On behalf of the City of Morro Bay, we respectfully communicate to you our Federal concerns, comments and priorities, outlined below:

Morro Bay Harbor Dredging and Army Corps of Engineers Funding:

- Annual harbor entrance dredging critical to maintaining safe navigation and commerce.
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Sincerely,

John Headding
Mayor

Scott Collins
City Manager

Eric Endersby
Harbor Director



CITY OF MORRO BAY

CITY HALL

595 Harbor Street
Morro Bay, CA 93442

March 4, 2019

Honorable Congressman Jimmy Panetta
212 Cannon House Office Building
Washington D.C. 20515

RE: MORRO BAY FEDERAL CONCERNS AND PRIORITIES

Dear Congressman Panetta,

Thank you for your continued service in the United States Congress. On behalf of the City of Morro Bay, we respectfully communicate to you our Federal concerns, comments and priorities, outlined below:

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Sincerely,

John Headding
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Scott Collins
City Manager

Eric Endersby
Harbor Director



CITY OF MORRO BAY

CITY HALL

595 Harbor Street
Morro Bay, CA 93442

March 4, 2019

Honorable Congresswoman Chellie Pingree
2162 Rayburn House Office Building
Washington D.C. 20515

RE: MORRO BAY FEDERAL CONCERNS AND PRIORITIES

Dear Congresswoman Pingree,

Thank you for your continued service in the United States Congress. On behalf of the City of Morro Bay, we respectfully communicate to you our Federal concerns, comments and priorities, outlined below:

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Thank you for considering our input. If you have any specific questions or concerns on the issues outlined herein, or others, please let us know. We look forward to our visit to Washington DC and discussing these issues with you and your staff.

Sincerely,

John Headding
Mayor

Scott Collins
City Manager

Eric Endersby
Harbor Director



CITY OF MORRO BAY

CITY HALL

595 Harbor Street
Morro Bay, CA 93442

March 4, 2019

Bradd Schwichtenberg, Civil Deputy
Department of Civil Works
U.S. Army Corps of Engineers
441 G Street NW, Office 3T61
Washington DC 20314-0002

RE: MORRO BAY DREDGING APPROPRIATIONS

Dear Deputy Schwichtenberg,

On behalf of the City of Morro Bay and the Central Coast of California, it is with deep gratitude to the Corps for prioritizing the important dredging work in Morro Bay Harbor, and to our legislators for funding it. We wish to respectfully communicate to you our comments and priorities, outlined below:

- Annual Morro Bay harbor entrance dredging is critical to maintaining safe navigation and commerce, including a safe haven for Coast Guard Station Morro Bay.
- Morro Bay is the only all-weather harbor between Monterey and Santa Barbara.
- Army Corps dredge ship *Yaquina* is funded \$2.94M in FY19 for harbor entrance dredging this Spring. *Thank you for prioritizing this project in your work plans.* This amount now likely insufficient to fully dredge our harbor entrance after this stormy winter.
- **City of Morro Bay requests a minimum \$3.0M in FY20 to enable full harbor entrance dredging next year.**
- Los Angeles District command and staff are efficient, responsive and a pleasure to work with.

We thank you for your leadership and continued support of Morro Bay. If you have any specific questions or concerns, please let us know, and we look forward to meeting with you during our visit to Washington DC.

Sincerely,

John Headding
Mayor

Scott Collins
City Manager

Eric Endersby
Harbor Director



CITY OF MORRO BAY

CITY HALL

595 Harbor Street
Morro Bay, CA 93442

March 4, 2019

Walter Cruickshank, Acting Director
Bureau of Ocean Energy Management
Department of the Interior
1849 C Street, NW
Washington D.C. 20515

RE: MORRO BAY INPUT ON OFFSHORE FLOATING WIND GENERATION LEASING

Dear Acting Director Cruickshank,

Thank you for your important work on the realization of offshore floating wind energy generation projects on the West Coast of California. As you know, Morro Bay submitted substantial comments to the BOEM Call for Information and Nominations for Commercial Leasing for Wind Power on the Outer Continental Shelf in California, which we will not repeat here.

Morro Bay supports floating offshore wind generation projects, as they stand to provide a critical part of the nation's energy generation portfolio, in addition to greatly improving local economies, provided they are properly sited, mitigated and operated. In order for that to occur, we feel strongly that:

- The lease auction process is properly designed to consider local stakeholder needs, impacts and roles by way of a multi-factor bidding auction.
- Wind farm projects should properly mitigate impacts on local communities and fisheries.
- Benefits agreements such that Castle Wind has executed with the City of Morro Bay, and Morro Bay and Port San Luis commercial fishermen's organizations are the models to follow and should be items of consideration in the BOEM lease auction process.
- California offshore wind generation projects need to be appropriately sized.
- Department of Defense needs and offshore wind farms can coexist.

Thank you for considering our input. If you have any specific questions or concerns on the issues outlined herein, or others, please let us know. We look forward to discussing these issues with you further during our visit to Washington DC.

Sincerely,

John Headding
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Scott Collins
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Eric Endersby
Harbor Director



Mayor: Dr. John Headding
 City Manager: Scott Collins
 Public Works Director: Rob Livick, PE/PLS
 Program Manager: Eric Casares, PE



Summary - City of Morro Bay Water Reclamation Facility Project

- New Water Reclamation Facility (WRF) to replace 65-year old Morro Bay Cayucos WWTP
- Fully operational by 2021
- Total project cost of \$126M
- Residential water and sewer rates based on a majority of the project being funded through conventional bond financing

Why this Project?

- Compliance with Coastal Act Policies
 - Managed retreat of critical infrastructure due to climate-change
 - Mitigates environmental risk – coastal flooding and tsunami protection
- Promotes water independence by offsetting 80% of the City's current water usage
- Improves the health of the local aquifer through nitrate flushing and prevention of seawater intrusion
- Supports long term coastal stream enhancement

Project Components

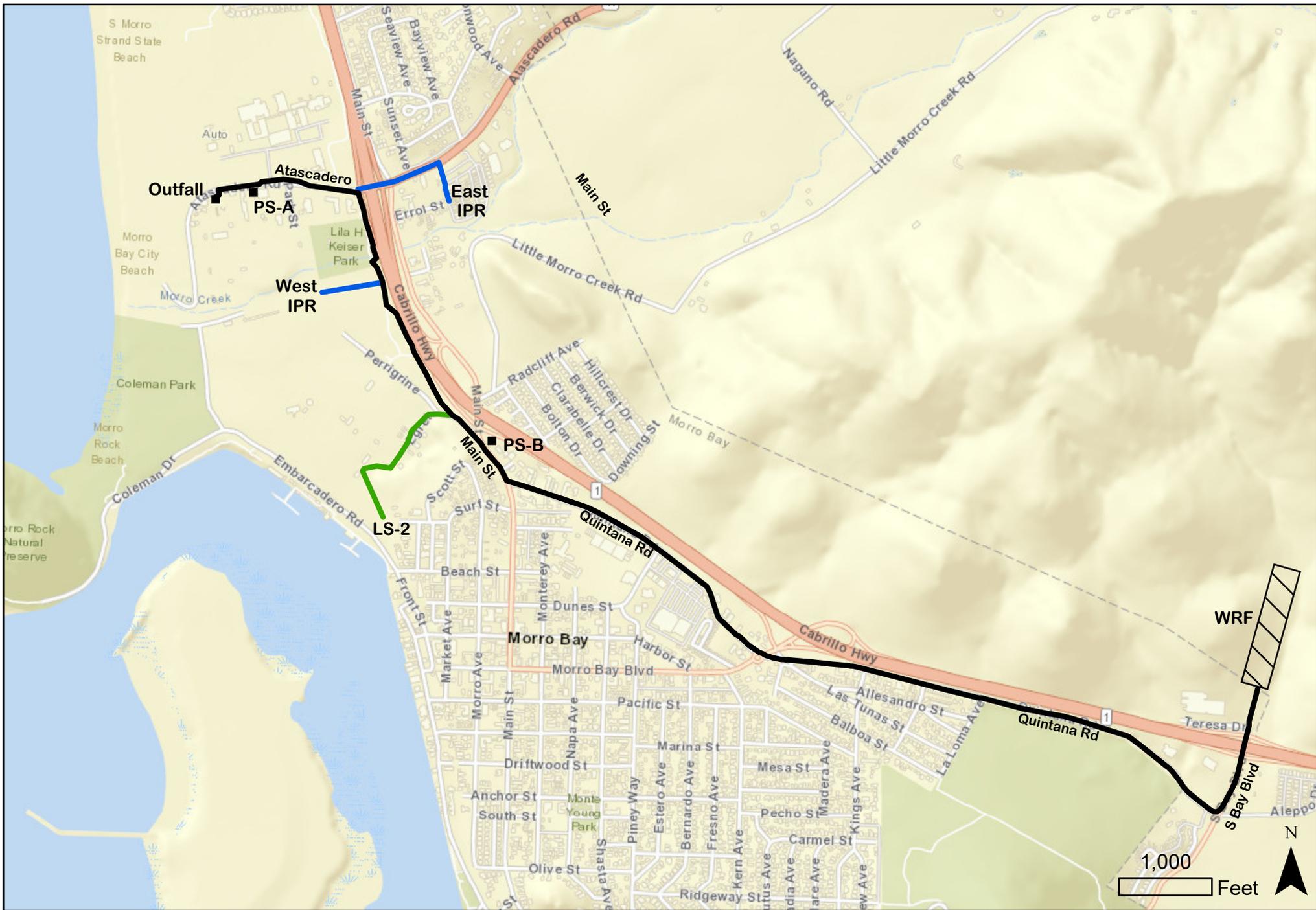
- Lift stations and connection between the existing WWTP and new WRF
- Biological treatment and micro-filtration
- Reverse osmosis and disinfection/advanced oxidation
- Recycled water pumping, conveyance and injection wells
- Brine and wet weather discharge pipeline to existing WWTP ocean outfall

Project Schedule

<i>Activities</i>	<i>Timeline</i>
Rate Increase, Permitting and Preliminary Engineering	Fall 2017 - July 2018 (Completed)
Environmental Review (CEQA-Plus and NEPA)	Fall 2017 - June 2018 (Completed)
Design-Build Procurement for WRF	October 2017 - October 2018 (Completed)
Project Financing – State Revolving Fund (SRF) and Water Infrastructure Finance and Innovation Act (WIFIA) Loan Review Process	Jun 2018 - April 2019
Design and Construction (Design-Build Delivery)	July 2019 - September 2021
Startup/Commissioning	September 2021-March 2022

Project Financing

- Awarded a \$10.3M planning and design State Revolving Fund Loan
- Project expenses to date have been self-funded by the Morro Bay rate payers
- Morro Bay was one of 12 communities selected to apply for EPA Low interest WIFIA funding for up to 49-percent of project costs
- Morro Bay anticipates the remainder of the project financing from State Revolving Fund Loan
- Potential grant funding will be used to reduce impact to rate payers
- Morro Bay Median Household income \$53,348 (Source: U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates)
- The City increased water and sewer rates in 2018 to pay the debt service (combined water and sewer of \$191 per month for average resident)



City of Morro Bay Water Reclamation Facility Project



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AGENDA NO: C-4

MEETING DATE: March 26, 2019

Staff Report

TO: Honorable Mayor and City Council

DATE: March 18, 2019

FROM: Jennifer Callaway, Finance Director

SUBJECT: Adopt Resolution No. 19-19 approving the City of Morro Bay's Revenue and Expenditure Policies

RECOMMENDATION

City Council adopt Resolution No. 19-19 approving the City of Morro Bay's Revenue and Expenditure Policies

BACKGROUND

The Morro Bay City Council requested that financial policies be added to a future Council agenda for review and discussion. On August 28, 2018, staff brought forward an action plan outlining the process to complete both a fiscal resiliency plan and formation of Accounting Policies and Procedures. Council approved staff's recommended plan and, as such, staff has proceeded with drafting revenue and expenditure policies for Council consideration and review.

DISCUSSION

Financial policies are a key component to achieving sound fiscal resiliency, and according to GFOA, not only a best practice, but also central to a strategic, long-term approach to financial management. Formal, written policies can help governments. Also, the City has received audit findings in the last two fiscal years related to Accounting Policies and Procedures.

GFOA outlines the following seven benefits to adopting formal financial policies:

1. Institutionalize good financial management practices. Formal policies usually outlive their creators, and thus promote stability and continuity. They also prevent the need to re-invent responses to recurring issues.
2. Clarify and crystallize strategic intent for financial management. Financial policies define a shared understanding of how the organization will develop its financial practices and manage its resources to provide the best value to the community.
3. Define boundaries. Financial policies define limits on the actions staff may take. The policy framework provides boundaries within which staff can innovate in order to realize the organization's strategic intent.
4. Support good bond ratings and thereby reduce the cost of borrowing.
5. Promote long-term and strategic thinking. The strategic intent articulated by many financial policies necessarily demands a long-term perspective from the organization.
6. Manage risks to financial condition. A key component of governance accountability is not to incur excessive risk in pursuit of public goals. Financial policies identify important risks to financial condition.
7. Comply with established public management best practices. The GFOA through its

Prepared By: JC

Dept Review: _____

City Manager Review: SC

City Attorney Review: CN

officially adopted Best Practices endorsement of National Advisory Council on State and Local Budgeting (NACSLB) budget practices and the GFOA Distinguished Budget Presentation Award Program, has recognized financial policies as an essential part of public financial management.

As such, GFOA recommends that municipal governments formally adopt financial policies and have staff proceed with drafting policy revenue and expenditure policies for council consideration.

Revenue Policy

The proposed Revenue Policy (Exhibit A to Attachment 1) outlines the City's policy on general revenue management (i.e., establishment of a diversified, stable revenue base) and provides guidance to staff and transparency on use of one-time revenues; new, discretionary revenues; and, user fees and charges. In summary, per the drafted policy the following is outlined:

One-Time Revenues: Shall be used for current or new one-time operating expenses such as replenishment of reserves, pay down of debt and capital needs.

New, Discretionary Revenue: Shall be treated as one-time revenue for the first 24 months, in order to establish that the revenue is a stable and reliable ongoing revenue that can be added to the City's base budget. During the first 24-month period of receipt of a new revenue source, these funds shall be diverted to one-time operating expenses as defined in the One-Time Revenues section of the policy. After consistent receipt over the first 24-month period, the new revenue may be added to the General Fund base budget, with 10% of the new revenue being diverted to fund capital projects.

User Fees and Charges: It is the City's policy to set user fees at full cost recovery levels, except where a greater public benefit is demonstrated to the satisfaction of the City Council or when it is not cost effective to do so. Increases to the user fees and charges may be added to the base budget upon adoption.

Expenditure Policy

The proposed Expenditure Policy (Exhibit B to Attachment 1) outlines the City's commitment and practices to general expenditure management, including maintaining service levels, providing efficient service delivery and managing risk and liability exposure.

The policy further outlines the City's commitment to identifying opportunities to reduce future operating costs, maintaining and replacing infrastructure and equipment and funding capital needs.

The drafted policies also outline staffing needs and practices and productivity accountability.

CONCLUSION

Having clearly defined financial policies that reflect the City of Morro Bay's values will serve as the foundation for decision-making in tough fiscal times and aid in preserving the City's long-term fiscal health and vitality. Staff recommends that Council review the proposed policies and adopt Resolution 19-19.

ATTACHMENT

1 – Resolution No. 19-19

Exhibit A – Revenue Policy

Exhibit B – Expenditure Policy

RESOLUTION NO. 19-19

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
ESTABLISHING THE CITY OF MORRO BAY'S REVENUE AND EXPENDITURE POLICIES**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the City of Morro Bay wishes to establish Accounting and Financial Reporting policies to direct staff and provide transparency to the Council and Community; and

WHEREAS, those Accounting and Financial policies include a policy regarding Revenue Management; and

WHEREAS, those Accounting and Financial policies include a policy regarding Expenditure Management; and

WHEREAS, staff recommends the City Council adopt the proposed Revenue Policy, which demonstrates the City's commitment to fiscal responsibility and prudent management and is consistent with Government Accounting Standards; and

WHEREAS, staff recommends the City Council adopt the proposed Expenditure Policy, which demonstrates the City's commitment to fiscal responsibility and prudent management and is consistent with Government Accounting Standards

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, the "Revenue Policy," as set forth in Exhibit A, attached hereto and incorporated herein, is hereby approved and hereby established as City policy.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, the "Expenditure Policy," as set forth in Exhibit B, attached hereto and incorporated herein, is hereby approved and hereby established as City policy.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 26^h day of March, 2019, by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk



COUNCIL POLICY

REVENUE POLICY

Policy Statement

The City of Morro Bay (City) is a full-service City, providing essential services to over 10,000 residents related to public safety, planning, building, public works and recreation. In addition, the City has a vibrant tourism industry, attracting thousands of visitors annually, all of whom utilize city services in some fashion. As such, it is prudent for the City to establish sound revenue management policies that conform with generally accepted accounting principles and state regulations.

Purpose

The purpose of this policy is to describe the City's key revenue management policies with respect to general revenue management, use of one-time revenues, and use of new revenue sources, so as to guide City staff and City Council in determining recommended use of City revenues.

General Revenue Management

Diversified and Stable Base. The City will seek to maintain a diversified and stable revenue base to protect it from short-term fluctuations in any one revenue source.

Long-Range Focus. To emphasize and facilitate long-range financial planning, the City will maintain current projections of revenues for the succeeding ten years.

Current Revenues for Current Uses. The City will make all current expenditures with current revenues, avoiding procedures that balance current budgets by postponing needed expenditures, accruing future revenues, or rolling over short-term debt.

Interfund Transfers and Loans. In order to achieve important public policy goals, the City has established various special revenue, capital project, internal service and enterprise funds to account for revenues whose use should be restricted to certain activities. Accordingly, each fund exists as a separate financing entity from other funds, with its own, expenditures and fund equity.

Any transfers between funds for operating purposes are clearly set forth in the adopted budget and can only be made by the Director of Finance in accordance with the adopted budget. These operating transfers, under which financial resources are transferred from one fund to another, are distinctly different from interfund borrowings, which are usually made for temporary cash flow reasons, and are not intended to result in a transfer of financial resources by the end of the fiscal year.

The Council recognizes that accounting principles for state and local governments discourage the "earmarking" of General Fund revenues, and accordingly, the practice of designating General Fund revenues for specific programs should be minimized in the City's management of its fiscal affairs.

Approval of the following revenue distribution policies does not prevent the Council from directing General Fund resources to other functions and programs as necessary.

One-Time Revenues

Once the General Fund Budget is brought into structural balance, one-time resources such as proceeds from asset sales, debt refinancing, one-time grants, revenue spikes, budget savings and similar non-recurring revenue shall not be used for current or new one-time operating expenses. Appropriate uses of one-time resources include replenishment of the Emergency Reserve if needed, replenishment of internal service fund reserves if necessary, pay down of unfunded liabilities, including CalPERS and Other Post-Employment Benefits (OPEB), early retirement of debt, capital expenditures and other non-recurring expenditures.

This policy is intended to ensure that the City maintains a structurally balanced budget and does not use onetime resources to increase the base budget that cannot be sustained by ongoing resources.

Definitions

One-time Resources: resources that the City cannot reasonably expect to receive on an ongoing basis. The source is most likely one-time if any of the following apply:

- a. Will not be available the next fiscal year.
- b. Has a set ending date such as 12-18 months from date of receipt.
- c. Results from a one-time spike.
- e. Results from temporary expenditure savings.

One-time resources include bond or debt proceeds, bond-refinancing proceeds, money from the sale of assets, one-time grant funds, budget surpluses, and fund balance.

Use of New Discretionary Revenues

New, discretionary revenues will be treated as one-time revenues for a period of two years (consecutive 24-month period), to establish that they will be permanent, steady and reliable ongoing revenues which can be added to the City's base general fund budget. For the first two years of a new, discretionary revenue, all funds will be used according to the defined one-time revenue uses in the section entitled "One-Time Revenues" above.

Once the General Fund budget is brought into structural balance, a minimum of 10 percent of all new (ongoing) discretionary revenue will be devoted to capital projects including deferred maintenance and infrastructure needs.

Allocation of discretionary revenues is intended to insure the designation of a proportionate and ongoing share of the annual budget for the needed care and construction of infrastructure.

1. This policy applies to the net increase of all discretionary General Fund recurring revenues (e.g., tax revenue, non-fee-based revenue [necessary for providing services]) due to a change in city policy, law, etc. An example would be cannabis tax revenue).

2. The designation of these funds in no way displaces or substitutes for the funds already being budgeted for capital projects.

3. Examples of projects qualifying for funding under this provision include such projects as facility repairs, roof repairs, street repairs, air conditioning repair or replacement, replacement of flooring, elimination of mold, etc.

User Fees and Charges

The City of Morro Bay recaptures, through fees, up to the full cost of providing specific services. Regular and consistent review of all fees is necessary to ensure that the costs associated with delivery of individual services have been appropriately identified, and that the City is fully recovering those costs. It is the City's policy to set user fees at full cost recovery levels, except where a greater public benefit is demonstrated to the satisfaction of the City Council, or when it is not cost effective to do so.

The Morro Bay Municipal Code Chapter 3.34, Master Fee Schedule, stipulates how the City shall move forward with amending the Master Fee Schedule. Relevant sections of that chapter are included below for reference.

3.34.010 – Established

The city Master Fee Schedule is established, which shall set forth a consolidated listing of fees as fixed and adopted by the city council, in accordance with all applicable provisions of state and city laws.

3.34.020 – Fee revisions and reviews

Any fees included in the Master Fee Schedule may be reviewed and revised annually by the city council. The city's cost of providing the services shall be computed and reflected in these fees. The fees shall then be enumerated and the revised Master Fee Schedule adopted by resolution of the city council.

On July 14, 2015, the City Council established December as the desired index for Consumer Price Index (CPI) and Engineering News Record (ENR) Construction Cost Index for the San Francisco Oakland-San Jose area as the adjusting factor.

Increases to the fee schedule, based either on CPI or ENR increase or as a result of a fee study and update, may be added to the base general fund budget, or other Internal Service Funds (ISF), if used to fund ISF needs (i.e., technology and software needs), immediately following adoption.

Reporting and Oversight

The Departments are responsible for working with the Finance Department and City Manager in identifying new revenue sources and bringing a proposed plan for allocation of new and one-time revenue sources that conforms to this policy to the City Council for consideration and direction.



COUNCIL POLICY

EXPENDITURE POLICY

Policy Statement

The City of Morro Bay (City) is a full-service City, providing essential services to over 10,000 residents related to public safety, planning, building, public works and recreation. In addition, the City has a vibrant tourism industry, attracting thousands of visitors annually, all of whom utilize City services in some fashion. As such, it is prudent for the City to establish a sound expenditure policy that conform with generally accepted accounting principles and state regulations.

Purpose

The purpose of this policy is to describe the City's expenditure management practices with respect to general expenditure management, to ensure service levels are maintained and to guide City staff and City Council in obtaining and maintaining a structurally balanced budget.

General Expenditure Management

Service Levels. The City will endeavor to achieve service levels that provide quality of life, public safety and enjoyment to residents, business owners and visitors of the City of Morro Bay in the most efficient manner possible and within the financial means of the City.

Service Delivery. The City will continue to look for and implement the most cost effective and reliable methods of delivering services to the City's residents, business owners and visitors.

Capital Investments. The City will endeavor to maintain all assets at a level that protects capital investments and minimizes future maintenance and replacement costs, if possible.

Risk Management. The risk management program will provide protection against loss and reduction in exposure to liability to the extent possible.

Safety Program. The City will endeavor to establish and maintain a safety program, to ensure that safe working conditions are provided to the City's employees, and to minimize the City's exposure to liability and thereby reduce the number of claims against the City.

General Fund Expenditures

High priority is given to expenditures that will reduce future operating costs, such as increased utilization of technology and equipment and proven business models.

As appropriate, balance will be maintained between budget dollars provided for direct public services and dollars provided to assure good management and legal compliance.

All departments share in the responsibility of looking at and understanding the City's long-term financial viability, its general spending trends, its projected incomes, and educating themselves and all employees on the necessary short-term and long-term balance between revenues and expenditures.

Before the City undertakes any agreements that would create fixed, ongoing expenses, the cost implications of such agreements will be estimated and considered for current and future years.

Organizations and agencies that are not part of the City, but which receive funds from the City, shall not have their appropriation carried forward from year to year unless contractually authorized and directed by City Council. Annual review and reauthorization of funding is required.

Maintenance and Replacement

The City's annual budget process will include a multi-year projection of facilities and vehicle replacement requirements and outline sufficient funding for adequate maintenance and orderly replacement of capital infrastructure and equipment. Future maintenance needs of new infrastructure and equipment will be costed out and included as decision criteria.

Capital Improvements

The City will prepare and maintain a multi-year Capital Improvement Plan (CIP) and update it annually as part of the City's annual budget process. The CIP will be developed in conjunction with the operating budget to ensure that all operation and maintenance costs associated with the new capital improvements are adequately addressed. All capital improvements will be made in accordance with the adopted plan. The City will endeavor to maintain all of its assets at a level adequate to protect the capital investments and minimize future maintenance and replacement costs.

Operating/Capital Expenditure Accountability

It is the City's policy to compare actual expenditures to budget, internally on a monthly basis, and generally on a quarterly basis to be reported to the City Council. If necessary, actions are taken to bring the budget into balance during the quarterly budget updates.

Human Resource Management

Regular Staffing: The budget will fully appropriate the resources needed for authorized regular staffing (full-time or full-time equivalent staffing that are provided benefits) and will limit programs to the regular staffing authorized.

Regular employees are and will continue to be the core work force and the preferred means of staffing ongoing, year-round program activities that should be performed by full-time City employees rather than independent contractors. The City will strive to provide competitive compensation and benefit schedules for its authorized regular work force. Each regular employee will:

- Fill a funded, authorized full-time equivalent (FTE) position.
- Be assigned to an appropriate classification and assigned a bargaining unit or maintain an employment agreement.

- Receive salary and benefits consistent with labor agreements or other compensation plans.

To maintain the growth of the regular work force and overall staffing costs, the City will follow these procedures:

- The Council will authorize all regular positions.
- The Human Resources Division will coordinate and approve the hiring of all regular, part-time and temporary employees.
- All requests for additional regular positions will include evaluations of:
 - The necessity, term and expected results of the proposed position.
 - Staffing and equipment costs, including salary, benefits, equipment, uniforms, facilities, etc.
 - The ability of private industry to provide the service (contract services) and the benefits of hiring in-house staff.
 - Additional revenues or cost savings, which may be realized.
- Periodically, programs will be evaluated to determine appropriate staffing levels.

Temporary Staffing: The hiring of temporary employees will not be used as an incremental method for expanding the City's regular work force.

Temporary, part-time employees include all employees other than regular employees, elected officials and volunteers. Temporary employees will augment regular City staffing as extra-help employees, seasonal employees, contract employees, interns and work-study assistants.

The use of temporary employees is encouraged to meet peak workload requirements, fill interim vacancies, and accomplish tasks where less than full-time staffing is required.

Under this guideline, temporary employee hours will generally not exceed (on a per employee basis) 50% of a regular, full-time position (1,040 hours annually). There may be limited circumstances where the use of temporary employees on an ongoing basis in excess of this target may be appropriate due to unique circumstances or staffing requirements. However, any such exceptions must be approved by the City Manager based on the review and recommendation from the Human Resources Division.

Contract employees are defined as temporary employees with written contracts approved by the City Manager. Contract employees will generally be used for medium-term (generally between six months and two years) projects, programs and activities requiring specialized or augmented levels of staffing for a specific period. Contract employees should not be used for services that are anticipated to be delivered on an ongoing basis.

Independent Contractors: Independent contractors are not City employees. They may be used in two situations:

1. Short-term, peak workload assignments to be accomplished using personnel contracted through an outside temporary employment agency. These employees are always considered to be the employee of the outside employment agency and not the City. All placements through a temporary employment agency will be coordinated through and subject to approval of the Human Resources Division.
2. Construction of Public Works projects and delivery of operation, maintenance or specialized professional services not routinely performed by City employees. Contract awards are guided by the City's purchasing policies and procedures.

Productivity

The City will constantly monitor and review the methods of operation to ensure that services continue to be delivered in the most cost-effective manner possible. This review process encompasses a wide range of productivity issues, including:

- A. Analyzing systems and procedures to identify and remove unnecessary review requirements.
- B. Evaluating the ability of new technologies and related capital investments to improve productivity.
- C. Developing the skills and abilities of all City employees.
- D. Developing and implementing appropriate methods of recognizing and rewarding exceptional employee performance.
- E. Evaluating the ability of the private sector to perform the same level of service at a lower cost.
- F. Conducting periodic formal reviews of operations on a systematic, ongoing basis.
- G. Maintaining a decentralized approach in managing the City's support service functions. Although some level of centralization is necessary for review and control purposes, decentralization supports productivity by:
 1. Encouraging accountability by delegating responsibility to the lowest possible level.
 2. Stimulating creativity, innovation and individual initiative.
 3. Reducing the administrative costs of operation by eliminating unnecessary review procedures.
 4. Improving the organization's ability to respond to changing needs, and identify and implement cost-saving programs.
 5. Assigning responsibility for effective operations and citizen responsiveness to the department

Reporting and Oversight

The Departments are responsible for understanding and working within the direction provided in this policy. Departments will coordinate closely with the City Manager, Human Resources Staff and Finance Staff to meet compliance with this policy. To the extent necessary, the City has three-years from date of adoption, to comply with this policy in all respects, but specially to bring the Capital budget process and identification of existing or future funds needed to meet infrastructure maintenance and repair needs. Should the City fall out of compliance with this policy, it is the responsibility of the City Manager, working with all Departments, to bring forward a plan to the City Council to come into compliance with policy stipulations within three years.