



City of Sonoma

Agenda Item Summary

Meeting: City Council - Nov 05 2018

Department

Administration

Staff Contact

David A. Storer, AICP, Planning & Community
Services Director

John Abaci, Assistant City Attorney

Agenda Item Title

Discuss, Consider, and Take Possible Action on Introduction and Adoption of an Urgency Ordinance Amending the Sonoma Municipal to Add Chapter 5.30 Supplementing Wireless Telecommunications Facilities Regulations in the Municipal Code and Replacing References to Chapter 5.32 with Chapter 5.30 within Title 19 (Integrated Development Regulations and Guidelines) of the Sonoma Municipal Code and Finding this Action to be Exempt from Environmental Review Under CEQA Guidelines Sections 15061(B)(3), 15301, 15303, and 15305

Summary

At its meeting of November 5, 2018, the City Council will consider taking action on a proposed Urgency Ordinance that would supplement the telecommunications facilities siting regulations in Chapter 5.32 with wireless telecommunications facilities siting regulations in new Chapter 5.30. The new regulations would respond to a recent order of the Federal Communications Commission on siting of small cell wireless telecommunications facilities and modify the regulations under the Municipal Code to establish siting regulations for small cell wireless facilities and update the other regulations on siting of wireless telecommunications facilities. An urgency ordinance may be introduced and adopted at the same meeting under Government Code Section 36937(b) to protect the health, safety, and welfare. Introduction and adoption of an urgency ordinance requires a 4/5 vote of the City Council. Upon adoption an urgency ordinance will take effect immediately.

Recommended Council Action

Introduce and Adopt an Urgency Ordinance of the City of Sonoma Amending Title 5 of the Sonoma Municipal Code To Add Chapter 5.30 Supplementing Wireless Telecommunications Facilities Regulations in the Municipal Code and Replacing References to Chapter 5.32 with Chapter 5.30 within Title 19 of the Municipal Code and Finding this Action to be Exempt from Environmental Review Under CEQA Guidelines Sections 15061(B)(3), 15301, 15303, and 15305.

Alternative Actions

1. Provide direction of edits and changes and introduce and adopt as modified.
 2. Decline to adopt the ordinance and thereby allow the regulations in Chapter 5.32 to continue to regulate the siting of wireless telecommunications facilities.
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Financial Impact

No immediate financial impact.

Environmental Review

- Environmental Impact Report
- Negative Declaration
- Exempt
- Not Applicable

Status

- Approved/Certified
- No Action Required
- Action Requested

Attachments

[SUPPLEMENTAL REPORT - Wireless Urgency Ordinance](#)
[Draft Urgency Ordinance for Wireless](#)

Alignment with Council Goals:

Not Applicable

Compliance with Climate Action 2020 Target Goals:

N/A

CC:

n/a

SUPPLEMENTAL REPORT

Discuss, Consider, and Take Possible Action on Introduction and Adoption of an Urgency Ordinance Amending the Sonoma Municipal Code to Add Chapter 5.30, Supplementing Wireless Telecommunications Facilities Regulations in the Municipal Code, and Replacing References to Chapter 5.32 with Chapter 5.30 within Title 19 (Integrated Development Regulations and Guidelines) of the Sonoma Municipal Code, and Finding this Action to be Exempt from Environmental Review Under CEQA Guidelines Sections 15061(B)(3), 15301 15303, and 15305.

For the City Council Meeting of November 5, 2018

Background

On September 27, 2018, the Federal Communications Commission (FCC) issued a new Declaratory Ruling and Third Report and Order (Order or FCC Order) which will significantly impact the area of local regulation of wireless telecommunications facilities siting. On October 15, the Order was incorporated into the Federal Register, thus establishing the new rules for local regulations on siting of wireless telecommunications facilities, particularly applicable to small cell facilities¹. On January 14, 2019, the Order is scheduled to take effect.

Small cell wireless facilities are primarily installed within public rights-of-way and as such create significant and far-reaching local concerns in traffic and pedestrian safety, aesthetics, protection and preservation of public property, and the health, safety and welfare of the general public. Installation of small cell and other wireless telecommunications facilities within the public right-of-way can pose a threat to the public health, safety and welfare, including disturbance to the right-of-way through the installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines; land use conflicts and incompatibilities including excessive height of poles and towers; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise or lack of camouflaging of wireless facilities including the associated pedestals, meters, equipment and power generators; and the creation of unnecessary visual and aesthetic blight by failing to utilize alternative technologies or capitalizing on collocation opportunities which may negatively impact the unique quality, historic nature and character of the City.

The Order is intended to facilitate the spread, growth, and accumulation of small cell facilities over a short period of time in order to enable deployment of technology that the Order claims will enable increased competition in healthcare, Internet of Things applications, life-saving car technologies and create jobs, possibly increasing the U.S. economy by as much as \$100 billion by speeding up the deployment of small cells by only one year. In order to effectuate this policy,

^{1 1} The Order defines small cell wireless facilities as meeting the following conditions: 1) satisfy one of the following-a) mounted on structures no higher than 50 feet (including antennae); b) mounted on structures no more than 10% taller than other adjacent structures; or c) not extend existing structures to a height of more than 50 feet or 10%, whichever is greater; 2) antenna is no greater than 3 cubic feet in volume; 3) all other wireless equipment associated with structure is no more than 28 cubic feet in volume; 4) do not result in human exposure to RF radiation in excess of the FCC guidelines; 5) not located on Tribal lands; and 5) not require antenna registration.

the Order reduces the “shot clock” period allowable to cities to review, comment upon, consider, and make a final determination on small cells applications for as many as 90 days for new facilities and as many as 30 days for collocated and modified facilities.

The Order provides that the trend toward small cell technology to deploy 5G and other next-generation wireless services requires greater densification and pace of build out to enable widespread deployment as is sought by the wireless industry. The Order states that as much as 80% of all new deployments will entail small cell technology going forward. The Order provides that wireless providers variably estimate that the preference towards small cell facilities will likely result in ten to one hundred times the number of wireless facilities existing in the nation, and estimates of the number of small cells nationwide would grow from 150,000 this year to nearly 800,000 by year 2026. Based on estimates of small cell facilities transmitting only a few hundred feet by some providers as stated by the Order, the number of small cells could grow to as many as 25-29 per provider per square mile within the City of Sonoma alone.

The City currently regulates wireless telecommunications facilities in the public right-of-way through its telecommunications ordinance which does not focus specifically on wireless telecommunications facilities within the public right-of-way. The existing standards have not been updated to reflect the development of current wireless telecommunications technologies, such as small cell wireless facilities and DAS systems (Distributed Antenna Systems) which are now the preferred method of providing wireless telecommunications services, trends, or necessary legal requirements for such preferred methods and wireless telecommunications facilities covered under Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, among other federal and state law requirements now applicable to local agencies. Further, the primary focus of the existing telecommunications facilities regulations in the Sonoma Municipal Code is wireless telecommunications facilities located on private property, and the existing Code provisions were not specifically designed to address the unique legal and practical issues that arise in connection with wireless telecommunications facilities deployed in the public right-of-way.

The lack of regulations that are specific to the siting of wireless telecommunications facilities in the public right-of-way combined with the Order’s regulations to hasten the spread and development of small cell facilities would, if continued, jeopardize the health and safety of the public by allowing applications for small cell facilities to be submitted and subject to limited local siting regulations resulting from the implementation of the Order. There would not be sufficient time for the City to develop regulations specific to the siting of wireless telecommunications facilities in the public right-of-way before such applications would be made. Yet, under the new “shot clock” rules such applications would need to be approved within either 60 or 90 days of the application being submitted. Any requirements that were placed into effect by the regulations being developed by the City could not be applied to the application before such application would be approved under the new “shot clock” rules. Such a state of affairs would result in facilities being approved that are inconsistent with appropriate regulations being developed by the City in order to exercise the degree of local authority within the parameters allowable under the Order. Thus, projects would be applied for and approved by law without local authority being properly, appropriately, and within the confines of federal and state laws exercised by the City which would in turn result in potentially numerous wireless telecommunications facilities being constructed and existing without local controls for as long as the life of the facility.

Proposed Ordinance

There are in general four types of wireless telecommunications facilities siting applications covered by the proposed ordinance.

- The first is small cell wireless facilities which are characterized by antennas, radio units, and other equipment being placed on utility poles not owned by the City. The Order has established that small cell wireless facility applications are subject to a 60-day or 90-day period (depending upon the circumstances of the application) from the date that the application is deemed complete for processing until the date the final determination is made. (This period to make a final determination is commonly referred to as the “shot clock” period under federal law, except that under each of the following shot clock periods the period begins when the application is first submitted, rather than when it is deemed complete for processing.)
- The second category is wireless facilities that are not considered “small cells” which were typically characterized by the term “towers.” These are subject to a shot clock period of 150, 90, or 60 days depending on the specific circumstances of the application.
- The third category is wireless collocation facilities which meet certain pre-conditions under Government Code Section 65850.6 and are entitled to an administrative review under that section. This third category is subject to a shot clock period of 90 days unless it is a small cell facility, which is subject to 60 days. If a collocation facility application does not meet the prerequisites under Government Code Section 65850.6, then it is subject to a 60-day shot clock period for small cells or 90-day period for all others.
- The fourth category is for requests made under Section 6409(a) for modifications or collocations that do not constitute a “substantial change” to the existing facility (as that term is defined under federal law). Such requests must be approved by the City within a 60-day period or are deemed granted under federal law.

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

1. Use Permit and Conditions of Approval (Sections 5.30.040 and 5.30.090)

All wireless telecommunications facilities (including small cells mounted on utility poles and cell towers on parcels of property) require a use permit approved by the Planning Commission (with the exception of modifications/collocations subject to Section 6409(a)). A permit determination of the Planning Commission may be appealed to the City Council. A use permit for a wireless telecommunications facility may be obtained within any zoning district, with the exception of residential zones and the Plaza Retail Overlay District. Use permit proceedings under Section 19.54.040 shall apply in addition to the new chapter. A use permit will have a maximum term of 10 years. Conditions of approval for a use permit include: 1) written certification that the facility meets the Federal Communications Commission (FCC) RF (radiofrequency) emissions standards (failure to comply with this condition shall be grounds for revocation); 2) post a performance bond with the City to assure maintenance, removal, and landscaping obligations; and 3) defend, indemnify and hold the City harmless for approval of the facility or claims related to the facility if within the public right-of-way.

2. Applications and Exceptions (Sections 5.30.050 and 5.30.120)

Applications for wireless telecommunications facilities require the following non-inclusive list of submittals in order to be complete and proceed to a determination:

- a) Photographs, visual impact analysis, and detailed site and engineering plans;

- b) Master plan of all facilities reasonably anticipated to be constructed within two years of the submittal of the application. The City may not accept applications that are not consistent with the master plan previously submitted unless the applicant demonstrates need or materially changed conditions which could not have been reasonably anticipated within the two-year period;
- c) Written documentation demonstrating a good faith effort to locate the facility in the least intrusive location and screened to the greatest extent feasible;
- d) RF exposure compliance report prepared and certified by an RF engineer that certifies the proposed facility meets the federal RF standards and exposure limits;
- e) Notice to owners of all properties within 500 feet of the application;
- f) Indemnification agreement to indemnify City in any proceeding to challenge approval of the facility.

Also, the applicant would be required to hold a community meeting at least two weeks prior to the planning commission hearing on the use permit.

In addition, an applicant believing that it is entitled to any exception to the regulations and standards established under the ordinance under state or federal law must make its request for the exception being claimed at the time of the application and include an analysis of the availability and feasibility of other alternatives, as well as, a description of the need for the exception and analysis of how the need would be met by the exception.

3. Design and development standards (Section 5.30.070 through 5.30.080)

Several design and development standards are established by the ordinance, including yard setback requirements that would otherwise be applicable under the applicable zoning regulations, noise standards, antenna height, pole height and width limitations, and the placement of accessory equipment within an underground vault to the greatest extent feasible.

Additionally, each pole-mounted wireless telecommunications facility may not be less than 1,500 feet apart.

4. Wireless Telecommunications Facilities Covered Under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act (Section 5.30.130)

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

5. Collocation Facilities Covered under CA Government Code Section 65850.6 (Section 5.30.140)

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

6. Additional requirements

Additional regulations are established throughout the remainder of the ordinance including business license and encroachment permit requirements, emergency deployment, operation and maintenance standards, permit expiration, revocation, cessation of use/abandonment, removal of equipment.

Environmental Review

The proposed ordinance is exempt from the California Environmental Quality Act (“CEQA”). The proposed ordinance does not constitute a “project” within the meaning of the California Environmental Quality Act of 1970 (CEQA) Guidelines Section 15060(c)(2) because there is no potential that small cell facility regulations will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because they have no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change to the environment. Moreover, even if the proposed ordinance comprises a project for CEQA analysis, the ordinance falls within the “common sense” CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment” because it will not allow for the development of any new or expanded wireless telecommunication facilities anywhere other than where they were previously allowed under existing federal, state and local regulations. Finally, the wireless facilities themselves are exempt from CEQA pursuant to CEQA Guidelines Section 15301, which exempts existing facilities where there is negligible or no expansion of an existing use, Section 15303, which exempts the installation of new, small equipment and facilities in small structures and Section 15305, which exempts minor encroachment permits.

City of Sonoma

ORDINANCE # _____ - 2018

AN URGENCY ORDINANCE OF THE CITY OF SONOMA AMENDING THE SONOMA MUNICIPAL CODE TO ADD CHAPTER 5.30 SUPPLEMENTING WIRELESS TELECOMMUNICATION FACILITIES REGULATIONS IN THE MUNICIPAL CODE, AND REPLACING REFERENCES TO CHAPTER 5.32 WITH CHAPTER 5.30 WITHIN TITLE 19 (INTEGRATED DEVELOPMENT REGULATIONS AND GUIDELINES) OF THE SONOMA MUNICIPAL CODE, AND FINDING THIS ACTION TO BE EXEMPT FROM ENVIRONMENTAL REVIEW UNDER CEQA GUIDELINES SECTIONS 15061(B)(3), 15301, 15303, and 15305

WHEREAS, This Ordinance is adopted as an urgency ordinance pursuant to Government Code Section 36937(b). The facts constituting the urgency are as follows:

(1) The purpose of this Ordinance is to amend the City's Municipal Code to provide uniform and comprehensive standards, regulations and permit requirements for the installation of wireless telecommunications facilities in the City's public right-of-way, in light of the Declaratory Ruling and Third Report and Order in "In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment" adopted September 26, 2018 by the Federal Communications Commission ("Order") setting new limitations on local standards for, and accelerating the processing of, the siting of small cell wireless telecommunications facilities¹ by local jurisdictions over such applications.

(2) Providers within the wireless telecommunications industry have expressed interest in submitting applications, or have already submitted applications, for the installation of "small cell" wireless telecommunications facilities in the City's public rights-of-way of the City. Other California cities have also received applications for small cells to be located within the public right-of-way.

(3) The recent FCC Order provides that all local jurisdictions must comply with various restrictions on the exercise of local aesthetic, zoning, public works, and fee restrictions when dealing with wireless installation siting applications by the effective date of the Order which is January 14, 2019. The FCC Order further provides that all agencies should be capable of fully implementing its provisions within 180 days of its adoption which was on September 26, 2018.

(4) Applications for siting of wireless facilities have grown dramatically among jurisdictions such as Santa Rosa, Hillsborough, Palo Alto, Piedmont, Rancho Palos Verdes, Monterey, Pacifica, Burlingame, and various other cities and counties located within the Bay Area as well as the State since small cell facilities became the most preferred option of wireless providers for wireless telecommunications facilities. Applications for siting of small cell facilities generally are submitted in batches for multiple locations at the same or substantially the same time and thus must all be reviewed and evaluated at the same time. The City last received applications for small cell facilities in a batch of more than ten separate applications for more than ten separate locations within the City which were all submitted on one date.

(5) The Order provides that the trend toward small cell technology to deploy 5G and other next-generation wireless services requires greater densification and pace of build out to enable

¹ The Order defines small cell wireless facilities as meeting the following conditions: 1) satisfy one of the following- a) mounted on structures no higher than 50 feet (including antennae); b) mounted on structures no more than 10% taller than other adjacent structures; or c) not extend existing structures to a height of more than 50 feet or 10%, whichever is greater; 2) antenna is no greater than 3 cubic feet in volume; 3) all other wireless equipment associated with structure is no more than 28 cubic feet in volume; 4) do not result in human exposure to RF radiation in excess of the FCC guidelines; 5) not located on Tribal lands; and 5) not require antenna registration.

widespread deployment as is sought by the wireless industry. The Order states that as much as 80% of all new deployments will entail small cell technology going forward.

(6) The Order provides that wireless providers variably estimate that the preference towards small cell facilities will likely result in ten to one hundred times the number of wireless facilities existing in the nation, and estimates of the number of small cells nationwide would grow from 150,000 this year to nearly 800,000 by year 2026. Based on estimates of small cell facilities transmitting only a few hundred feet by some providers as stated by the Order, the number of small cells could grow to as many as 25-29 per provider per square mile within the City of Sonoma alone.

(7) The Order is intended to facilitate the spread, growth, and accumulation of small cell facilities over a short period of time in order to enable deployment of technology that the Order claims will enable increased competition in healthcare, Internet of Things applications, life-saving car technologies and create jobs, possibly increasing the U.S. economy by as much as \$100 billion by speeding up the deployment of small cells by only one year. The Order reduces the “shot clock” period allowable to cities to review, comment upon, consider, and make a final determination on small cells applications for as many as 90 days for new facilities and as many as 30 days for collocated and modified facilities.

(8) Small cell wireless facilities are primarily installed within public rights-of-way and as such create significant and far-reaching local concerns in traffic and pedestrian safety, aesthetics, protection and preservation of public property, and the health, safety and welfare of the general public.

(9) Installation of small cell and other wireless telecommunications facilities within the public right-of-way can pose a threat to the public health, safety and welfare, including disturbance to the right-of-way through the installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines; land use conflicts and incompatibilities including excessive height or poles and towers; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise or lack of camouflaging of wireless facilities including the associated pedestals, meters, equipment and power generators; and the creation of unnecessary visual and aesthetic blight by failing to utilize alternative technologies or capitalizing on collocation opportunities which may negatively impact the unique quality and character of the City.

(10) The City currently regulates wireless telecommunications facilities in the public right-of-way through its telecommunications ordinance which does not focus specifically on wireless telecommunications facilities within the public right-of-way and the encroachment permit process. The existing standards have not been updated to reflect the development of current wireless telecommunications technologies, such as small cell wireless facilities and DAS systems (Distributed Antenna Systems) which are now the preferred method of providing wireless telecommunications services or necessary legal requirements for such preferred methods and wireless telecommunications facilities covered under Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, among other federal and state law requirements now applicable to local agencies. Further the primary focus of the existing telecommunications facilities regulations in the Sonoma Municipal Code is wireless telecommunications facilities located on private property, and the existing Code provisions were not specifically designed to address the unique legal and practical issues that arise in connection with wireless telecommunications facilities deployed in the public right-of-way.

(11) The lack of regulations that are specific to the siting of wireless telecommunications facilities in the public right-of-way combined with the Order's regulations to hasten the spread and development of small cell facilities would, if continued, jeopardize the health and safety of the public by allowing applications for small cell facilities to be submitted and subject to limited local siting regulations resulting from the implementation of the Order. There would not be sufficient time for the City to develop regulations specific to the siting of wireless telecommunications facilities in the public right-of-way before such applications would be made. Yet, under the new "shot clock" rules such applications would need to be approved within either 60 or 90 days of the application being submitted. Any requirements that were placed into effect by the regulations being developed by the City could not be applied to the application before such application would be approved under the new "shot clock" rules. Such a state of affairs would result in facilities being approved that are inconsistent with appropriate regulations being developed by the City in order to exercise the degree of local authority within the parameters allowable under the Order. Thus, projects would be applied for and approved by law without local authority being properly, appropriately, and within the confines of federal and state laws exercised by the City which would in turn result in potentially numerous wireless telecommunications facilities being constructed and existing without local controls for as long as the life of the facility.

(12) The Federal Telecommunications Act of 1996 preempts and declares invalid all state rules that restrict entry or limit competition in both local and long-distance telephone service.

(13) The California Public Utilities Commission (CPUC) is primarily responsible for the implementation of local telephone competition and the CPUC issues certificates of public convenience and necessity to new entrants that are qualified to provide competitive local telephone exchange services and related telecommunications service, whether using their own facilities or the facilities or services provided by other authorized telephone corporations.

(14) Section 234(a) of the California Public Utilities Code defines a "telephone corporation" as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

(15) Section 616 of the California Public Utilities Code provides that a telephone corporation "may condemn any property necessary for the construction and maintenance of its telephone line."

(16) Section 2902 of the California Public Utilities Code authorizes municipal corporations to retain their powers of control to supervise and regulate the relationships between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets by any public utility and the location of the poles, wires, mains, or conduits of any public utility on, under, or above any public streets.

(17) 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.

(18) 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.

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

(20) State and federal law have changed substantially since the City last adopted regulations for wireless telecommunications facilities in the City. Such changes include modifications to "shot clocks" whereby the City must approve or deny installations within a certain period of time. State and federal laws require local governments to act on permit applications for wireless facilities within a prescribed time period and may automatically deem an application approved when a failure to act occurs. See 47 U.S.C. § 332(c)(7)(B)(iii); 47 C.F.R. §§ 1.40001 et seq.; Cal. Gov't Code § 65964.1. The Federal Communications Commission (FCC) may require a decision on certain applications in as few as 60 days. See 47 C.F.R. § 1.40001(c)(2); see also In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Report and Order, 29 FCC Red. 12865 (Oct. 17, 2014) [hereinafter "2014 Report and Order"]; In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review, Declaratory Ruling, 24 FCC Red. 13994 (Nov. 18, 2009) [hereinafter "2009 Declaratory Ruling"]. Pursuant to FCC regulations, the City cannot adopt a moratorium ordinance to toll the time period for review for certain type of facilities, even when needed to allow the City to maintain the status quo while it reviews and revises its policies for compliance with changes in state or federal law. See 47 C.F.R. § 1.40001(c)(3); 2014 Report and Order, 29 FCC Red. at 219, 265. The City is in immediate need of clear regulations for wireless installations in the public right-of-way given the number of anticipated applications and legal timelines upon which the City must act.

(21) The public right-of-way in the City is a uniquely valuable public resource, closely linked with the City's historical, unique small-town character, as well as, its attractiveness for tourists, members of the business community, and residents alike. The reasonably regulated and orderly deployment of wireless telecommunications facilities in the public right-of-way is desirable, and unregulated or disorderly deployment represents an ever-increasing and true threat to the health, welfare and safety of the community.

(22) The regulations of wireless installations in the public right-of-way are necessary to protect and preserve the aesthetics in the community, as well as the values of properties within the City, and to ensure that all wireless telecommunications facilities are installed using the least intrusive means possible.

(23) The City finds that in light of more recent developments in federal and state law with respect to the regulation of small cell and other wireless telecommunications facilities, there is a need for the City to update its current ordinances based on current telecommunications trends, updates in laws, as well as aesthetic and location options for wireless facilities. The City Council also finds that the lack of specifically-designed standards and regulations in the Municipal Code for wireless facilities located in the public right-of-way, the increasing requests for information about the City's regulation of wireless telecommunications facilities, the inability to adopt a temporary moratorium, and the potential liabilities and negative consequences for noncompliance with state and federal regulations (including, without limitation, automatic approvals) present current and immediate threat to the public health, safety and welfare. The City Council further finds and declares that the immediate implementation of the Ordinance is necessary to preserve and protect public health, safety and welfare.

(24) The City recognizes its responsibilities under the Federal Telecommunications Act of 1996 and state law, and believes that it is acting consistent with the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health,

safety, or welfare. The City does not intend that this Ordinance prohibit or have the effect of prohibiting the provision of telecommunications service; rather, but includes appropriate regulations to ensure that the installation, augmentation and relocation of wireless telecommunications facilities in the public rights-of-way are conducted in such a manner as to lawfully balance the legal rights of applicants under the Federal Telecommunications Act and the California Public Utilities Code while, at the same time, protect to the full extent feasible against the safety and land use concerns described herein.

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

WHEREAS, adoption of this Ordinance is consistent with the City's General Plan. The City's General Plan provides goals, policies and implementation measures to preserve the high-quality design, scale, unique historical small-town character, aesthetics, scenic vistas, natural setting and resources, and environmental characteristics while also maintaining a strong and vibrant healthy economy for its local business and assuring the health and safety of the predominantly residential character of the community. Adoption of this Ordinance will provide uniform and comprehensive regulations and standards for wireless telecommunications facilities in furtherance of these goals and objectives while reducing the potentially negative impacts.

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

Section 1. The above recitals are hereby declared to be true and correct and represent the findings of the City Council of the City of Sonoma, made in the exercise of its independent judgment. Said findings are incorporated by this reference.

Section 2. The Sonoma Municipal Code is hereby amended as follows:

A. A new Chapter 5.30, entitled "Wireless Telecommunications Facilities" is hereby added to Title 5 of the Sonoma Municipal Code to read as set forth in Exhibit A to this Ordinance, which is hereby incorporated as though set forth in full herein.

Section 3. All references to Chapter 5.32 within Title 19 of this Municipal Code, including those within Tables 2-1 through 2-4, shall refer to Chapter 5.30 instead and the terms of Chapter 5.30 shall dictate whether wireless telecommunications facilities subject to this chapter are permitted within the district being referenced by that provision, except that where section 5.30.030(A)(2) is applicable or Chapter 5.30 does not apply by its own terms (such as in the case of applications that have been submitted and are neither stayed nor suspended as of the effective date of this ordinance) Chapter 5.32 shall continue to dictate whether those wireless telecommunications facilities are permitted within the district being referenced by that provision, unless otherwise provided herein.

Section 4. The City Council hereby finds that Adoption of this Ordinance will enact only minor changes in land use regulations, and it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for the development of any new or expanded wireless telecommunication facilities anywhere other than where they were previously allowed under existing federal, state and local regulations. The wireless facilities themselves are exempt from CEQA pursuant to CEQA Guidelines Section 15301, which exempts existing facilities where there is negligible or no expansion of an existing use, Section 15303, which exempts the installation of new, small equipment and facilities in small structures and Section 15305, which exempts minor encroachment permits.

The proposed Ordinance also falls within the "common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."

Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is, for any reason, deemed or held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or preempted by legislative enactment, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Sonoma hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or word thereof, regardless of the fact that any one or more sections, subsections, clauses, phrases, or words might subsequently be declared invalid or unconstitutional or preempted by subsequent legislation.

Section 6. Notice. The City clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be posted within 15 days after its passage, in accordance with Section 36933 of the Government Code.

Section 7. Effective Date. This ordinance is adopted as an urgency ordinance for the immediate preservation of the public peace, health and safety within the meaning of Government Code Section 36937(b) and therefore shall be passed immediately upon its introduction and shall become effective immediately, and shall be published in accordance with applicable provisions of law by publishing the entire Ordinance once in the Sonoma Index Tribune, a newspaper of general circulation, published in the City of Sonoma, within fifteen (15) days after its passage and adoption.

INTRODUCED, PASSED, AND ADOPTED at a regular meeting of the City Council of the City of Sonoma on this 5th day of November 2018, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Madolyn Agrimonti, Mayor

ATTEST:

Rebekah Barr, MMC, City Clerk

Exhibit A
URGENCY ORDINANCE

Chapter 5.30
WIRELESS TELECOMMUNICATIONS FACILITIES

5.30.010 Purpose

A. 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 of Sonoma. 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 to: (1) preserve and promote harmonious land uses and the public right-of-way in the City; (2) 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; (3) provide for the orderly, managed, and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules, and regulations; and (4) encourage new and more efficient technology in the provision of wireless telecommunications facilities.

B. This chapter 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 or regulation 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 state law; or (6) otherwise authorize the City to preempt any applicable federal or state law.

5.30.020 Definitions. For the purposes of this chapter, the following defined terms shall have the meaning set forth in this section unless the context clearly indicates or requires a different meaning.

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

B. "Antenna" means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals or electromagnetic waves for the provision of services, including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such devices include, but are not

limited to, directional antennas, such as panel antenna, microwave dishes, and satellite dishes; omnidirectional antennas; wireless access points (Wi-Fi); and strand-mounted wireless access points. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

C. "Base Station" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended, which defines that term as a structure or equipment at a fixed location that enables FCC- licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.40001(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, 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. The term includes, but is not limited to, 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-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii) 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 such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii).

D. "Building-mounted" means mounted to the side or facade, but not the roof, of a building or another structure such as a water tank, pump station, church steeple, freestanding sign, or similar structure.

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

F. "Collocation" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC's definition effectively means "to add" and does not necessarily refer to more than one wireless telecommunication facility installed at a single site.

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

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

I. "Existing" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which provides that a constructed tower or base station is existing for purposes of the FCC's Section 6409(a) regulations if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

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

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

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

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

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

O. "Planning director" means the City planning director or the City planning director's designee.

P. "Pole" means a single shaft of wood, steel, concrete, or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of the Sonoma Municipal Code. "Pole" does not include a City-owned pole with one or more streetlights and related equipment mounted on it that is solely operated by the City.

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

R. "Reviewing Authority" means the person or body who has the authority to review and either grant or deny a wireless telecommunications facility permit pursuant to this chapter.

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

T. "Roof-mounted" means mounted directly on the roof of any building or structure, above the eave line of such building or structure.

U. "Section 6409(a)" means Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as such law may be amended from time to time.

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

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

X. "Substantial Change" means the same as defined by the FCC in 47 C.F.R. §1.40001(b)(7), as may be amended, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC's criteria and thresholds for a substantial change according to the wireless facility type and location.

1. For towers outside the public rights-of-way, a substantial change occurs when:

a) the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or

b) the proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or

c) the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or

d) the proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.

2. For towers in the public rights-of-way and for all base stations, a substantial change occurs when:

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

3. In addition, for all towers and base stations wherever located, a substantial change occurs when:

- a) the proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the planning director; or the proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.

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

Y. "Telecommunications Tower" or "Tower" means a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and primarily used to support wireless telecommunications facility antennas.

Z. "Transmission Equipment" means the same as defined by the FCC in 47 C.F.R. §1.40001(b)(8), as may be amended, which defines that term as equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

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

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

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

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

5.30.030 Applicability

A. Notwithstanding the provisions of Chapter 5.32, this chapter applies to all wireless telecommunications facilities as follows:

1. All facilities for which applications are submitted after the effective date of this chapter shall be subject to and comply with all provisions of this chapter.

2. All facilities for which applications have been stayed or suspended as of the effective date of this chapter, except as to any provisions which, if applied, would result in any of the conditions set forth within Section 5.30.010(B).

3. All facilities, notwithstanding the date approved, shall be subject to the provisions of this chapter governing the operation and maintenance, cessation of use and abandonment, removal and restoration of wireless telecommunications facilities and wireless telecommunications collocation facilities and the prohibition of dangerous conditions or obstructions by such facilities; provided, however, that in the event a condition of approval conflicts with a provision of this chapter, the condition of approval shall control unless and until the permit is amended or revoked.

4. Additionally, all facilities, notwithstanding the date of the application, shall be subject to the appeal provisions of this chapter for any determination made by the Planning Commission on a use permit subsequent to the effective date of this chapter.

B. Titles 5 and 19, including but not limited to this chapter 5.30 and Tables 2-1 through 2-4 in Title 19, shall not apply to a wireless telecommunications facility on property that is owned by the City.

C. Notwithstanding any provision of the Sonoma Municipal Code to the contrary, provisions governing the installation of a public utility facility or accessory equipment shall not apply to wireless telecommunications facilities. This chapter 5.30 shall govern all applications for wireless telecommunications facilities in accordance with this section.

5.30.040 Wireless Telecommunications Facility Permit Required

A. Use Permit required. A use permit shall be required to locate or modify any wireless telecommunications facility in any zone within the City, including the public right-of-way, subject to the following exceptions: 1) no wireless telecommunications facility shall be permitted within a residential district, or the Plaza Retail Overlay Zone (SMC Section 19.10.030(C)(4)); 2) any application made under Section 6409(a) shall be subject to the provisions of Section 5.30.130 of this Chapter; 3) no use permit shall be required for any wireless telecommunications facility to be located or modified on property belonging to the City. No wireless telecommunications facility shall be located or modified within the City on any property, including the public right-of-way, without the issuance of a permit as required by this chapter. The use permit procedures in Section 19.54.040 of this Code shall be applicable to use permits under this chapter. Such permit shall be in addition to any other permit required pursuant to the Sonoma Municipal Code, including encroachment permits that may be required under Chapter 12.20.

B. Non-exclusive grant. No approval granted under this chapter shall confer any exclusive right, privilege, license, or franchise to occupy or use the public right-of-way of the City for delivery of telecommunications services or any other purposes. Further, no approval shall be construed as any warranty of title.

5.30.050 Application for Permit

A. Application content. All applications for a permit required by this chapter and all required submittals must be made in writing by the applicant or the applicant's authorized agent on such form as the planning director may prescribe, which shall include the following information, in addition to all other information determined necessary by the planning director as well as all other information required by the City as part of an application for a conditional use permit:

1. Full name and contact information for the facility owner, facility operator, agent (if any), and property owner, and related letter(s) of authorization of facility and/or property owner.
2. The type of facility, including a full written description of the proposed facility, its purpose and specifications.
3. A detailed site and engineering plan of the proposed facility containing the exact proposed location of the facility, created by a qualified licensed engineer and in accordance with requirements set by the planning director.
4. Photographs of facility equipment and an accurate visual impact analysis with photo simulations, including reasonable line-of-sight locations from public streets or other adjacent viewpoints, and a map that shows the photo location of each view angle.
5. Building elevations and roof plan (for building- and/or rooftop-mounted facilities) indicating exact location and dimensions of equipment proposed. For freestanding facilities, indicate surrounding grades, structures, and landscaping from all sides.
6. Proposed landscaping and/or nonvegetative screening (including required safety fencing) plan for all aspects of the facility.
7. Written documentation demonstrating a good faith effort to locate the proposed facility in the least intrusive location and screened to the greatest extent feasible in accordance with the site selection and visual impact criteria of this Chapter.
8. If the application is for a facility that will be located within the public right-of-way, the applicant shall certify that it is a telephone corporation or state the basis for its claimed right to enter the right-of-way, and provide a copy of its certificate of public convenience and necessity (CPCN), if a CPCN has been issued by the California Public Utilities Commission.
9. A written description identifying the geographic service area for the subject installation, accompanied by a plan and maps showing anticipated future installations and modifications for the following two years, in addition to the master plan described by this section.
10. A written report that analyzes acoustic levels for the proposed wireless telecommunications facility and all associated equipment including without limitation all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators in order to demonstrate compliance with chapter

9.56 (Noise). The acoustic analysis must be prepared and certified by an engineer and include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the noise contours for the proposed equipment relative to all adjacent property lines. In lieu of a written report, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.

11. If the applicant claims it requires an exception to the requirements of this chapter, all information and studies necessary for the City to evaluate that claim.

12. An application and processing fee, or (if already established) an advance reimbursable deposit in a maximum amount to be established by resolution of the City Council for the estimated cost of the City, including staff time, a consultant review as set forth in paragraph (B) of this section, other legal and third party services, and all other costs of whatever type or variety, incurred for the processing, review, commenting upon, evaluation, hearing, and consideration of the application. The planning director shall establish a reasonable deposit amount for each application that is no greater than the maximum established by the city council in accordance with this provision. In addition, the applicant shall submit a fully executed cost recovery agreement in the form provided by the City wherein the applicant agrees to replenish the deposited amount in full and fully reimburse the City otherwise where the advance deposit is insufficient to cover all of the City's costs related to the application. Where the advance deposit is insufficient to pay for the costs incurred by the City, the planning director shall invoice the applicant who shall pay the invoice in full within ten (10) calendar days after receipt of the invoice. No permit shall be issued to an applicant where that applicant has not timely paid a required fee, provided any required deposit or paid any invoice as required by this Code. A "reasonable deposit" under this paragraph shall take into consideration the scope and scale of the proposal being made by the application, the City's prior costs incurred with like or similar applications, and whether one or more exceptions are being requested by the applicant. Any portion of the deposit that is not expended by the City shall be reimbursed to the applicant upon the completion of the application and determination process.

13. An agreement in the form provided by the City that applicant agrees to defend, hold harmless and fully indemnify City, its officers, employees, agents, attorneys, and volunteers, from any claim, action or proceeding brought against the City or its officers, employees, agents, or attorneys to attack, set aside, void, or annul any such approval of the City; and/or (b) an action taken to provide environmental clearance under the California Environmental Quality Act (CEQA) by its advisory agencies, appeal boards, or City Council. This indemnification agreement shall be in a form acceptable to the City Attorney and shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and cost of suit, attorney's fees, and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the applicant, the City and/or the parties initiating or bringing such proceeding. The agreement shall also include a provision obligating the applicant to indemnify the City for all of the City's costs, fees and damages which the City incurs in enforcing the indemnification provisions of this Section. Also at the time of submitting an application, the applicant shall agree, as part of the application, to defend, indemnify and hold harmless the City, its agents, officers, employees and attorneys for all costs incurred in additional investigation of or study of, or for supplementing, redrafting, revising, or

amending any document (such as an EIR, Negative Declaration, Specific Plan, or General Plan Amendment) if made necessary by said proceeding and if the applicant desires to pursue securing such approvals and/or clearances, after initiation of the proceeding, which are conditioned on the approval of these documents. In the event that a proceeding described by this section is brought, the City shall promptly notify the applicant of the existence of the proceeding and the City will cooperate fully in the defense of the proceeding. Nothing in this section shall prohibit the City from participating in the defense of any proceeding. In the event that the applicant is required to defend the City in connection with any proceeding described in this section, the City shall retain the right to approve: (a) the counsel to so defend the City; (b) all significant decisions concerning the manner in which the defense is conducted; and (c) any and all settlements, which approval shall not be unreasonably withheld.

14. A master plan which identifies the location of the proposed facility in relation to all existing and potential locations in the city that are reasonably anticipated for construction within two years of submittal of the application. Applicants may not file, and the City shall not accept, applications that are not consistent with the master plan for a period of two years from approval of a wireless facility use permit unless: (a) the applicant demonstrates materially changed conditions which could not have been reasonably anticipated to justify the need for a wireless telecommunications facility site not shown on a master plan submitted to the City within the prior two years; (b) the applicant establishes that the application is needed to prevent the actual or effective prohibition of the provision of telecommunications wireless services under the Telecommunications Act of 1996; or (c) the applicant includes all of the documentation necessary to request an exception under Section 5.30.120.

15. A siting analysis which identifies a minimum of five other feasible locations within or outside the City which could serve the area intended to be served by the facility, unless the applicant provides compelling technical reasons for fewer than the minimum. The alternative site analysis should include at least one collocation site, if feasible.

16. Any request for exceptions to be made to the provisions of this Code pursuant to Section 5.30.120 shall be submitted at the time of the application. The request shall include an analysis as to the availability and feasibility of other alternatives to the exception(s) that are being requested and a description of the need for the exception and analysis of how the need would be met by the exception being requested.

17. An RF exposure compliance report prepared and certified by an RF engineer licensed by the State of California that certifies that the proposed facility, as well as any collocated facilities, 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 and 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 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.

18. Every applicant applying for authorization to construct, modify, or remove a wireless communications facility located on private or public property must include with its application a written authorization signed by the property owner.

19. Any other studies or information as determined to be necessary by the planning director in order to consider an application for a wireless telecommunications facility may be required.

20. In addition to any other action otherwise required by law pertaining to the process of a conditional wireless facility permit application that requires planning commission review, the applicant for which such review is being sought shall take all of the following actions:

(a) Send written notice to both the owner(s) of real property, as shown on the latest equalized assessment roll, within five hundred (500) feet of the proposed wireless telecommunications facility, and the city planning department, of the pendency of the filing of such an application, including with such notice copies of preliminary drawings of the proposed project at a scale no smaller than one inch equals sixteen feet. No application for neighborhood review will be accepted as complete unless it contains evidence acceptable to the director that such notice has been sent or such determination would otherwise be in conflict with federal or state law.

(b) Hold a community meeting at least two weeks before the date of the planning commission meeting at which the application will be heard, and invite the persons entitled to notice pursuant to subparagraph (a) to attend such meeting to discuss the proposed application. The community meeting shall be held at a location within the City. One meeting that includes all of the applications submitted on the same day shall be sufficient to satisfy this paragraph. The mock-up of the proposed project shall be erected at the subject site before the meeting. The primary location and all alternative sites shall be presented to the community as well as the reasons for the selection of the primary location. Notice of the date, time and place of such meeting shall be sent at least seven (7) days before the meeting and shall be filed with the planning department.

(c) If the hearing on the application is continued by the planning commission, the applicant is encouraged, but not required, to hold a further meeting with the persons entitled to notice pursuant to subparagraph (a) at least one week prior to the continued hearing.

(d) If a meeting pursuant to subparagraph (b) results in any modifications to the project prior to the planning commission hearing on the project, the applicant shall (1) notify the director of the proposed modifications, and (2) explain to the planning commission at the hearing on the matter any discrepancy between the project as proposed in the notice sent pursuant to subparagraph (a) and the project as presented to the planning commission.

A community meeting may be required at the discretion of the director for an application for a wireless telecommunications collocation facility under Section 5.30.140 or an eligible facility permit under Section 5.30.130.

21. All submittals required for a wireless telecommunications collocation facility under Section 5.30.140(D).

22. In the event a subsequent state or federal law prohibits the collection of any information described herein, the director is authorized to omit, modify, or add to that request from the City's application form.

B. Independent expert.

1. The planning director is authorized to retain on behalf of the City any one or more independent, qualified consultants to review any application for a permit for a wireless telecommunications facility to review the technical aspects of the application, including but not limited to the following matters:

(a) The accuracy, adequacy, and completeness of submissions,

(b) Compliance with applicable radio frequency emission standards,

(c) Whether any requested exception is necessary to avoid actual or effective prohibition of provision of wireless telecommunications services or use of the public right-of-way on a non-discriminatory basis, which may include a determination as to whether the requested exception would close a significant gap in coverage and is the least intrusive means of doing so.

(d) Technical demonstration of the unavailability of alternative sites, facility designs or configurations, and coverage analysis, and

(e) The applicability, reliability and sufficiency of analyses or methodologies used by the applicant and the validity of conclusions reached or claims made by applicant.

(f) Any other application issue or element that requires expert or specialized knowledge.

2. The applicant must pay for the cost of any review required under this section and for the technical consultant's testimony in any hearing as requested by the director and must provide a reasonable advance deposit of the estimated cost of such review with the city prior to the commencement of any work. The cost of this review shall be paid by the applicant through a deposit and cost recovery agreement pursuant to the application requirements stated within subsection A above.

5.30.055 Notice of hearing

Notwithstanding the notice of hearing provisions in Section 19.88.020, notice of a public hearing before the Planning Commission or an appeal of a Planning Commission determination before the City Council of a use permit shall be published at least once in a newspaper of general circulation in the City and mailed or delivered in accordance with Section 19.88.020 no less than ten (10) days prior to the date of the hearing.

5.30.060 Design and Development Standards for All Facilities

A. Basic requirements. The design and development standards set forth in this section apply to all wireless telecommunications facilities no matter where they are located. Wireless telecommunications facilities shall be designed and maintained so as to minimize visual, noise, and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the design and development standards in this section.

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

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

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

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

F. Landscaping. Where appropriate, facilities shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening. Additional landscaping shall be planted, irrigated, and maintained where such vegetation is deemed necessary by the City to provide screening or to block the line of sight between facilities and adjacent uses.

G. Signage. Wireless telecommunications facilities and wireless telecommunications collocation facilities shall not bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the City.

H. Lighting. No wireless telecommunications facility may be illuminated unless either specifically required by the Federal Aviation Administration or other government agency or in association with the illumination of an athletic field on City or school property. Lightning arresters and beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as telecommunications towers, lattice towers, and monopoles.

I. Noise.

1. Each wireless telecommunications facility and wireless telecommunications collocation facility shall be operated in such a manner so as to minimize any possible disruption caused by noise.

2. 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 5:00 p.m. and 8:00 a.m.

3. At no time shall equipment noise from any facility exceed 65 dbA intermittent or 55 dbA constant (Ldn or CNEL) for installations within the public right of way or an exterior noise level of 60 Ldn 50 dbA at the facility's property line if the facility is located within 100 feet of a residential dwelling unit or in excess of the applicable level established under Chapter 9.56 (Noise) if not located within 100 feet of a residential dwelling.

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

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

K. Modification. 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.

L. Pole standards. All poles, and equipment attached or mounted to poles shall comply with the standards approved by the City Engineer for poles and equipment placed within the public right-of-way, in addition to all other applicable requirements of Chapter 12.20 and this Chapter. No poles or equipment attached or mounted to poles within a public right-of-way shall be installed without an encroachment permit issued under Chapter 12.20.

5.30.070 Additional Design and Development Standards for Facilities Outside the Public Right- of-Way

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

B. No parking interference. In no event shall the installation of facilities replace or interfere with parking spaces in such a way as to reduce the total number of parking spaces below the number that is required.

C. Roof-mounted facilities. Roof-mounted facilities shall be designed and constructed to be fully concealed or screened in a manner compatible with the existing architecture of the building the facility is mounted to in color, texture, and type of material. Screening shall not increase the bulk of the structure nor alter the character of the structure.

D. Facilities mounted to a telecommunications tower. Facilities mounted to a telecommunications tower shall be located in close proximity to existing above-ground utilities, such as electrical towers or utility poles (which are not scheduled for removal or undergrounding for at least 18 months after the date of application), light poles, trees of comparable heights, and in areas where they will not detract from the appearance of the City.

1. Facilities mounted to a telecommunications tower, including, but not limited to, the attached antennas, shall be designed to be the minimum functional height and width required to adequately support the proposed facility and meet FCC requirements. The applicant shall provide documentation satisfactory to the planning director establishing compliance with this paragraph. In any event, facilities mounted to a telecommunications tower shall not exceed the applicable height limit for structures in the applicable zoning district.

2. Aside from the antenna itself, no additional equipment may be visible. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the telecommunications tower and shall be camouflaged or hidden to the fullest extent feasible without jeopardizing the physical integrity of the tower.

3. Monopole installations shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening.

4. All antenna components and accessory wireless equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background or existing architectural elements so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.

5. Monopoles shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility.

6. If a faux tree is proposed for the monopole installation, it shall be of a type of tree compatible with those existing in the immediate areas of the installation. If no trees exist within the immediate areas, the applicant shall create a landscape setting that integrates the faux tree with added species of a similar height and type. Additional camouflage of the faux tree may be required depending on the type and design of faux tree proposed.

7. Wireless telecommunications facilities requiring permits under this chapter shall not be located within any required yard setback area of the zoning district in which they are located with the exception of possible encroachment of the antenna array into airspace over said setback.

E. Accessory equipment. All accessory equipment associated with the operation of any wireless telecommunications facility shall be fully screened or camouflaged, and located in a manner to minimize their visibility to the greatest extent possible utilizing the following methods for the type of installation:

1. Accessory equipment for roof-mounted facilities shall be installed inside the building to which it is mounted or underground, if feasible. If not feasible, such accessory equipment may be located on the roof of the building that the facility is mounted on, provided that both the equipment and screening materials are painted the color of the building, roof, or surroundings. All screening materials for roof-mounted facilities shall be of a quality and design that is architecturally integrated with the design of the building or structure.

2. To preserve community aesthetics, all accessory equipment, excluding antennas, aboveground vents and the smallest possible electrical meter boxes, shall, to the greatest extent possible, be required to be located underground, flush to the finished grade, shall be fully enclosed, and not cross property lines. Equipment may include, but is not limited to, the following: meter pedestals, fiber optic nodes, radio remote units or heads, power filters, cables, cabinets, vaults, junction or power boxes, and gas generators. Wherever possible, electrical meter boxes related to wireless communications facilities shall be appropriately screened, not visible to the general public, and located in less prominent areas on public property and private property. Where it can be demonstrated that undergrounding of equipment is infeasible due to conflict with other utilities the reviewing authority may approve alternative above-grade equipment mounting when adequately screened in accordance with the following: facilities mounted to a telecommunications tower shall be visually screened by locating the equipment either within a nearby building, in an underground vault (with the exception of required electrical panels) or in another type of enclosed structure, which shall comply with the development and design standards of the zoning district in which the accessory equipment is located. Such enclosed structure shall be architecturally treated and adequately screened from view by landscape plantings, decorative walls, fencing or other appropriate means, selected so that the resulting screening will be visually integrated with the architecture and landscaping of the surroundings.

5.30.080 Additional Design and Development Standards for Facilities in the Public Right-of-Way

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

B. Right-of-way authority. An encroachment permit under Chapter 12.20 must be obtained for any work in the public right of way. Only applicants authorized to enter the public right-of-way pursuant to state or federal law or a franchise or other agreement

with the City shall be eligible for a permit to install or modify a wireless telecommunications facility in the public right-of-way.

C. Antennas.

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

D. Poles.

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

2. Pole height and width limitations:

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

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

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

3. If an applicant proposes to replace a pole in order to accommodate the facility, the pole shall match the appearance of the original pole to the extent feasible, unless another design better accomplishes the objectives of this section. Such replacement pole shall not exceed the height of the pole it is replacing by more than seven feet.

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

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

F. Location.

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

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

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

4. All cables, including, but not limited to, electrical and utility cables, between the pole and any accessory equipment shall be placed underground, if not infeasible as described within subsection H.

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

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

H. Accessory equipment. To preserve community aesthetics, all accessory equipment (with the exception of the smallest possible electrical meter boxes and any other equipment that may not be so placed) shall be placed within an underground vault whenever there are no physical or site constraints to make an underground vault infeasible, except as may be determined by the reviewing authority. Equipment which may not be placed in an underground vault shall be pole-mounted to the extent feasible. When above-ground is the only feasible location for a particular type of accessory equipment and when such accessory equipment cannot be pole-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five feet and a total footprint of 15 square feet, and shall be screened and camouflaged to the fullest extent possible, including the use of landscaping or alternate screening. Required electrical meter cabinets shall be adequately screened and camouflaged. Infeasibility under this paragraph shall not be demonstrated by mere cost to construct an underground vault or place the equipment within the vault.

I. Documentation. The applicant shall provide documentation satisfactory to the planning director establishing compliance with this section 5.30.080.

5.30.090 Conditions of Approval for All Facilities

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

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

2. Where feasible, as new technology becomes available, the permittee shall:

(a) place above-ground wireless telecommunications facilities below ground, including, but not limited to, accessory equipment that has been mounted to a telecommunications tower or mounted on the ground; and

(b) replace larger, more visually intrusive facilities with smaller, less visually intrusive facilities, after receiving all necessary permits and approvals required pursuant to the Sonoma Municipal Code.

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

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

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

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

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

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

6. At all times, the permittee shall ensure that the facility complies with the most current regulatory and operational standards including, but not limited to, radio frequency emissions standards adopted by the FCC and antenna height standards adopted by the Federal Aviation Administration.

7. Every five years a technically sufficient written report certified by a qualified radio frequency emissions engineer, certifying that the facility follows the radio frequency emissions guidelines or standards of the FCC shall be submitted to the planning director. Additionally, if at any time while the permit is in effect the planning director determines there is good cause to believe that the facility may emit radio frequency emissions that are likely to exceed FCC standards, the planning director may require the permittee to submit a report described by this section. Failure to comply with this section shall be grounds for revocation of the use permit. The report shall also include an acoustical analysis that demonstrates compliance with the noise requirements herein and with the city's Noise ordinance contained within Section 9.56 of the Sonoma Municipal Code.

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

9. Indemnification shall be made a condition of approval and shall include the following responsibilities: Permittee shall defend, indemnify, protect and hold harmless the City, its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers from and against any and all claims, actions, or proceedings against the City and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers to attack, set aside, void or annul, an approval of the City, Planning Commission or City council concerning this permit and the project. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The City shall promptly notify the permittee of any claim, action, or proceeding. Nothing contained herein shall prohibit City from participating in a defense of any claim, action or proceeding. The City shall have the option of coordinating the defense, including, but not limited to, choosing counsel for the defense at permittee's expense. The indemnification responsibilities in a condition of approval shall be at least as extensive as that set forth within Section 5.30.050(A) and shall also be inclusive of claims related to, connected with, or arising out of the construction, maintenance, operation, repair, alteration, or improvement of the wireless telecommunications facility if located within a public right-of-way.

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

11. A condition setting forth the permit expiration date in accordance with section 5.30.190 shall be included in the conditions of approval.

12. A condition setting forth the modification requirement stated within section 5.30.060(K).

5.30.100 Additional Conditions of Approval for Facilities in the Public Right-of-Way

A. In addition to compliance with the requirements of this chapter, upon approval all facilities in the public right-of-way shall be subject to each of the conditions of approval set forth in section 5.30.090, each of the following conditions of approval, and any modification of these conditions or additional conditions of approval deemed necessary by the reviewing authority:

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

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

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

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

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

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

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

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

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

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

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

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

5.30.110 Findings

A. Where a wireless telecommunication facility requires a use permit under this chapter, the reviewing authority shall not approve any application unless, in addition to

the findings generally applicable to all use permits, all of the following additional findings are made:

1. The proposed facility complies with all applicable provisions of this chapter.
2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.
3. The applicant has submitted a statement of its willingness to allow other carriers to collocate on the proposed wireless telecommunications facility wherever technically and economically feasible and where collocation would not harm community compatibility.
4. Noise generated by equipment will not be excessive, annoying nor be detrimental to the public health, safety, and welfare and will not exceed the standards set forth in this chapter.

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

1. The applicant has provided substantial written evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise or other agreement with the City permitting them to use the public right-of-way.
2. The applicant has demonstrated that the facility will not interfere with the use of the public right-of-way, existing subterranean infrastructure, or the City's plans for modification or use of such location and infrastructure.

5.30.120 Exceptions

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

1. Denial of the facility as proposed would violate federal law, state law, or both; or
2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.

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

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

D. The applicant shall have the burden of proving that denial of the facility as proposed would violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both, using the evidentiary standards required by that law at issue. The City shall have the right to hire one or more independent consultants, at the applicant's expense in accordance with the deposit and cost recovery agreement requirements of Section 5.30.050, to evaluate the issues raised by the exception request and shall have the right to submit rebuttal evidence to refute the applicant's claim.

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

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

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

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

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

D. Other Regulatory Approvals. No collocation or modification approved under any section 6409(a) approval may occur unless the applicant also obtains all other applicable permits or regulatory approvals from the City and state or federal agencies.

Furthermore, any section 6409(a) approval granted under this chapter shall remain subject to any and all lawful conditions or requirements associated with such other permits or regulatory approvals from the City and state or federal agencies.

E. Application Requirement. The City shall not approve any wireless facility subject to this chapter except upon a duly filed application consistent with this Section and any other written rules the City or the planning director may establish from time to time. An application must include the information required by Section 5.30.050 and the following additional information:

1. A title report prepared within the six months prior to the application filing date in order for the City to verify the property owner's identity. If the applicant does not own the subject property, the application must include a written authorization signed by the property owner that empowers the applicant to file the application and perform all wireless facility construction, installation, operation and maintenance to the extent described in the application.

2. A written statement that explains in plain factual detail whether and why Section 6409(a) and the related FCC regulations at 47 C.F.R. § 1.40001 et seq. require approval for the specific project. A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met. Bare conclusions not factually supported do not constitute a complete written analysis. As part of this written statement the applicant must also include (i) whether and why the support structure qualifies as an existing tower or existing base station; and (ii) whether and why the proposed collocation or modification does not cause a substantial change in height, width, excavation, equipment cabinets, concealment or permit compliance.

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

1. Pre-Submittal Conference. Before application submittal, applicants must schedule and attend a pre-application meeting with the planning director for all proposed modifications submitted for approval pursuant to Section 6409(a). The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification, including whether the project qualifies for Section 6409(a); any latent issues in connection with the existing tower or base station; potential concealment issues (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback about whether such applications or other materials may be incomplete or unacceptable. The planning director may, in the planning director's discretion, grant a written exemption to the submittal appointment under Section 5.30.130(F)(2) or for a specific requirement for a complete application to any applicant who (i) schedules, attends and fully participates in any pre-submittal conference and (ii) shows to the planning director's satisfaction that such specific requirement duplicates information already provided in other materials to be submitted or is otherwise unnecessary to the City's review under facts and circumstances in that particular case. Any written exemption will

be limited to the project discussed at the pre-submittal conference and will not be extended to any other project.

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

3. **Appointment Scheduling Procedures.** For any event in the submittal process that requires an appointment, applicants must submit a written request to the planning director. The planning director shall endeavor to provide applicants with an appointment as soon as reasonably feasible and within five business days after a written request is received.

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

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

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

the 60th day after the date the application was filed unless the applicant withdraws the application.

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

1. Involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
2. Does not substantially change the physical dimensions of the existing wireless tower or base station.

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

1. Does not satisfy the criteria for approval;
2. Violates any legally enforceable standard or permit condition reasonably related to public health and safety then in effect; or
3. Involves the replacement of the entire support structure.

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

K. Appeals. Notwithstanding any provision of the Sonoma Municipal Code to the contrary, including but not limited to Chapter 19.84 and any other section of this Chapter, an applicant may appeal a decision by the planning director to deny without prejudice a Section 6409(a) application. The appeal must be filed within 10 days from the planning director's decision. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The City Manager shall serve as the appellate authority for all appeals of all actions of the planning director taken pursuant to this section. The City shall provide notice for an administrative hearing by the City manager. The City Manager shall limit its review to whether the project should be approved or denied in accordance with the provisions in paragraphs (H) and (I) of this section. The decision of the City manager shall be final and not subject to any further administrative appeals.

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

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

2. **Permit Term.** The City's grant or grant by operation of law of a Section 6409(a) approval constitutes a federally-mandated modification to the underlying permit or other prior regulatory authorization for the subject tower or base station. The City's grant or grant by operation of law of a section 6409(a) approval will not extend the permit term, if any, for any conditional use permit, or other underlying prior regulatory authorization. Accordingly, the term for a section 6409(a) approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station.

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

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

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

6. **Maintenance Obligations; Vandalism.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in

accordance with the Approved Plans and all conditions in this section 6409(a) approval. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

7. Compliance with Laws. The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("Laws") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this section 6409(a) approval. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws.

8. Adverse Impacts on Other Properties. The permittee shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's construction, installation, operation, modification, maintenance, repair, removal or other activities at the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines on any day and at any time prohibited under the Sonoma 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. The planning director may issue a stop work order for any work that violates this condition.

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

10. Inspections; Emergencies. The permittee expressly acknowledges and agrees that the City or its designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the City or its designee may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee will be permitted to supervise the City or its designee while such inspection or emergency access occurs.

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

12. Indemnification. The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, employees and volunteers from any and all (1) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("Claims") brought against the City or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the City's approval of this section 6409(a) approval, and (2) other Claims any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this section 6409(a) approval or the wireless facility. In the event the City becomes aware of any Claims, the City will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this section 6409(a) approval, and that such indemnification obligations will survive the expiration or revocation of this section 6409(a) approval.

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

14. Record Retention. The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.

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

5.30.140 Wireless Telecommunications Collocation Facilities Covered Under California Government Code Section 65850.6

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

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

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

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

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

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

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

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

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

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

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

3. A wireless telecommunications collocation facility permit shall not be approved unless an environmental impact report, negative declaration, or mitigated negative declaration was prepared and approved for the wireless telecommunications collocation facility.

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

1. The wireless telecommunications collocation facility:

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

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

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

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

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

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

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

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

G. Appeals. Notwithstanding any provision of the Sonoma Municipal Code to the contrary, including but not limited to Chapter 19.84 and any other section of this Chapter, any applicant may appeal a decision by the planning director. The appeal must

be filed within 10 days from the planning director's decision. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The City manager shall serve as the appellate authority for all appeals of all actions of the planning director taken pursuant to this section. The City shall provide notice for an administrative hearing by the City manager. The City manager shall limit its review to whether the project should be approved or denied in accordance with the provisions in this section. The decision of the City manager shall be final and not subject to any further administrative appeals.

5.30.150 Business License

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

5.30.160 Emergency Deployment

In the event of a declared federal, state, or local emergency, or when otherwise warranted by conditions that the planning director deems to constitute an emergency, the planning director may approve the installation and operation of a temporary wireless telecommunications facility (e.g., a cell on wheels or "COW"), which is subject to such reasonable conditions that the planning director deems necessary.

5.30.170 Operation and Maintenance Standards

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

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

B. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:

1. General dirt and grease;
2. Chipped, faded, peeling, and cracked paint;
3. Rust and corrosion;
4. Cracks, dents, and discoloration;
5. Missing, discolored, or damaged artificial foliage or other camouflage;
6. Graffiti, bills, stickers, advertisements, litter and debris;

7. Broken and misshapen structural parts; and

8. Any damage from any cause.

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

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

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

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

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

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

5.30.180 No Dangerous Conditions or Obstructions Allowed

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

5.30.190 Permit Expiration

A. A permit for any wireless telecommunications facility shall be valid for a period of 10 years, unless the Planning commission authorizes a longer period or pursuant to

another provision of the Sonoma Municipal Code the permit lapses sooner or is revoked. At the end of such period, the permit shall expire.

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

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

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

2. If the planning director determines that the facility is nonconforming or that additional conditions of approval are necessary to bring the facility into compliance with the provisions of the Sonoma Municipal Code that are then in effect at the time of permit expiration, the planning director shall refer the extension request to the Planning commission.

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

5.30.200 Cessation of Use or Abandonment

A. A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for 90 or more consecutive days. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.

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

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

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

3. Calling of any bond or other assurance required by this chapter or conditions of approval of the permit;
4. Removal of the facilities by the City in accordance with the procedures established under the Sonoma Municipal Code for abatement of a public nuisance at the owner's expense; and
5. Any other remedies permitted under the Sonoma Municipal Code.

5.30.210 Revocation.

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

B. Revocation procedures.

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

2. If after notice and opportunity to show that no noncompliance ever occurred or to cure the noncompliance, the permittee fails to cure the noncompliance, the city council shall conduct a noticed public hearing to determine whether to revoke the permit for uncured noncompliance. The permittee shall be afforded an opportunity to be heard and may speak and submit written materials to the City Council. After the noticed public hearing, the City Council may revoke or suspend the permit when it finds that the permittee had notice of the noncompliance and remained in noncompliance with an enforceable permit, permit condition or law applicable to the facility. Written notice of the city council's determination and the reasons therefor shall be dispatched by certified U.S. mail, return receipt requested, to the permittee's last known address. Upon revocation, the city council may take any legally permissible action or combination of actions necessary to protect public health, safety, and welfare.

5.30.220 Removal and Restoration, Permit Expiration, Revocation or Abandonment

A. Permittee's removal obligation. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the permit or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the City. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the City. The facility shall be removed from the property within 30 days, at no cost or expense to the City. If the facility is located on private property, the private property owner shall also be independently responsible for the expense of timely removal and restoration.

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

1. Prosecution;
2. Calling of any bond or other assurance required by this chapter or conditions of approval of permit;
3. Removal of the facilities by the City in accordance with the procedures established under the Sonoma Municipal Code for abatement of a public nuisance at the owner's expense; or
4. Any other remedies permitted under the Sonoma Municipal Code.

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

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

5.30.230 Effect on Other Ordinances

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

5.30.240 Effect of State or Federal Law

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

5.30.250 Appeals

Except as may be otherwise provided by this Chapter, any planning commission determination on the issuance, modification, revocation, or extension of a use permit may be appealed to the city council under, and in accordance with, the provisions of Chapter 19.84.