



SAN RAFAEL
THE CITY WITH A MISSION

Agenda Item No:

Meeting Date: December 17, 2018

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development Department

Paul A. Jensen

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Community Development Director

City Manager Approval: _____

AS

TOPIC: REGULATIONS AND PROCEDURES FOR SMALL WIRELESS FACILITIES

SUBJECT: URGENCY ORDINANCE AMENDING THE SAN RAFAEL MUNICIPAL CODE TITLE 14 (ZONING) AND ACCOMPANYING POLICY RESOLUTION TO ESTABLISH PROVISIONS AND PROCEDURES FOR REGULATING THE PLACEMENT OF SMALL WIRELESS FACILITIES

RECOMMENDATION:

Conduct a public hearing and adopt an urgency ordinance and policy resolution establishing application and review procedures for installation of small wireless facilities.

BACKGROUND:

On September 26, 2018, the Federal Communications Commission (FCC) adopted a [Declaratory Ruling and Third Report and Order](#) geared toward speeding up the deployment of small wireless facilities in the public right-of-way (hereafter, the "FCC ruling"). The FCC ruling, which will go into effect January 14, 2019, sets forth limitations on state and local government regulation of small wireless facilities that are placed on existing or new utility poles and street light standards located in the public right-of-way and private property. The FCC ruling clarifies and more specifically restricts the authority of state and local governments to regulate small wireless facilities in the public right-of-way. This ruling is significant in that there are several nuances in small "cell" wireless facilities technology and application, which set them apart from other wireless communication facilities. On December 10, 2018, the FCC denied local governments' motion for a "stay" (essentially a freeze) on the regulations but ruled that aesthetic restrictions would not go into effect until April 14, 2019. Therefore, it remains prudent for the City to address this matter as soon as possible.

On December 3, 2018, City Council was provided a [comprehensive report](#) covering the FCC ruling, the City's current regulations for wireless communication facilities and recommended approaches for addressing small wireless facilities. A presentation was made by Michael Johnston, attorney (Telecom Law Firm) who summarized the implications of the FCC ruling and responded to detailed questions. In addition, staff presented possible text amendments to the San Rafael Municipal Code ("SRMC") (Title 14, Zoning) and a draft policy resolution to establish regulations and procedures for small wireless facilities.

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

Forty (40) community members provided public comment on this topic. Following public comment and deliberation, the City Council directed staff to meet with the Council's subcommittee on small wireless facilities to: 1) evaluate possible changes to the draft policy resolution; and 2) return to the Council with an urgency ordinance and a final, draft policy resolution. As part of this action, the City Council directed staff to evaluate the public comments and review the following information in considering further changes to the draft policy resolution:

- The Town of San Anselmo Wireless Facilities Ordinance;
- The Town of Burlington (Massachusetts) Policy on Small Wireless Facilities Installation; and
- 23-point list of recommendations presented to the Town of Fairfax from "5G-Free Marin." for the City to consider in establishing regulations for small wireless facilities (Attachment 3).

On December 5, the City Council subcommittee (Councilmembers Colin and McCullough) met with City staff and attorney Michael Johnston to discuss the above documents and possible changes to the draft policy resolution. The subcommittee discussed the pros and cons of numerous, additional standards as well as the recommendations presented by members of the public. This extra time also allowed staff to work with Michael Johnston to refine the policy resolution language to include a greater level of detail in the definitions, application submittal requirements, and overall review process. As a result, changes have been made to the draft policy resolution to include the following:

- A re-drafting of the policy language;
- Establishing a 500-foot setback from residential districts;
- Establishing a 500-foot separation between small wireless facilities;
- Requiring a public notice to properties within 500 feet of any proposed facility; and
- Requiring an expanded review process for applications that do not meet the setback and separation requirements.

The subcommittee also recognized that the policy resolution would serve as a measure for evaluating applications, but that there is an expectation that this document may need to change over time. The ability to make changes to the policy resolution is needed for several reasons:

- Litigation has been filed challenging the FCC ruling. It is unclear whether the courts will issue a "stay" of the FCC ruling pending a final decision by the courts on the litigation. If there is a stay, the City will likely also put a hold on issuing approvals for small wireless facilities.
- As staff becomes more familiar with processing applications for small wireless facilities, the procedures and regulations presented in the policy resolution may need to be amended to ensure an effective review process and standards. If changes are necessary, staff will likely provide the City Council with an update and possible amendments to the policy resolution that address any challenges experienced in the review process that will be established as part of the adopted policy.

ANALYSIS:

Staff has prepared an urgency ordinance and special procedures and regulations (including objective aesthetic standards) covered in a draft policy resolution for administering such facilities. These documents are intended to assure the City is prepared to evaluate new applications for small wireless facilities when the FCC ruling goes into effect. The urgency ordinance and policy resolution are attached (Attachments 1 and 2). The procedures and regulations have been updated to: 1) consider the public comments; 2) include some of the 23-point recommendations presented to the Town of Fairfax by "5G-Free Marin;" 3) address the direction from the City Council received at the December 3rd meeting; 4) and

incorporate the recommendations of the City Council subcommittee meeting held on December 5. The following is a summary of the draft urgency ordinance and resolution (see Attachments 1 & 2):

Urgency Ordinance

Ordinarily, to adopt an ordinance the City Council must approve introduction of the ordinance at a first meeting, and then finally adopt it at a second meeting not less than 5 days later. Additionally, once adopted, the ordinance normally will not become effective for 30 days. Using that procedure to adopt the attached ordinance would mean that it would not become effective until late February. Staff has concluded that there are important reasons for the City to have local small wireless facility regulations in place prior to the January 14, 2019 effective date of the FCC ruling,

Government Code Section 36937(b) authorizes a city council to adopt at a single meeting an “urgency” ordinance that will take effect immediately, in cases where the council makes findings that it is required “for the immediate preservation of the public peace, health or safety” and the ordinance is passed by a four-fifths (4/5) vote of the city council. Staff is recommending that the Council adopt the attached ordinance as an urgency ordinance pursuant to this statute. Therefore, the proposed ordinance contains findings of fact setting forth why an urgency ordinance is necessary, and if adopted by a four-fifths (4/5) vote of the City Council, the ordinance will go into effect immediately.

The urgency ordinance would make the following amendments to the City’s Municipal Code:

1. Amend SRMC Title 14 (Zoning), Section 14.03.030 (Definitions) to add a new definition for “small wireless facility.” This definition would mirror the definition established by the FCC.
2. Amend SRMC Section 14.16.360 (Wireless Communication Facilities) to specifically include small wireless facilities as part of the mix of wireless communication facilities.
3. Add new SRMC Section 14.16.361 (Small Wireless Communication Facilities). The text for this new section acknowledges that small wireless facilities in the public right-of-way are unique and subject to additional provisions and standards adopted by separate resolution of the City Council (policy resolution).

Policy Resolution

The proposed policy resolution has been significantly revised from the initial draft to set forth policies, procedures, standards and limitations for small wireless facilities to include the following key sections:

1. *Definitions*- includes definitions used in the application and review process. For clarity, this section provides FCC-mandated definitions specifically related to small wireless facilities.
2. *Required permits*- requires a “Small Cell Permit” for all small wireless facilities. Although initially recommended by staff, an Administrative Design Review has been eliminated because the required findings for this permit would introduce subjectivity that is expressly preempted by the FCC ruling. In place of Administrative Design Review, all requests would be evaluated based on a set of objective criteria outlined in the policy resolution, and decisions would be based on a list of required findings that require confirmation of compliance with the criteria.
3. *Application and Review Procedures Requirements*– establishes the application submittal requirements and process for efficient review of applications including procedures for reviewing batched or grouped applications. While staff initially recommended procedures identifying the possibility of accepting a “batched” application of 10 similar facilities to be submitted at one time, this number has been reduced to allow review of 5 similar facilities to be submitted as part of one

batched application. However, even with this change, the FCC ruling does not allow the local jurisdiction to set limits on precluding simultaneous filings of multiple batched applications.

4. *Public Notice Process*- establishes a public noticing process. While a public noticing process was not previously proposed, staff believes that such a noticing process would be a necessary form of disclosure to the community about impending, nearby installation and construction work. This noticing requirement is similar to the community outreach that is sometimes done for certain types of City improvement projects. The process requires a mailed public notice to all properties and record owners within 500 feet of the proposed location (500-foot radius measured laterally from the right-of-way). The notice would provide a 10-day noticing period for written public comment, which is intended to assist staff in its determination on whether the proposed facility would comply with all the applicable standards in the policy. It should be noted that this noticing process would not include a public hearing. Considering the shot clock deadlines, even factoring in a staff-level Zoning Administrator hearing with the processing steps would mean that the City would likely be unable to comply with these deadlines.
5. *Appeals Process*- requires appeals be directly referred to the City Council. A direct appeal to the City Council is necessary given the shot clock time limits imposed by the FCC. The policy language limits City Council appeals of individual permit applications to whether the application complies with the required findings for approval in Section 7(c) – design standards, location, support structure type, etc. Please note that the policy is drafted so that no appeals will be permitted to the extent that the appeal is based on the effects from RFR emissions that comply with all applicable FCC regulations. As discussed in the December 3, 2018 staff report, the recent FCC ruling made no changes in the 1996 Telecommunications Act related to a local jurisdiction's ability to regulate or enforce radio frequency (RFR) emission limits on small wireless facilities or any other wireless communication facility. Therefore, the City has no authority to approve or deny a small wireless facility application on the basis of health risks unless such facility exceeds the FCC standards for public exposure.
6. *Most Preferred, Less Preferred and Least Preferred Locations*- establishes a list of most preferred (commercial/industrial/public-quasi-public) versus least preferred locations (residential). The policy retains the proposed provision to limit installation of small wireless facilities in parks/open space and residential districts (least preferred locations) on or along major or minor arterial roads (as defined by General Plan 2020 Exhibit 22); The policy authorizes the City to deny any application in a residential zoning district, when the small wireless facility is not located along an arterial or minor arterial road, unless the applicant can show by clear and convincing evidence that a more-preferred location is not technically feasible.

The policy states preference for facilities to be installed on existing streetlights to enhance concealment opportunities. Wood utility poles are subject to physical limitations (wood is solid, and cabling cannot be routed through the pole) and additional CPUC safety regulations (minimum separation distances from the pole and from communications and electrified lines) that make blending and camouflaging more difficult.

The policy statement applies to small wireless facilities in the public right-of-way and on private property as the FCC ruling applies to both locations.

7. *Setback/buffer requirements*- establishes a 500-foot buffer from residential districts. This policy authorizes the City to deny an application that does not meet this requirement. However, if an applicant demonstrates with clear and convincing evidence in the written record that any other more preferred location is technically infeasible, the setback/buffer is waived.

8. *Separation requirements* – requires a 500-foot separation between poles for new installation. This number was increased from the 300 feet that previously recommended. If installed on existing utility poles or light standards, waive the separation requirement if the antenna and boxes are concealed in a canister or are flush-mounted on the pole.
9. *Dimensional and stealth design requirements*- establishes design requirements that are similar to what was previously required for antennas and recommendations for undergrounding of associated structures. However, the language now provides opportunities for pole mounting of associated equipment when it can be appropriately integrated into a shroud or pedestal at the base of the pole. The draft policy sets forth similar design standards for each element of the proposed facility and provides volumetric requirements for each piece of equipment that is more consistent with local preferences – maximum of 17 cubic feet for accessory equipment rather than the FCC definition of 28 cubic feet. Please note that it is staff's intent to further assess the design standards and return to the City Council in the near future with additional or more specific standards.
10. *Conditions of Approval*- provides standard conditions of approval that automatically attach to any permit and govern the operation and maintenance standards for each small wireless facility. One standard condition requires the permittee to cooperate with all the City's efforts to maintain compliance with the FCC's RF exposure rules and guidelines.
11. *Height limits*- a height standard requiring a clearance of equipment installation of a minimum of 10 feet from grade and not to exceed 10 feet above the existing pole.
12. *Signage*- limits signage to only signage required by the FCC.
13. *Shot-clock/processing deadlines*- establishes review and action timelines consistent with the FCC ruling. The FCC ruling for small wireless facilities requires that an application action must be made within 60 days of application filing for co-locations and 90 days of application filing for new structures. Staff is concerned that compliance with the shot-clock deadlines will be challenging. While the application process has been crafted to incorporate a direct appeal of action to the City Council, the prescribed and required steps in the application review process (application review for completeness, referrals, report writing, notifications, public meeting scheduling, public hearing) has the potential to extend beyond these FCC deadlines. Considering the processing steps, staff cannot guarantee that the shot-clock deadlines will be met with every application.
14. *Fees*- As discussed above, the FCC ruling sets limits on the fees that can be charged on small wireless facility applications in the public right-of-way. An assessment of the City's current fees relative to their application for small wireless facilities in the public right-of-way is discussed under the Fiscal Impact section of this report.

With adoption of an urgency ordinance and associated policy resolution, the City will be prepared to process applications for small wireless facilities when the FCC ruling becomes effective.

Environmental Review

Pursuant to California Environmental Quality Act ("CEQA") Guidelines § 15378 and California Public Resources Code § 21065, the adoption of the urgency ordinance and policy resolution is not a "project" because their adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Alternatively, if the adoption does constitute a project under CEQA, it is one that qualifies for an Exemption from the provisions of CEQA Guidelines

pursuant to Sections 15183(a) because it entails a project that can be found consistent with the General Plan policies and pursuant to 15061(b)(3), Review for Exemptions, which states that as a 'general rule' CEQA applies only to projects which have the potential to cause a significant, physical environmental effects. Regarding health hazards and review of individual small wireless facility applications, the City is not precluded from requiring CEQA review. However, the City cannot make RF-based decisions under CEQA to the extent that RFR emissions comply with the FCC's RFR regulations.

COMMUNITY OUTREACH:

Notice of this meeting was mailed to a list of stakeholders 15 days prior to the December 3, 2018 City Council meeting. In addition, while public notice for an urgency ordinance is not required, a 10-day notice of the December 17, 2018 City Council hearing on this matter was published in the Marin Independent Journal and notice was mailed to the list of stakeholders previously notified (see Attachment 5 for meeting notice).

FISCAL IMPACT:

The proposed adoption of an urgency ordinance and resolution has no direct fiscal impact on the City of San Rafael. However, the fees that are charged (both non-recurring and recurring) for small wireless facility applications could have a fiscal impact on the City. Per the FCC ruling, the fees charged by the City for small wireless facilities must be fair and reasonable. As reported in the December 3 City Council report, the FCC conducted a survey of 20 local jurisdictions finding that the following fee levels comply with this "fair and reasonable" standard:

- \$500.00 for non-recurring fees,¹ including a single, up-front application for up to five small wireless facility sites, with an additional \$100.00 for each additional small wireless facility site beyond the initial five sites.
- \$1,000 for non-recurring fees for a new pole to support one or more small wireless facility.
- \$270.00 per year for all recurring fees² including any right-of-way access fee (e.g., encroachment permit) or fee for attachment to a municipality-owned structure in the public right-of-way.

The FCC ruling states that, in limited circumstances, a state or local agency can charge fees higher than the above fees provided that: a) they are a reasonable approximation of the costs; b) the costs themselves are reasonable; and c) they are not discriminatory.

The "non-recurring" fees that are presented in the FCC survey (discussed above) are not enough to cover the staff costs for the Planning review process and the one-time, \$246.00 construction-related Encroachment Permit (administered by Public Works). The current wireless communication fees charged by the City are based on a 2011 Cost of Services Study, which found that: a) the Administrative Design Permit fee of \$1,167.00 represents 97% cost recovery (staff time to process and administer the application); b) the \$398.00 Telecommunication Fee represents 100% cost recovery; and c) the more significant permits for new antennas/structures (\$2,258.00/\$4,693.00 for Environmental and Design Review Permit) cover approximately 80-85% of City staff time. The \$246.00 fee for a construction-related Encroachment Permit ("non-recurring" fee) is also 100% cost recovery. However, as proposed, if the Planning process for small wireless facilities is limited to a Small Cell Permit (fee of \$398.00 coupled with the \$246.00 Encroachment Permit), the cost for service would not be recovered. Section 8(a)(16) of the policy resolution (Attachment 2) recommends that the applicant be subject to covering "cost reimbursement."

¹ A non-recurring fee is akin to the Planning application fees such as an Administrative Design Review Permit

² A recurring fee would be akin to an annual fee charged for the encroachment into the public right-of-way

The Planning Division currently administers a cost reimbursement (cost recovery) program for deposit-based Planning applications (including several of those applications referenced above). Therefore, it is recommended that this current cost reimbursement program be administered for all small wireless facility applications requiring: a) a \$2,000 deposit; and b) a signed written statement that acknowledges that the applicant will be required to reimburse the City of reasonable cost of processing the application. Unused deposit amounts would be reimbursed to the applicant. This cost reimbursement program is also suitable in the event an independent contractor is hired by the City. To ensure that applications can be processed within the time limits established by the FCC, it may be necessary for the City to hire an independent consultant to complete this service.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Adopt the attached an urgency ordinance and resolution.
2. Direct staff to return with more information.
3. Take no action.

RECOMMENDED ACTION:

Adopt the attached urgency ordinance and resolution.

ATTACHMENTS:

1. Urgency Ordinance for small wireless facilities
2. Resolution (containing regulations, standards and permitting)
3. 23-point list of recommendations presented to the Town of Fairfax from "5G-Free Marin"
4. Public hearing notice
5. Community comments and correspondence received to date

ORDINANCE NO. _____

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL,
PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 36937(b),
AMENDING TITLE 14 ("ZONING") OF THE SAN RAFAEL MUNICIPAL CODE**

THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

DIVISION 1. FINDINGS

WHEREAS, Government Code Section 36937(b) authorizes the adoption of an urgency ordinance for the immediate preservation of the public peace, health or safety; and

WHEREAS, the City Council of the City of San Rafael deems it necessary to adopt an urgency ordinance pursuant to Government Code Section 36937(b) to add regulations to the San Rafael Municipal Code to regulate the placement of small wireless facilities in the public rights-of-way, finding the urgency to do so based upon the following facts:

1. The global wireless telecommunications industry has developed and is starting to install "small wireless facilities" primarily in public rights-of-way. Small wireless facilities are designed to accommodate "5G" technology. Wireless telecommunications providers have made inquiries with the City of San Rafael and other California cities about installing small wireless facilities in San Rafael's rights-of-way, and some other California cities are already receiving applications for such facilities.
2. The Federal Telecommunications Act of 1996 preempts and declares invalid all state and local rules that restrict entry or limit competition in both local and long-distance telephone service, and the Federal Communications Commission has adopted regulations for the implementation of that Act.
3. The City of San Rafael currently regulates wireless telecommunications facilities pursuant to San Rafael Municipal Code ("SRMC") Title 14 ("Zoning"), Section 14.16.360, which was last revised in 2014. Among other provisions, these regulations impose design, height, general location and other standards for installation of wireless facilities primarily on private property, establish ministerial and discretionary review processes, and require submittal of reports regarding radiofrequency emissions and alternative sites.
4. 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.
5. 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.

6. On September 26, 2018, the Federal Communications Commission adopted its “Declaratory Ruling and Third Report and Order” (hereafter, the “FCC Ruling”) expressly to “*reduce regulatory barriers to the deployment of wireless infrastructure and to ensure that our nation remains the leader in advanced wireless services and wireless technology.*” (FCC Ruling, ¶29.) The FCC Ruling is intended to facilitate the spread, growth, and accumulation of small wireless facilities over a short period of time in order to enable deployment of technology that the FCC Ruling claims will enable increased competition in healthcare, Internet of Things applications, lifesaving car technologies, and creation of jobs.
7. Small wireless facilities are primarily installed within public rights-of-way and as such create significant and far-reaching local concerns about traffic and pedestrian safety, land use conflicts and incompatibilities including excessive height of poles and towers; creation of visual and aesthetic blights arising from excessive size, heights, noise or lack of camouflaging of wireless facilities including the associated pedestals, meters, equipment and power generators, and protection and preservation of public property, all of which may negatively impact the unique quality and character of the City and the public health, safety and welfare thereof. Accordingly, regulating the installation of small wireless facilities in the public right-of-way is necessary to protect and preserve the aesthetics in the community, as well as the values of properties within the City, and to ensure that all wireless telecommunications facilities are installed using the least intrusive means possible.
8. The FCC Ruling, which will go into effect on January 14, 2019, sets forth new limitations on state and local government regulation of small wireless facilities that are placed on existing or new utility poles and street light standards located in the public right-of-way. Specifically, the FCC Ruling: a) limits the level of local permitting and discretion; b) establishes new shorter “shot clock” rules (e.g., time limits and deadlines) for processing and action on local permits; and c) limits the fees that can be charged for the facilities.
9. The current regulations in SRMC Section 14.16.360 are primarily focused on 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 deployment of small wireless facilities in the public right-of-way pursuant to the new limitations established in the FCC Ruling.
10. Without the immediate implementation through an urgency ordinance of regulations specific to the siting of small wireless facilities in the public right-of-way, the City Council will be unable to adopt and implement such regulations before the January 14, 2019 effective date of the FCC Ruling. The consequence will be that under the new “shot clock” rules, applications submitted at that time will need to be approved within either 60 or 90 days of the application being submitted and will not be subject to the City’s regulations of

the right-of-way; small wireless facilities could therefore be approved that are inconsistent with the regulations being developed by the City as permitted by federal and state laws.

WHEREAS, adoption of this Ordinance is consistent with the City's General Plan policies; and

WHEREAS, pursuant to California Environmental Quality Act ("CEQA") Guidelines § 15378 and California Public Resources Code § 21065, the Council finds that this ordinance is not a "project" because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment; and that, even if this ordinance qualified as a "project" subject to CEQA, and pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment; and

WHEREAS, for all the foregoing reasons, the City Council finds and declares that adoption of this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES HEREBY ORDAIN AS FOLLOWS:

DIVISION 2. MUNICIPAL CODE AMENDMENTS.

Title 14 of the San Rafael Municipal Code, entitled "Zoning," is hereby amended as follows:

1. Section 14.03.030 is hereby amended to add a new definition of "Small Wireless Facility", to read in its entirety as follows (**as shown below by strikethroughs for deletions and underline/italics for insertions**):

14.03.030 - Definitions.

"Small Wireless Facility" means a small wireless facility as defined by the FCC and that meets the following requirements:

1. Meet one of the following mounting requirements:
 - a. are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or
 - b. are mounted on structures no more than 10 percent taller than other adjacent structures, or
 - c. do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
2. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three cubic feet in volume;

3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume

Antenna equipment, means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

2. Section 14.03.030 is hereby amended to amend the definition of "Wireless communication facilities" to read in its entirety as follows:

"Wireless communication facilities" means facilities regulated by the FCC that transmit and/or receive electromagnetic signals for cellular technology, personal communication services, enhanced specialized mobile services, paging systems, and radio and television broadcast transmission facilities. Facilities include antennas, microwave dishes, parabolic antennas, and all other types of equipment (but does not include small wireless facility, which is defined separately under "Small Wireless Facility") used in the transmission or reception of such signals; telecommunication towers or similar structures supporting said equipment; associated equipment cabinets and/or buildings; and all other accessory development. These facilities include amateur radio antenna structures that exceed thirty feet (30') in height but do not include government-operated public safety networks.

3. Section 14.16.360(A) is hereby amended to read in its entirety as follows:

14.16.360 - Wireless communication facilities.

A. Purpose. This section establishes standards to regulate the design and placement of towers, antennas, and other wireless communication transmission and/or reception facilities (hereinafter called wireless communication facilities) on public and private property, including facilities within the public right-of-way to minimize the potential safety and aesthetic impacts on neighboring property owners and the community, and to comply with applicable state and federal laws, including the Federal Telecommunications Act of 1996. This section does not apply to small wireless facilities as defined under Section 14.03.030, which are regulated by Section 14.16.361. To fulfill this its purpose, this section is intended to:

1. Establish review and approval requirements, application submittal requirements, and development standards to regulate the design and placement of wireless communication facilities so as to preserve the visual character of the city and to ensure public health and safety, consistent with federal law and Federal Communications Commission (FCC) regulations.
2. Acknowledge the community benefit associated with the provision of wireless communication services within the city.
3. Encourage the joint use of new and existing ground mounted facility monopole/tower sites as a primary option rather than construction of additional single-use towers.

4. Allow the community development director, or delegated staff, to make certain determinations under the provisions of this section.
4. Section 14.16.360(H)(1) is hereby amended to read in its entirety as follows:
 - H. Design Requirements.
 1. Co-Location. All new wireless communication facilities service providers shall co-locate with other existing and/or planned new wireless communication facilities whenever feasible. Service providers are encouraged to co-locate with other existing facilities such as water tanks, ~~light standards~~ and other utility structures where the co-location is found to minimize the overall visual impact of the new facility. Co-location of small wireless facilities on light standards/poles, traffic lights, or other structures located within the public right-of-way shall be subject to requirements of Section 14.16.361.
5. Section 14.16.360(N)(1) is hereby amended to read in its entirety as follows:
 - N. Definitions.
 1. Ground Mounted Facility" means a monopole, tower or any structure built for the sole or primary purpose of supporting FCC-licensed wireless communications facility antenna and their associated facilities. Wireless antenna facilities and equipment that are mounted onto an existing structure, including existing utility poles, on private property shall be considered building mounted co-located on an existing structure. Mounting of wireless facilities on light standards/poles, traffic lights, or utility poles within the public right-of-way shall be governed by Section 14.16.361.
6. New Section 14.16.361, entitled "Small Wireless Facilities", is hereby added to read in its entirety as follows:

14.16.361 – Small wireless facilities.

Notwithstanding any other provision of this Title as provided herein, all small wireless facilities as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded, are subject to a permit as specified in the San Rafael City Council's "Policies, Procedures, Standards and Limitations for Submittal and Review of Small Wireless Facilities Within the Public Right-Of-Way as Set Forth in the San Rafael Municipal Code Section 14.16.361" ("Policy"), as adopted and amended from time to time by City Council resolution, and all small wireless facilities shall comply with such Policy. If the City Council Policy is repealed, an application for a small wireless facility shall be processed pursuant to Section 14.16.360.

DIVISION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT

This Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to the State CEQA Guidelines, since it can be seen with certainty that there is no possibility that this Ordinance or its implementation would have a significant effect on the environment (14 Cal. Code Regs. Section 15061(b)(3), 'general rule' provision).

DIVISION 4. SEVERABILITY

If any provision of this Ordinance or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Ordinance, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Ordinance are severable.

DIVISION 5. EFFECTIVE DATE OF ORDINANCE.

This Ordinance is hereby declared to be an urgency measure and shall become effective immediately upon adoption by at least a four-fifths (4/5) vote of the City Council pursuant to Government Code section 36937(b). The City Clerk is directed to publish forthwith a copy of this Ordinance, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

GARY O. PHILLIPS, Mayor

ATTEST:

LINDSAY LARA, City Clerk

I, LINDSAY LARA, City Clerk of the City of San Rafael, certify that the foregoing Ordinance was passed by the City Council of the City of San Rafael, California, by a vote of at least four-fifths (4/5) of the members thereof, at a regular meeting held on Monday, the 17th day of December 2018, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

RESOLUTION NO. _____

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL ADOPTING POLICIES, PROCEDURES, STANDARDS AND LIMITATIONS FOR SUBMITTAL AND REVIEW OF SMALL WIRELESS FACILITIES WITHIN THE PUBLIC RIGHT-OF-WAY AS SET FORTH IN THE SAN RAFAEL MUNICIPAL CODE SECTION 14.16.361

WHEREAS, on September 26, 2018, the Federal Communications Commission (FCC) adopted a [Declaratory Ruling and Third Report and Order](#) pertaining to small wireless facilities setting forth limitations on state and local government regulation of small wireless facilities that are placed on utility poles and street light standards located in the public right-of-way (the “FCC ruling”); and

WHEREAS, the FCC ruling: a) limits the level of local permitting and discretion; b) establishes “shot clock” rules (e.g., time limits and deadlines) for processing and action on local permits; and c) limits the fees that can be charged for the facilities; and

WHEREAS, the FCC ruling further established that any aesthetic regulations and fees required for processing of small wireless facilities be published in advance; and

WHEREAS, on December 3, 2018, the San Rafael Municipal City Council received a presentation on the FCC ruling and considered public testimony related to small wireless facility policy and directed staff to prepare an urgency ordinance to amend San Rafael Municipal Code Title 14 (the “Zoning Ordinance”) and a policy resolution to include provisions defining and regulating the placement of small wireless facilities in the City; and

WHEREAS, at the December 3, 2018, City Council meeting the City Council received public testimony with requests from community members that small wireless facilities regulations include additional provisions that would prohibit small wireless facilities in the residential districts; and

WHEREAS, the City Council concluded that some of the recommendations presented could be beneficial in addressing aesthetic impacts; and

WHEREAS, the City Council directed staff to prepare an Urgency ordinance to amend the Zoning Ordinance related to small wireless facilities with changes to the Draft Resolution that incorporates additional design criteria;

WHEREAS, on December 17, 2018, the City Council adopted Urgency Ordinance No. _____ amending the Zoning Ordinance to include provisions to define and regulate the placement of small wireless facilities in the City. These amendments refer to a policy resolution for application/review procedures and review criteria for evaluating the placement of small wireless facilities; and

WHEREAS, the City Council finds that, pursuant to California Environmental Quality Act (“CEQA”) Guidelines § 15378 and California Public Resources Code § 21065, the Policy is not a “project” because

its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, the City Council finds that, even if the Policy qualified as a “project” subject to CEQA, and pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. The Policy merely carries out the delegation of authority under the San Rafael Municipal Code to regulate the deployment of small wireless facilities and does not directly or indirectly authorize or approve any actual changes in the physical environment; and

WHEREAS, the City Council finds the Policy will, to the extent permitted by federal and California law, protect and promote public health, safety and welfare, and also balance the benefits that flow from robust, advanced, wireless services with the City’s local values, which include without limitation the aesthetic character of the City, its neighborhoods and community;

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby adopts the following Policies, Procedures, Standards and Limitations for submittal and review of small wireless facilities:

SECTION 1 PURPOSE AND INTENT

- (a) The City of San Rafael intends this Policy to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City’s territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this Policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the City’s local values, which include without limitation the aesthetic character of the City, its neighborhoods and community. This Policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interest is maintained; (2) protecting the City’s visual character from potential adverse impacts or visual blight created or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the City’s environmental resources; and (4) promoting access to high-quality, advanced wireless services for the City’s residents, businesses and visitors.
- (b) This Policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider’s ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity’s ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC’s regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unfair, unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California law.

SECTION 2 DEFINITIONS

In addition to the definitions contained in San Rafael Municipal Code 14.03.030, the following definitions shall also provide clarity:

- (a) **“antenna”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded, which defines the term as an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of Title 47.
- (b) **“arterial street”** means a road designated as an arterial or minor arterial street under General Plan 2020 Exhibit 22.
- (c) **“collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded, which defines the term as (1) mounting or installing an antenna facility on a pre-existing structure; and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
- (d) **“concealed” or “concealment”** means camouflaging techniques that meet the design standards in Section 10 and integrate the transmission equipment into the surrounding natural and/or built environment such that the average, untrained observer cannot directly view the equipment but would likely recognize the existence of the wireless facility or concealment technique. Camouflaging concealment techniques include, but are not limited to: (1) facade or rooftop mounted pop-out screen boxes; (2) antennas mounted within a radome above a streetlight; (3) equipment cabinets in the public rights-of-way painted or wrapped to match the background; and (4) an isolated or standalone faux-tree.
- (d) **“decorative pole”** means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public right-of-way in which the pole is located.
- (e) **“Director”** means the Community Development Director for the City of San Rafael or the Director’s designee.
- (f) **“FCC Shot Clock”** means the presumptively reasonable time frame within which the City must act on a wireless application, as defined by the FCC and as may be amended from time to time.
- (g) **“personal wireless services”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services. As an illustration and not a limitation, personal wireless services are typically services that are offered directly to the public or a class of people for a fee. At the adoption of the Telecommunications Act of 1996, these services generally meant cellular, specialized mobile radio (SMR) and broadband personal communications services (PCS).
- (h) **“personal wireless service facilities”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as facilities that provide personal wireless services. As an illustration and not a limitation, personal wireless service facilities are the

physical infrastructure – antennas, support structures, radios, wires and base station equipment – that are used to provide personal wireless services. “

- (i) **“RF”** means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.
- (j) **“Section 6409”** means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.
- (k) **“structure”** for this policy, means the same as defined by the FCC in 47 C.F.R. § 1.6002(m), as may be amended or superseded, which defines the term as a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

SECTION 3 APPLICABILITY

- (a) **Applicable Wireless Facilities.** Except as expressly provided otherwise in this Policy, the provisions in this Policy shall be applicable to all existing small wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate or otherwise deploy small wireless facilities within the City’s jurisdictional and territorial boundaries within the public rights-of-way or on private property.
- (b) **Special Provisions for Eligible Facilities Requests.** Notwithstanding Section 3(a), all requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409 will be reviewed consistent with the standards required by law.

SECTION 4 REQUIRED PERMITS AND APPROVALS

- (a) **Small Cell Permit.** A “small cell permit,” subject to the Director’s prior review and approval, is required for any small wireless facility proposed on an existing, new or replacement support structure.
- (b) **Other Permits and Approvals.** In addition to the above a small cell permits, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or approvals issued by other City departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility must contain a valid permit for the proposed facility. Any application submitted without such small cell permit will be denied without prejudice. Furthermore, any permit or approval granted under this Policy shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals.

SECTION 5 SMALL CELL PERMIT APPLICATION REQUIREMENTS

- (a) **Small Cell Permit Application Contents.** All applications for a small cell permit must include all the information and materials required in this subsection (a).
 - (1) **Application Form.** The applicant shall submit a complete, duly executed small cell permit application on the then-current form prepared by the Director or his/her designee.

- (2) **Application Fee.** The applicant shall submit the applicable small cell permit application fee established by City Council resolution. Batched applications must include the applicable small cell permit application fee for each small wireless facility in the batch. If no small cell permit application fee has been established, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to reimburse the City for its reasonable costs incurred in connection with the application.
- (3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all structures within 250 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.
- (4) **Site Survey.** For any small wireless facility proposed to be located within the public rights-of-way, the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 250 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.
- (5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point.
- (6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a "small wireless facility" as defined by the FCC in 47 C.F.R. § 1.6002(f). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a structure as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets

each required finding for a small cell permit as provided in Section 7(c).

- (7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed small wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
 - (8) **Public Notices.** The applicant shall submit a mailing list and envelopes, stamped and addressed, for all properties and record owners of properties entitled to receive notice under Section 7(a). Insufficient postage and/or illegible addressing shall be a basis to deem the application incomplete.
 - (9) **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the small wireless facility proposed in the application.
 - (10) **Site Agreement.** For any small wireless facility proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant shall submit a partially-executed site agreement on a form prepared by the City that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the City's form site agreement except as may be indicated on the form itself. Any unpermitted changes to the City's form site agreement shall be deemed a basis to deem the application incomplete.
 - (11) **Title Report and Property Owner's Authorization.** For any small wireless facility proposed to be installed on any private property not owned or controlled by the City, the applicant must submit: (i) a title report issued within 30 days from the date the applicant filed the application; and (ii) if the applicant is not the property owner, a written authorization signed by the property owner identified in the title report that authorizes the applicant to submit and accept a small cell permit in connection with the subject property.
 - (12) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by an engineer for the proposed small wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise ordinance (SRMC 8.13). The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.
- (b) **Additional Requirements.** The City Council authorizes the Director to develop, publish and from

time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this Policy. All such requirements and materials must be in written form and publicly stated to provide all interested parties with prior notice.

SECTION 6 SMALL CELL PERMIT APPLICATION SUBMITTAL AND REVIEW

- (a) **Requirements for a Duly Filed Application.** Any application for a small cell permit will not be considered duly filed unless submitted in accordance with the requirements in this subsection (a).
 - (1) **Submittal Appointment.** All applications must be submitted to the City at a pre-scheduled appointment with the Director. Applicants may generally submit one application per appointment, or up to five individual applications per appointment for batched applications subject to subsection (d). Applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The Director shall use reasonable efforts to provide the applicant with an appointment within five working days after the Director receives a written request. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed.
 - (2) **Pre-Submittal Conferences.** The City strongly encourages, but does not require, applicants to schedule and attend a pre-submittal conference with the Director for all proposed projects that involve more than five (5) small wireless facilities. This voluntary pre-submittal conference does not cause the FCC Shot Clock to begin and is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The Director shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the services rendered in the pre-submittal conference.
- (b) **Application Completeness Review.** Within 30 calendar days after the Director receives a duly filed small cell permit application, the Director shall review the application for completeness and, if any application does not contain all the materials required in Section 5(a) or any other publicly stated requirements, send a written notice to the applicant that identifies the missing or incomplete requirements.
- (c) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, and to mitigate unreasonable delays or barriers to entry caused by chronically incomplete applications, any application governed under this Policy will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the Director within 60 calendar days after the Director deems the application incomplete in a written notice to the applicant. As used in this subsection (c), a “substantive response” must include the materials identified as incomplete in

the Director's notice.

- (d) **Batched Applications.** Applicants may submit up to five individual applications for a small cell permit in a batch; provided, however, that small wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each application in the batch. If any application in a batch is incomplete, the entire batch shall be deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch, the entire batch shall be deemed withdrawn. If any application in a batch fails to meet the required findings for approval, the entire batch shall be denied.
- (e) **Additional Procedures.** The City Council authorizes the Director to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments with applicants, as the Director deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice.

SECTION 7 APPROVALS AND DENIALS; NOTICES

- (a) **Public Notice.** Prior to any approval, conditional approval or denial, public notice shall be mailed to all properties and record owners and occupants of properties within a 500-foot radius of the project site. The notice must contain: (1) a general project description; (2) the applicant's identification and contact information as provided on the application submitted to the City; (3) contact information for the Project Planner; (4) a statement that the Director will act on the application without a public hearing, but will for a minimum of ten (10) days from the date of the notice accept written public comments that evaluate the application for compliance with the standards in this Policy; and (5) a statement that the FCC requires the City to act on small wireless facility applications, which includes any administrative appeals, in 60 days for attachments to existing structures and 90 days for new structures, unless the applicant voluntarily agrees to toll the timeframe for review.
- (b) **Administrative Review.** Not less than 10 calendar days after the public notice required in subsection (a), the Director shall approve, conditionally approve or deny a complete and duly filed small cell permit application without a public hearing.
- (c) **Required Findings.** The Director may approve or conditionally approve a complete and duly filed application for a small cell permit when the Director finds:
 - (1) the proposed project meets the definition for a "small wireless facility" as defined by the FCC;
 - (2) the proposed project would be in the most preferred location provided in Section 9(b) or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 500 feet would be technically infeasible;
 - (3) the proposed project would not be located on a prohibited support structure identified in this Policy;
 - (4) the proposed project would be on the most preferred support structure provided in Section 9(c) or 9(d) or the applicant has demonstrated with clear and convincing evidence in the

written record that any more-preferred support structure(s) within 500 feet would be technically infeasible;

- (5) the proposed project complies with all applicable design standards in this Policy;
 - (6) the applicant has demonstrated that the proposed project will be in compliance with all applicable health and safety regulations, which include without limitation the Americans with Disabilities Act and all FCC regulations and guidelines for human exposure to RF emissions; and
 - (7) all public notices required for the application have been given.
- (d) **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or California laws, nothing in this Policy is intended to limit the Director's ability to conditionally approve or deny without prejudice any small cell permit application as may be necessary or appropriate to ensure compliance with this Policy.
- (e) **Decision Notices.** Within five calendar days after the Director acts on a small cell permit application or before the FCC Shot Clock expires (whichever occurs first), the Director shall notify the applicant of such decision by written notice. If the Director denies the application (with or without prejudice), the written notice must contain the reasons for the decision.
- (f) **Appeals.** Any decision to approve, conditionally approve or deny a small wireless facility shall be appealable directly to the City Council. Appeals shall be filed within 5 working days of a decision having been rendered. Any such appeal shall include a letter identifying the name, address and contact information for the appellant and provides the reasons for the appeal based on the alleged noncompliance with the required findings in Section 7(c). the reasons for appeal. Any such appeal shall be subject to the appeal fees established in the City's Master Fee Schedule. Appeals from an approval will not be permitted to the extent that the appeal is based on environmental effects from RF emissions that comply with all applicable FCC regulations.

SECTION 8 STANDARD CONDITIONS OF APPROVAL

- (a) **General Conditions.** In addition to all other conditions that may be adopted by the Director for a small cell permit, all such permits issued under this Policy shall be automatically subject to the conditions in this subsection (a).
- (1) **Permit Term.** This small cell permit will automatically expire 10 years and one day from its issuance. Any other permits or approvals issued in connection with any collocation, modification or other change to this small wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed- approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law. To the extent that this small cell permit is issued in connection with any structure owned or controlled by the City and located in the public rights-of-way, this small cell permit shall be coterminous with the cancellation, termination or expiration of the agreement between the applicant and the City for access to the subject City structure.
 - (2) **Permit Renewal.** Not more than one year before this small cell permit expires, the permittee may apply for permit renewal. The permittee must demonstrate that the subject

small wireless facility complies with all the conditions of approval associated with this small cell permit and all applicable provisions in the Municipal Code and this Policy that exist at the time the decision to renew or not renew the permit is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with this Policy. Upon renewal, this small cell permit will automatically expire 10 years and one day from its issuance.

- (3) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility approved or deemed-approved, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- (4) **Build-Out Period.** This small cell permit will automatically expire six (6) months from the approval date (the "build-out period") unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved small wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the small wireless facility or its use. If this build-out period or the construction permit expires, the permit automatically terminates and the City will not extend the build-out period or the permit, but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project
- (5) **Site Maintenance.** 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 construction drawings and all conditions in this small cell permit. 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.
- (6) **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 small wireless facility or any use or activities in connection with the use authorized in this small cell permit, which includes without limitation any laws applicable to human exposure to RF emissions. 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. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the San Rafael Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with all applicable provisions in the San Rafael Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation.
- (7) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby

properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about 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 except during normal construction work hours authorized by the San Rafael Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The Director may issue a stop work order for any activities that violates this condition in whole or in part.

- (8) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.
- (9) **Permittee's Contact Information.** Within 10 days from the final approval of this small cell permit, the permittee shall furnish the Director with accurate and up-to-date contact information for a person responsible for the small 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 and promptly provide the Director with updated contact information if either the responsible person or such person's contact information changes.
- (10) **Indemnification.** The permittee and, if applicable, the property owner (if not on City-owned infrastructure) upon which the small wireless facility is installed shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") 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 indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this small cell permit, and (2) other claims of 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 small cell permit or the small 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 (if applicable) 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 and/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. Within ten calendar days of the service of a claim, the permittee shall execute a letter of agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations.

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 small cell permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this small cell permit.

- (11) **Performance Bond.** Before the City issues any permits required to commence construction in connection with this small cell permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on 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 small wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the Director shall take into consideration any information provided by the permittee regarding the cost to remove the small wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the expiration, revocation or other termination of this small cell permit to the extent required to completely remove the equipment and improvements, restore the affected areas and perform all other obligations in accordance with this condition.
- (12) **Permit Revocation.** Any permit granted under this Policy may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before the Director may conduct a public hearing to revoke any permit granted under this Policy, the Director must issue a written notice to the permittee that specifies (i) the facility; (ii) the violation(s) to be corrected; (iii) the timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s). A permit granted under this Policy may be revoked only by the City Council after a duly notice public hearing. The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.
- (13) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the small cell permit application, small cell permit, RF report, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record

in connection with the small cell permit (collectively, “records”). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City’s regular files will control over any conflicts between such City-controlled copies or records and the permittee’s electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

- (14) **Abandoned Wireless Facilities.** The small wireless facility authorized under this small cell permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a small wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the San Rafael Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
- (15) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee’s direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree and consistent with the City’s list of pre-approved street trees. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (16) **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee’s request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.

- (17) **Cooperation with RF Compliance Evaluations.** At all times relevant to this permit, the permittee and the property owner shall reasonably cooperate with efforts by the City to evaluate whether the wireless facility complies with all applicable FCC rules and regulations for human exposure to RF emissions. Such cooperation shall be at no cost to the City and may include, but is not limited to: (1) furnishing the City with a written affidavit signed by an RF engineer certifying the wireless facility's compliance with applicable FCC rules and regulations; (2) providing technical data such as the frequencies in use, power output levels and antenna specifications, reasonably necessary to evaluate compliance with maximum permissible exposure levels set by the FCC; (3) allowing the City or its designee to have supervised access to the areas near the wireless facility for inspections and field measurements; and (4) promptly responding to all requests by the City or its designee for information and/or cooperation with respect to any of the foregoing. The City may conduct random tests to ensure compliance with the FCC's rules and regulations. In the event that the City determines that permittee is not in compliance with any legal requirements or conditions, the permittee shall be responsible for all costs and expenses incurred by the City in connection with the investigation, enforcement and/or remediation of such noncompliance.
- (b) **Conditions for Small Wireless Facilities in the Public Rights-of-Way.** In addition to all conditions in subsection (a), all small cell permits for small wireless facilities in the public rights-of-way issued under this Policy shall be automatically subject to the conditions in this subsection (b).
- (1) **Future Undergrounding Programs.** If other public utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility is located, the permittee must underground its equipment except the antennas, any electric meter and any other equipment that must be placed above ground to function. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function are not exempt from this condition and shall be undergrounded. Small wireless facilities installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the CPUC for undergrounding costs.
- (2) **Electric Meter Upgrades.** If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
- (3) **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (1) change any street grade, width or location; (2) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (3) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such

rights without the express reservation in this small cell permit. If the Public Works Director determines that any City work will require the permittee's small wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility within a reasonable time after the Public Works Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's small wireless facility without prior notice to permittee when the Public Works Director determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within ten (10) days after a written demand for reimbursement and reasonable documentation to support such costs.

SECTION 9 LOCATION REQUIREMENTS

- (a) **Preface to Location Requirements.** This subsection (a) provides guidance as to how to interpret and apply the location requirements in this Section 9. To better assist applicants and decisionmakers understand and respond to the community's aesthetic preferences and values, subsections (b), (c) and (d) set out listed preferences for locations and support structures to be used in connection with small wireless facilities in ordered hierarchies. Applications that involve least-preferred locations or structures may be approved so long as the applicant demonstrates that either: 1) no more preferred locations or structures exist within 500 feet from the proposed site; or 2) any more preferred locations or structures within 500 feet from the proposed site would be technically infeasible as supported by clear and convincing evidence in the written record. Subsection (e) identifies "prohibited" support structures on which the City shall not approve any small cell permit application for any competitor or potential competitor.
- (b) **Location Preferences.** The City prefers small wireless facilities to be installed in locations, ordered from most preferred to least preferred, as follows:
 - (1) **Most Preferred Locations.**
 - (A) City-owned parcels in any zoning district;
 - (B) any parcel or public right-of-way location in Industrial Zoning Districts (I, LI/O, CCI/O & LMU);
 - (C) any parcel or public right-of-way location in Commercial Zoning Districts (GC, NC, R/O, C/O & FBWC);
 - (D) any parcel or public right-of-way location in Marine Zoning District (M); and
 - (E) any parcel or public right-of-way location in Public/Quasi Public District (P/QP);
 - (2) **Less Preferred Locations.**
 - (A) any parcel or public right-of-way location in Parks/Open Space (P/OS) Districts;
 - (B) any public right-of-way location in Residential Zoning Districts (R, DR, MR, HR) on or along roads designated as arterial or minor arterial roads (see Exhibit A of this resolution);
 - (3) **Least Preferred Locations.**

- (A) any public right-of-way location in Residential Zoning Districts (R, DR, MR, HR) on or along roads not designated as arterial or minor arterial roads (see Exhibit A of this resolution);
- (B) any parcel located in Residential Zoning Districts (R, DR, MR, HR).

For purposes of these location preferences, the applicant's proposed location in the public right-of-way shall be classified by the same zoning district that applies to the nearest adjacent parcel. Planned Development Zoning District shall follow the closest zoning district from lists above, based on the approved uses.

- (c) **Support Structures in the Public Rights-of-Way.** The City prefers small wireless facilities to be installed on support structures in the public rights-of-way, ordered from most preferred to least preferred, as follows:
 - (1) existing or replacement streetlight poles;
 - (2) existing or replacement wood utility poles;
 - (3) new, non-replacement streetlight poles;
 - (4) new, non-replacement poles for small wireless facilities.
- (e) **Support Structures Outside the Public Rights-of-Way.** The City prefers small wireless facilities to be installed on support structures outside the public rights-of-way, ordered from most preferred to least preferred, as follows:
 - (1) existing buildings or other non-tower structures previously approved for use as a support structure for personal wireless service facilities;
 - (2) other existing buildings or non-tower structures;
 - (3) existing or replacement poles or towers;
 - (4) new, non-replacement towers for small wireless facilities.
- (f) **Prohibited Support Structures.** The City prohibits small wireless facilities to be installed on the following support structures, whether located in the public rights-of-way or not:
 - (1) decorative poles;
 - (2) traffic signals, signs, poles, cabinets and related devices;
 - (3) any utility pole scheduled for removal or relocation within 12 months from the time the Director acts on the small cell permit application;
 - (4) new, non-replacement wood poles.

SECTION 10 DESIGN STANDARDS

- (a) **General Standards.**
 - (1) **Noise.** Small wireless facilities and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations in San Rafael Municipal Code Articles 8.13, and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable district.
 - (2) **Lights.** Small wireless facilities shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation

Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this Policy.

- (3) **Landscape Features.** Small wireless facilities shall not displace any existing landscape features unless: (A) such displaced landscaping is replaced with native and/or drought-resistant plants, trees or other landscape features approved by the Director and (B) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscape maintenance must be performed in accordance with San Rafael Municipal Code 14.25.050.G.
- (4) **Site Security Measures.** Small wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The Director shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials.
- (5) **Signage; Advertisements.** All small wireless facilities must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, OSHA or other United States governmental agencies for compliance with RF emissions regulations.
- (6) **Compliance with Health and Safety Regulations.** All small wireless facilities shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions, the Americans with Disabilities Act, California Building Standards Code and the San Rafael Municipal Code.

(b) Small Wireless Facilities in the Public Right-of-Way.

- (1) **Overall Height.** Small wireless facilities may not exceed either (A) the minimum separation from electrical lines required by applicable safety regulations (such as CPUC General Order 95), plus four feet or (B) four feet above the existing support structure. However, at no point shall an existing support structure be increased by more than 10 feet above existing height.
- (2) **Antennas.**
 - (A) **Concealment.** All antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be graffiti-resistant and painted a flat, non-reflective color to match the underlying support structure.
 - (B) **Antenna Volume.** Each individual antenna may not exceed three cubic feet in

volume and all antennas may not exceed six cubic feet in volume.

(3) Accessory Equipment.

- (A) Installation Preferences.** All non-antenna accessory equipment shall be installed in accordance with the following preferences, ordered from most preferred to least preferred: (i) underground in any area in which the existing utilities are primarily located underground; (ii) on the pole or support structure; or (iii) integrated into the base of the pole or support structure. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically infeasible as supported by clear and convincing evidence in the written record.
- (B) Undergrounded Accessory Equipment.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Applicants shall not be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced.
- (C) Pole-Mounted Accessory Equipment.** All pole-mounted accessory equipment must be installed at least 10 feet above grade and flush to the pole to minimize the overall visual profile. If any applicable health and safety regulations prohibit flush-mounted equipment, the maximum separation permitted between the accessory equipment and the pole shall be the minimum separation required by such regulations. All pole-mounted equipment and required or permitted signage must be placed and oriented away from adjacent sidewalks and structures. Pole-mounted equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. All cables, wires and other connectors must be routed through conduits within the pole, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying support structure.
- (D) Base-Mounted Accessory Equipment.** All base-mounted accessory equipment must be installed within a shroud, enclosure or pedestal integrated into the base of the support structure. All cables, wires and other connectors routed between the antenna and base-mounted equipment must be concealed from public view.
- (E) Ground-Mounted Accessory Equipment.** The Director shall not approve any ground-mounted accessory equipment including, but not limited to, any utility or transmission equipment, pedestals, cabinets, panels or electric meters.
- (F) Accessory Equipment Volume.** All accessory equipment associated with a small wireless facility installed above ground level shall not cumulatively exceed: (i) nine (9) cubic feet in volume if installed in a residential district or within 500 feet from any structure approved for a residential use; or (ii) seventeen (17) cubic feet in volume

if installed in a non-residential district. The volume calculation shall include any shroud, cabinet or other concealment device used in connection with the non-antenna accessory equipment. The volume calculation shall not include any equipment or other improvements placed underground.

- (4) **Streetlights.** Applicants that propose to install small wireless facilities on an existing streetlight must remove and replace the existing streetlight with one substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment, unless the existing streetlight has been designed and engineered to support a small wireless facility in accordance with applicable health and safety regulations. To mitigate any material changes in the streetlighting patterns, the replacement pole must: (A) be located as close to the removed pole as possible; (B) be aligned with the other existing streetlights; and (C) include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. All antennas must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.
- (5) **Wood Utility Poles.** Applicants that propose to install small wireless facilities on an existing wood utility pole must install all antennas above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the side-arm mount or extension arm. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.
- (6) **New, Non-Replacement Poles.** Applicants that propose to install small wireless facilities on a new, non-replacement pole must demonstrate that any existing structures within 500 feet from the proposed site would be technically infeasible as supported by clear and convincing evidence in the written record. Any new, non-replacement pole must be a new streetlight substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome.
- (7) **Encroachments over Private Property.** Small wireless facilities may not encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.
- (8) **Backup Power Sources.** Fossil-fuel based backup power sources shall not be permitted within the public rights-of-way; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.
- (9) **Obstructions; Public Safety.** Small wireless facilities and any associated equipment or

improvements shall not physically interfere with or impede access to any: (A) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (B) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (C) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (D) fire hydrant or water valve; (E) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or (F) access to any fire escape.

- (10) **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through and concealed from view within: (A) internal risers or conduits if on a concrete, composite or similar pole; or (B) a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. The Director shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
- (11) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
- (12) **Electric Meters.** Small wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. The Director shall not approve a separate ground-mounted electric meter pedestal.
- (13) **Street Trees.** To preserve existing landscaping in the public rights-of-way, all work performed in connection with small wireless facilities shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees, consistent with the City's list of pre-approved street trees, at the site for the duration of the permit term.

(c) Small Wireless Facilities Outside the Public Right-of-Way.

- (1) **Overall Height.** Small wireless facilities on private property may not exceed the applicable height limit for structures in the applicable zoning district or overlay zone.
- (2) **Setbacks.** Small wireless facilities on private property may not encroach into any applicable setback for main structures in the subject zoning district.
- (3) **Backup Power Sources.** The Director shall not approve any diesel generators or other similarly noisy or noxious generators in or within 250 feet from any residence; provided, however, the Director may approve sockets or other connections used for temporary

backup generators.

- (4) **Parking; Access.** Any equipment or improvements constructed or installed in connection with any small wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, small wireless facilities must use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements must be the minimum size necessary to reasonably accommodate the proposed use.
- (5) **Towers, Poles and Other Freestanding Small Wireless Facilities.** All new towers, poles or other freestanding structures that support small wireless facilities must be made from a metal or composite material capable of concealing all the accessory equipment, including cables, mounting brackets, radios, and utilities, either within the support structure or within an integrated enclosure located at the base of the support structure. All antennas must be installed above the pole in a single, canister-style shroud or radome. The support structure and all transmission equipment must be painted with flat/neutral colors that match the support structure. The pole height shall not exceed thirty-five (35) feet or the height limit for the applicable zoning district or overlay zone, whichever is less. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches.
- (6) **Building-Mounted Small Wireless Facilities.**
 - (A) **Preferred Concealment Techniques.** All applicants must propose new non-tower small wireless facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, if the applicant demonstrates with clear and convincing evidence that integration with existing features is technically infeasible, the applicant may propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, steeples and chimneys).
 - (B) **Facade-Mounted Equipment.** When small wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the Director may approve facade-mounted equipment in accordance with this subsection (c)(6)(B). All facade-mounted equipment must be concealed behind screen walls and mounted flush to the facade. The Director may not approve "pop-out" screen boxes. Except in industrial zones, the Director may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade.

BE IT FURTHER RESOLVED that any and all amendments to the Small Wireless Facilities policies, procedures, standards and limitations herein, as deemed necessary from time-to-time shall be adopted by resolution of the City Council.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the forgoing resolution was adopted as a regular meeting of the City Council on the 17th day of December 2018.

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

EXHIBITS:

- A. General Plan 2020, Exhibit 22-San Rafael Roadways and Arterials

ATTACHMENT 3

23-Point Recommendations from "5G-Free Marin"

Ordinance Recommendations, 11/29 Planning Commission

Dear Fairfax Planning Commission:

Below you will find a comprehensive list of recommendations for our Fairfax Urgency Ordinance addressing 5G. Please consider these as you make recommendations and edits for the Town Council, and factor in the following suggestions we believe will be helpful in creating the strongest, most effective ordinance.

Attachments we refer to below include:

1. ADA/US Access Board Information
2. Property Value Reduction Information
3. Permitting Process and Measurements
4. Peter Lacques Recommendations

Below are proposed ideas/language to be included in the ordinance:

1. **Zoning and other prohibitions-** Installations in residential zoning districts, public rights of way and easements in all zones are prohibited. Note: the Mill Valley Ordinance has an unintentional loophole on public rights of way- **this needs to be addressed in all further ordinances, to make sure public rights of way and easements are also prohibited in zones where facilities are and are not permitted.** We recommend eliminating the following additional zones: CC, CL, PD. We recommend keeping CS and CH as allowable zones, but further restricting areas by parcel delineation, to be reviewed and approved by the Planning Commission. **Also eliminate the item stating "in the public right of way with the closest district being the commercial district".** (we can provide exact details of where to make these amendments in the ordinance.)
2. **Property Values-** We have data that shows that property values can drop up to 20% when a small cell antenna is nearby, and 94% of home buyers are less interested in a property (**see attachment #2 Property Value Reduction Information**). We are recommending language be included in our Fairfax ordinance that protects property owners and property values from this effective "taking" of Fairfax residents' property should 5G installations go forward. **Please see attachment #2 for more details and our specific recommendations.**
3. **Public Process-** Upon proposal of any wireless facilities from telecoms, the town must notify the public via website, postings, and paper mail. Include all residents within 3000 feet. During the application process, the town must provide a public comment period and schedule meetings to

address issues about the proposed facility. Telecoms are required to use story poles to demonstrate actual size and physical impact. Public notice mailings should include information about the notification contents on the *outside of the envelope* such as, "Notice of Nearby Cell Antenna Proposal" to ensure the public sees and has an opportunity fully participate. See permitting process details, **Attachment #3, Permitting Process and Measurements** (composed by Frank Leahy, Mill Valley). Note: public hearings have been effective in discouraging the telecoms for Montgomery, MD and Burlington, MA.

4. **Permitting process-** The town must adopt a more rigorous permitting process. A new telecom permit application should be designed, with new components. As stated in the attached content, this equipment can often be remotely upgraded or changed via software at any time, so both permitting and monitoring process should be specific, frequent, and rigorous. Details for exactly what to include in the process can be found in the attached document from electrical engineer Frank Leahy, **item #3**.
5. **Monitoring-** The town of Fairfax/San Anselmo must create a robust signal monitoring plan and use our own contractors to do the work- not industry contractors. In addition to developing a protocol on how and where to measure, the issue of how frequently measurement should be taken needs attention. Once per year is grossly inadequate. We would like to recommend including language for an ongoing real time monitoring plan that the telecoms would pay for. We need to know specifics about what kind and how strong the signals are from antennas. This requires more research, but we think is quite reasonable and feasible. If this cannot be done, then we will need monitoring at least once per month. (The attached document on permitting process recommendations written by Mill Valley electrical engineer Frank Leahy gives some guidance and suggestions on this as well, **item #3**.)
6. **ADA-** Add language about the ADA, which addresses electrical sensitivity as a federally recognized disability: "The reviewing authority may NOT grant an exception if the exception itself violates federal and/or state law, including, but not limited to, the ADA", (Please see **Attachment #1, ADA/US Access Board Informaiton**.) [Note: the ADA was originally part of the revised Urgency Ordinance, then appeared to be removed by town staff edits. We are asking that the content about the ADA be replaced and addressed.]
7. **Undergrounding** – Require undergrounding for cables and accessory equipment for facilities in the public right-of-way and amend language to state that ground-level equipment **MUST** be undergrounded. Omit "if feasible" in ordinance (Fairfax has "if feasible" language). Undergrounding must occur within 3 feet of the utility pole on which the antennas are

mounted. This language should also be spelled out in the Conditions of Approval section. Before any digging occurs, a full cultural resources evaluation should be required (see above). Also, Fairfax has some undergrounding districts. ***If we restrict installation to these districts, it could create a strong disincentive for antenna installation here.*** It is our understanding that undergrounding can cost telecoms 3 to 10 times as much as installing equipment on poles.

8. **Co-location-** Co-location (the addition of multiple antennas on an existing antenna structure) rules in California provide telecoms a green light with virtually no controls or regulations by local jurisdictions unless there are changes to the physical dimensions of the structure that the new equipment will be installed on. Co-location may be difficult to fight in places where there is existing equipment, but we have identified a problem with this issue. Once equipment is installed in a town on a pole, then anything afterwards is considered co-location. We need to have language in place that does not allow this to be abused, and that ensures that telecoms do not circumvent the normal permitting processes we are planning on putting into place (such as public meetings, etc.) This is complex because co-location is protected by state law (or possibly federal), and local laws do not supersede state and federal laws, yet this is a critical element to review. We would like to discuss this with you before 11/29 if possible.
9. **Exceptions Clauses-** We have had many suggestions about exceptions and how they could work for us or against us. If we are excessively restrictive in other areas, having an exception clause can protect us from being sued by the telecoms as it provides them a doorway in. If, however, we have too broad of an exceptions clause, it creates loopholes that can be big enough for 5G antennas to get through too easily. We would like the town's legal council to craft this skillfully with the town's interest as the priority rather than the telecoms, and to not allow a major loophole for telecom entry.
10. **Fire Hazard and Other Hazard Potential-**A full fire hazard potential assessment must be conducted that includes the presence of nearby vegetation and structures. All materials in the facilities must be disclosed, including hazardous materials in any and all equipment. No poles should be overloaded such that a risk is created for life or property. There should be no co-location of equipment on such facilities. Mechanical consideration: poles and other structures must exceed general guidelines to ensure they can withstand earthquakes and storms. There are studies that show equipment killing trees and drying local vegetation through desiccation creates further fire hazards. This needs further assessment, which we can help provide.

11. **Other Hazards-** 5G equipment is frequently installed on poles underneath or adjacent to electrical wires and equipment, which has been the cause of several recent local fires (Santa Rosa, Camp, Malibu, etc.). Additionally, as indicated above, studies show equipment killing and drying out adjacent vegetation. [Please see the additions to Chapter 20 in Fairfax, attached- Peter Lacques proposed changes to urgency ordinance 9/26, listed also in the Findings section of the ordinance, **Attachement #4, Peter Lacques Recommendations.**]
12. **Decorative Light Poles-** Prohibit installations on all Decorative Light Poles. In Fairfax, we have asked for this prohibition. (To protect our street lamps from a 50% height increase, amend by adding, "The downtown decorative street light poles are exempt from this section.")
13. **Viewsheds and Aesthetics Considerations-**Viewsheds and general aesthetics need to be considered via the design review process for all applications with full public noticing and involvement. Consideration should include historic preservation considerations and the general aesthetic character of our towns. Facilities must not disrupt or alter the aesthetic beauty or historic character of the town. This should be subject to review by the Town Planning Commission and approved by the Town Council.
14. **Schools and Child Care Centers-** Similarly, we wish to restrict a 1000 foot buffer around schools, child care centers, and elder facilities from consideration of 5G installation. As with the item above, this can be accomplished through our zoning restrictions.

Related to this: are there any opportunities for potential compensation from the telecoms to pay for relocating children from schools impacted by 5G radiation? There may be issues around inter-district transfer limitations and potentially forcing kids into private schools which are very expensive. If this were to happen, who would pay? And, what about lost revenue for schools that lose children due to transfers to other schools? This is a very real possibility we believe needs to be addressed.

15. **Health Care Facilities** – We recommend that the Town of Fairfax require a 1000-foot buffer around medical care facilities for 5G small cell and other similar wireless antennas to ensure safety of recovering patients. [Note: We are recommending only certain planning zones be eligible for 5G antennas. Within those zones, there will be further restrictions. This item may best be addressed in our zoning section without mentioning Care Meridian in Fairfax, our only health care facility (head injury care facility).

This may be a wise strategy as mentioning health is, of course, a red flag for telecoms.]

16. **Establishing setbacks and antenna intervals-** We know each antenna can transmit up to at least 1 GB/sec of data at 3000 feet. Even with prohibition in the residential areas for antennas, this would impact a large swath of town, both residential and commercial. With setbacks and antenna intervals, as well as limiting zoning and strategic placing, we can control where antennas are placed. We want to minimize exposure to people living in mixed use zones and on the edge of commercial zones. Our strategy is to eliminate most of the zones, all with residential, except for two commercial zones. Within those zones we are recommending further restricting locations on specific parcels to protect the most vulnerable populations, among others (children and elderly, etc.)
17. **Endangered/Threatened Species, ESA-** Fairfax is home to several endangered and threatened species. Here in Fairfax we have spotted owls, and in our creeks we have threatened steelhead and other listed species. We need to review the Natural Resources Database to see what else we have here. There are increasing numbers of studies emerging that focus on insect and other wildlife impacts from this technology. We recently learned that there may be a state or federal law prohibiting local jurisdictions from using environmental impacts to stop 5G installations, but we are not sure if this is the case. Using provisions in the Endangered Species Act could certainly help, especially with regards to creating a rationale for buffers. More research is needed here, and we can help in this area.
18. **Trees-** The town of Fairfax has a tree ordinance that requires a permitting process to remove trees. Fairfax has a committee that reviews applications and make recommendations for approval/disapproval. There are studies that show cell tower radiation kills trees. The study we recently reviewed was focused on cell towers installed in trees, but any trees in close proximity would have similar effects. Telecoms would need to do a tree analysis within a certain number of feet of antennas and if there is a risk of killing trees, the telecoms should be required to apply for a tree removal permit if equipment is installed within 100 feet of trees.
19. **Cultural Resources-** Under CEQA there needs to be full assessment of cultural resources, including artifacts buried under the ground. We are asking for undergrounding of equipment and want to be assured that there are no cultural artifacts where telecoms may want to dig, and if there are, the proper process is followed (archeologists on site, etc.).

20. **Cumulative Impact Assessment-** CEQA requires cumulative impact assessments. Despite the FCC and 1996 FTA's prohibition on health as a rationale for prohibiting installations, there may be other cumulative impacts that need to be assessed, such as visual or aesthetic and environmental impacts. We have not come up with other specific examples, but perhaps there could be language included about health if deemed useful.
21. **Conflicts with Other Plans and Regulations-** CEQA has a category of "Conflict with any land use plan, policy or regulation". We have outlined our undergrounding districts and our tree ordinance here. These are two that we can think of, please investigate to see if there are more.
22. **Future Damages-** Regarding health, we want to investigate if there is anything in the law that allows corporations to be held liable for future damages (could a coal burning plant be liable for future damage to air quality or health of neighbors, etc.?) We are curious if something like that could be applied here.
23. **Noise Assessment/Evaluation-** There should be no equipment that generates noise whatsoever. Ordinance needs to have language that specifies details around noise and abatement, including containment if there are fans or other noisy components.

Marin Independent Journal

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2070419

CITY OF SAN RAFAEL
CITY OF SAN RAFAEL
CITY CLERK, ROOM 209
1400 FIFTH AVENUE, SAN RAFAEL, CA 94901
SAN RAFAEL, CA 94915-1560

PROOF OF PUBLICATION (2015.5 C.C.P.)

STATE OF CALIFORNIA County of Marin

I am a citizen of the United States and a resident of the County aforesaid: I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer of the MARIN INDEPENDENT JOURNAL, a newspaper of general circulation, printed and published daily in the County of Marin, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Marin, State of California, under date of FEBRUARY 7, 1955, CASE NUMBER 25566; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

12/07/2018

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Dated this 7th day of December, 2018.



Signature

PROOF OF PUBLICATION

Legal No. **0006265233**

CITY OF SAN RAFAEL NOTICE OF PUBLIC HEARING

You are invited to attend the City Council hearing on the following project:

DATE/TIME/PLACE:

Monday, December 17, 2018 at 7:00 P.M.
City Hall Council Chambers, 1400 Fifth Avenue,
San Rafael, CA 94901

PROJECT:

Proposed amendments to San Rafael Municipal Code (SRMC) Title 14 (Zoning Ordinance):

The City Council will hold a public hearing to consider an urgency ordinance to amend the Zoning Ordinance to include provisions defining and regulating the placement of small wireless facilities in the City; File No: ZO18-004.

This project qualifies for a Exemption from the provisions of the California Environmental Quality Act Guidelines pursuant to Sections 15183(a) because it entails a project that can be found consistent with the General Plan policies and pursuant to 15061(b)(3), Review for Exemptions, which states that as a 'general rule' that the California Environmental Quality Act (CEQA) applies only to projects which have the potential to cause a significant, physical environmental effects.

WHAT WILL HAPPEN:

You can comment on the project. The City Council will consider all public testimony and will then decide whether to adopt the urgency ordinance.

IF YOU CANNOT ATTEND:

You can send written correspondence to the City Clerk, City of San Rafael, P.O. Box 94915-1560; 1400 5th Avenue, San Rafael, CA 94901.

FOR MORE INFORMATION:

Contact Ali Giudice, Project Planner at (415) 485-3092 or Alicia.giudice@cityofsanrafael.org. The office is open from 8:30 a.m. to 4:30 p.m. on Monday, Tuesday and Thursday and 8:30 a.m. to 1:30 p.m. on Wednesday and Friday. The staff report will be available on Thursday, December 13, 2018 at www.cityofsanrafael.org/public-meetings.

SAN RAFAEL CITY COUNCIL

/s/ Lindsay Lara
Lindsay Lara
CITY CLERK

No. December 7, 2018

Associated Constituent**Adam Silver**

C-1057588, added on December 3rd, 2018 at 6:32 PM

Phone Numbers:

[REDACTED]

Email Addresses:

[REDACTED]

Locations:

None

Conversation:**First Name:** Adam**Last Name:** Silver**Email Address:** [REDACTED]**Phone Number:** 4157178580**Subject:** SMALL CELL "5G" WIRELESS COMMUNICATION TECHNOLOGY

Message: I'm concerned the city will have no way to verify, and no recourse, if small cell sites prove to not be compliant with FCC guidelines concerning microwave emissions and microwave emissions at prescribed distances. The city should add, as part of their 'fees', charges for independent testing and verification of each cell site's compliance. Furthermore, the vendor, shall be held responsible to fix or replace any cell sites out of compliance and be subject to re-verification at the vendor's expense. Furthermore, data communications between small cell-sites be done via fiber optic cable or some other 'wired' means to insure that data transport does not happen wirelessly between cell sites, thus increasing transmissions.

**A: LOCATION**[REDACTED]
[REDACTED]

Inbound form submission from Adam Silver to Contact the City Council on December 3rd, 2018 at 6:32 PM

Thank you for your message. We value your input and strive to respond to any questions or concerns within 2 business days. Thank you, City of San Rafael

Automated message sent to Adam Silver via City Manager's Office on December 3rd, 2018 at 6:32 PM

From: Sangita Moskow

Sent: Tuesday, December 11, 2018 5:48 AM

To: Gary Phillips; John Gamblin; Andrew McCullough; Kate Colin; Maribeth Bushey; Jim Schutz Paul Jensen; Alicia Giudice; Caron Parker; Lisa Goldfien

Subject: 5G ordinance

Thank you so much for supporting the health of the citizens of San Rafael and Marin County.

I am including part of an article about some other people who are thinking of human and animal safety:

"It all comes down to this: Jim Turner, Esq., President of NISLAPP (The National Institute for Science, Law & Public Policy, says: "NISLAPP considers it a mistake to place new high-frequency radiating antennas in local communities, in very close proximity to homes, offices and schools, when no pre-market health testing at scale has been conducted on the effects of the radiation emitted, to our knowledge, and when much safer hard-wired internet access technologies are readily available. We strongly support Senator Blumenthal's request of FCC Commissioner Carr to provide the documentation evidencing the FCC's 'safety determination for 5G,' along with the supporting scientific citations used in making that determination."

<https://www.businesswire.com/news/home/20181203006017/en/Blumenthal-Presses-FCC-Commissioner-Brendan-Carr-Disclose>

There actually is a huge amount of info about health problems with other EMF-radiating technology like the "smart" meters.

To opt out, BEFORE installation and negative effects, makes sense.

Furthermore 5G does not offer any great tech advantages to citizens--it is for the convenience of the telecoms.

I would not worry about lawsuits because companies do not want the bad publicity.

Thank you, Sangita Moskow

Sangita Moskow

For sound samples:

<http://www.lisasangitamoskow.com>

From: Lonner Holden

Sent: Monday, December 10, 2018 4:57 PM

To: Gary Phillips; John Gamblin; Andrew McCullough; Kate Colin; Maribeth Bushey; Jim Schutz; Paul Jensen; Alicia Giudice; Caron Parker; Lisa Goldfien

Subject: Dec. 3rd SR City Council Meeting & 5G

Dear Mayor, Council Members & Staff,

As a resident of San Rafael for over 25 years, I want to thank you for your astonishing sustained presence during the long-houred meeting on Decemeber 3rd.

You listened to perhaps a record number of open-period public comments on a single topic; your reflections at the end of the evening reflected sincere interest in the concerns of your constituents, and your questions to the attorney, Mr. Johnson who advised on the FCC ruling, and staff who drafted a urgency Ordinance were intelligent and far reaching, seeking a skillful strategy for protecting the local jurisdiction from federal and telecom domination.

As you work on your current draft, please incorporate into the new Ordinance/Resolution, specific Revisions and Recommendations submitted by Vicki Sievers, Kim Hahn, Bob Berg and Alex Stadtner.

Many Thanks,
Lonner Holden

From: Arthur D. Saftlas

Sent: Sunday, December 09, 2018 8:28 PM

To: Gary Phillips; John Gamblin; Kate Colin; Jim Schutz; Andrew McCullough; Lisa Goldfien; Alicia Giudice; Paul Jensen; Caron Parker; Maribeth Bushey; Melanie Moran

Subject: I spoke December 3rd on 5G...

I spoke December 3rd on the 5G issue. I was not able to finish, so I am sending this simple solution for your consideration.

NO 5G IN MARIN COUNTY, PERIOD!

I suggest our City Councils clearly say NO to the FCC. NO 5G installations of any kind in Marin, until it can be proven safe for us and the environment. The mandates of the FCC, by not allowing health and safety to be a consideration, clearly show their mandates are unjust. We have an obligation and a right to refuse to obey unjust laws.

A popular quote of Thomas Jefferson is, "If a law is unjust, a man is not only right to disobey it, he is obligated to do so." The Thomas Jefferson foundation website, suggests this quote it is a paraphrase of Jefferson's statement in the Declaration of Independence, "...whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government...". Martin Luther King, Jr.'s comment in his famous letter from Birmingham Jail: "One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws."

And there is Jury Nullification, a right not forthrightly shared by judges. A jury has the right to nullify an unjust law and free a defendant so charged. We disobey or counter sue and nullify the FCC by jury or grand jury. We need to be proactive and not lay down to this Industry.

What I am proposing is simple. We just say NO, period. The FCC has the power of the Federal Government, but we are stronger, because we have LOVE. We have love for ourselves, our children, our neighbors, and our beautiful natural environment. Marin is a special place, a garden spot in an insane world. We refuse to be polluted by big money interests.

To say NO to the rulers takes courage. Courage comes from the French corage meaning 'heart' and 'spirit' and Latin, cor, meaning 'more at heart', 'inner strength'. We in Marin County have heart and spirit, we are an advanced society of intelligent beings. We must come together face to face, heart to heart, where our ultimate power of love resides. The revolution starts now, and I was assured by Marin TV, it will be televised.

From: [Victoria Sievers](#)
To: [Gary Phillips](#); [John Gamblin](#); [Andrew McCullough](#); [Kate Colin](#); [Maribeth Bushey](#); [Jim Schutz](#); [Paul Jensen](#); [Alicia Giudice](#); [Caron Parker](#); [Lisa Goldfien](#); [Lindsay Lara](#)
Cc: [Kim Hahn](#); [Bob Berg](#); [Alex Stadtner](#)
Subject: U.S. legislators challenge FCC on 5G safety
Date: Tuesday, December 11, 2018 10:52:33 PM

Hello Mr. Mayor, Councilmembers and Staff,
You may well have already learned of this December 3 letter to the FCC from Senator Richard Blumenthal and Congresswoman Anna Eshoo, but we'd like to be certain that you know you're in responsible company when you express and exercise precaution about this untested technology. Also, below the ehtrust link to the letter, please find Dr. Martin Pall's statement on how EMF/RF radiation causes plants to become more flammable. This critical info was presented by a speaker at the Dec. 3 San Rafael hearing.
Thank you for your interest in protecting our city and its residents.
Vicki Sievers, EMF Safety Network

<https://ehtrust.org/u-s-senator-richard-blumenthal-and-u-s-representative-anna-g-eshoo-ca-18-letter-to-federal-communications-commission-commissioner-brendan-car-about-5g-health-hazards/>

Pima County, AZ 5G Awareness Coalition Public Forum: Is 5G a Technological Revolution or a Pandora's Box?

Nov 17, 2018 — Tucson, AZ Live-Streamed Event

[Link to](#) event video

- **0:00:15** — Ashley Portman: Start of Program
- **0:02:30** — Elizabeth Kelley
- **0:24:30** — Dr. Martin Pall at 1:44:54 in the video talks about terpenes*, produced by plants, in his 90-page document:
<https://peaceinspace.blogs.com/files/5g-emf-hazards--dr-martin-l.-pall--eu-emf2018-6-11us3.pdf>
- **0:54:35** — Dr. Timothy Schoechle
- **1:18:00** — Eric Windheim
- **1:37:55** — Questions & Answers
- **2:02:00** — Ashley Portman: End of Program

* At 1:48:13 . . . **Q:** "How do EMFs make plants more flammable?" **A:** "What EMFS do is that they work in the cells of plants very similarly to the way EMFS work in the cells of our bodies, by increasing intracellular calcium, by working on the channels in the plasma membranes in plants. I have published on that. What happens as a consequence of that is that the plants make much, much higher levels of terpenes, which are highly volatile and highly flammable. It's a bit like having a light spray of gasoline on the plants. So they do become more flammable."