



City Council Agenda Report

From: Warren Frace, Community Development Director

Subject: **Second Reading - Zone Change 17-002 (ZC 17-002)**
Wireless Communications Facilities Ordinance

An amendment to the Zoning Ordinance amending Table 16.20.200 and adding Chapter 21.20B to the Paso Robles Municipal Code regarding Wireless Communications Facilities located on private property and within the Public Right-of-Way.

Applicant – City of Paso Robles

Location – Applies City wide.

Date: June 20, 2017

Facts

1. Various federal and state laws partially restrict the City of El Paso de Robles' ability to regulate telecommunications facilities.
2. Despite these restrictions, the City has the ability to regulate all telecommunications facilities for reasons of health, safety and aesthetics.
3. The telecommunications industry is preparing for the next generation of 5G wireless communication facilities (WCF) that will utilize more numerous and disperse antenna systems.
4. The City is already seeing a significant increase in application for "small cell" WCF's within the public right-of-way (PROW).
5. The City's existing wireless communication facilities zoning regulations are no longer adequate to regulate the next generation of WCFs.
6. The City desires to adopt telecommunications facility regulations to comply with applicable federal and state law while preserving local control and the ability to require visual mitigation and stealthing WCFs.
7. The Planning Commission held a duly noticed public hearing on May 9, 2017, and is recommending the City Council approve the ordinance.
8. The City Council held a duly noticed public hearing on June 6, 2016, and voted 5-0 to introduce the ordinance for first reading by title only.

Options

1. Take no action.
2. Approve 2nd Reading of the proposed WCF code amendments to the Zoning Ordinance;
3. Refer back to staff or Planning Commission for additional analysis.

Analysis and Conclusions

Changes at First Reading

The City Council made the following change to the ordinance and first reading to correct a cross reference change.

21.20B.040 Permitting Process.

A. An application is required for all WCFs, including WCFs located in the PROW. The application shall be subject to the requirements of Sections 21.~~20B23~~.180-21.~~20B23~~.200 and to the administrative file close-out program in Section 21.~~20B23~~.430.

No substantive changes have been made between first and second reading. A summary of the ordinance was published in the Tribune on June 15, 2017 and, if adopted, a second summary of the ordinance will be published within 15 days.

Project Summary

The proposed WCF code amendment has been developed by staff and the City Attorney to respond to changes in the wireless communication industry. The upcoming transition to 5G technology will require a new generation of smaller more dispersed antenna systems. The industry is focusing on placing many of these antennas in the PROW and is lobbying State legislatures to limit the City's ability to regulate WCF's in the PROW. The proposed amendments would require all WCFs on private property and within the PROW to obtain a conditional use permit and require WCFs to incorporate the following:

- Co-location with existing WCFs to the extent possible
- Incorporate stealth designs
- Minimize the impacts of support equipment
- Limit the maximum height and girth of WCFs
- Limit impacts to the use of the PROW
- Avoid any Americans with Disabilities Act (ADA) impacts in the PROW

Fiscal Impact

Revenue neutral. The amendment will require conditional use permit for all WCFs. Conditional use permits have cost recovery fees that make the process revenue neutral to the City.

Recommendation

Approve Second Reading by Title Only of Ordinance XXXX N.S., amending the Wireless Communication Facilities Code sections of the Zoning Ordinance.

Attachments

1. Ordinance XXXX N.S. - Proposed WCF code amendments to the Zoning Ordinance
2. Legal Noticing

Ordinance XXXX N.S.

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ORDINANCE XXXX N.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES ADD CHAPTER 21.20B AND AMENDING TABLE 16.20.200 OF THE MUNICIPAL CODE OF THE CITY OF EL PASO DE ROBLES (ZONING ORDINANCE) REGARDING WIRELESS COMMUNICATIONS FACILITIES

WHEREAS, various federal and state laws partially restrict the City of El Paso de Robles' ability to regulate telecommunications facilities; and

WHEREAS, despite these restrictions, the City has the ability to regulate all telecommunications facilities for reasons of health, safety and aesthetics; and

WHEREAS, the telecommunications industry is preparing for the next generation of 5G wireless communication facilities (WCF) that will utilize more numerous and disperse antenna systems; and

WHEREAS, the City is already seeing a significant increase in application for "small cell" WCF's within the public right-of-way (PROW); and

WHEREAS, the City's existing wireless communication facilities zoning regulations are no longer adequate to regulate the next generation of WCF's; and

WHEREAS, the City desires to adopt telecommunications facility regulations to comply with applicable federal and state law while preserving local control to the extent possible; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the proposed Zoning Ordinance amendment on May 9, 2017, where it considered the staff report and public testimony and recommending the City Council approve the ordinance; and

WHEREAS, the City Council held a duly noticed public hearing on the proposed Zoning Ordinance amendment on June 6, 2017, where it considered the staff report, Planning Commission recommendation and public testimony and introduced the ordinance for first reading by title only; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Recitals. The recitals set forth above are true and correct and are incorporated as though fully set forth herein.

Section 2. Environmental Determination. This application has been determined to be Statutorily Exempt from California Environmental Quality Act under section 15061.b.3. because there is no possibility that the activity in question may have a significant effect on the environment.

Section 3. Municipal Code Addition. The Council hereby adopts the language attached hereto as Exhibit A and B and incorporated herein by reference to add chapter 21.20b and amend table 16.20.200 Paso Robles Municipal Code.

Section 4. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

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Section 5. . Effective Date. This Ordinance shall be in full force and effect 30 days after its passage and adoption as provided by Government Code section 36397.

Section 6. . Publication. The City Clerk shall certify to the passage of this Ordinance by the City Council of the City of El Paso de Robles, California, and cause a summary to be published once within 15 days after its passage in a newspaper of general circulation, published and circulated in the City in accordance with Government Code section 36933.

INTRODUCED at a regular meeting of the City Council held on June 6, 2017, for first reading by the City Council of the City of El Paso de Robles, and adopted on the ____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Steven W. Martin, Mayor

Attest:

Kristen L. Buxkemper, Deputy City Clerk

Exhibit A Table 16.20.200 amendment
Exhibit B Chapter 21.20B

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EXHIBIT A

Amendment to TABLE 21.16.200 – Section D

Underline = add text
Strike-through = delete text

ZONING DISTRICT																			
LAND USE	AG	RA	R1	R2	R3	R30	R4	R5	OP	CP	C1	C2	C3	RC	M	PM	AP	POS	
D. Communications																			
1. Broadcasting studios.	C	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P	P	N	
2. <u>Wireless Communications Facility ("WCF") consistent with Section 21.20B Transmission and receiving stations</u> (not including ham operators, private microwave and radio dispatch).	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	
3. <u>Wireless Communications Facility ("WCF") in Public Right-of-Way (PROW) consistent with Section 21.20B</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	
*In the R, OP and POS districts, a facility may be permitted with the approval of a CUP by the planning commission for a site located in a public or quasi public property/building such as a church, school, golf course, community building.																			
NOTE: All facilities, regardless of the zone, shall be camouflaged (antennas and equipment are incorporated into a building/structure or built into the existing environment in a manner that results in the antennas/equipment not being noticeable as determined by the planning commission.	P	C*	C*	C*	C*	C*	C*	C*	C*	C	C	C	C	C	C	C	C	C*	

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EXHIBIT B

WIRELESS COMMUNICATIONS FACILITIES

Chapter 21.20B

- 21.20B.010** Intent and Purpose.
- 21.20B.020** Definitions.
- 21.20B.030** Applicability and Exemptions.
- 21.20B.040** Permitting Process.
- 21.20B.050** Development and Design Standards for all WCFs.
- 21.20B.060** WCFs in the PROW.
- 21.20B.070** Application Factors Considered; Findings for Approval.
- 21.20B.080** Modifications to WCFs.
- 21.20B.090** Revocation for Violation.
- 21.20B.100** Abandonment or Discontinuation of Use.
- 21.20B.110** State or Federal Preemption.
- 21.20B.120** Use of Outside Consultants.

21.20B.010 Intent and Purpose.

The purpose of this Chapter is to provide placement, design, and screening criteria to regulate the establishment of wireless communication facilities to protect the public health, safety, general welfare, and quality of life in the City consistent with applicable federal and state requirements. Additionally, the standards in this Chapter make wireless communications reasonably available while preserving the visual aesthetics of the community through the promotion of stealthing techniques that architecturally integrate or camouflage WCFs with their surroundings.

21.20B.020 Definitions.

For the purposes of this Chapter, the following terms and phrases have the meaning ascribed to them in this subsection.

A. "Co-location" means the practice of sharing support structures and buildings on a single freestanding support structure or building. Co-location shall also include the location of WCFs with other utility facilities and structures including, but not limited to, water tanks, transmission towers, and light poles.

B. "FCC" means the Federal Communications Commission or any successor agency.

C. "Public Right-of Way" ("PROW") means an Alley or Street as defined in this Title.

D. "Wireless Communications Facility" ("WCF") means a facility that transmits and/or receives electromagnetic or radio frequency waves, including, but not limited to towers, antennas, monopoles, distributed antenna systems, wireless utility monitoring and control services, support or accessory structures and related equipment. Amateur radio operators are not included in this definition.

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21.20B.030 Applicability and Exemptions.

The requirements of this Section apply to all WCFs, except as exempted. The following are exempt from the provisions of this Chapter:

A. Radio or Television Antenna: Any ground- or building-mounted antenna that receives radio or television signals for use only by owners or occupants of the property or development on which the antenna is located that does not exceed a height of ten (10) feet above the maximum allowable building height for the zone in which the antenna is located.

B. Satellite Dish Antenna: Ground- or building-mounted dish antenna that is one (1) meter (39.37 inches) or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals as defined by Section 207 of the Telecommunications Act of 1996, Title 47 of the Code of Federal Regulations, and any interpretive decisions thereof issued by the FCC.

C. Amateur Radio Antenna: Any antenna, including its support structure, used by an authorized amateur radio operator licensed by the FCC that does not exceed a height of fifteen (15) feet above the maximum allowable building height of the zone in which it is located. For the purpose of this section, amateur radio means the licensed non-commercial, non-professional, private use of designated radio bands for purposes of private recreation including the non-commercial exchange of messages and emergency communication. This includes HAM radio and citizens band antenna.

D. Government Antenna: Any antenna, dish, or similar equipment owned and/or operated by any government entity.

E. Wifi Routers: Any wireless facilities located within a structure and intended to provide wireless service only within the same structure, including wifi hotspots and access points.

F. Temporary Facility: Placement of a temporary WCF for a period of not more than thirty (30) days following federal, state or City declaration of an emergency or disaster or as part of a City permitted or sponsored special event.

21.20B.040 Permitting Process.

A. An application is required for all WCFs, including WCFs located in the PROW. The application shall be subject to the requirements of Sections 21.23.180-21.23.200 and to the administrative file close-out program in Section 21.23.430.

B. WCFs Outside the PROW. Applications for WCFs outside of the PROW are subject to the conditional use permit requirements specified in Table 21.16.200(C)(8) and 21.16.200(D)(2),(3) and must be accompanied by the applicable permit application.

C. Permits for WCFs in the PROW. A WCF permit is required for the installation, construction or development of any WCF in the PROW. WCFs in the PROW are subject to the development and design standards in Section 21.20B.050 of this Chapter as well as the requirements specified in Section 21.20B.060. The applicant shall provide scaled drawing

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signed by a licensed professional demonstrating that any encroachments in the PROW will not affect handicapped accessibility or traffic safety. Applicants shall also obtain all applicable encroachment and building approvals and permits. WCF permit applications shall be reviewed, approved, conditionally approved or denied by the zoning administrator in consultation with the city engineer. Prior to the zoning administrator's decision on a WCF permit application, public notice shall be mailed to every property owner and occupant within three hundred (300) feet of the proposed WCF site. Such notice shall be mailed no less than ten (10) business days prior to the scheduled zoning administrator's decision date and shall include information about the proposed project, the zoning administrator's pending decision, and information about when and how an appeal may be filed. The zoning administrator's decision may be appealed as set forth in Section 21.23A.090.

D. All WCF applications must include documentation of compliance with FCC regulations pertaining to radio frequency emissions, including cumulative emissions from any existing WCFs on the site and the proposed WCF, in a manner deemed appropriate by the zoning administrator.

21.20B.050 Development and Design Standards for all WCFs.

A. New Facilities.

All new WCFs must comply with the following development and design standards except when impractical or technologically infeasible. The burden shall be on the applicant to provide evidence as part of the application showing why and how complying with the standard would be impractical or technologically infeasible. Impracticality shall be determined based on the cost of complying with the development and design standards and the cost of noncompliance. The applicant shall submit a deposit to pay for such independent third party review as set forth in the City's Fee Resolution.

B. Existing Conforming and Legal Nonconforming Facilities.

All existing WCFs that have all proper use permits, building permits, encroachment permits, and other entitlements approved by the City as of the effective date of this Chapter shall be allowed to continue as they presently exist and will be considered legal non-conforming or legal conforming facilities, as the case may be, unless otherwise required by law. All existing WCFs that do not qualify as legal non-conforming or legal conforming facilities pursuant to the foregoing sentence as of the effective date of this Chapter shall be subject to the requirements of this Chapter.

Modifications of existing conforming WCFs and existing legal nonconforming WCFs shall be subject to Section 21.20B.080 regarding modifications. Major modifications to existing WCFs shall comply with the requirements of this Chapter.

C. Requirements for All WCFs.

1. Where practical, WCFs shall be integrated into existing or newly developed facilities that are functional for other purposes.

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2. WCFs shall incorporate stealth design so as to minimize aesthetic impacts on surrounding land uses. Stealth design means that the WCF is designed to closely blend into the surrounding environment and to be minimally visible. Antennas and related equipment are either not readily visible beyond the property on which it is located, or, if visible, appear to be part of the existing landscape or environment rather than the WCF.

3. Related equipment shall be co-located within an existing equipment enclosure or undergrounded to the extent technologically feasible. If co-location or undergrounding are not feasible, the equipment shall be designed to match the architecture of adjacent buildings and/or be screened from public view by walls, fences, parapets, landscaping, and similar treatments.

4. Monopoles, antennas, and support structures for antennas shall be no greater in diameter or any other cross-sectional dimension than is reasonably necessary for the proper functioning and physical support of the WCF and future co-location of additional WCFs.

5. No WCF or any portion thereof may be located within a required setback area except with the zoning administrator's approval.

6. WCFs should adhere to the existing height limitations of the zone in which they are located.

7. WCFs shall comply with the City's noise ordinance. WCFs operating in excess of the maximum sound levels permitted by the City's noise ordinance shall be enclosed to achieve compliance with the noise ordinance. Backup generators or similar equipment that operates only during power outages or other emergencies are exempt from this requirement. Testing of such backup generators or similar equipment may only occur during standard daytime hours.

8. No WCF may, by itself or in conjunction with other WCFs, generate radio frequency emissions and/or electromagnetic radiation in excess of FCC standards and any other applicable regulations. All WCFs must comply with all standards and regulations of the FCC, and any other agency of the State or Federal government agency with the authority to regulate WCFs.

D. Additional Requirements for Freestanding WCFs.

1. An applicant for a freestanding WCF shall demonstrate as part of the application that a proposed WCF cannot be placed on an existing building, utility pole, streetlight, or co-located.

2. Freestanding WCFs shall be compatible with the architecture, color, texture, and/or materials of nearby buildings and the surrounding area and landscaping.

3. Freestanding WCFs shall be located in areas where existing topography, vegetation, buildings or other structures provide the greatest amount of screening so as to minimize aesthetic impacts on surrounding land uses.

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4. Freestanding WCFs shall be designed to allow for co-location of additional antennas.

5. Freestanding WCFs may not utilize guy wires or other diagonal or horizontal support structures.

6. Exterior lighting of freestanding WCFs is prohibited unless required by the Federal Aviation Administration (FAA) or other government agency.

21.20B.060 WCFs in the PROW.

A. No PROW permit may be issued unless the applicant is authorized to place WCFs within the PROW by franchise, certificate of convenience and necessity, City license or otherwise. Any City license may be granted in City's sole discretion as property owner, and not as land use regulator.

B. WCFs shall have subdued colors and non-reflective materials which blend in with the surrounding area to the satisfaction of the zoning administrator or his/her designee.

C. The height of any new WCF pole or structure shall not exceed ten (10) vertical feet of the maximum height allowed in the nearest adjacent zoning district.

D. In residential areas, WCFs shall not be located within three hundred (300) feet of another wireless telecommunications facility; this does not include co-location of sites.

E. All WCFs and Equipment shall be built in compliance with the Americans with Disabilities Act (ADA) and traffic safety standards, including but not limited to surface access in and around facilities.

F. Utility and Light Poles.

1. Antennas in the PROW shall be collocated or installed on existing utility or light poles, except when impractical or technologically infeasible. No new poles may be installed except as replacements for existing poles, or when the applicant provides evidence as part of the application showing why and how complying with the foregoing standard would be impractical or technologically infeasible.

2. If a City streetlight or other city-owned structure is used, compensation shall be paid to the City as the owner.

3. All installations on utility poles shall fully comply with California Public Utilities Commission General Order 95.

4. The maximum height of any antenna or antenna radome shall not exceed six (6) feet above the height of an existing light pole.

5. Revocation for Non-Use. WCF permits be revoked if not used within six months from the date of approval. The six-month period may be extended for additional time upon written request to and written approval of the zoning administrator.

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G. Equipment Location.

1. Equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise inconvenience public use of the right-of-way, or create safety hazards to pedestrians and/or motorists as determined by the City Engineer.

2. Ground-mounted equipment shall be undergrounded to the extent technologically feasible. Ground-mounted equipment that cannot be undergrounded shall be screened, to the fullest extent possible, either within the equipment contained in the pole or through the use of landscaping, walls, or other decorative features, to the satisfaction of the zoning administrator or his/her designee.

3. Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the zoning administrator or his/her designee.

H. City Changes to the PROW.

The permittee shall modify, remove, or relocate its WCF, or portion thereof, without cost or expense to the City, if and when made necessary by any abandonment, change of grade, alignment or width of any street, sidewalk or other public facility, including the construction, maintenance, or operation of any other City underground or aboveground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by City or any other public agency. Said modification, removal, or relocation of a WCF shall be completed within a reasonable relocation time frame as determined by the zoning administrator. In the event a WCF is not modified, removed, or relocated within said period of time, City may cause the same to be done at the sole expense of applicant. Further, in the event of an emergency, the City may modify, remove, or relocate WCFs without prior notice to applicant provided applicant is notified within a reasonable period thereafter.

21.20B.070 Application Factors Considered; Findings for Approval.

In considering whether to grant a conditional use permit or WCF permit, as may be required under Section 21.20B.060, the decision maker shall consider the following factors:

A. Compliance with the design and development standards in this Chapter and with the applicable zoning standards where the WCF is proposed to be located;

B. Height and setbacks;

C. Proximity to residential uses;

D. The nature of uses on adjacent and nearby properties;

E. Surrounding topography and landscaping;

F. Quality and compatibility of stealth design and screening;

G. Impacts on public views and the visual quality of the surrounding areas; and

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- H. Availability of other facilities or buildings for collocation.
- I Impacts to the future use and aesthetics of the PROW and streetscape character.
- J. Impacts to historic structures, historic districts, parks and the Downtown historic core.

21.20B.080 Modifications to WCFs.

A. Minor Modifications. A new use or WCF permit (as applicable) is not required for modifications to an existing WCF that:

1. Decrease or do not increase capacity, including alterations such as replacing the existing antenna with a smaller antenna, installing quieter equipment, or decreasing the number of antennas;
2. Where the a proposed WCF will be placed on a previously approved WCF and is consistent with requirements for the existing WCF installation permit; and
3. Any co-location that meets the requirements of Government Code section 65850.6.

An application with a proposed modification that falls within one of the categories above shall be considered a minor modification that may be approved administratively by the zoning administrator.

B. Section 6409 Modification. A new use permit or WCF permit, as applicable, is not required for a modification of an existing wireless tower or base station that does not substantially change the dimension of such tower or base station within the meaning of to P.L. 112-96, Section 6409 and any FCC regulations or orders interpreting this section. An application for a modification pursuant to this subsection shall expressly request treatment under this subsection and shall identify, with supporting documentation, how the modification qualifies under this subsection. The zoning administrator shall review and approve such modification to the extent required by federal law.

C. Modifications that do not qualify as minor modifications under this Section shall be considered a major modification. Major modifications shall be treated the same as requests for a new WCF.

21.20B.090 Revocation for Violation.

Any permit granted in accordance with the terms of this Chapter for a WCF may be revoked if any of the conditions or terms of such permit or variance are violated or if any law or ordinance is violated in connection therewith.

21.20B.100 Abandonment or Discontinuation of Use.

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A. Within thirty (30) days of discontinuation of use, the WCF operator shall notify the zoning administrator in writing that use of the WCF has been discontinued. A WCF must be completely removed, and the site returned to its pre-WCF condition within one hundred eighty (180) days of discontinuation of use.

B. Non-operation, disuse (including, but not limited to, cessation of wireless services) or disrepair for one hundred eighty (180) days or more shall constitute abandonment under this Chapter or any predecessors to this Chapter.

C. A WCF that is not removed within one hundred eighty (180) days of abandonment or discontinued use will be considered a nuisance and, in addition to any other available remedy, will be subject to abatement under Chapter 9.06.

D. The City may require a performance bond or other sufficient security in an amount rationally related to the cost of removing the WCF and all related facilities and equipment on the site, as determined by the zoning administrator. However, the city may not require the owner or operator to post a cash deposit or establish a cash escrow account as security under this subsection. In setting the amount of the bond or security, the community development zoning administrator shall take into consideration the estimate of removal costs.

21.20B.110 State or Federal Preemption.

Notwithstanding any other provision of this Chapter to the contrary, if any provision(s) of this Chapter would give rise to a claim by an applicant that a proposed action by the City would prohibit or have the effect of prohibiting the provision of personal wireless services within the meaning of 47 USC 332(c)(7), or otherwise are preempted or prohibited by state or federal law, evidence of such effect may be grounds for a variance from the requirements of this Chapter or an appeal of any decision denying an application for a WCF.

21.20B.120 Use of Outside Consultants.

From time to time the City may need the services of a qualified outside consultant to supplement staff to review and make appropriate recommendations including, but not limited to, compliance with radio frequency emissions standards and/or identification of alternative solutions where there is a possibility that a proposed facility could result in a significant impact to the surrounding area. The use of outside consultants shall be at the applicant's expense. The cost of these services shall be in addition to all other applicable fees associated with the project, and shall be contracted for and administered by the City.

PROOF OF PUBLICATION

LEGAL NEWSPAPER NOTICES

PLANNING COMMISSION PROJECT NOTICING

Newspaper: The Tribune

Date of Publication: 04/28/17 & 05/26/17

Meeting Date: 05/9/17 & 06/06/17
Planning Commission & City
Council

Project: ZC 17-002 – Wireless
Communications Facilities Ordinance

I, Monica C Hollenbeck, employee of the
Community Development Department, Engineering
Division, of the City of El Paso de Robles, do hereby
certify that this notice is a true copy of a published
legal newspaper notice for the above named project.

Signed: Monica C Hollenbeck
Monica C Hollenbeck

Legals

CITY OF EL PASO DE ROBLES
"The Pass of the Oaks"

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Planning Commission and City Council will hold two separate Public Hearings to consider the following project:

APPLICATION: Zone Change 17-002 (ZC 17-002) Wireless Communications Facilities Ordinance
An ordinance of the city of El Paso De Robles adding Chapter 21.20B to the Paso Robles Municipal Code regarding wireless communications facilities located on private property and within the public right-of-way.

APPLICANT: City of Paso Robles

LOCATION: Ordinance applies to all property within the City of Paso Robles

ENVIRONMENTAL DETERMINATION: This application is has been determined to be Statutorily Exempt from California Environmental Quality Act under section 15061 b.3. (Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.)

PLANNING COMMISSION HEARING: The Planning Commission will hold a Public Hearing on May 9, 2017, at 6:30 p.m. at the Library Conference Center, 1000 Spring Street, Paso Robles, California.

CITY COUNCIL HEARING: The City Council will hold a Public Hearing on June 6, 2017, at 6:30 p.m. at the Library Conference Center, 1000 Spring Street, Paso Robles, California.

Questions about this application may be directed to the Community Development Department at (805) 237-3970 or via email at planning@pcity.com. Comments on the proposed application may be mailed to the Community Development Department, or emailed to planning@pcity.com provided that such comments are received prior to the time of the hearings.

If you challenge the application in court, you may be limited to raising only those issues you or someone else raised at the public hearings described in this notice, or in written correspondence delivered to the Planning Commission or City Council at, or prior to, the public hearings.

Copies of the staff report pertaining to this project will be available for review at the Community Development Department on the Thursday preceding each hearing (copies are available for purchase for the cost of reproduction). If you have any questions, please contact the Community Development Department at (805) 237-3970.

/s/ Warren Fraze
Community Development Director
April 28, May 26, 2017

3048511

Mobilite Comments

From: Ben Johnson [<mailto:Ben.Johnson@mobilitie.com>]

Sent: Wednesday, June 07, 2017 2:54 PM

To: Darren Nash <DNash@prcity.com>

Cc: Tyler Gentry <tgentry@mobilitie.com>

Subject: Informal Comment on Proposed Wireless Ordinance Update, City of Paso Robles

Darren, Thanks again for making us aware of where the City is in it's process. I thought it'd be helpful to at least offer some informal comment of my own so that you may weigh against other input received:

- The Project Summary acknowledges new trends in wireless technology (i.e. small cells), its implications to communities and the importance of revising processes to better reflect the impacts posed; i.e. the intent of the wireless code rewrite. However, the ordinance language itself fails to distinguish between that shifting trend (i.e. small cell) and traditional wireless improvements for which the original code contemplated.
- To remedy that failure to distinguish, please consider:
 - Inclusion of a small cell definition;
 - Separate processes for small cells (either in private and/or PROW) more reflective of their significantly lower impacts to the built environment as compared to more traditional (macro) towers;
 - Consider small cells attaching to existing poles as akin in impacts to that of a minor modification to existing traditional towers and apply that same admin process.
- Generally, the revised code, most succinctly demonstrated in the Table, suggests that the same consideration for all WCFs be applied across all zone types, as if no difference in land use context or sensitivity exists (ex. between Industrial and SF Detached Residential). I'd recommend revising that Table so that the most sensitive zones receive the most involved consideration and vice versa.
- WCF (pole) height as it pertains to the underlying zone height: there is little to no correlation between pole and building height; zone height, intended for *building* height and to control for intensity of development, its impacts to other infrastructure like roads, wet and dry utilities, traffic, human density, etc. A WCF, like a traditional utility pole, presents none of those impacts. Heights ought to be controlled for relative to existing utility poles only.
- Lesser Notes:
 - For minor modifications/small cell attachments, consider an Admin Process whereby Planning simply offers an informal "Clearance" before or after an application is submitted directly to PW or Building (to control for aesthetics).
- For both Discretionary and Ministerial, but particularly the former, consider a "bundled" or "multiple sites permit" that allow for consideration of up to ten sites; it affords an opportunity to reduce the admin burden for all parties.
- Equipment Undergrounding produces otherwise unnecessary complications and burdens to routine maintenance, technical functionality (supporting equipment-to antennas weakens in effect the further removed from the antenna and in some instances, ex. UE Relay, cannot function underground at all). Further, flooding has proven to be a technical issue for undergrounded equipment. Lastly, undergrounding cost can render a site financially infeasible. (Note that a vault must be sizable enough not just for the equipment but to accommodate a technician and 30" of working space from a panel by electrical code).

Thank you,

Ben R. Johnson, AICP | Permitting Manager, Network Real Estate, LA Metro

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June 12, 2017

Via E-Mail

Warren Frace (WFrace@prcity.com)
Community Development Director
City of Paso Robles
1000 Spring Street
Paso Robles, CA 93446

RE: AT&T's Initial Comments on Zone Change 17-002,
Proposed Wireless Communications Facilities Ordinance

Dear Mr. Frace:

I write on behalf of my client New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) to provide initial comments on the city's proposed Wireless Communications Facilities Ordinance to amend Table 21.16.200¹ and add Chapter 21.20B to the Paso Robles Municipal Code ("Draft Ordinance"). Before addressing section specific comments, the city should consider adding provisions to the Draft Ordinance to facilitate small cell deployment. Small cell facilities have limited aesthetic impact and are used to improve service by increasing throughput and reducing latency.² The recitals to the Draft Ordinance recognize the need to address small cell facilities and next-generation services, but the city misses an opportunity to encourage this investment in the city.

Small cells will play a critical role in advancing to 5G in the future. As more than 60% of the data traffic on AT&T's total network was video in 2015, 5G is expected to assist by delivering much faster speeds and far lower latency. Latency, for example, is how long it takes after you press play on a video app for the video to start streaming on your device. You can see multiple use cases on the horizon to tap this next-gen network. But to work effectively, mobile customers and businesses need multi-gigabit bandwidth speeds and low latency, which a small cell network helps provide. By getting the physical antennas closer to the user, such as by attaching on a street pole, the user is presented with a dominate signal that results in less noise interference and provides faster throughput. If the city is interested in improving the Draft Ordinance to facilitate small cell deployment, AT&T can suggest language to help achieve that result.

¹ Although the title and recitals to the Draft Ordinance refer to Table 16.20.200, the Draft Ordinance seeks to amend Section D to Table 21.16.200.

² A typical small cell facility consists of a low powered antenna, remote radio unit, and associated fiber and electricity needed to connect the node to the wireless network. Depending on the location, AT&T generally deploys a 2' small cell antenna and attaches a 2' remote radio unit to the support structure (i.e., new or existing utility pole, street light, traffic signal).

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Section Specific Concerns

Table 21.16.200

The proposed amendment to Table 21.16.200 of the Municipal Code would require a conditional use permit for all new and "major modifications" (as the term is defined under proposed Section 21.20B.080 of the Draft Ordinance) to wireless communications facilities in all districts throughout the city and in the public rights-of-way. In addition to providing an exception for small cell facilities, the city should consider an administrative process for proposed stealth wireless communications facilities in certain zoning districts, such as commercial and industrial districts.

The city should not require use permits for new or modified wireless facilities in the rights-of-way. As a general matter, requiring a CUP for right-of-way installations is excessive and results in unnecessary expense and delays to wireless providers and the city. And, as described in greater detail below, under California Public Utilities Code Section 7901, AT&T has state law rights to access and construct facilities in public rights-of-way in order to furnish wireless telecommunications services. AT&T objects to the extent the Draft Ordinance interferes in any manner with AT&T's right to deploy facilities in the public way under Sections 7901 and is inconsistent with Section 7901.1. Further, under Section 7901 the city cannot dictate the utility infrastructure that AT&T deploys. Moreover, delays associated with the city's CUP process could result in applications being deemed granted under state or federal law. The city would be better served to use only an encroachment process, which historically has been the appropriate way to manage the public rights-of-way.

Section 21.20B.040 – Permitting Process

In order to avoid confusion, proposed Section 21.20B.040.A of the Draft Ordinance should explicitly except minor modifications and Section 6409 modifications from the referenced application requirements.

Based on recent email correspondence with Community Development Director Warren Frace, we understand that the code sections referenced in Section 21.20B.040.A of the Draft Ordinance should be "Sections 21.23.180-21.23.200" rather than "Sections 21.20B.180-21.20B.200" and "Section 21.23.430" rather than "Section 21.20B.430." But Section 21.23.430 should not apply to applications for wireless communications facility permits because it is inconsistent with applicable federal law that sets forth the timeframes for review of such applications. Specifically, Section 21.23.430 provides that an application will be "deemed abandoned" and the file closed without further action by the city in certain circumstances. The Federal Telecommunications Act of 1996, however, requires a local government to act on an application to place or construct a wireless communications facility "within a reasonable period of time." See 47 U.S.C. § 332(c)(7)(B)(ii). In a 2009 declaratory ruling, the Federal Communications Commission ("FCC") established a legal presumption that "reasonable period of time" means 90 days to act on an application to collocate a wireless facility or 150 days to act on other requests to install wireless telecommunications facilities (the "shot clock").³ Once an application is submitted, the city must act within the applicable shot clock unless the timeframe is tolled, either by notifying the applicant that the application is incomplete within the first 30 days after submittal or by mutual agreement between the jurisdiction and the applicant. To toll the shot clock for incompleteness, the city must identify information lacking in the application submittal that is required by local codes or other published application guidelines.⁴ Under the relevant FCC orders, the application review remains paused until the applicant

³ See *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B)*, WT Docket No. 08-165, Declaratory Ruling, 24 FCC Ruling 13994 (2009) ¶¶ 45, 71.

⁴ See *In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Final Rule, 80 Fed. Reg. 1,238 (FCC Jan. 8, 2015), ¶¶ 131-133.

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responds to a valid Notice of Incomplete Application, at which point the shot clock resumes.⁵ Federal law does not provide for a deemed withdrawal or deemed abandonment of an application, and such local provisions are inconsistent with the shot clock. Indeed, if the city fails to act before the shot clock expires, the application may be deemed granted under state law upon notice by AT&T.⁶

Section 21.20B.040.C (among others) of the Draft Ordinance refers to a "WCF permit" as an alternative to a use permit for a wireless communications facility. (See also Sections 21.20B.060.F.5, 21.20B.070 and 21.20B.080.) But the Draft Ordinance only provides for a use permit process, and the proposed amendment to Section D of Table 21.16.200 indicates that all applications for new or major modifications to wireless communications facilities will proceed through a conditional use permit process. Again, it does not make sense to require all such applications – even for attaching small cells to existing infrastructure in the public right-of-way – to go through a use permit process. To the extent the city intends to provide a different "WCF permit" process, the city should propose a new section of the Draft Ordinance and a further amendment to Table 21.16.200.

It is important that the city develop processes that can comply with the FCC shot clock. Section 21.20B.040.C of the Draft Ordinance should be revised to reduce the likelihood that the city will be unable to comply with the FCC shot clock, especially for collocation applications that are subject to a 90-day shot clock. This section should specify the timeframe for review by the zoning administrator in order to help mitigate that risk. An even bigger timing problem here is that under this proposed section, along with referenced Section 21.23A.090 of the Code, each application could be subject to three sets of notices and hearings if the zoning administrator's decision is appealed to the Planning Commission under Section 21.23A.090 and the Planning Commission's decision is appealed to or called-up by City Council under Section 21.23A.100. AT&T recommends developing a streamlined process that will ensure the city can properly handle applications for wireless communications facilities within the applicable shot clocks.

Section 21.20B.060 – WCFs in the PROW

Again, under California Public Utilities Code Section 7901, AT&T has state law franchise rights to access and construct facilities in public rights-of-way in order to furnish wireless telecommunications services. The city cannot interfere with AT&T's right to deploy facilities in the public way in any manner inconsistent with Section 7901.1. For example, the city may discourage, but cannot prohibit, AT&T from installing new poles in the public right-of-way. Thus, Section 21.20B.060.F.1 of the Draft Ordinance must be reworked to eliminate the unlawful prohibition.

Likewise, the city should not impose a hard-and-fast rule to prohibit antennas higher than six feet above the existing height of light poles, as provided under Section 21.20B.060.F.4 of the Draft Ordinance of the Proposed Amendment. Not only might this infringe AT&T's legal rights, this may prohibit wireless providers from deploying the most aesthetically-pleasing pole-top installations. In addition, this may unnecessarily limit availability of poles where pole heights vary. AT&T recommends amending the proposal to limit pole extensions to ten feet above the average height of existing poles in the vicinity of a proposed installation.

Section 21.20B.060.G.2 of the Draft Ordinance seeks to require undergrounding of ground-mounted equipment. But this is inconsistent with the Chapter 15.04 of the City Code, regarding undergrounding utilities districts. Section 15.04.060(g) of the City Code excepts from undergrounding requirements "Antennae, associated equipment and supporting structures, used by a utility for furnishing wireless communications services."

⁵ See *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B)*, WT Docket No. 08-165, Declaratory Ruling, 24 FCC Ruling 13994 (2009), ¶¶45, 71; See *In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket 13-238, WC Docket 11-59, WT Docket 13-32, Report and Order (2014), ¶1259.

⁶ See California Govt. Code § 65964.1(a).

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Section 21.20B.080.B. – Section 6409 Modifications

AT&T applauds the city for recognizing the need to apply an abbreviated administrative process for handling eligible facilities requests under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, P.L. 112-96, codified at 47 U.S.C. § 1455(a). AT&T also recommends that the city reference the limited scope of review and 60-day timeframe for review pursuant to FCC regulation, 47 C.F.R. § 1.40001(c).

For consistency, Section 21.20B.080.C should specify that a Section 6409 modification is not a major modification.

Section 21.20B.120 – Use of Outside Consultants

This section and Section 21.20B.050.A permit the city to retain an expert with open-ended fees that are covered by the applicant. AT&T's experience is that consultants can unnecessarily increase the cost of deployment by allowing the city to incur unlimited consulting fees that are passed on to the applicant. Consultants often slow down the permitting process because it is in their interest to find problems to increase their fees. Further, consultants should not be used to second guess AT&T's business decisions regarding the design of its network. Any provision that allows the use of consultants should clearly define what role or scope a consultant can perform, such as a structural safety assessment, and only require reimbursement for reasonable fees.

Conclusion

AT&T understands and appreciates the city's desire to develop a comprehensive approach to siting wireless communication facilities within the city, which is surely needed due to significant technological advances in the wireless industry and recent changes to the state and federal laws that govern wireless siting. Especially as technologies advance and the types of facilities needed to meet increasing demands change, the city and wireless providers will be better served by policies that foster flexibility in siting wireless technologies. AT&T is confident that the city can, after thoughtful consideration of the issues, develop a lawful policy. And AT&T encourages the city to add a process to facilitate small cell deployment. We welcome the opportunity to work with the city as it finalizes the Draft Ordinance.

Very truly yours,

/s/ Aaron M. Shank

Aaron M. Shank

Attachment: AT&T's Proposed Redlines

cc: Thomas Frutchey, City Manager (TFrutchey@prcity.com)

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ORDINANCE XXXX N.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
ADD CHAPTER 21.20B AND AMENDING TABLE ~~16-2021.16~~.200 OF THE
MUNICIPAL CODE OF THE CITY OF EL PASO DE ROBLES (ZONING ORDINANCE)
REGARDING WIRELESS COMMUNICATIONS FACILITIES**

WHEREAS, various federal and state laws partially restrict the City of El Paso de Robles' ability to regulate telecommunications facilities; and

WHEREAS, despite these restrictions, the City has the ability to regulate all telecommunications facilities for reasons of health, safety and aesthetics; and

WHEREAS, the telecommunications industry is preparing for the next generation of 5G wireless communication facilities (WCF) that will utilize more numerous and disperse antenna systems; and.

WHEREAS, the City is already seeing a significant increase in application for "small cell" WCF's within the public right-of-way (PROW); and

WHEREAS, the City's existing wireless communication facilities zoning regulations are no longer adequate to regulate the next generation of WCF's; and

WHEREAS, the City desires to adopt telecommunications facility regulations to comply with applicable federal and state law while preserving local control to the extent possible; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the proposed Zoning Ordinance amendment on May 9, 2017, where it considered the staff report and public testimony and recommending the City Council approve the ordinance; and

WHEREAS, the City Council held a duly noticed public hearing on the proposed Zoning Ordinance amendment on June 6, 2017, where it considered the staff report, Planning Commission recommendation and public testimony; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Recitals. The recitals set forth above are true and correct and are incorporated as though fully set forth herein.

Section 2. Environmental Determination. This application has been determined to be Statutorily Exempt from California Environmental Quality Act under section 15061.b.3. because there is no possibility that the activity in question may have a significant effect on the environment.

Section 3. Municipal Code Addition. The Council hereby adopts the language attached hereto as Exhibit A and B and incorporated herein by reference to add chapter 21.20b and amend table ~~16-2021.16~~.200 Paso Robles Municipal Code.

Section 4. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

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Section 5. . Effective Date. This Ordinance shall be in full force and effect 30 days after its passage and adoption as provided by Government Code section 36397.

Section 6. . Publication. The City Clerk shall certify to the passage of this Ordinance by the City Council of the City of El Paso de Robles, California, and cause a summary to be published once within 15 days after its passage in a newspaper of general circulation, published and circulated in the City in accordance with Government Code section 36933.

INTRODUCED at a regular meeting of the City Council held on June 6, 2017, for first reading by the City Council of the City of El Paso de Robles, and adopted on the ____ day of _____, 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Steven W. Martin, Mayor

Attest:

Kristen L. Buxkemper, Deputy City Clerk

| Exhibit A Table ~~16.2021.16~~.200
amendment Exhibit B Chapter 21.20B

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EXHIBIT A

Amendment to TABLE 21.16.200 – Section D

Underline = add text
Strike-through = delete text

ZONING DISTRICT																		
LAND USE	AG	RA	R1	R2	R3	R30	R4	R5	OP	CP	C1	C2	C3	RC	M	PM	AP	POS
D. Communications																		
1. Broadcasting studios.	C	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P	P	N
2. <u>Wireless Communications Facility ("WCF") consistent with Section 21.20B. Transmission and receiving stations (not including ham operators, private microwave and radio dispatch).</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
3. <u>Wireless Communications Facility ("WCF") in Public Right-of-Way (PROW) consistent with Section 21.20B</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
In the R, OP and POS districts, a facility may be permitted with the approval of a CUP by the planning commission for a site located in a public or quasi-public property/building such as a church, school, golf course, community building.																		
NOTE: All facilities, regardless of the zone, shall be camouflaged (antennas and equipment are incorporated into a building/structure or built into the existing environment in a manner that results in the antennas/equipment not being noticeable as determined by the planning commission.	P	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C

Comment [AT&T1]:
The city should consider administrative review for wireless communications facilities in less sensitive zoning districts.

Comment [AT&T2]:
The city should not require a use permit for utility infrastructure in the public rights-of-way

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EXHIBIT B

WIRELESS COMMUNICATIONS FACILITIES

Chapter 21.20B

- 21.20B.010 Intent and Purpose.**
- 21.20B.020 Definitions.**
- 21.20B.030 Applicability and Exemptions.**
- 21.20B.040 Permitting Process.**
- 21.20B.050 Development and Design Standards for all WCFs.**
- 21.20B.060 WCFs in the PROW.**
- 21.20B.070 Application Factors Considered; Findings for Approval.**
- 21.20B.080 Modifications to WCFs.**
- 21.20B.090 Revocation for Violation.**
- 21.20B.100 Abandonment or Discontinuation of Use.**
- 21.20B.110 State or Federal Preemption.**
- 21.20B.120 Use of Outside Consultants.**

21.20B.010 Intent and Purpose.

The purpose of this Chapter is to provide placement, design, and screening criteria to regulate the establishment of wireless communication facilities to protect the public health, safety, general welfare, and quality of life in the City consistent with applicable federal and state requirements. Additionally, the standards in this Chapter make wireless communications reasonably available while preserving the visual aesthetics of the community through the promotion of stealthing techniques that architecturally integrate or camouflage WCFs with their surroundings.

21.20B.020 Definitions.

For the purposes of this Chapter, the following terms and phrases have the meaning ascribed to them in this subsection.

A. "Co-location" means the practice of sharing support structures and buildings on a single freestanding support structure or building. Co-location shall also include the location of WCFs with other utility facilities and structures including, but not limited to, water tanks, transmission towers, and light poles.

B. "FCC" means the Federal Communications Commission or any successor agency.

C. "Public Right-of Way" ("PROW") means an Alley or Street as defined in this Title.

D. "Wireless Communications Facility" ("WCF") means a facility that transmits and/or receives electromagnetic or radio frequency waves, including, but not limited to towers, antennas, monopoles, distributed antenna systems, wireless utility monitoring and control services, support or accessory structures and related equipment. Amateur radio operators are not included in this definition.

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21.20B.030 Applicability and Exemptions.

The requirements of this Section apply to all WCFs, except as exempted. The following are exempt from the provisions of this Chapter:

A. Radio or Television Antenna: Any ground- or building-mounted antenna that receives radio or television signals for use only by owners or occupants of the property or development on which the antenna is located that does not exceed a height of ten (10) feet above the maximum allowable building height for the zone in which the antenna is located.

B. Satellite Dish Antenna: Ground- or building-mounted dish antenna that is one (1) meter (39.37 inches) or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals as defined by Section 207 of the Telecommunications Act of 1996, Title 47 of the Code of Federal Regulations, and any interpretive decisions thereof issued by the FCC.

C. Amateur Radio Antenna: Any antenna, including its support structure, used by an authorized amateur radio operator licensed by the FCC that does not exceed a height of fifteen (15) feet above the maximum allowable building height of the zone in which it is located. For the purpose of this section, amateur radio means the licensed non-commercial, non-professional, private use of designated radio bands for purposes of private recreation including the non-commercial exchange of messages and emergency communication. This includes HAM radio and citizens band antenna.

D. Government Antenna: Any antenna, dish, or similar equipment owned and/or operated by any government entity.

E. Wifi Routers: Any wireless facilities located within a structure and intended to provide wireless service only within the same structure, including wifi hotspots and access points.

F. Temporary Facility: Placement of a temporary WCF for a period of not more than thirty (30) days following federal, state or City declaration of an emergency or disaster or as part of a City permitted or sponsored special event.

21.20B.040 Permitting Process.

A. ~~Except with respect to minor modifications and Section 6409 modifications, a~~An application is required for all WCFs, including WCFs located in the PROW. The application shall be subject to the requirements of Sections 21.20B.23.180-21.20B.23.200 ~~and to the administrative file close-out program in Section 21.20B.430.~~

B. WCFs Outside the PROW. Applications for WCFs outside of the PROW are subject to the conditional use permit requirements specified in Table 21.16.200(C)(8) and 21.16.200(D)(2),(3) and must be accompanied by the applicable permit application.

C. Permits for WCFs in the PROW. ~~A WCF permit~~ is required for the installation, construction or development of any WCF in the PROW. WCFs in the PROW are subject to the development and design standards in Section 21.20B.050 of this Chapter as well as the requirements specified in Section 21.20B.060. The applicant shall provide scaled drawing

Comment [AT&T3]:

It is unclear what a "WCF permit" is under this draft. The proposed amendment to Section D of Table 21.16.200 indicates that all major modifications will require a conditional use permit. AT&T agrees that different process should apply for several types of proposals for new or modified wireless communications facilities, and we encourage the city to add a separate process to that end.

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signed by a licensed professional demonstrating that any encroachments in the PROW will not affect handicapped accessibility or traffic safety. Applicants shall also obtain all applicable encroachment and building approvals and permits. WCF permit applications shall be reviewed, approved, conditionally approved or denied by the zoning administrator in consultation with the city engineer no more than 60 days from submittal. Prior to the zoning administrator's decision on a WCF permit application, public notice shall be mailed to every property owner and occupant within three hundred (300) feet of the proposed WCF site. Such notice shall be mailed no less than ten (10) business days prior to the scheduled zoning administrator's decision date and shall include information about the proposed project, the zoning administrator's pending decision, and information about when and how an appeal may be filed. The zoning administrator's decision may be appealed as set forth in Section 21.23A.090.

D. All WCF applications must include documentation of compliance with FCC regulations pertaining to radio frequency emissions, including cumulative emissions from any existing WCFs on the site and the proposed WCF, in a manner deemed appropriate by the zoning administrator.

21.20B.050 Development and Design Standards for all WCFsMajor Modifications.

A. New Facilities.

All new WCFs must comply with the following development and design standards except when impractical or technologically infeasible. The burden shall be on the applicant to provide evidence as part of the application showing why and how complying with the standard would be impractical or technologically infeasible. Impracticality shall be determined based on availability or the cost of complying with the development and design standards and the cost of noncompliance. The applicant shall submit a deposit to pay for such independent third party review as set forth in the City's Fee Resolution.

B. Existing Conforming and Legal Nonconforming Facilities.

All existing WCFs that have all proper use permits, building permits, encroachment permits, and other entitlements approved by the City as of the effective date of this Chapter shall be allowed to continue as they presently exist and will be considered legal non-conforming or legal conforming facilities, as the case may be, unless otherwise required by law. All existing WCFs that do not qualify as legal non-conforming or legal conforming facilities pursuant to the foregoing sentence as of the effective date of this Chapter shall be subject to the requirements of this Chapter.

Modifications of existing conforming WCFs and existing legal nonconforming WCFs shall be subject to Section 21.20B.080 regarding modifications. Major modifications to existing WCFs shall comply with the requirements of this Chapter.

C. Requirements for All WCFsMajor Modifications.

1. Where practical, WCFs shall be integrated into existing or newly developed facilities that are functional for other purposes.

Comment [AT&T4]:

This provides for three levels of review: zoning administrator, Planning Commission, and City Council. The city will run into problems complying with the FCC shot clock, especially with respect to the 90-day collocation shot clock.

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2. To the extent feasible, WCFs shall incorporate stealth design so as to minimize aesthetic impacts on surrounding land uses. Stealth design means that the WCF is designed to closely blend into the surrounding environment and to be minimally visible. Antennas and related equipment ~~are should be~~ either not readily visible beyond the property on which it is located, or, if visible, appear to be part of the existing landscape or environment rather than the WCF.

3. Related equipment shall be co-located within an existing equipment enclosure ~~or undergrounded~~ to the extent ~~td~~ technologically feasible. If co-location ~~or undergrounding are is~~ not feasible, the equipment shall be designed to match the architecture of adjacent buildings and/or be screened from public view by walls, fences, parapets, landscaping, and similar treatments.

4. Monopoles, antennas, and support structures for antennas shall be no greater in diameter or any other cross-sectional dimension than is reasonably necessary for the proper functioning and physical support of the WCF and future co-location of additional WCFs.

5. No WCF or any portion thereof may be located within a required setback area except with the zoning administrator's approval.

6. To the extent feasible, WCFs should adhere to the existing height limitations of the zone in which they are located.

7. WCFs shall comply with the City's noise ordinance. WCFs operating in excess of the maximum sound levels permitted by the City's noise ordinance shall be enclosed to achieve compliance with the noise ordinance. Backup generators or similar equipment that operates only during power outages or other emergencies are exempt from this requirement. Testing of such backup generators or similar equipment may only occur during standard daytime hours.

8. No WCF may, by itself or in conjunction with other WCFs, generate radio frequency emissions and/or electromagnetic radiation in excess of FCC standards ~~and any other applicable regulations. All WCFs must comply with all standards and regulations of the FCC, and any other agency of the State or Federal government agency with the authority to regulate WCFs.~~

D. Additional Requirements for Freestanding WCFs.

1. An applicant for a freestanding WCF shall demonstrate as part of the application that a proposed WCF cannot be placed on an existing building, utility pole, streetlight, or co-located.

2. Freestanding WCFs shall be compatible with the architecture, color, texture, and/or materials of nearby buildings and the surrounding area and landscaping.

3. Freestanding WCFs shall be located in areas where existing topography, vegetation, buildings or other structures provide the greatest amount of screening so as to minimize aesthetic impacts on surrounding land uses.

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4. To the extent feasible and practical, fFreestanding WCFs shall be designed to allow for co-location of additional antennas.

5. Freestanding WCFs may not utilize guy wires or other diagonal or horizontal support structures.

6. Exterior lighting of freestanding WCFs is prohibited unless required by the Federal Aviation Administration (FAA) or other government agency.

21.20B.060 WCFs in the PROW.

A. No PROW permit may be issued unless the applicant is authorized to place WCFs within the PROW by franchise, certificate of convenience and necessity, City license or otherwise. Any City license may be granted in City's sole discretion as property owner, and not as land use regulator.

B. WCFs shall have subdued colors and non-reflective materials which blend in with the surrounding area to the satisfaction of the zoning administrator or his/her designee.

C. The height of any new WCF pole or structure shall not exceed ten (10) vertical feet above the maximum height allowed in the nearest adjacent zoning district.

~~D. In residential areas, WCFs shall not be located within three hundred (300) feet of another wireless telecommunications facility; this does not include co-location of sites.~~

~~E.D.~~ All WCFs and Equipment shall be built in compliance with the Americans with Disabilities Act (ADA) and traffic safety standards, including but not limited to surface access in and around facilities.

~~F.E.~~ Utility and Light Poles.

1. Antennas in the PROW shall be collocated or installed on existing utility or light poles, except when impractical or technologically infeasible. ~~No new poles may be installed except as replacements for existing poles, or when the applicant provides evidence as part of the application showing why and how complying with the foregoing standard would be impractical or technologically infeasible are discouraged.~~

2. If a City streetlight or other city-owned structure is used, compensation shall be paid to the City as the owner.

3. All installations on utility poles shall fully comply with California Public Utilities Commission General Order 95.

4. The maximum height of any antenna or antenna radome shall not exceed ~~six-ten (610)~~ feet above the average height of ~~an~~ existing light poles in the vicinity of the proposed installation.

5. Revocation for Non-Use. WCF permits be revoked if not used within six months from the date of approval. The six-month period may be extended for additional time upon written request to and written approval of the zoning administrator.

Comment [AT&T5]:

This may cause confusion as this is not a defined term under the City Code.

Comment [AT&T6]:

The city should delete this provision because it risks an unlawful effective prohibition of services.

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~~G.F.~~ Equipment Location.

1. Equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise inconvenience public use of the right-of-way, or create safety hazards to pedestrians and/or motorists as determined by the City Engineer.

~~2. Ground-mounted equipment shall be undergrounded to the extent technologically feasible. Ground-mounted equipment that cannot be undergrounded shall be screened, to the fullest extent possible, either within the equipment contained in the pole or through the use of landscaping, walls, or other decorative features, to the satisfaction of the zoning administrator or his/her designee.~~

~~3.2.~~ To the extent practical and feasible, rRequired electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the zoning administrator or his/her designee.

~~H.G.~~ City Changes to the PROW.

The permittee shall modify, remove, or relocate its WCF, or portion thereof, without cost or expense to the City, if and when made necessary by any abandonment, change of grade, alignment or width of any street, sidewalk or other public facility, including the construction, maintenance, or operation of any other City underground or aboveground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by City or any other public agency. Said modification, removal, or relocation of a WCF shall be completed within a reasonable relocation time frame as determined by the zoning administrator. In the event a WCF is not modified, removed, or relocated within said period of time, City may cause the same to be done at the sole expense of applicant. Further, in the event of an emergency, the City may modify, remove, or relocate WCFs without prior notice to applicant provided applicant is notified within a reasonable period thereafter.

21.20B.070 Application Factors Considered; Findings for Approval.

In considering whether to grant a conditional use permit or WCF permit, as may be required under Section 21.20B.060, the decision maker shall consider the following factors:

- A. Compliance with the design and development standards in this Chapter and with the applicable zoning standards where the WCF is proposed to be located;
- B. Height and setbacks;
- C. Proximity to residential uses;
- D. The nature of uses on adjacent and nearby properties;
- E. Surrounding topography and landscaping;
- F. Quality and compatibility of stealth design and screening;
- G. Impacts on public views and the visual quality of the surrounding areas; and

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- H. Availability of other facilities or buildings for collocation.
- I. Impacts to the future use and aesthetics of the PROW and streetscape character.
- J. Impacts to historic structures, historic districts, parks and the Downtown historic core.

21.20B.080 Modifications to WCFs.

A. Minor Modifications. A new use or WCF permit (as applicable) is not required for modifications to an existing WCF ~~that~~:

1. ~~That do~~ decrease or do not increase ~~capacity~~ the physical dimensions, including alterations such as replacing the existing antenna with a smaller antenna, installing quieter equipment, or decreasing the number of antennas;

2. Where the a proposed WCF will be placed on a previously approved WCF and is consistent with requirements for the existing WCF installation permit; and

~~3. That is a~~ Any co-location that meets the requirements of Government Code section 65850.6.

~~4.3.~~ 65850.6.

An application with a proposed modification that falls within one of the categories above shall be considered a minor modification that may be approved administratively by the zoning administrator.

B. Section 6409 Modification. A new use permit or WCF permit, as applicable, is not required for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station within the meaning of ~~to P.L. 112-96, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, P.L. 112-96, codified at 47 U.S.C. § 1455(a), and any FCC regulations, rules or orders interpreting this section.~~ An application for a modification pursuant to this subsection shall expressly request treatment under this subsection and shall identify, with supporting documentation, how the modification qualifies under this subsection. The zoning administrator shall review and approve such modification to the extent required by federal law ~~within sixty (60) days of submittal.~~

C. Modifications that do not qualify as minor modifications or Section 6409 modifications under this Section shall be considered a major modification. Major modifications shall be treated the same as requests for a new WCF.

21.20B.090 Revocation for Violation.

Any permit granted in accordance with the terms of this Chapter for a WCF may be revoked if any of the conditions or terms of such permit or variance are violated or if any law or ordinance is violated in connection therewith.

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21.20B.100 Abandonment or Discontinuation of Use.

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A. Within thirty (30) days of discontinuation of use, the WCF operator shall notify the zoning administrator in writing that use of the WCF has been discontinued. A WCF must be completely removed, and the site returned to its pre-WCF condition within one hundred eighty (180) days of discontinuation of use.

B. Non-operation, disuse (including, but not limited to, cessation of wireless services) or disrepair for one hundred eighty (180) days or more shall constitute abandonment under this Chapter or any predecessors to this Chapter.

C. A WCF that is not removed within one hundred eighty (180) days of abandonment or discontinued use will be considered a nuisance and, in addition to any other available remedy, will be subject to abatement under Chapter 9.06.

D. The City may require a performance bond or other sufficient security, including self-insurance, in an amount rationally related to the cost of removing the WCF and all related facilities and equipment on the site, as determined by the zoning administrator. However, the city may not require the owner or operator to post a cash deposit or establish a cash escrow account as security under this subsection. In setting the amount of the bond or security, the community development zoning administrator shall take into consideration the estimate of removal costs.

21.20B.110 State or Federal Preemption.

Notwithstanding any other provision of this Chapter to the contrary, if any provision(s) of this Chapter would give rise to a claim by an applicant that a proposed action by the City would prohibit or have the effect of prohibiting the provision of personal wireless services within the meaning of 47 USC 332(c)(7), or otherwise are preempted or prohibited by state or federal law, evidence of such effect may be grounds for a variance from the requirements of this Chapter or an appeal of any decision denying an application for a WCF.

21.20B.120 Use of Outside Consultants.

From time to time the City may need the services of a qualified outside consultant, who shall be a California-licensed professional engineer, to supplement staff to review and make appropriate recommendations including, but not limited to, compliance with radio frequency emissions standards and/or identification of alternative solutions where there is a possibility that a proposed facility could result in a significant impact to the surrounding area. The reasonable use of outside consultants shall be at the applicant's expense. The reasonable cost of these services shall be in addition to all other applicable fees associated with the project, and shall be contracted for and administered by the City.

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Attachment 2

PROOF OF PUBLICATION	
LEGAL NEWSPAPER NOTICES	
PLANNING COMMISSION PROJECT NOTICING	
Newspaper:	The Tribune
Date of Publication:	04/28/17 & 05/26/17
Meeting Date:	05/09/17 & 06/06/17
	Council
Project:	ZC 17-002 – Wireless Communications Facilities Ordinance
I, Monica C. Hollenbeck, employee of the Community Development Department, Engineering Division, of the City of El Paso de Robles, do hereby certify that this notice is a true copy of a published legal newspaper notice for the above named project.	
S	C Monica C. Hollenbeck

ROBLES
of the Oaks™

NOTICE OF PUBLIC HEARING

IS HEREBY GIVEN that the Planning Commission and
will hold two separate Public Hearings to consider the
project

(ZC 17-002) Wireless

Ordinance of the
to Paso Robles
right of way
City of Paso Robles

ITION: Ordinance applies to all property within the City of
Robles

possibility that the activity in question
on the environment, the activity is not

COUNCIL HEARING: The City Council will hold a Public
on June 6, 2017, at 6:30 p.m. at the Library Conference
1000 Spring Street, Paso Robles, California

about the application may be directed to the Governance
237-3670 or via email at
the
or
that such comments are received

to time

public hearings

Franc
Director

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