

NOTICE OF SPECIAL MEETING

Pursuant to Section 54956 of the Government Code of the State of California, a Special meeting of the **Tracy City Council** is hereby called for:

Date/Time: **Tuesday, April 6, 2021 at 5:30 p.m.**
(or as soon thereafter as possible)

Location: **Tracy City Hall**
333 Civic Center Plaza, Tracy

THIS SPECIAL MEETING WILL BE CONDUCTED PURSUANT TO THE PROVISIONS OF THE GOVERNOR'S EXECUTIVE ORDER N-29-20 WHICH SUSPENDS CERTAIN REQUIREMENTS OF THE RALPH M. BROWN ACT

RESIDENTS ARE STRONGLY ENCOURAGED TO PARTICIPATE REMOTELY AT THE APRIL 6, 2021 SPECIAL MEETING

Government Code Section 54954.3 states that every public meeting shall provide an opportunity for the public to address the Tracy City Council on any item, before or during consideration of the item, however no action shall be taken on any item not on the agenda.

Remote Access to City of Tracy Council Meeting:

In accordance with the guidelines provided in Executive Order N-29-20 on social distancing measures, the City of Tracy will allow for remote participation at the upcoming Special City Council meeting on Tuesday, April 6, 2021.

As always, the public may view the City Council meetings live on the City of Tracy's website at www.CityofTracy.org or on Channel 26. To view from the City's website, select "Watch Live Council Meetings" from the drop down menu "Select an Online Service" at the top of the City's homepage. You will be directed to the "Council Meeting Videos" page where you may select the video for the appropriate date under "Upcoming Events."

If you only wish to watch the meeting and do not wish to address the Council, the City requests that you stream the meeting through the City's website or watch on Channel 26.

Remote Public Comment:

*Public comment, limited to 250 words or less, submitted via email **will be accepted for agenda items before the start of the Council meeting at 5:30 p.m.** Please send an email to publiccomment@cityoftracy.org and identify the item you wish to comment on in your email's subject line.*

During the upcoming Council meeting public comment will be accepted via the options listed below. If you would like to comment remotely, please follow the protocols below:

- *Comments via:*
 - **Phone** by dialing (209) 831-6010, or
 - **Online by visiting** <https://cityoftracyevents.webex.com> and using the following **Event Number:** 182 778 1059 and **Event Password:** TracyCC
 - ***If you would like to participate in the public comment anonymously***, you may submit your comment via phone or in WebEx by typing "Anonymous" when prompted to provide a First and Last Name and inserting Anonymous@example.com when prompted to provide an email address.

- *Protocols for submitting comments by **phone**:*
 - *Comments received by phone for the “Items from the Audience/Public Comment” portion of the agenda must be received by the time the Mayor opens that portion of the agenda for discussion.*
 - *Comments received by phone on each “Agendized Item” will be accepted until the Mayor announces that public comment for that item is closed.*
- *Protocols for commenting via WebEx:*
 - *If you wish to comment under “Items from the Audience/Public Comment” portion of the agenda:*
 - *Listen for the Mayor to open “Items from the Audience/Public Comment”, then raise your hand to speak by clicking on the Hand icon on the Participants panel to the right of your screen.*
 - *If you no longer wish to comment, you may lower your hand by clicking on the Hand icon again.*
 - *Comments for the “Items from the Audience/Public Comment” will be accepted until the public comment period is closed.*
- *The total allotted time for public comment under “Items from the Audience/Public Comment” will be 15 minutes:*

1. Call to Order
2. Roll Call
3. Items from the Audience - Items from the audience - *In accordance with Council Meeting Protocols and Rules of Procedure, adopted by Resolution 2019-240, a five-minute maximum time limit per speaker will apply to all individuals speaking during “Items from the Audience/Public Comment”. For non-agendized items, Council Members may briefly respond to statements made or questions posed by individuals during public comment; ask questions for clarification; direct the individual to the appropriate staff member; or request that the matter be placed on a future agenda or that staff provide additional information to Council.*
4. PUBLIC HEARING TO INTRODUCE AN ORDINANCE ADDING CHAPTER 7.28 TO THE TRACY MUNICIPAL CODE TO INCLUDE WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND APPROVE COUNCIL POLICY ESTABLISHING SMALL WIRELESS FACILITIES REGULATIONS
5. Council Items and Comments
6. Adjournment



Mayor

Posting Date: Thursday, April 1, 2021

The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in public meetings. Persons requiring assistance or auxiliary aids in order to participate should call City Hall (209-831-6105), at least 24 hours prior to the meeting.

Any materials distributed to the majority of the Tracy City Council regarding any item on this agenda will be made available for public inspection in the City Clerk's office located at 333 Civic Center Plaza, Tracy, during normal business hours.

AGENDA ITEM 4

REQUEST

PUBLIC HEARING TO INTRODUCE AN ORDINANCE ADDING CHAPTER 7.28 TO THE TRACY MUNICIPAL CODE TO INCLUDE WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND APPROVE COUNCIL POLICY ESTABLISHING SMALL WIRELESS FACILITIES REGULATIONS

EXECUTIVE SUMMARY

The Federal Communication Commission (FCC) is responsible for implementing and enforcing federal communications laws and regulations such as small cell wireless facilities. Federal laws generally limit local control over telecommunication facilities, with the exception of allowing communities to establish reasonable design standards and permit processing requirements. State legislation has also codified a number of federal telecommunication regulations (Gov. Code 65964.1) and standards for approving certain wireless facility requests.

The purpose of this agenda item is to establish local design standards and process application requirements, within federal and state guidelines, to ensure that the look of the small cell wireless facilities blend into the various locations and the process is as transparent as possible. Similar policies and guidelines have been implemented in other jurisdictions in our region. Staff from PW, CAO, DS, Utilities and CMO have all contributed to the policies and requirements that you see attached.

More specifically, this item introduces an ordinance adding Chapter 7.28 to the Tracy Municipal Code to include wireless telecommunications facilities in the public right-of-way and to approve Council Policy Small Wireless Facilities Regulations.

DISCUSSION

Background

In prior decades, wireless antennas and equipment were primarily installed on large towers or “macro-cells.” These deployments are subject to Conditional Use Permit approval under the Zoning Code and are currently prohibited in residential zones.

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

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

- Defines SWFs as up to 50 feet in height, including antennas, or mounted on structures no more than 10% taller than other adjacent structures; or that do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; each antenna is no more than 3 cubic feet in volume, and the total associated wireless equipment on one structure is no more than 28 cubic feet in volume.
- Caps all fees that local governments can charge to the actual and reasonable cost of providing service. This limitation applies to fees for SWFs located on private property as well.
- Imposes shot clocks of 60 days for SWFs added to existing structures (regardless of whether the structure already supports a wireless service) and 90 days for SWFs proposing a new structure. The shortened shot clocks also apply to applications for SWFs on private property.
- Preempts all aesthetic requirements for SWFs in the PROW unless they are (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployments; (3) objective; and (4) published in advance. (Effective April 14, 2019.)

This report introduces an ordinance to provide the regulatory framework and standards for permitting the installation of SWFs within the City's PROW. Staff has been working with outside counsel to draft such ordinance. The proposed ordinance and corresponding design standards have been revised in response to the FCC Order. The proposed ordinance also addresses "eligible facilities requests"—a category of "by-right" installations that were established by the FCC several years ago, but never acknowledged in the City's Municipal Code.

This report also proposes a resolution to adopt a Council Policy establishing "SWF Regulations" (Attachment B hereto) as a set of aesthetic/design standards for SWFs in the PROW. The SWF design standards are proposed to be adopted by resolution, rather than ordinance, given the rapidly-changing nature of wireless technology. With design standards encompassed in a Council Policy adopted by resolution, the design standards can more quickly and easily be updated as new technologies and designs evolve.

Discussion

The Federal Telecommunications Act is intended to ensure that the public has sufficient access to telecommunication services. Based on this Federal law, a local government shall not prohibit or have the effect of prohibiting the provision of personal wireless services. Further, no State or local government may dictate, or even consider, wireless entitlements based on "the environmental (health) effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning

such emissions.” A zoning authority’s mere consideration of health effects, including potential effects on property values due to potential radio frequency emissions, may not serve as “substantial evidence” for purposes of denying a wireless facility. The City’s role in the siting and design of WCFs is generally limited to aesthetics.

Wireless telecommunications providers are treated as telephone companies under their State franchise conferred in California Public Utilities Code Section 7901, and thus are entitled to use the PROW to deploy their equipment. However, even with their right to occupy the PROW, under Section 7901 providers may not “unreasonably subject the public use to inconvenience or discomfort; to unreasonably trouble, annoy, molest, embarrass, inconvenience; to unreasonably hinder, impede, or obstruct the public use.” These limitations on Section 7901 have been interpreted broadly enough to include concerns related to the appearance of a facility,” and thus Section 7901 allows cities to condition a wireless permit on (i) aesthetic concerns, (ii) restricting the location of proposed facilities due to public safety reasons or other local concerns or even deny applications in appropriate circumstances, and (iii) to exercise reasonable control over the time, place and manner of “when, where, and how telecommunications service providers gain entry to the public rights-of-way,” including the need for encroachment permits. (See, Pub. Util. Code § 7901.)

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

On aesthetics, spacing restrictions and undergrounding requirements, the FCC declares that such requirements will not be preempted if they are reasonable, no more burdensome than those applied to other types of infrastructure deployments, and objective and published in advance. In essence, this new standard for aesthetic conditions means that cities can impose aesthetic requirements to the extent they are “technically feasible” for the provider. This is a significant departure from the “least intrusive means” analysis that developed in the Ninth Circuit over the last few decades. The FCC Order purports to overturn the “least intrusive means” standard entirely, with the new standards taking effect on April 15, 2019.

Aesthetic standards implementing the FCC Order must be reasonable, objective, and published ahead of time. If a city does not have “published” its design standards, then it does not appear that any standards can be enforced. Staff therefore recommends the Council adopt an ordinance setting out the permitting procedures for SWFs in the PROW. The proposed ordinance seeks to balance the community’s need for wireless services, the industry’s need to deploy quickly, and the City’s obligation to maintain safety and protect the aesthetic qualities of our neighborhoods. As drafted, the proposed ordinance would:

- Add a new Chapter 7.28.000 to the Municipal Code, Wireless Facilities in the Public Right of Way. For all wireless facility installations in the PROW, the ordinance provides, among other regulations, the permit and review procedures as well as the operation and maintenance standards. The ordinance treats wireless installations in the PROW similar to other installations in the ROW by

requiring an encroachment permit, in addition to a special “wireless telecommunications facility permit” or “WTFP. The WTFP is a new entitlement type/process tailored to suit the legal standards and technologies uniquely attendant to wireless facilities. Once WTFP and encroachment permits are issued, the carrier may still need to obtain traffic control plans, construction permits and if necessary, a license to attach to City infrastructure, etc.

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

To accompany the new ordinance, staff has also prepared a separate Council Policy “SWF Regulations” that will provide the industry direction on the City’s aesthetic, location and design requirements. For example, the proposed design standards recommend that when there is a choice in location, carriers should choose to site on a pole or street light that is between structures and not immediately adjacent to a structure, that paint and design should blend with surrounding structures, that signage should be limited, and that lighting be prohibited unless required by the Federal Aviation Administration. This draft document is provided as an attachment to this report and once approved by the Council, will be promptly published by staff on the City’s website as required by the FCC Order.

Proposed Resolution adopting a Council Policy “SWF Regulations” is attached to this report for City Council consideration or approval; staff recommends that the City Council adopt the design standards with the ordinance.

General Plan Consistency

This ordinance is consistent with the General Plan Objective ED-6.7, Policy P3 which reads “High-speed telecommunications systems should be included in development to help create the premier office location in Tracy.”

CEQA DETERMINATION

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

STRATEGIC PLAN

This agenda item supports the City of Tracy’s Economic Development Strategic Priority 5.5, which is to develop policies to Target new jobs in innovative industries (e.g., cannabis; green industry), and initiate marketing for enhancement of the green economy cluster and develop strategies for business growth and attraction.

FISCAL IMPACT

No fiscal impacts are associated with the ordinance. However, installation of wireless facilities would be subject to fees and yield potential application and lease revenue. Staff will incorporate new application fees as part of the Master Fee Schedule that will be brought back to Council at a later date.

RECOMMENDATION

Staff recommends that City Council:

- (1) Introduce and waive the full reading of : “An Ordinance of the City Council of the City of Tracy, California, adding Chapter 7.28.000 to Title 7 (“Public Works”) of the Tracy Municipal Code,” and
- (2) Adopt, via resolution, the “Council Policy: Small Wireless Facilities per 47 CFR 1.6002(1) ‘SWF Regulations.’”

Agenda Item 4
April 6, 2021
Page 6

Prepared by: Veronica Child, Management Analyst II

Reviewed by: Robert Armijo, PE, City Engineer / Assistant Director of Development Services
Karin Schnaider, Finance Director
Andrew Malik, Assistant City Manager

Approved by: Jenny Haruyama, City Manager

ATTACHMENTS

Attachment A – An Ordinance of the City Council of the City of Tracy, California, adding
Chapter 7.28 to Title 7 (“Public Works”) of the Tracy Municipal Code
Attachment B – General SWF Council Policy

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TRACY,
CALIFORNIA, ADDING CHAPTER 7.28 TO TITLE 7 (“PUBLIC
WORKS”) OF THE TRACY MUNICIPAL CODE**

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

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

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

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

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

D. Given the rapid and significant changes in Federal and State law, the actual and effective prohibition on moratoria to amend local policies in response to such changes and the significant adverse consequences for noncompliance with Federal and State law, the City Council desires to add a new Chapter 7.28 of Title 7 in the Tracy Municipal Code, entitled "Chapter 7.28.000 - WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY" (the "Ordinance") to allow greater flexibility and responsiveness to the new Federal and State laws while still preserving the City's traditional authority to the maximum extent practicable.

On April 6, 2021 the City Council held a duly noticed public hearing on the Ordinance, reviewed and considered the staff report, other written reports, public testimony and other information contained in the record.

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

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

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

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

SECTION 4. The Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. The Ordinance is further exempt from CEQA because the City Council's adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment (State CEQA Guidelines,

§ 15061(b)(3)). Installations, if any, would be exempt from CEQA review in accordance with either State CEQA Guidelines Section 15302 (replacement or reconstruction), State CEQA Guidelines Section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines Section 15304 (minor alterations to land).

SECTION 5. The Ordinance is hereby adopted by the addition of a new Chapter 7.28, “WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY” in Title 7 of the Tracy Municipal Code to read in its entirety as shown in Exhibit “A” attached hereto and incorporated herein by this reference.

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

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

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

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

ADOPTED, SIGNED and APPROVED this __ day of _____, 2021.

MAYOR, Nancy D. Young

ATTEST:

City Clerk, Adrienne Richardson

STATE OF CALIFORNIA)
COUNTY OF _____)
CITY OF _____)

I, Adrienne Richardson, CITY CLERK OF THE CITY OF TRACY, DO HEREBY CERTIFY that the foregoing Ordinance Number _____ was duly adopted by the City Council of the City of Tracy at a regular meeting of said Council on the __ day of _____, 2021, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

City Clerk, Adrienne Richardson

**Chapter 7.28.000 - WIRELESS TELECOMMUNICATIONS FACILITIES IN THE
PUBLIC RIGHT-OF-WAY**

7.28.010 - PURPOSE.

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

7.28.20 - DEFINITIONS.

- (a) "Accessory equipment" means any and all on-site equipment, including, without limitation, back-up generators and power supply units, cabinets, coaxial and fiber optic cables, connections, equipment buildings, shelters, radio transceivers, transmitters, pedestals, splice boxes, fencing and shielding, surface location markers, meters, regular power supply units, fans, air conditioning units, cables and wiring, to which an antenna is attached in order to facilitate the provision of wireless telecommunication services.
- (b) "Antenna" means that specific device for transmitting and/or receiving radio frequency or other signals for purposes of wireless telecommunications services. "Antenna" is specific to the antenna portion of a wireless telecommunications facility.
- (c) "Antenna array" shall mean two or more antennas having active elements extending in one or more directions, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.

- (d) “Base station” shall have the meaning as set forth in Title 47 Code of Federal Regulations (C.F.R.) Section 1.6100(b)(1), or any successor provision. This means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network (regardless of the technological configuration, and encompassing DAS and small wireless facilities). “Base station” does not encompass a tower or any equipment associated with a tower. Base station includes, without limitation:
- (1) Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
 - (2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small wireless facilities).
 - (3) Any structure other than a tower that, at the time the relevant application is filed with the City under this chapter, supports or houses equipment described in paragraphs 1 and 2 of this definition that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.
 - (4) “Base station” does not include any structure that, at the time the relevant application is filed under this chapter, does not support or house equipment described in paragraphs 1 and 2 of this definition. Other structures that do not host wireless telecommunications facilities are not “base stations.”

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

- (e) “Cellular” means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.
- (1) “City” means the City of Tracy.
 - (2) “Code” means the Tracy Municipal Code.
 - (3) “Collocation” bears the following meanings:
- (f) For the purposes of any eligible facilities request, the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), as may be amended, which defines that term as “[t]he mounting or installation of transmission equipment on an eligible support structure

for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.” As an illustration and not a limitation, the FCC’s definition means to add transmission equipment to an existing facility and does not necessarily refer to two or more different facility operators in the same location; and

- (g) For all other purposes, the same as defined in 47 CFR 1.6002(g)(1) and (2), as may be amended, which defines that term as (1) Mounting or installing an antenna facility on a pre-existing structure, and/or (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
- (h) “Collocation facility” means the eligible support structure on, or immediately adjacent to, which a collocation is proposed, or a wireless telecommunications facility that includes collocation facilities. (*See*, Gov. Code, § 65850.6(d)(1).)
- (i) “COW” means a “cell on wheels,” which is a portable, self-contained wireless telecommunications facility that can be moved to a location and set up to provide wireless telecommunication services, which facility is temporarily rolled in, or temporarily installed, at a location. Under this chapter, the maximum time a facility can be installed to be considered a COW is five (5) days. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.
- (j) “Development Services Director” means the director of the Development Services and Engineering Department or their designee.
- (k) “Distributed antenna system” or “DAS” means a network of spatially separated antennas (nodes) connected to a common source (a hub) via a transport medium (often fiber optics) that provide wireless telecommunications service within a specific geographic area or building. DAS includes the transport medium, the hub, and any other equipment to which the DAS network or its antennas or nodes are connected to provide wireless telecommunication services.
- (l) “Eligible facilities request” means any request for modification to an existing eligible support structure that does not substantially change the physical dimensions of such structure, involving:
 - (1) Collocation of new transmission equipment;
 - (2) Removal of transmission equipment;
 - (3) Replacement of transmission equipment (replacement does not include completely replacing the underlying support structure); or
 - (4) Hardening through structural enhancement where such hardening is necessary to accomplish the eligible facilities request, but does not include replacement of the underlying support structure.

- (m) “Eligible facilities request” does not include modifications or replacements when an eligible support structure was constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. “Eligible facilities request” does include collocation facilities satisfying all the requirements for a non-discretionary collocation facility pursuant to Government Code Section 65850.6.
- (n) “Eligible support structure” means any support structure located in the PROW that is existing at the time the relevant application is filed with the City under this chapter.
- (o) “Existing” means a support structure, wireless telecommunications facility, or accessory equipment that has been reviewed and approved under the City’s applicable zoning or siting process, or under another applicable state or local regulatory review process, and lawfully constructed prior to the time the relevant application is filed under this chapter. However, a support structure, wireless telecommunications facility, or accessory equipment that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is “existing” for purposes of this chapter. “Existing” does not apply to any structure that (1) was illegally constructed without all proper local agency approvals, or (2) was constructed in noncompliance with such approvals. “Existing” does not apply where an existing support structure is proposed to be replaced in furtherance of the proposed wireless telecommunications facility.
- (p) “Facility(ies)” means wireless telecommunications facility(ies).
- (q) “FCC” means the Federal Communications Commission.
- (r) “Ground-mounted” means mounted to a pole, tower or other freestanding structure which is specifically constructed for the purpose of supporting an antenna or wireless telecommunications facility and placed directly on the ground at grade level.
- (s) “Lattice tower” means an open framework structure used to support one or more antennas, typically with three or four support legs.
- (t) “Located within (or in) the public right-of-way” includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the PROW.
- (u) “Modification” means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. “Modification” does not include repair, replacement or maintenance if those actions do not involve whatsoever any expansion, alteration, enlargement, intensification, reduction, or augmentation of an existing wireless telecommunications facility.

- (v) “Monopole” means a structure composed of a pole or tower used solely to support antennas or related equipment. A monopole also includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole (e.g. water tower).
- (w) “Mounted” means attached or supported.
- (x) “OTARD antennas” means antennas covered by the “over-the-air reception devices” rule in 47 C.F.R. sections 1.6100 et seq. as may be amended or replaced from time to time.
- (y) “Permittee” means any person or entity granted a WTFP pursuant to this chapter.
- (z) “Personal wireless services” shall have the same meaning as set forth in 47 United States Code Section 332(c)(7)(C)(i).
- (aa) “Pole” means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this code.
- (bb) “Public right-of-way” or “PROW” means a strip of land acquired by reservation, dedication, prescription, condemnation, or easement that allows for the passage of people and goods. The PROW includes, but is not necessarily limited to, streets, curbs, gutters, sidewalks, roadway medians, and parking strips. The PROW does not include lands owned, controlled or operated by the City for uses unrelated to streets or the passage of people and goods, such as, without limitation, parks, City Hall and community center lands, City yards, and lands supporting reservoirs, water towers, police or fire facilities and non-publicly accessible utilities.
- (cc) “Replacement” refers only to replacement of transmission equipment, wireless telecommunications facilities or eligible support structures where the replacement structure will be of like-for-like kind to resemble the appearance and dimensions of the structure or equipment replaced, including size, height, color, landscaping, materials and style.
 - (1) In the context of determining whether an application qualifies as an eligible facilities request, the term “replacement” relates only to the replacement of transmission equipment and does not include replacing the support structure on which the equipment is located.
 - (2) In the context of determining whether a SWF application qualifies as being placed upon a new eligible support structure or qualifies as a collocation, an application proposing the “replacement” of the underlying support structure qualifies as a new pole proposal.
- (dd) “RF” means radio frequency.

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

(ff) “Substantial change” has the same meaning as “substantial change” as defined by the FCC at 47 C.F.R. 1.6100(b)(7). Notwithstanding the definition above, if an existing pole-mounted cabinet is proposed to be replaced with an underground cabinet at a facility where there are no pre-existing ground cabinets associated with the structure, such modification may be deemed a non-substantial change, in the discretion of the Development Services Director and based upon his/her reasonable consideration of the cabinet’s proximity to residential view sheds, interference to public views and/or degradation of concealment elements. If undergrounding the cabinet is technologically infeasible such that it is materially inhibitive to the project, the Development Services Director may allow for a ground mounted cabinet. A modification or collocation results is a “substantial change” to the physical dimensions of an eligible support structure if it does any of the following:

- (1) It increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
- (2) It involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- (3) It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets. However, for towers and base stations located in the public rights-of-way, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- (4) It entails any excavation or deployment outside the current site. For purposes of this Subsection, excavation outside the current site occurs where excavation more than twelve feet from the eligible support structure is proposed;
- (5) It defeats the concealment or stealthing elements of the eligible support structure; or

- (6) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs 1 through 4 of this definition.
- (7) For all proposed collocations and modifications, a substantial change occurs when:
 - (ii) The proposed collocation or modification involves more than the standard number of new equipment cabinets for the technology involved, but not to exceed four equipment cabinets;
 - (jj) The proposed collocation or modification would defeat the concealment elements of the support structure; or
 - (kk) The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval that is inconsistent with the thresholds for a substantial change described in this Section.

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

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

(hh) “SWF” means a “small wireless facility” as defined by the FCC in 47 C.F.R. 1.6002(1) as may be amended, which are personal wireless services facilities that meet all the following conditions that, solely for convenience, have been set forth below:

- (1) The facility:
 - i. Is mounted on an existing or proposed structure 50 feet or less in height, including antennas, as defined in Title 47 C.F.R. Section 1.1320(d); or
 - ii. Is mounted on an existing or proposed structure no more than 10 percent taller than other adjacent structures, or

- iii. Does not extend an existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
 - (2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;
 - i. 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;
 - ii. The facility does not require antenna structure registration under 47 C.F.R. Part 17, Section 17.4;
 - iii. The facility is not located on Tribal lands, as defined under Title 36 C.F.R. Section 800.16(x); and
 - iv. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Title 47 C.F.R. Section 1.1307(b).
- (ii) “SWF Regulations” means those regulations adopted by the City Council (City Council Policy Number _____) implementing the provisions of this chapter applicable to SWFs and further regulations and standards applicable to SWFs.
- (jj) “Telecommunications tower” or “tower” bears the meaning ascribed to wireless towers by the FCC in 47 C.F.R. § 1.6100(b)(9), including without limitation a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.
- (kk) “Transmission equipment” means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (ll) “Utility pole” means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or

other utility services regulated by the California Public Utilities Commission. A telecommunications tower is not a utility pole.

- (mm) “Wireless telecommunications facility” means equipment and network components such as antennas, accessory equipment, support structures, and emergency power systems that are integral to providing wireless telecommunications services. Exceptions: The term “wireless telecommunications facility” does not apply to the following:
- (1) Government-owned and operated telecommunications facilities.
 - (2) Emergency medical care provider-owned and operated telecommunications facilities.
 - (3) Mobile services providing public information coverage of news events of a temporary nature.
 - (4) Any wireless telecommunications facilities exempted from this code by federal law or state law.
- (nn) “Wireless telecommunications services” means the provision of services using a wireless telecommunications facility or a collocation facility, and shall include, but not limited to, the following services: personal wireless services as defined in the federal Telecommunications Act of 1996 at 47 U.S.C. § 332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.
- (oo) “WTFP” means a “wireless telecommunications facility permit” required by this chapter.

7.28.30 - APPLICABILITY.

- (a) This chapter applies to the siting, construction or modification of any and all wireless telecommunications facilities proposed to be located in the public right-of-way as follows:
- (1) Pre-existing Facilities in the ROW. Nothing in this chapter shall validate any existing illegal or unpermitted wireless facilities. All existing wireless facilities shall comply with and receive a wireless encroachment permit, when applicable, to be considered legal and conforming.
- (b) This chapter does not apply to the following:
- (1) Amateur radio facilities;
 - (2) OTARD antennas;

- (3) Facilities owned and operated by the City for its use or for public safety purposes;
 - (4) Any entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement;
 - (5) Installation of a COW or a similar structure for a temporary period in connection with an emergency or event at the discretion of the Development Services Director, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities;
 - (6) Facilities on private property or publicly-owned property not in the public right-of-way.
- (c) Public use. Except as otherwise provided by state or federal law, any use of the PROW authorized pursuant to this chapter will be subordinate to the City's use and use by the public.

7.28.40 - WIRELESS TELECOMMUNICATIONS FACILITY PERMIT REQUIREMENTS.

- (a) Administration. Unless a matter is referred to the planning director as provided below, The Development Services Director is responsible for administering this chapter. As part of the administration of this chapter, the Development Services Director may:
- (1) Interpret the provisions of this chapter;
 - (2) Develop and implement standards governing the placement and modification of wireless telecommunications facilities consistent with the requirements of this chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;
 - (3) Develop and implement acceptable design, location and development standards for wireless telecommunications facilities in the PROW, taking into account the zoning districts bounding the PROW;
 - (4) Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this chapter;
 - (5) Collect, as a condition of the completeness of any application, any fee established by this chapter;

- (6) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations;
 - (7) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
 - (8) Require, as part of, and as a condition of completeness of any application, that an applicant for a wireless encroachment permit send notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;
 - (9) Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and
 - (10) Take such other steps as may be required to timely act upon applications for placement of wireless telecommunications facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.
- (b) Administrative Wireless Telecommunications Facilities Permits (“Administrative WTFP”).
- (1) An Administrative WTFP, subject to the Development Services Director’s approval, may be issued for wireless telecommunications facilities, collocations, modifications or replacements to an eligible support structure that meet the following criteria:
 - i. The proposal is determined to be for a SWF; or
 - ii. The proposal is determined to be an eligible facilities request; or
 - iii. Both.
 - (2) In the event that the Development Services Director determines that any application submitted for an Administrative WTFP does not meet the administrative permit criteria of this chapter, the Development Services Director shall convert the application to a major facility application and refer it to Planning Commission hearing in accordance with section 10.25.080 of the Code.
 - (3) Except in the case of an eligible facilities request, the Development Services Director may refer, in his/her discretion, any application for an Administrative WTFP to the Planning Commission for hearing.
- (c) Special Provisions for SWFs; SWF Regulations. Notwithstanding any other provision of this chapter as provided herein, all SWFs are subject to a permit as

specified in the SWF Regulations, which is adopted and may be amended by City Council resolution. All SWFs, shall comply with the SWF Regulations, as they may be amended from time to time.

- (1) The SWF Regulations are intended to be constructed in consistency with, and addition to, the terms and provisions of this chapter. To the extent general provisions of this chapter are lawfully applicable to SWFs, such terms shall apply unless in contradiction to more specific terms set forth in the SWF Regulations, in which case the more specific terms of the SWF Regulations shall control.
- (d) Other Permits Required. In addition to any permit that may be required under this chapter, the applicant must obtain all other required prior permits or other approvals from other City departments, or state or federal agencies. Any permit granted under this chapter is subject to the conditions and/or requirements of other required prior permits or other approvals from other City departments, state or federal agencies. Building and encroachment permits, and all City standards and requirements therefor, are applicable.
- (e) Eligible Applicants. Only applicants who have been granted the right to enter the PROW pursuant to state or federal law, or who have entered into a franchise agreement with the City permitting them to use the PROW, shall be eligible for a WTFP pursuant to this chapter.

7.28.50 - APPLICATION FOR WIRELESS TELECOMMUNICATIONS FACILITY PERMITS.

- (a) Generally. Unless the SWF Regulations specifically provide otherwise, the applicant shall submit a paper copy and an electronic copy of any application, amendments, or supplements to a WTFP application, or responses to requests for information regarding an WTFP, in accordance with the provisions of this section. SWF applications shall be governed by any additional terms set forth in the SWF Regulations, and in the event of an inconsistency between the provisions of this Section and the terms of the SWF Regulations, the Regulations shall control.
 - (1) All applications for WTFPs shall be initially submitted to the Development Services Director. In addition to the information required of an applicant for an encroachment permit or any other permit required by this Code, each applicant shall fully and completely submit to the City a written application on a form prepared by the Development Services Director and published on the City's website.
 - (2) Ground mounted equipment, conduit, junction boxes and fiber and electrical connections necessary for and intended for use in the deployment shall also be specified, to the extent known regardless of whether the additional facilities are to be constructed by the applicant or leased from a third party. Where another party is responsible for installing such electric and fiber utilities, conduits, cables, and related improvements, applicant's

construction drawings will include such utilities to the extent known at the time of application, but at a minimum applicant must indicate how it expects to obtain fiber and electric service to the small wireless facility. Notwithstanding the foregoing, no ground mounted equipment, conduit, junction boxes or fiber and electrical connections necessary for and intended for use in the deployment shall be installed until a WTFP has been approved or conditionally approved for the deployment.

- (b) Application Contents—Administrative WTFPs. The content of the application form for facilities subject to an Administrative WTFP shall be determined by the Development Services Director. Fees and Deposits Submitted with Application(s).
 - (1) For all WTFPs, application fee(s) and or deposit(s) shall be required to be submitted with any application, as established by City Council resolution and in accordance with California Government Code Section 50030. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a WTFP unless paid as a refundable deposit.
- (c) Costs. Reasonable costs of City staff, consultant and attorney time (including that of the City Attorney) pertaining to the review, processing, noticing and hearing procedures directly attributable to a WTFP shall be reimbursable to the City. To this end, the Development Services Director or designee, as applicable, may require applicants to enter cost recovery agreement, in a form approved by the City Attorney, or other established trust/deposit accounting mechanism for purposes of obtaining an applicant deposit from which the direct costs of City processing of an application may be drawn-down.
- (d) Effect of State or Federal Law on Application Process. In the event a state or federal law prohibits the collection of any information required by the application, the Development Services Director is authorized to omit, modify or add to that request from the City’s application form in consultation with the City Attorney. Requests for waivers from any application requirement of this Section shall be made in writing to the Development Services Director or designee. The Development Services Director may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the WTFP sought. All waivers approved pursuant to this Subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored to minimize deviation from the requirements of this Code.
- (e) Applications Deemed Withdrawn. To promote efficient review and timely decisions, any application governed under this chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the City on any application within sixty (60) calendar days after the application is deemed incomplete in a written notice to the applicant that identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information. The Development Services

Director (as applicable) may, in their discretion, grant a written extension when the applicant submits a written request prior to the sixtieth (60th) day that shows good cause to grant the extension.

- (f) **Waiver of Applications Superseded by Submission of New Project.** If an applicant submits a WTFP application, but substantially revises the proposed facility during the application process prior to any City hearing or decision on such application, the substantially revised application shall be deemed a new application for all processing purposes, including federal shot clocks, and the prior submittals deemed waived and superseded by the substantially revised application. For purposes of this subparagraph, “substantially revised” means that the project as initially- proposed has been alternately proposed for a location 300 feet or more from the original proposal or constitutes a substantial change in the dimensions or equipment that was proposed in the original WTFP application unless the proposed changes were as a result of City requested changes.
- (g) **Rejection for Incompleteness.** WTFPs will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is incomplete, it may be rejected by the Development Services Director by notifying the applicant in writing and specifying the material omitted from the application.

7.28.60 - REVIEW PROCEDURE.

- (a) **Generally.** Wireless telecommunications facilities shall be installed and modified in a manner that minimizes risks to public safety and utilizes installation of new support structures or equipment cabinets in the PROW only after all existing and replacement structure options have been exhausted, and where feasible, places equipment underground, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the PROW; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the ROW, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate the PROW or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the PROW.
- (b) **Findings Required for Approval.**
 - (1) **Administrative WTFP Applications for SWFs.** For WTFP applications proposing a SWF, the Development Services Director or planning director, as the case may be, shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:
 - i. The facility qualifies as a SWF; and
 - ii. The facility meets all standards, requirements and further findings

as may be specified in the SWF Regulations; and

- iii. The facility is not detrimental to the public health, safety, and welfare; and
- iv. The facility meets applicable requirements and standards of State and Federal law.

(2) Administrative WTFP Applications for Eligible Facility Requests. For WTFP applications proposing an eligible facilities request, the Development Services Director shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:

- i. That the application qualifies as an eligible facilities request; and
- ii. That the proposed facility will comply with all generally-applicable laws.

(c) Notice; Decisions. The provisions in this Section describe the procedures for the approval process, and any required notice for a WTFP application.

(1) Administrative WTFPs: Notice of a WTFP application for a SWF shall be mailed to owners and occupants of real property surrounding the proposed SWF site in the manner specified in the SWF Regulations. Applications qualifying for eligible facilities requests shall not require notice.

(2) Written Decision Required for All WTFP Determinations. Unless otherwise specified for SWF's in the SWF Regulations, all final decisions made pursuant to this chapter, including those for administratively- processed permits and eligible facilities requests, shall be in writing and based on substantial evidence in the written administrative record. Within five days after any decision to grant, approve, deny or conditionally grant a WTFP application, the Development Services Director shall provide written notice including the following:

- i. A general explanation of the decision, including the findings required for the decision, if any, and how those findings were supported or not supported by substantial evidence;
- ii. A general description of the property involved;
- iii. Information about applicable rights to appeal the decision and explanation of how that right may be exercised; and
- iv. To be given by first class mail to:
 - a. The project applicant and property owner,

- b. Any person who submitted written comments concerning the WTFP,
 - c. Any person within who has filed a written request with the City to receive such notice, and
 - d. Adjacent property owners within 300 feet of the WTFP facility.
 - (3) Once a WTFP is approved, no changes shall be made to the approved plans without review and approval in accordance with this chapter.
- (d) Appeals.
 - (1) Administrative WTFP Appeals. Any person claiming to be adversely affected by an administrative decision pursuant to this chapter may appeal such decision. The appeal will be considered by a hearing officer appointed by the City Manager. The hearing officer may decide the issues de novo and whose written decision will be the final decision of the City. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless facility. Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, appeals of the administrative decision premised on the environmental effects of radio frequency emissions will not be considered.
 - a. Where the administrative decision grants an application based on a finding that denial would result in a prohibition or effective prohibition under applicable federal law, the decision shall be automatically appealed to the hearing officer. All appeals must be filed within two (2) business days of the written administrative decision, unless the Development Services Director extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law.
 - b. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law. For SWFs, the appeal shall be conducted in accordance with any procedures adopted in the SWF Regulations.
- (e) Notice of Shot Clock Expiration. The City acknowledges there are federal and state shot clocks which may be applicable to a proposed wireless telecommunications facility. That is, federal and state law provide time periods in which the City must approve or deny a proposed wireless telecommunications facility. As such, the applicant is required to provide the Development Services Director written notice, which may be by email, of the expiration of any shot clock, which the applicant shall ensure is received by the City (e.g. overnight mail) no later than 10 days prior to the expiration.

7.28.70 – DESIGN AND DEVELOPMENT STANDARDS.

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

- (b) Eligible Facilities Request Design and Development Standards. Approved eligible facilities requests for which the findings set forth in Section 7.28.060 have been made are subject to the following conditions, unless modified by the approving authority:
 - (1) WTFP subject to conditions of underlying permit. Any WTFP granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit and all such conditions that were applicable to the facility prior to approval of the subject eligible facility request, provided such conditions do not apply in such a manner as to prohibit the granting of the Eligible Facilities Request.

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

 - (3) No Waiver of Standing. The City’s grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act (codified as 47 U.S.C. §1455(a)).

- (c) Other General Design Standards. Excepting applications for eligible facilities requests, all wireless telecommunications facilities that are located within the public right-of-way shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following standards. WTFP applications (excepting those eligible facilities requests) that do not meet any of the following standards are prohibited unless such standards (i) would be technically infeasible to achieve the applicant’s service objectives, as supported by clear and convincing evidence in the written record, and/or (ii) subject to an exception for State or Federal law under Section 7.28.150.

- (1) The applicant shall employ screening, undergrounding and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is as visually screened as technically feasible, to prevent the facility from dominating the surrounding area and to minimize significant view impacts from surrounding properties and public views, all in a manner that achieves compatibility with the community and in compliance with this code.
- (2) Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.
- (3) All facilities shall have colors and non-reflective materials that blend with the materials and colors of the surrounding area, infrastructure and structures.
- (4) The applicant shall use the least visible equipment for the provision of wireless telecommunications services that is technically feasible.
- (5) All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the support structure and shall be camouflaged to the extent technologically feasible. For all support structures wherein interior installation is infeasible, conduit and cables attached to the exterior shall be mounted as close to the pole as technically feasible while complying with applicable electric safety codes and painted to match the structure. All cables and wires that cannot feasibly be mounted internally shall be clipped-up and/or placed in conduit the minimum size necessary to accommodate the wiring, or otherwise concealed out of public view.
- (6) No new guy wires shall be allowed unless required by other laws or regulations.
- (7) All ground-mounted facility, pole-mounted equipment, or walls, fences, landscaping or other screening methods shall be installed at least 18 inches from the curb and gutter flow line.
- (8) No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the City.

7.28.80 - OPERATION AND MAINTENANCE STANDARDS.

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

- (a) The permittee shall at all times maintain compliance with all applicable federal,

state and local laws, regulations and other rules, including, without limitation, those applying to use of the PROW. The permittee shall ensure that all equipment and other improvements to be constructed and/or installed in connection with the approved WTFP are maintained in a manner that is not detrimental or injurious to the public health, safety, and general welfare and that the aesthetic appearance is continuously preserved, and substantially the same as shown in the approved plans at all times relevant to the WTFP.

- (b) Unless otherwise provided herein, all necessary repairs and restoration shall be completed by the permittee, owner, operator or any designated maintenance agent at its sole cost **within 3 business days:**
 - (1) After discovery of the need by the permittee, owner, operator or any designated maintenance agent; or
 - (2) After permittee, owner, operator or any designated maintenance agent receives notification from the City.
- (c) Insurance. The permittee shall obtain and maintain throughout the term of the permit a type and amount of insurance as specified by City's risk management. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insured. The permittee shall use its best efforts to provide thirty (30) days prior notice to the Development Services Director of the cancellation or material modification of any applicable insurance policy.
- (d) Indemnities. The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the City or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and, if applicable, the private property owner and shall reasonably cooperate in the defense. The City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or Permittee (as applicable) shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of defending itself against any such actions or claims as noted herein.

- (e) Performance and Removal Bond. Prior to issuance of a wireless encroachment permit, the permittee shall file with the City, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to 100% of the cost of removal of the facility as specified in the application for the WTFP or as that amount may be modified by the Development Services Director in in the permit based on the characteristics of the application as approved. The permittee shall reimburse the City for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City Council. Reimbursement shall be paid when the security is posted and during each administrative review.
- (f) Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable and technically feasible efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility. All facilities, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the use of the PROW, impede the flow of vehicular or pedestrian traffic, impair the primary use and purpose of poles/signs/traffic signals or other infrastructure, interfere with outdoor dining areas or emergency facilities, or otherwise obstruct the accessibility of the PROW.
- (g) Contact Information. Each permittee of a wireless telecommunications facility shall provide the Development Services Director with the 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility (“contact information”). Contact information shall be updated within seven days of any change.
- (h) All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:
 - (1) Subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to City streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems (water, sewer, storm drains, gas, oil, electrical, etc.) that result from any activities performed in connection with the installation and/or maintenance of a wireless facility in the PROW;
 - (2) General dirt and grease;

- (3) Chipped, faded, peeling, and cracked paint;
 - (4) Rust and corrosion;
 - (5) Cracks, dents, and discoloration;
 - (6) Missing, discolored or damaged artificial foliage or other camouflage;
 - (7) Graffiti, bills, stickers, advertisements, litter and debris. All graffiti on facilities must be removed at the sole expense of the permittee within forty eight (48) hours after notification from the City;
 - (8) Broken and misshapen structural parts; and
 - (9) Any damage from any cause.
- (i) All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in neat, safe and good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the Development Services Director.
 - (j) The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.
 - (k) Each facility shall be operated and maintained to comply with all conditions of approval. The permittee, when directed by the City, must perform an inspection of the facility and submit a report to the Development Services Director on the condition of the facility to include any identified concerns and corrective action taken.
 - (l) Failure to comply with the City's adopted noise standard, Section 4.12.710, *et seq.* after written notice and reasonable opportunity to cure have been given shall be grounds for the City to revoke the permit.
 - (m) Interference.
 - (1) The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a wireless encroachment permit, the permittee shall provide the City with

documentation establishing to the City's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the PROW or City utility easement to be affected by permittee's facilities.

(2) The facility shall not damage or interfere in any way with City property, the City's operations or the operations of prior-existing, third party installations. The City will reasonably cooperate with the permittee and/or carrier to carry out such activities as are necessary to correct the interference.

i. **Signal Interference.** The permittee shall cure any such interference within 24 hours of written notification of the interference, or such other timeframes as may be dictated by FCC regulations, and in accordance with FCC regulations. Upon the expiration of the cure period and until the cause of the interference is eliminated, the permittee shall cease operation of any facility causing such interference until such interference is cured.

ii. **Physical Interference.** The City shall give the permittee thirty (30) days to correct the interference after which the City reserves the right to take any action it deems necessary, which could include revocation of the permit.

(3) The City at all times reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the sites. Such actions may temporarily interfere with the operation of the facility. The City will in all cases, other than emergencies, give the applicant 30 days written notification of such planned, non-emergency actions.

(n) **RF Exposure Compliance.** All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards.

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

(p) **Records.** The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the City, any ambiguities or uncertainties that

would be resolved through an inspection of the missing records will be construed against the permittee.

- (q) Attorney's Fees. In the event it is necessary to take legal action pursuant to this chapter, all costs of such legal action, including reasonable attorney's fees, shall be paid to the prevailing party, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the parties otherwise agree to waive said fees or any part thereof.

7.28.090 - NO DANGEROUS CONDITION OR OBSTRUCTIONS ALLOWED.

No person shall install, use or maintain any wireless telecommunications facility that in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, fire station, fire escape, water valve, underground vault, valve housing structure, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety. A facility shall not be located within any portion of the public right-of-way interfering with access to a fire hydrant or any other public health or safety facility.

7.28.100 - NONEXCLUSIVE GRANT; NO POSSESSORY INTERESTS.

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

permittee by reason of a wireless encroachment permit or the issuance of any other permit or exercise of any privilege given thereby.

7.28.110 - PERMIT EXPIRATION; ABANDONMENT OF APPLICATIONS.

- (a) Permit Term. Unless Government Code Section 65964, as may be amended, or any other law authorizes the City to issue a permit with a shorter term, a permit for any wireless telecommunications facility shall be valid for a period of ten (10) years, unless pursuant to another provision of this code it lapses sooner or is revoked. At the end of ten (10) years from the date of issuance, such permit shall automatically expire.
- (b) A permittee may apply for a new permit within 180 days prior to expiration. To the extent allowed by law, said application and proposal shall comply with the City's current code requirements for wireless telecommunications facilities.
- (c) Timing of Installation. The installation and construction authorized by a WTFP shall begin within one (1) year after its approval, or it will expire without further action by the City. The installation and construction authorized by a WTFP shall conclude, including any necessary post-installation repairs and/or restoration to the PROW, within thirty (30) days following the day construction commenced, or at such later completion date as otherwise approved by the Director in writing based upon the City's reasonable discretion.
- (d) Commencement of Operations. The operation of the approved facility shall commence no later than ninety (90) days after the completion of installation, unless additional delay is caused by power and/or backhaul providers, or the WTFP will expire without further action by the City. The permittee shall provide the Development Services Director notice that operations have commenced by the same date.

7.28.120 - CESSATION OF USE OR ABANDONMENT.

- (a) A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for ninety (90) or more consecutive days unless the permittee has obtained prior written approval from the director which shall not be unreasonably denied. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.
- (b) The operator of a facility shall notify the Development Services Director in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the Development Services Director of any discontinuation of operations of thirty (30) days or more.
- (c) Failure to inform the Development Services Director of cessation or

discontinuation of operations of any existing facility as required by this Section shall constitute a violation of any approvals and be grounds for:

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

7.28.130 - REMOVAL AND RESTORATION—PERMIT EXPIRATION, REVOCATION OR ABANDONMENT.

- (a) Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the WTFP or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to the condition it was in prior to the granting of the WTFP, except for retaining the landscaping improvements and any other improvements at the discretion of the City. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the City. Expired, terminated or revoked wireless telecommunications facility equipment shall be removed from the site at no cost or expense to the City.
- (b) Failure of the permittee, owner or operator to promptly remove its facility and restore the property within ninety (90) days after expiration, earlier termination or revocation of the WTFP, or abandonment of the facility, shall be a violation of this code. Upon a showing of good cause, an extension may be granted by the Development Services Director where circumstances are beyond the control of the permittee after expiration. Further failure to abide by the timeline provided in this Section shall be grounds for:
 - (1) Prosecution;
 - (2) Acting on any security instrument required by this chapter or conditions of approval of permit;
 - (3) Removal of the facilities by the City in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
 - (4) Any other remedies permitted under this code or by law.
- (c) Summary Removal. In the event any City director or City engineer determines that the condition or placement of a wireless telecommunications facility located in the

public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, “exigent circumstances”), such director or City engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five business days of removal and all property removed shall be preserved for the owner’s pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within 60 days, the facility shall be treated as abandoned property.

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

7.28.140 - EFFECT ON OTHER ORDINANCES.

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

7.28.150 - STATE OR FEDERAL LAW.

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

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

- (a) Legal nonconforming wireless telecommunications facilities are those facilities that existed but did not conform to this chapter on the date this chapter became effective.
- (b) Legal nonconforming wireless telecommunications facilities shall, within ten years

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

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

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

<p><u>SUBJECT:</u> Small Wireless Facilities (Administrative Approvals and Standards)</p>	<p><u>POLICY NO.:</u> _____</p> <hr/> <p><u>AUTHORITY:</u> Resolution No. _-_____</p>	<p><u>DATE ADOPTED:</u></p>
---	--	------------------------------------

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. GENERAL PROVISIONS.....	2
SECTION 1.1 PURPOSE AND INTENT.....	2
SECTION 1.2 GENERAL DEFINITIONS.....	2
SECTION 2. SMALL WIRELESS FACILITIES	4
SECTION 2.1 APPLICABILITY; REQUIRED PERMITS AND APPROVALS.....	4
SECTION 2.2 SMALL CELL PERMIT APPLICATION REQUIREMENTS	4
SECTION 2.3 SMALL CELL PERMIT APPLICATION SUBMITTAL AND COMPLETENESS REVIEW	8
SECTION 2.4 APPROVALS AND DENIALS; NOTICES	9
SECTION 2.5 STANDARD CONDITIONS OF APPROVAL	10
SECTION 2.6 SECTION 2.6. LOCATION REQUIREMENTS	12
SECTION 2.7 DESIGN STANDARDS.....	14

City Council Policy

SECTION 1 GENERAL PROVISIONS SECTION

1.1. PURPOSE AND INTENT

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

1.2. GENERAL DEFINITIONS

- (a) **Undefined Terms.** Undefined phrases, terms or words in this Policy will have the meanings assigned to them in Chapter 7.28 of the Tracy Municipal Code, as may be amended or superseded, and, if not defined therein, will have their ordinary meanings. If any definition assigned to any phrase, term or word in this Policy conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.
- (b) **Defined Terms.**
 - (1) **“approval authority”** means the City official responsible for reviewing applications for small cell permits and vested with the authority to approve, conditionally approve or deny such applications as provided in this Policy. The approval authority for applications in connection with small wireless facilities within the public rights-of-way shall be the Development Services Director or their designee.
 - (2) **“major roadway”** means a road designed primarily for long-distance travel, high traffic capacity, and low accessibility from neighboring roads. The term “major roadway” as used in this Policy includes freeways, expressways, boulevards, and major arterials as defined in the City of Tracy General Plan, Circulation Element and or City Roadway Master Plan.
 - (3) **“minor roadway”** means a road designed primarily as a connection between local roads and arterials, moderate to low traffic capacity, and high accessibility from local roads. The term “minor roadway” as used

City Council Policy

in this Policy includes rural highways, minor arterials, collectors, and local streets and roads as defined in the City of Tracy General Plan, Circulation Element and or City Roadway Master Plan.

- (4) **“concealed”** or **“concealment”** means camouflaging techniques that 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) antennas mounted within a shroud or radome; (2) painted or otherwise concealed with film to match the existing structure, (3) equipment cabinets (whether mounted on the pole or in the PROW) painted or wrapped to match the applicable background; (4) concealed within the interior of the structure, and (5) if applicable and technically feasible, stealthed, such as a faux-tree or facade or rooftop mounted pop-out screen box.
- (5) **“decorative pole”** means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.
- (6) **“FCC Shot Clock”** means the presumptively reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended from time to time.
- (7) **“ministerial permit”** means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City's jurisdiction. Ministerial permits may include, without limitation, a building permit, construction permit, electrical permit, encroachment permit, excavation permit and/or traffic control permit.
- (8) **“personal wireless services”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.
- (9) **“personal wireless service facilities”** means the same as defined in 47 U.S.C. §332(c)(7)(C)(i), as may be amended or superseded, which defines the term as facilities that provide personal wireless services.
- (10) **“RF”** means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.

City Council Policy

- (11) **“Section 6409”** means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.
- (12) **“Small cell”** bears the same meaning as “small wireless facility” or “SWF” as used in Chapter 7.28 of the Municipal Code.

SECTION 2 SMALL WIRELESS FACILITIES

2.1. APPLICABILITY; REQUIRED PERMITS AND APPROVALS

- (a) **Applicable Wireless Facilities.** Except as expressly provided otherwise in this Policy, the provisions in this Policy shall be applicable to all existing small wireless facilities (SWFs) and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate or otherwise deploy small wireless facilities within the City's jurisdictional and territorial boundaries within the public rights-of-way (PROW).

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

- (a) **Small Cell Permit Application Contents.** All applications for a SWF WTFP must include all the information and materials required in this subsection (a), unless exempted by the approval authority.
 - (1) **Application Form.** The applicant shall submit a complete, duly executed SWF WTFP application on the then-current form prepared pursuant to Chapter 7.28.050 of the Municipal Code.
 - (2) **Application Fee.** The applicant shall submit the applicable SWF WTFP application fee established by City Council resolution. Batched applications must include the applicable application fee for each SWF in the batch.
 - (3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) for new, non-replacement poles and/or structures with ground mounted equipment. identify all structures within 500 feet from the proposed

City Council Policy

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 to the extent known at the time of application; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.

- (4) **Site Survey.** For any SWF proposed to be located within the PROW that (i) proposes a new pole, (ii) the installation of ground mounted equipment, or (iii) any equipment mounted below eight (8) feet on an existing or replacement pole of the same dimensions as the replaced structure, the site survey requirements in this subparagraph shall apply. 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 a 250 foot radius, or the next closest pole if such is more than 250 feet away, 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 SWF in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point.
- (6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a SWF as defined by the FCC in 47 C.F.R. § 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a structure as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a SWF permit as provided in Section 2.4.

City Council Policy

- (7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed SWF, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The applicant may provide one RF exposure report for the entire SWF deployment if the applicant is using the same SWF configuration for all installations within that batch, or may submit one RF exposure compliance report for each subgroup installation identified in the batch. The RF report must be prepared and certified by an RF engineer a qualified expert acceptable to the City. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- (8) **Public Notice.** Prior to a SWF application being deemed complete, applicants shall submit proof of mailing of public notice to all owners and occupants of real property, and the resident manager for any multi-family dwelling unit that includes ten (10) or more units, within 100 feet of the proposed SWF. The notice must contain: (1) a general project description and dimensioned, full color photo simulations; (2) the applicant's identification and contact information as provided on the application submitted to the City; (3) contact information for the approval authority; (4) a statement that the approval authority will act on the application without a public hearing but will accept written public comments that evaluate the application for compliance with the standards in this Policy; (5) a statement that the FCC requires the City to act on small cell permit applications, which includes any administrative appeals, in 60 days for attachments to existing structures and 90 days for new structures, unless the applicant voluntarily agrees to toll the timeframe for review; and (6) a deadline for submission of written public comments to the approval authority, which deadline shall not be less than thirty (30) days after mailing of said notice. Proof of mailing of notice by applicants shall include:
- (A) A list of all addresses to which notice was mailed;
 - (B) A sample of the actual notice mailed, complete with any exhibits thereto;
 - (C) Proof of certified mailing.

City Council Policy

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

City Council Policy

the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g. crane).

- (16) **Landscape Plan.** Where vegetation is present and applicable, or otherwise technically feasible for concealment purposes, a scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the SWF and its accessory equipment. Should there be no landscaping disturbed, no tree cutting proposed or no new landscaping proposed, no landscape plan shall be required. If any ground disturbance to existing ground conditions is employed (e.g., trenching, vaulting or conduit runs), such ground conditions must be returned to an in-kind condition.
 - (17) **CPCN.** Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the PROW. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.
 - (18) **Lighting Study.** The applicant shall submit a lighting study, which shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties. Should no lighting be proposed, no lighting study shall be required.
- (b) **Additional Requirements.** The City Council authorizes the approval authority to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the approval authority finds necessary, appropriate or useful for processing any application governed under this Policy. All such requirements and materials must be in written form and publicly stated to provide all interested parties with prior notice (or posted upon the City's website).

2.3. SMALL CELL PERMIT APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

- (a) **Pre-Submittal Conferences.** For purposes of SWFs only, and notwithstanding any contrary provisions of Chapter 7.28, the City does not require pre-submittal appointments for the submission of SWF WTFPs. However, the City strongly encourages applicants to schedule and attend a pre-submittal conference with the approval authority for all proposed SWF projects, and particularly those that involve more than five SWFs. This voluntary pre-submittal conference does not cause the FCC Shot Clock to begin and is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety;

City Council Policy

potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The approval authority shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the services rendered in the pre-submittal conference.

- (b) **Batched Applications.** Applicants may submit up to five individual applications for a SWF permit in a batch; provided, however, that small wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each site in the batch. If any application in a batch is incomplete, the entire batch shall be deemed incomplete; excepting that the applicant may withdraw from the batch (in writing to the City or otherwise on-record) any facility contained in the batch at applicant's discretion, in which event the withdrawn facility shall be submitted as a new application. 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. Where the city determines that it requires the services of a consultant to process SWF applications, the applicant shall deposit a fee equal to the actual and reasonable costs of the consultant's services to the city.
- (c) **Additional Procedures.** The City Council authorizes the approval authority to establish other reasonable rules and regulations for duly filed applications. All such rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice (or posted upon the City's website).

2.4. ADDITIONAL FINDINGS FOR SWFs

- (a) **Required Findings.** In addition to those finding requirements set forth in Chapter 7.28 for SWF WTFP, the following findings are required for the approval or conditional approval of a SWF application:
 - (1) The proposed SWF would not be located on a prohibited support structure identified in this Policy;
 - (2) The proposed SWF would utilize the most preferred support structure and location within 250 feet from the originally proposed site in any direction, or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support

City Council Policy

structure(s) or locations within 250 feet would be technically infeasible or are otherwise unavailable;

- (3) All public notices required for the application have been given.
- (b) Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, no decision upon a SWF application shall be premised upon the environmental or health effects of RF emissions, nor shall public comments be considered to the extent they are premised upon the environmental or health effects of RF emissions.

2.5. STANDARD CONDITIONS OF APPROVAL

- (a) **General Conditions.** In addition to all other conditions adopted by the approval authority and Chapter 7.28 for a SWF permit, all SWF WTFPs issued under this Policy shall be automatically subject to the conditions in this subsection (a).
- (b) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a SWF approved or deemed-approved, the permittee shall provide the approval authority with documentation reasonably acceptable to the approval authority that the SWF has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
 - (1) **Adverse Impacts on Other Properties.** In addition to those requirements in Chapter 7.28 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 Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The approval authority may issue a stop work order for any activities that violates this condition in whole or in part.
 - (2) **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

City Council Policy

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.

- (3) **Future Undergrounding Programs.** If other public utilities or communications providers in the PROW underground their facilities in the segment of the PROW where the permittee's SWF is located, the permittee must underground its equipment except the antennas and any other equipment that must be placed above ground to function in a technically feasible manner. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition, unless such requirement is technically infeasible as demonstrated by applicant. SWFs installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
- (4) **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 or radios, 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 decommissioning and removal of a SWF, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment, including the removal of any electric meter installed as part of the SWF.
- (5) **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (i) change any street grade, width or location; (ii) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (iii) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in the SWF permit. If the Development Services Director determines that any City work will require the permittee's SWF located in the PROW to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's SWF within one

City Council Policy

hundred twenty (120) days from a City notice of start-of-work or reasonable time after notice from the Development Services Director, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's SWF without prior notice to permittee when the Development Services Director determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.

- (6) The installation and construction approved by a SWF permit shall begin within one year after its approval. The Development Services Director may grant a permit extension when the applicant submits a written request that shows good cause to grant the extension. Otherwise, the permit will expire without further action by the City.

2.6. LOCATION REQUIREMENTS

- (a) **Preface to Location Requirements.** Applications that involve lesser-preferred locations or structures may be approved so long as the applicant demonstrates that either (1) no more preferred locations or structures exist within 250 feet from the proposed site; or (2) any more preferred locations or structures within 250 feet from the proposed site would be technically infeasible to achieve the operator's service objectives, or more preferred locations within 250 feet are otherwise unavailable, as supported by clear and convincing evidence in the written record. The final subsection of this Section 2.6 identifies "prohibited" support structures on which the City shall not approve any small cell permit application for any competitor or potential competitor.
 - (1) Allowable locations for SWFs are on existing or replacement infrastructure such as street lights and utility poles.
 - (2) When choosing locations, choose locations in the right-of-way between occupiable buildings rather than immediately adjacent to occupiable buildings, and not adjacent to a window, if technically feasible.
 - (3) When locating in an alley, the SWF shall be placed at a height above the roof line of adjacent buildings to avoid being placed adjacent to a window. When locating in a walk-street, the facility shall be placed below the roof line of the adjacent buildings.
 - (4) If the SWF is not able to be placed on existing or like-kind replacement infrastructure, the applicant shall provide a map of existing infrastructure within ~~300~~ 200 feet of the SWF proposed site and describe why each such alternative site or structure was not technically feasible.

City Council Policy

- (b) **Locations in the Public Rights-of-Way.** The City prefers small wireless facilities in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:
- (1) Locations within commercial or industrial districts on or along arterial roads;
 - (2) Locations within commercial or industrial districts on or along collector roads;
 - (3) Locations within commercial or industrial districts on or along local roads;
 - (4) Locations within residential districts on or along major roadways;
 - (5) Locations within residential districts on or along minor roadways;
 - (6) Any location in any district within 250 feet from any structure approved for a residential use.
- (c) **Support Structures in the Public Rights-of-Way.** The City prefers SWFs to be installed on support structures in the PROW, ordered from most preferred to least preferred, as follows:
- (1) Existing or replacement streetlight poles;
 - (2) Existing or replacement wood utility poles
 - (3) New, non-replacement streetlight poles;
 - (4) New, non-replacement poles for small wireless facilities;
 - (5) Non-prohibited strand-mounted facilities.
- (d) **Prohibited Support Structures.** The City prohibits SWFs to be installed on the following support structures, unless no other technically feasible structure that maximizes aesthetic characteristics is potentially available:
- (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 approval authority acts on the small cell permit application;
 - (4) New, non-replacement wood poles.

City Council Policy

- (5) Strand-mounted wireless facilities are prohibited, except for strand-mounted proposals in a PROW area that already contains aerial conduit carrying similar strand-mounted infrastructure.

2.7. DESIGN STANDARDS

- (a) **Visual & Other General Standards.** SWFs shall be designed in the most aesthetically compatible means possible and with the underlying support structure and surrounding environment to the maximum extent feasible.

- (1) **Noise.** SWFs and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations in Municipal Code Section 4.12.710, *et seq.*, as may be amended or superseded, and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable district/zone.

- (2) **Lights.** SWFs shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection (a)(2) shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this Policy.

- (3) **Landscape Features.** SWFs shall not displace any existing landscape features unless: (A) such displaced landscaping is replaced with native and/or drought-resistant plants, trees or other landscape features approved by the approval authority and (B) the applicant submits and adheres to a landscape maintenance plan in the event that tree cutting, landscaping disturbance or new landscaping is proposed. 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 Municipal Code Chapter 10.08 and the City's Landscape Manual or Streetscape Design Guidelines, as applicable, and as either may be amended or superseded.

- (A) If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree. The permittee shall, at all times, be responsible to maintain any replacement landscape features.

City Council Policy

- (B) To preserve existing landscaping in the public rights-of-way, all work performed in connection with SWFs shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant replacement trees and landscaping as similar to the original landscaping as reasonably possible and technically feasible at the site, and shall maintain said replacement landscaping for a period of one year following planting, after which time maintenance responsibility shall transfer to the City. Replacement landscaping that dies during the one year period will be replaced in a reasonable time, and the one-year survival and maintenance period shall restart. In lieu of actual maintenance, a deposit amount for the landscaping survival period referenced in this subsection may be utilized as established by City fee resolution (to reflect actual cost).

- (4) **Site Security Measures.** SWFs may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The approval authority shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on SWFs shall be constructed from or coated with graffiti-resistant materials.

- (5) **Signage; Advertisements.** All SWFs shall contain a site identification sticker that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. SWFs may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, OSHA, Federal Aviation Administration or other United States governmental agencies for compliance with RF emissions regulations. Permittees shall:
 - (A) Remove or paint over unnecessary equipment manufacturer decals and fill-in any visibly depressed manufacturer logos on equipment.
 - (B) Utilize the smallest and lowest visibility stickers required by government or electric utility regulations.
 - (C) Except where the use of such colors would conflict with federal law or the requirements of other governmental agencies, applicants shall use sticker colors that are muted
 - (D) Signage shall be maintained in legible condition and the carrier will be required to replace any faded signage within thirty (30)

City Council Policy

days of receiving written notification from the City that it is in need of replacing.

- (6) **Compliance with Health and Safety Regulations.** All SWFs shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions.
- (b) **Dimensions; Design.** Wireless facilities shall be as small, short and unobtrusive as possible. Each facility shall be designed to occupy the least amount of space in the right- of-way that is technically feasible.
- (1) **Overall Height.** SWFs may not exceed either (A) the minimum separation from electrical lines required by applicable safety regulations, plus four feet or (B) four feet above the existing support structure. In addition, SWFs shall be located no higher than 10% or 10 feet, whichever is greater, than the height otherwise permitted in the immediately adjacent zoning district. In no event shall a SWF structure exceed the standards set by 47 CFR 1.6002(1), subject to maximizing aesthetic standards for the deployment needed and compliant with General Order 95.
 - (2) **Concealment.** All antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed within an opaque antenna shroud or radome, to the extent technically feasible. The antenna shroud or radome must be painted a flat, non-reflective color or otherwise treated to match the underlying support structure. The wireless facility and accessory equipment shall be camouflaged with use of one or more concealment elements to blend the facility with surrounding materials and colors of the adjacent street light or utility pole to which it is mounted. Concealment elements include:
 - (A) Radio frequency transparent screening;
 - (B) Approved, specific colors;
 - (C) Use of non-reflective material(s);
 - (D) Minimizing the size of the site;
 - (E) Integrating the installation into existing or replacement utility infrastructure;
 - (F) Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site;
 - (G) Antennas, brackets (mounting), PVC or steel risers and cabling shall match the color of the adjacent structure;

City Council Policy

- (H) Paint shall be of durable quality;
- (I) Materials shall be non-flammable and non-reflective;
- (J) Each individual antenna may not exceed three cubic feet in volume.

(c) Accessory Equipment.

- (1) **Installation Preferences.** SWF accessory equipment shall be enclosed in replacement poles, pole mounted in an equipment cabinet or enclosure, enclosed within ground-mounted equipment cabinets or placed underground where technically feasible and applicable to similar infrastructure deployments; and if not feasible, shall be as small, short and unobtrusive as possible. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically infeasible as supported by clear and convincing evidence in the written record.
- (2) **Undergrounded Accessory Equipment.** Where technically feasible and/or as in compliance with the support structure owner's policies, 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.

- (d) **Streetlights.** Applicants shall provide replacement streetlight poles when the existing pole (i) cannot safely accommodate the proposed attachment, or (ii) is misaligned with, or non-characteristic of, the other existing streetlights in the immediate vicinity, or (iii) is otherwise non-compliant with the Tracy Municipal Code, or (iv) as required by the owner of the existing pole infrastructure. Applicants that propose to install SWFs on an existing streetlight that must remove and replace the existing streetlight must do so with one substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment. To mitigate any material changes in the streetlighting patterns, the replacement pole must: (A) be located as close to the removed pole as possible; (B) be aligned with the other existing streetlights; and (C) include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. All antennas must be installed above the pole within a single, canister style shroud or radome that tapers to the pole to the extent technically feasible and in accordance with the design standards in Section 2.7.

City Council Policy

- (e) **Wood Utility Poles.** The City prefers that applicants that propose to install SWFs on an existing wood utility pole install all antennas above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible or otherwise not possible 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 or otherwise camouflaged. All cables, wires and other connectors must be concealed within the side-arm mount or extension arm to the extent technically feasible. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations and pole owner requirements.
- (f) **For Replacement Poles and Street Lights.** If an applicant proposes a replacement pole or street light to accommodate the SWF, the replacement shall be in the same location as the street light or pole being replaced; unless the replacement will not meet all applicable standards, then replacement may be located in an alternative location that complies with the requirements herein.
- (g) **New, Non-Replacement Poles.** Applicants that propose to install SWFs on a new, non- replacement pole must install a new streetlight substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter and any base enclosure diameter shall not exceed a diameter substantially similar to that of other poles in the immediate vicinity of the proposed site and which is technically feasible. 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, or if such design is not technically feasible shall be designed to appear as integrated into the pole as feasible. Subject to these general guidelines:

The new pole must actually function for a purpose other than placement of a wireless facility (e.g. street light, utility pole, aerial strand, etc.).

- (1) Such new support structure shall be designed to resemble existing support structures of the same type in the right-of-way near that location, including size, height, color, materials and style, with the exception of any existing structural designs that are scheduled to be removed and not replaced.
- (2) Such new support structures shall not adversely impact public view corridors, and shall be located to the extent feasible in an area where there is existing natural or other feature that obscures the view of the new support structure. The applicant shall further employ concealment techniques to blend the new support structure with said features,

City Council Policy

including but not limited to the addition of concealment vegetation if technically feasible and non-obtrusive to facility signal transmission.

- (h) **Encroachments over Private Property.** SWFs may not encroach onto or over any private or other property outside the PROW without the property owner's express written consent.
- (i) **Backup Power Sources.** Fossil-fuel based backup power sources shall not be permitted within the PROW; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 p.m. and 7:00 a.m.
- (j) **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.
- (k) **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground as required for similar right-of-way infrastructure deployments. 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.
- (l) **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.
- (m) **Electric Meters.**
 - (1) Applicants shall be solely responsible for obtaining and maintaining electric service for the SWF, including, but not limited to, making payments to electric utilities. Meterless electric utilities are required to be used when available. Upon proof that a wireless tariff is not available, an applicant shall be allowed to install a meter. No above-

City Council Policy

ground electric meters are allowed when meterless electric utilities are available. If a wireless tariff or the like is not available and a meter must be installed, all equipment must be metered independently from City utility services.

- (2) Electrical meters, vaults and fans shall be located underground where technically feasible.

- (n) **Illustrative Examples.** The following photographs depict wireless facility designs that the City may deem appropriate and technically feasible based upon clear and convincing evidence presented by the applicant. These examples are illustrative only, and may not be appropriate in all cases.



City Council Policy



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

RESOLUTION 2021-_____

APPROVING COUNCIL POLICY ESTABLISHING SMALL WIRELESS FACILITIES REGULATIONS IN ACCORDANCE WITH FEDERAL LAW

WHEREAS, The Federal Communications Commission (FCC) released a Declaratory Ruling and Third Report and Order (FCC Order), that has certain requirements for Small Wireless Facilities (SWFs) in the public right-of-way, and

WHEREAS, The FCC Order requires that materials and requirements related to SWFs be in written form and available to the public, and

WHEREAS, Staff created Council Policy "SWF Regulations" as guidelines for wireless Communications facilities in the public right-of-way and intends to post on the City's website for public use, and

WHEREAS, The City Council conducted a public hearing to review and consider the Council Policy on April 6, 2021;

NOW, THEREFORE BE IT RESOLVED, That the City Council of the City of Tracy hereby approves a Council Policy on Small Wireless Facilities (SWF) Regulations.

* * * * *

The foregoing Resolution 2021-_____ was adopted by the Tracy City Council on the 6th day of April 2021, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

MAYOR

ATTEST:

CITY CLERK