

ORDINANCE NO. 1194

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UKIAH ADDING ARTICLE 10 TO CHAPTER 2 OF DIVISION 2 OF THE UKIAH CITY CODE, ENTITLED "BROADBAND DEPLOYMENT," COMMENCING WITH SECTION 2400.

The City Council of the City of Ukiah hereby ordains as follows:

**SECTION ONE.**

Article 10 is hereby added to Chapter 2, Division 2 of the Ukiah City Code to read as follows:

ARTICLE 10. BROADBAND DEPLOYMENT

**2400. Short Title and Definitions**

**Section 2400.1 Short Title.**

This Article 10 is titled "Broadband Deployment".

**Section 2400.2 Definitions.**

- a. **"Administrative Review"** means ministerial review of an Application by the City relating to the review and issuance of a Permit, including review by the City's Director of Community Development ("Director") to determine whether the issuance of a Permit is in conformity with the applicable provisions of this Article. This process does not involve the exercise of discretion. Either the issuance of a Permit is in conformity with the applicable provisions of this Article or it is not. This process is not subject to a public hearing.
- b. **"Antenna"** means communications equipment that transmits and/or receives over-the-air electromagnetic signals used in the provision of Wireless Services. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.
- c. **"Applicable Codes"** means currently adopted California building, fire, safety, electrical, plumbing, or mechanical codes adopted under Section 3000 of this Code.
- d. **"Applicant"** means a Person who submits an Application.
- e. **"Application"** means a written request submitted by an Applicant in a form adopted by the Community Development Department to the City for a Permit (i) to locate or Collocate, or to modify, a Communications Facility underground or on any existing Support Structure, Pole, or Tower, or (ii) to construct, modify or Replace a new Support Structure, Pole or Tower or any other structure on which a Communications Facility will be Collocated.
- f. **"City"** means the City of Ukiah.

- g. **“City Pole”** means a Pole owned, managed or operated by or on behalf of the City.
- h. **“Collocate”** means to install, mount, maintain, modify, operate and/or replace a Communications Facility on an existing Support Structure, Pole, or Tower or any other structure capable of supporting such Communications Facility. “Collocation” has a corresponding meaning.
- i. **“Communications Facility”** means, collectively, the equipment at a fixed location or locations that enables communication between user equipment and a communications network, including: (i) radio transceivers, Antennas, coaxial, fiber-optic or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing. A Communications Facility does not include the Pole, Tower or Support Structure to which the equipment is attached.
- j. **“Communications Service Provider”** means a cable operator, as defined in 47 USC § 522(5), a provider of information service, as defined in 47 USC § 153(24), a provider of telecommunications service, as defined in 47 USC § 153(53), a provider of fixed wireless, or a provider of personal wireless services as defined in 47 U.S.C. § 332(c)(7)(C)(i).
- k. **“Decorative Pole”** means a City Pole that is specially designed and placed for aesthetic purposes.
- l. **“Department”** means the City Department of Community Development.
- m. **“Deployable”** means a portable, self-contained Wireless Facility that can be moved to a specified location or area and provide Wireless Services on a temporary or emergency basis such as a “cell on wheels” or “COW,” “cell on light truck” or “COLT,” tethered balloon, tethered drone or other unmanned device.
- n. **“Discretionary Review”** means review of an Application by the City relating to the review and issuance of a Permit, that is other than an Administrative Review. Discretionary Review involves discretion on the part of the City (subject to any applicable limits on such discretion) in determining whether to issue a Permit and may be subject to one or more public hearings or meetings.
- o. **“Eligible Facilities Request”** means an eligible facilities request as set forth in 47 C.F.R. Section 1.6100(b)(3), as may be amended from time to time.
- p. **“FCC”** means the Federal Communications Commission of the United States.
- q. **“Fee”** means a one-time, nonrecurring charge, whether a fixed amount or cost-based amount based on time and expense.
- r. **“Historic Property”** means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the United States Secretary of the Interior (in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C) or established pursuant to state historic preservation law.

- s. **“Law”** means any and all Federal, State, or local law, statute, common law, code, rule, regulation, order, or ordinance.
- t. **“Ordinary Maintenance, Repair and Replacement”** means (i) with respect to a Communications Facility and/or the associated Support Structure, Pole or Tower, inspections, testing, repair and modifications that maintain functional capacity, aesthetic and structural integrity, and (ii) with respect to a Communications Facility only, the replacement or upgrade of Antennas and/or other components of the Communications Facility (specifically, such as a swap out or addition of 5G Antennas and radio equipment as required by the Applicant), with Antennas and/or other components substantially similar, in color, aggregate size and other aesthetics to that previously permitted by the City (and/or consistent with the same height and volume limits for Wireless facilities under this Article), so long as the Support Structure, Pole, or Tower will structurally support, or prior to installation will be modified to support, the structural load. Modifications are limited by the structural load analysis supplied by the Applicant to the City, and by the volume limits in Subsection 2400.2(aa). Modifications beyond the foregoing must be requested in writing by the Applicant and are subject to discretionary approval by the City.
- u. **“Permit”** means a written authorization (in electronic or hard copy format) required by the City to initiate, continue, or complete installation of a Communications Facility, or an associated Support Structure, Pole, or Tower.
- v. **“Person”** means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.
- w. **“Pole”** means a pole, such as a utility, lighting, or similar pole made of wood, concrete, metal or other material, located or to be located within the Public Right of Way or Utility Easement. The term does not include the vertical support structure for traffic lights, a horizontal structure to which signal lights or other traffic control devices are attached, or the arm of a streetlight unless the City grants a waiver for such pole. The term does not include electric transmission (but does include electric distribution) poles or structures. A Pole does not include a Tower or Support Structure.
- x. **“Provider”** means a Communications Service Provider or a Wireless Provider.
- y. **“Public Right of Way” or “Public ROW”** means the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, alley or similar purpose, but not including a federal interstate highway or other area not within the legal jurisdiction, or within the legal ownership or control of the municipality.
- z. **“Rate”** means a recurring charge.
- aa. **“Replace” or “Replacement”** means, in connection with an existing Pole, Support Structure or Tower, to replace (or the replacement of) same with a new structure, similar in design, size and scale to the existing structure and in conformance with current adopted requirements of the City, in order to address limitations of, or change

requirements applicable to, the existing structure to structurally support Collocation of a Communications Facility. In connection with replacement of a Pole or Tower to support Collocation of a Wireless Facility, similarity in size and scale shall be evaluated consistent with 47 C.F.R. 1.6100 Subpart b(7).<sup>1</sup>

- bb. **“Small Wireless Facility” or “Small Cell”** means a Wireless Facility that meets both of the following qualifications: (i) each Wireless Provider’s Antenna (including, without limitation, any strand-mounted Antenna) could fit within an enclosure of no more than 3 cubic feet in volume; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume, with a maximum of 7 cubic feet being pole mounted. The following types of associated, ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for connection of power and other services.
- cc. **“State”** means the State of California.
- dd. **“Support Structure”** means a building, a billboard, a water tank or any other structure to which a Communications Facility is or may be attached. Support Structure does not include a Pole or a Tower.
- ee. **“Tower”** means any structure built for the sole or primary purpose of supporting a Wireless Facility, such as a self-supporting Tower, a monopole, a lattice Tower or a guyed Tower. Tower also includes a structure designed to conceal from the general public the Wireless Facility. A Tower does not include a Pole or a Support Structure.

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<sup>1</sup> (7) Substantial change. A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

- (i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
- (A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings’ rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.
- (ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, 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;
- (iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, 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;
- (iv) It entails any excavation or deployment outside the current site;
- (v) It would defeat the concealment elements of the eligible support structure; or
- (vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, 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 § 1.6100(b)(7)(i) through (iv).

- ff. **“Utility Easement”** means the area on, below, or above privately- owned property that has been designated for use as or is used for a specific utility purpose (such as for electric, cable or other utility purpose), and is evidenced by a recorded instrument in the public land records pursuant to a recorded plat, easement or right of way or is otherwise a legally enforceable easement, and does not include any portion of a Public Right of Way.
- gg. **“Wireless Facility”** means a Communications Facility installed and/or operated by a Wireless Provider. The term does not include: (i) the Support Structure, Tower or Pole on, under, or within which the equipment is located or Collocated; or (ii) coaxial, fiber-optic or other cabling that is between Communications Facilities or Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna. A Small Wireless Facility is one example of a Wireless Facility.
- hh. **“Wireless Infrastructure Provider”** means any Person, including a Person authorized to provide telecommunications service in the State, that builds or installs and/or operates Wireless Facilities or Poles, Towers or Support Structures on which Wireless Facilities are or are intended to be used for Collocation, but that is not a Wireless Services Provider.
- ii. **“Wireless Provider”** means a Wireless Infrastructure Provider or a Wireless Services Provider.
- jj. **“Wireless Services”** means any wireless services including, without limitation, personal wireless services as that term is defined in 47 USC § 332(c)(7)(C)(i), fixed wireless and other wireless services.
- kk. **“Wireless Services Provider”** means a Person who provides Wireless Services.

**Section 2401 Governance of Deployment in the Public ROW**

**Section 2401.1 General Provisions of Agreement for Access to Public ROW**

- a. Municipal Agreement for City owned facilities. Prior to receiving a Permit to install a communications Facility in the Public ROW on facilities owned wholly or in part by the City, each Applicant shall be required to enter into a Municipal Agreement substantially in the form of Appendix A. At the option of the City, the provisions of the Agreement shall prevail over any provision in this Article which conflicts or is inconsistent with the provisions of the Agreement. The Applicant shall submit an executed Agreement with their Application. For facilities in the Public ROW that are not owned wholly or in part by the City, no Municipal Agreement will be required and the Applicant shall consult with the owner of the facility and obtain the consent of the owner prior to installation.
- b. Fees
  - 1. **Application Fees** shall be established by resolution of the City Council from time to time and shall be based on a measurable estimate of the actual costs of services rendered by the Department from the time of the initial application intake submission until the application is approved.

2. **Make-Ready Fee** shall be determined on a site-specific, engineering basis, for work reasonably necessary to make a particular City Pole suitable for attachment of the applicable Communications Facility.
3. **Annual ROW or Occupancy Rate** shall be established and revised from time to time by City Council resolution.
4. **Annual Pole Attachment Fee**, for attachment to a City Pole shall be established and revised from time to time by City Council resolution.
5. Generally applicable, non-discriminatory Fees, such as for Electrical permits, Building permits, or Encroachment permits.
6. An Applicant shall not be subject to any municipal Fees or Rates or payment of other compensation, other than those expressly cited above or as may be otherwise negotiated between an Applicant and the City or required pursuant to the City Code.
7. The Applicant, or person who owns or operates the Communications Facility installed in the Public ROW (including, without limitation, on a City Pole) may remove its facilities at any time from the Public ROW, upon not less than thirty (30) days prior written notice to the City and may cease paying to the City any applicable Fees for such use, as of the date of actual removal of the facilities; provided the removal leaves the structure and grounds, if any, occupied by the Communications Facility in the condition they were in prior to its installation.

**Section 2401.2 Permitted Communications Facility Uses/Administrative Review; Application**

- a. Permitted Use. The following uses within the Public ROW shall be a permitted use, subject to Administrative Review and issuance of a Permit as set forth in this Section 2401.2. All such uses shall be in accordance with all other applicable provisions of this Article, including without limitation, those set forth in Section 2401.5 below:
  1. Collocation of Small Cells or a Collocation that qualifies as an Eligible Facilities Request;
  2. Modification of a Pole, Tower or Support Structure or Replacement of a Pole, for Collocation of a Communications Facility that qualifies as an Eligible Facilities Request or involves a Small Wireless Facility that does not exceed the maximum limitations set forth in Subsection 2401.3.c.1(A)(i) below. All other such modifications or Replacements require a minor use permit under Section 9262.
  3. Construction of a new Pole or a monopole Tower (but no other type of Tower) to be used for Collocation of Small Cells that does not exceed the maximum height and location requirements set forth in Subsection 2402.3.c.1(A)(i) below; and

4. Construction of a Communications Facility, other than those set forth in subparagraphs (1), (2) or (3) in this Subsection 2401.2.a, involving the installation of coaxial, fiber-optic or other cabling, that is installed underground in accordance with City standards for buried utility cabling or above ground between two or more Poles or a Pole and a Tower and/or Support Structure, and related equipment and appurtenances.
- b. Permit Required. No Person shall place any facility described in Subsection 2401.2.a above in the Public ROW without first filing an Application for same and obtaining a Permit therefor, except as otherwise expressly provided in this Article.
- c. Proprietary or Confidential Information in Application. The City shall make accepted Applications publicly available. Notwithstanding the foregoing, Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each portion of such materials accordingly, and the City shall treat the information as proprietary and confidential, subject to applicable provisions in the California Public Records Act. (Gov't Code §6250 et seq.)
- d. Administrative Review Application Requirements. The Application shall be made by the applicable Provider or its duly authorized representative and shall contain the following:
  1. The Applicant's name, address, telephone number, and e-mail address, including emergency contact information for the Applicant.
  2. The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application.
  3. A general description of the proposed work and the purposes and intent of the proposed facility. The scope and detail of such description shall be appropriate to the nature and character of the physical work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed.
  4. Detailed construction drawings regarding the proposed facility in addition to any plans required by Applicable Codes.
  5. To the extent the proposed facility involves Collocation on a Pole, Tower or Support Structure, a structural report performed by a duly licensed engineer evidencing that the Pole, Tower or Support Structure will structurally support the Collocation (or that the Pole, Tower or Support Structure will be modified to meet structural requirements) in accordance with Applicable Codes.
  6. For any new aboveground facilities, visual depictions or representations if not included in the construction drawings.
  7. An executed Municipal Agreement as set forth in Section 2401.1.a of this

Code, if applicable.

- e. Ordinary Maintenance, Repair and Replacement. An Application shall not be required for Ordinary Maintenance, Repair and Replacement, other than to the extent required for Permits described in Subsection 2401.5.b.3 below.
- f. Information Updates. Any material change to information contained in an Application shall be submitted in writing to the City within thirty (30) days after the information has changed.
- g. Application Fees. Unless otherwise provided by applicable Laws, all Applications pursuant to this Article shall be accompanied by the Fees required under Subsection 2401.1.a above.

### **Section 2401.3      Action on Administrative Review Applications**

- a. Review of Applications.
  - 1. The Department shall review the Application in light of its conformity with applicable provisions of this Article and shall issue a Permit on nondiscriminatory terms and conditions, subject to the following requirements.
    - (A) Within ten (10) days of receiving an Application, the Department must determine and notify the Applicant whether the Application is complete; or if an Application is incomplete, the Department must specifically identify the missing information, and may toll the approval interval in Subsection 2401.3.a.1(B) below. The Applicant may resubmit the completed Application within twenty (20) days without additional charge, and the subsequent review will be limited to the specifically identified missing information subsequently completed, except to the extent material changes to the proposed facility have been made by the Applicant (other than those requested or required by the Department) in which case a new Application and Application Fee for same must be submitted.
    - (B) The Department must make its final decision to approve or deny the Application within sixty (60) days for a Collocation, and ninety (90) days for any new structure, after the Application is complete (or deemed complete). The Department must advise the Applicant in writing of its final decision, and in the final decision document the basis for a denial, including specific code provisions and/or regulations on which the denial was based. A decision to deny an application shall be in writing and supported by substantial evidence contained in a written record, publicly available, and sent to the applicant. The written decision, supported by such substantial evidence, shall constitute final action by City. The review period or “shot clock” shall continue to run until the written decision, supported by substantial evidence, is made publicly available and sent to the Applicant. The Applicant may cure the deficiencies identified by the City and resubmit the Application within 30

days of the denial without paying an additional Application Fee unless denial was issued due to non-compliance with Design Guidelines or other requirements under this Section 2401, in which case a new Application Fee must be paid.

- (C) The City shall approve or deny the revised Application within thirty (30) days of receipt of the revised Application. The subsequent review by the City shall be limited to the deficiencies cited in the original denial and any material changes to the Application made to cure any identified deficiencies.
- 2. If the City fails to act on an Application within the review period referenced in Subsection 2401.3.a.1(B), the Applicant may provide the City written notice that the time period for acting has lapsed, and the City then has twenty (20) days after receipt of such notice within which to render its written decision, failing which the Application is then deemed approved by passage of time and operation of law and a Permit shall be deemed issued for such Application. Applicant shall provide written notice to the City at least seven (7) days prior to beginning construction or Collocation pursuant to the de facto Permit issued under this Subsection, and such notice shall not be construed as an additional opportunity for objection by the City or other entity to the deployment.
  - 3. An Applicant seeking to construct, modify or replace a network of Communications Facilities may, at the Applicant's discretion and subject to the City's batch Application requirements and process under Section 2401.7 below, file a consolidated Application and receive a single Permit for multiple Communications Facilities, or multiple Permits. The City's denial of any site or sites within a consolidated Application shall not delay or affect other sites submitted in the same Application. The City shall grant a Permit(s) for any and all sites in a consolidated Application that it does not otherwise deny, subject to the requirements of this Section.
- b. Review of Eligible Facilities Requests. Notwithstanding any other provision of this Article, the City shall approve within sixty (60) days and may not deny Applications for Eligible Facilities Requests according to the procedures established under 47 C.F.R. 1.6100(c).<sup>2</sup>

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<sup>2</sup> Review of applications. A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

(1) Documentation requirement for review. When an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

(2) Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application unless it determines that the application is not covered by this section.

(3) Tolling of the timeframe for review. The 60-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the reviewing State or local government determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

c. Small Wireless Facilities; Maximum Height; Other Requirements.

1. Maximum Size of Permitted Use. Small Wireless Facilities, and new, modified or Replacement Poles, Towers and Support Structures (subject to the further limitation for Replacement of Support Structures described in Subsection 2400.2.aa above to be used for Collocation of Small Wireless Facilities may be placed in the Public Right of Way as a permitted use in accordance with this Subsection 2401.2, subject to the following requirements:
  - (A) New Poles, but not new Towers, may be installed in the Public ROW as long as their installation facilitates the extension of existing pole lines or does not result in the creation of parallel paths of poles or exceed the greater of:
    - i. Five (5) feet above the tallest existing Pole, Tower, or Support Structure not exceeding 50 feet in the Public ROW, in place as of the effective date of this Article, and located within 500 feet of the new proposed Pole, Tower, or Support Structure; or ten (10') feet on utility distribution poles where required by the electrical utility separation requirements; or
    - ii. Fifty (50) feet above ground level.
  - (B) Each modified or Replacement Pole, Tower, or Support Structure installed in the Public ROW shall not exceed the greater of:
    - i. five (5) feet above the height of the Pole, Tower or Support Structure being modified or replaced in place as of the effective date of this Article; or ten (10) feet on utility distribution poles where required by the electrical utility separation requirements; or

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(i) To toll the timeframe for incompleteness, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of this section.

(ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the State or local government's notice of incompleteness.

(iii) Following a supplemental submission, the State or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(4) Failure to act. In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(5) Remedies. Applicants and reviewing authorities may bring claims related to Section 6409(a) to any court of competent jurisdiction.

- ii. the height limit under Subsection 2401.3.c.1(A).
- (C) Division 3, Chapter 9 of this Code shall apply to all new Poles and modified or Replacement Pole, Tower, or Support Structures.
- d. Discretionary Review Requirements. Unless an Applicant seeks to install a Communications Facility that conforms to the specific uses and size and height limitations set forth in Subsection 2401.2.a above (or involves Ordinary Maintenance, Repair and Replacement), the Application shall require a minor use permit under Section 9262.
- e. Undergrounding Provisions. The City shall administer undergrounding provisions in a non-discriminatory manner.
  - 1. Underground Districts. The provisions in Division 4, Chapter 3, governing the creation of Underground Utility Districts in the City shall apply with full force and effect to Wireless Facilities, Wireless Service Providers and Wireless Providers, provided compliance by the Wireless Facilities or Wireless Service Providers does not discriminate against or unduly inhibit or prevent them from providing wireless services. An Applicant shall comply with nondiscriminatory City undergrounding requirements, including requirements that apply in existing Underground Utility Districts or in Districts established after the effective date of this Article. "Unduly inhibit" does not include increased costs to comply with undergrounding requirements that are imposed on other utilities and property owners in such Districts.
  - 2. Outside Underground Districts. Outside established Underground Districts now established or established in the future the City may require relocation without expense to City of any poles, wires, conduits and appurtenances theretofore installed, in accordance with Section 2401.3.g. In areas where existing aerial utilities are being moved underground, Wireless Providers shall be required at their own expense to move their Wireless Facilities to another Pole, if the undergrounding requires the removal of the Pole used by those Wireless Facilities. The City shall make available for the use of said Wireless Facilities any City-owned Pole or street light pole in a suitable location which can accommodate said Wireless Facilities. No additional fees shall be imposed in connection with said relocation, but applicable Make-Ready, Annual ROW and Occupancy, and Attachments Fees pursuant to Section 2401.1.b.2-4, shall continue to apply. To the degree such vertical structures are not available, the Applicant must apply for a minor use permit pursuant to Section 9262 to install new poles.
- f. Effect of Permit.
  - 1. Authority Granted; No Property Right or Other Interest Created. A Permit from the City authorizes an Applicant to undertake only certain activities in accordance with this Article, and does not create a property right or grant authority to the Applicant to impinge upon the rights of others who may already have an interest in the Public ROW.

2. Duration. Any Permit for construction issued under this Section 2401 shall be valid for a period of six (6) months after issuance during which the construction must be completed, provided that the six month period shall be extended for up to an additional 6 months upon written request of the Applicant (made prior to the end of the initial 6 month period) if the failure to complete construction is delayed as a result of circumstances beyond the reasonable control of the Applicant.
- g. Removal, Relocation or Modification of a Communications Facility in the ROW.
1. Notice. Within ninety (90) days following written notice from the City, a Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any Communications Facility within the Public ROW whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the Public ROW. The City shall apply the same standards to all utilities in the Public ROW.
  2. Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut power to or move any Communications Facility located within the Public ROW of the City, as the City may determine to be necessary, appropriate or useful in response to any public welfare emergency, or safety emergency. If circumstances permit, the City shall notify the Provider and provide the Provider an opportunity to move its own facilities prior to cutting power to or removing the Communications Facility and in all cases shall notify the Provider after cutting power to or removing the Communications Facility as promptly as reasonably possible. The Provider shall pay the City its costs necessarily incurred to move the Communications Facility within sixty (60) days of receiving a written statement from the City detailing the costs.
  3. Abandonment of Facilities. A Provider is required to notify the City of abandonment of any Communications Facility at the time the decision to abandon is made, however, in no case shall such notification be made later than 30 days prior to abandonment. Following receipt of such notice, the City shall direct the Provider to remove all or any portion of the Communications Facility if the City determines that such removal will be in the best interest of public safety and public welfare. If the Provider fails to remove the abandoned facility within sixty (60) days after such notice, the City may undertake to do so and recover the actual expenses of doing so from the Provider, its successors and/or assigns.
  4. Structural reconditioning, repair and replacement. From time to time, the City may paint, recondition, or otherwise improve or repair the City Poles in a substantial way ("Reconditioning Work"). The Provider shall reasonably cooperate with the City to carry out Reconditioning Work activities in a manner that minimizes interference with the Provider's approved use of the facility.

- (A) Prior to commencing Reconditioning Work, the City will use reasonable efforts to provide the Provider with at least sixty (60) days prior written notice. Upon receiving that notice, it shall be the Provider's sole responsibility to provide adequate measures to cover, remove, or otherwise protect the Provider's Communications Facility from the consequences of the Reconditioning Work, including but not limited to paint and debris fallout. The City reserves the right to require the Provider to remove all of the Provider's Communications Facility from the City Pole and surrounding premises during Reconditioning Work, provided the requirement to remove same is contained in the written notice required by this Subsection. All costs associated with the protection measures, including temporary removal, shall be the sole responsibility of the Provider. If the City fails in good faith to give notice of less than sixty (60) days' notice, it will not affect the City's rights under this Subsection. In all cases, as much notice as possible should be provided, but in no case less than thirty (30) days' notice shall be provided. The City will provide the Provider with a date by which its equipment must be protected or removed.
- (B) The Provider may request a modification of the City procedures for carrying out Reconditioning Work in order to reduce the interference with Provider's operation of its Communications Facility. If the City agrees to the modification, the Provider shall be responsible for all reasonable incremental cost related to the modification.
- (C) If the City Poles need to be replaced ("Replacement Work"), the City shall give Provider at least sixty (60) days written notice to remove its Communications Facilities. The City shall also promptly notify Provider when the City Poles have been replaced and Provider may re-install its equipment. During the Replacement Work, the Provider may maintain a temporary Communications Facility on the property, or after approval by City, on any land owned or controlled by City, in the vicinity of the property. If the property will not accommodate the Provider's temporary Communications Facility or if the parties cannot agree on a temporary location, the Provider, at its sole option, shall have the right to suspend the applicable permit, until the replacement Pole is installed, upon thirty (30) days written notice to the City.
- (D) If the City Poles need to be repaired due to storm or other damage ("Repair Work"), the City shall notify the Provider to remove its Communications Facilities as soon as possible. In the event of an emergency, the City shall contact the Provider by telephone at its emergency contact of record upon or prior to removing the Provider's equipment. Once the City Poles have been replaced or repaired, the City will promptly notify the Provider that it can reinstall its equipment. During City Repair Work, with the approval of the City which shall not be unreasonably withheld or delayed, the Provider may maintain a temporary Communications Facility on the property, or after approval by Provider, on any land owned or controlled by the City in the vicinity of

the property that the City determines is suitable for that use. All cost associated with any removal or protection of Communications Facilities shall be the sole responsibility of the Provider without prejudice to the Provider's right to seek indemnity or contribution from third parties other than the City.

h. Attachment to City Poles in the Public ROW.

1. Make-Ready. For any attachment to City Poles in the Public ROW, except as otherwise provided in the agreement required by Section 2401.1.a, the City shall provide a good faith estimate for any make-ready work necessary to enable the City Pole to support the proposed facility, including Replacement of the Pole if necessary, within sixty (60) days after receipt of a completed Application requesting attachment to the City Pole. Make-ready work including any Pole Replacement shall be completed within one hundred and twenty (120) days of written acceptance of the good faith estimate by the Provider. Such acceptance shall be signified by payment via check or other commercially reasonable and customary means specified by the City.

**Section 2401.4 Applications Requiring Discretionary Review and Approval.**

- a. Discretionary Review Required. All other uses not expressly set forth or referenced in Subsection 2401.2(a) above shall require compliance with, and issuance of a minor use permit pursuant to Section 9262.

**Section 2401.5 Other Public ROW Installation Requirements.**

a. General Principles.

1. The City shall have the power to establish reasonable and non-discriminatory limitations on the placement of new or additional facilities within specific congested segments of the Public ROW if there is insufficient space to accommodate all of the requests of Applicants or other Persons to occupy and use the Public ROW. In making such decisions, the City shall to the extent possible accommodate all existing users and potential users (i.e. those who have submitted an Application to deploy facilities within the Public ROW) of the Public ROW, and shall be guided primarily by considerations of the public interest, the width and physical condition of the Public ROW, the time of year with respect to essential utilities, the protection of existing facilities and uses in the Public ROW and established plans for public improvements and development projects which have been determined to be in the public's interest.
2. Leasing of excess space in ducts, conduits and on a Pole is a matter between interested parties (subject to any applicable Pole Attachment regulations and any other applicable statutory, regulatory or contractual obligations); however, lessees or licensees of such physical facilities must still comply with the terms of this Article, unless otherwise expressly exempted by the City.
3. An occupant of the Public ROW shall employ due care during the installation

and maintenance process, and comply with all safety and Public ROW-protection requirements of applicable Federal, State and local Laws (and any generally applicable City guidelines, standards and practices), and any additional commonly accepted safety and Public ROW-protection standards, methods and devices (to the extent not inconsistent with applicable Laws). All facilities under the streets of the City shall be kept and maintained in a safe and well-ordered condition, and in good order and repair.

- (A) Any permittee occupying any portion of the Public ROW shall erect a barrier around the perimeter of any excavation and provide any and all traffic-control devices, signs and lights appropriate to the level of complexity of the activity in order to protect, warn and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic-control plan in accordance with the Uniform Manual of Traffic Control Devices.
- (B) Occupants of the Public ROW with open excavations awaiting final restoration shall maintain all devices until the City notifies the occupant in writing that the City or the City's designated contractor is assuming responsibility for traffic control.
- (C) Each occupant shall designate a safety officer. The safety officer shall be responsible for safety-related issues affecting both the public and the occupant's field employees and contractors for all job sites within the Public ROW.

4. Location of Existing Facilities.

- (A) An occupant of the Public ROW shall not place any fixtures or equipment where the same will interfere with any existing facility, and shall locate its lines and equipment in such a manner as not to interfere with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abuts any Public ROW.
- (B) To minimize disruption of public passage or infrastructure, to forestall or relieve overcrowding of the Public ROW, or to protect Historic Property or environmentally sensitive areas, the City may require, as a condition of issuing any Permit for placement of underground facilities or new Applicant poles that the occupant place empty conduits, and/or reserve space on a new Applicant pole in excess of its own present and reasonably foreseeable requirements for the purpose of accommodating the City's own present or reasonably foreseeable governmental, not-for-resale use as set forth in the applicable Permit. The occupant shall cooperate with the City in any such construction, provided that the City has first notified the occupant in writing that it is interested in reserving such Pole space or sharing the trenches or bores in the area where the construction is occurring.

The occupant shall allow the City to place its infrastructure in the occupant's trenches or bores or on the Pole as requested by the City,

provided that the City incurs the incremental costs of placing the conduit/infrastructure as requested. The City shall be responsible for maintaining its facilities in the trenches and bores and/or on the Pole under this Subsection.

- (C) Before beginning excavation in any Public ROW, an occupant shall comply with Underground Service Alert notification procedures to determine possible conflicts with existing underground structures and facilities in the area to be excavated.

5. Relocation of Existing Facilities.

- (A) If relocation of facilities is required as a result of any public project, the City shall provide the greatest practical advance notice to the affected occupants of the Public ROW and shall facilitate the greatest reasonable project coordination among the affected occupants, whereas coordinated sequencing dependencies are common. Generally, projects of greater scale and scope will have a longer planning horizon, and commensurate notice.
- (B) The objective of the relocation process recognizes the mutual obligations and responsibilities of the City and the Public ROW occupants to avoid or minimize service disruption and to timely and economically complete the public project. Public ROW occupants are obligated to proceed with diligent speed and attention so as not to unreasonably delay or complicate a public project.
- (C) As general guidance, projects involving a public project of less than One Million Dollars (\$1,000,000), or ten (10) utility poles, or One Thousand (1000) frontage feet of public roadway would be smaller projects; and projects greater than any of the above would be larger projects. A reasonable, general expectation is that smaller projects would provide ninety (90) days' notice, and larger projects would provide one hundred and eighty (180) days' notice to complete the relocation of the Public ROW occupants.
- (D) Unless otherwise provided by applicable Law, the occupant, at no cost to the City, shall accomplish the necessary relocation within a reasonable time from the date of the notification, but, in no event, later than seven (7) days prior to the date the City has notified the occupant that it intends to commence work which requires the occupant's relocation, or immediately in the case of emergencies. With as much notice as possible, but, except for emergencies, no less than ninety (90) days following written notice from the City, a Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any Communications Facility.
- (E) The City will use its best efforts to accommodate the Provider's request for relocation of the Communications Facility, whenever the City has

determined that removal, relocation, change or alteration of facilities within the Public ROW is reasonably necessary for the construction, repair, maintenance or installation of any City improvement in or upon, or the operations of the City in or upon, the Public ROW.

- (F) The City may not require an Applicant to perform services unrelated to the Communications Facility or Support Structure for which approval is sought, or to provide in-kind contributions, except for reserving Pole space or placing conduit in the trench or bore for governmental, not-for-sale City use as provided in Section 2401.5.a.4(B). Notwithstanding the foregoing, an Applicant may offer in-kind contributions related to the Communications Facility or Support Structure for which approval is sought, on a reasonable and nondiscriminatory basis, including by contributing the cash value of an in-kind contribution already provided by another party.
6. In the event of an emergency where any Communications Facility in the Public ROW creates or is contributing to an imminent danger to health, safety, or property, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of such Communications Facility, and charge the occupant for actual and reasonable costs incurred. The City shall use a Provider's emergency contact information of record, or best available contact information, for prior notice, and if not possible because of emergent and imminent danger, shall notify the occupant promptly afterwards. Ten (10) days after notification as outlined in this Subsection, the City may remove any Communications Facilities that obstructs the progress of a public project. All costs associated with any removal or protection of Communications Equipment shall be the sole responsibility of the Provider.
7. Abandonment of Facilities.
- (A) Any occupant of the Public ROW that intends to permanently discontinue use of any facilities within the Public ROW shall notify the City in writing within thirty (30) days prior to abandonment. Such notice shall describe the facilities for which the use is to be discontinued, and the date of discontinuance of use. Upon notification, the City will chose from the following options within 30 days or any other agreed upon option, and so notify the occupant of its decision:
    - 1. Abandon the facilities in place and the occupant shall further convey full title and ownership of such abandoned facilities to the City. The occupant is responsible for all obligations of the facilities, or other associated liabilities until the conveyance to the City is completed; or
    - 2. The facilities shall be removed, and the occupant shall be liable for removing the facilities at its own cost. If an occupant fails to remove facilities that the City requires it to remove, after ninety (90) days' notice to the occupant, the City may perform the work. The occupant or its successors and/or assigns shall pay

the City the costs of removal within thirty (30) days after the City provides a written statement detailing the costs.

b. Additional Requirements.

1. General. All deployments of Communications Facilities in the Public ROW shall comply with the following:
  - (A) Compliance with ADA and other applicable Federal, State and local Laws and standards.
  - (B) Pedestrian and vehicular traffic and safety requirements established by the City.
  - (C) Existing Public ROW occupancy or management ordinances, not otherwise inconsistent with this Article.
2. Design Standards. All aboveground Communications Facilities in the Public ROW requiring Administrative Review only shall conform to the Aesthetic Guidelines for Wireless Telecommunication Facilities adopted by resolution by the City as required by Section 5620 of this Code.
3. Additional Permits. In addition to obtaining a Permit for installation of a Communications Facility in the Public ROW, an Applicant must enter the Agreement in Attachment A and obtain the following additional permits: encroachment permit and applicable permits under Section 3000.
4. Placement of facilities. The City engineer may assign specific corridors within the Public ROW for each type of Communication Facility as he determines may be necessary for each type of facility that is or may be located in the Public ROW. In making these assignments the City engineer shall consider facility types that currently exist or which, based on current technology, may be located within the Public ROW in the future. All excavation, obstruction, or other Permits issued by the City engineer involving the installation or replacement of facilities shall designate the proper corridor for the facilities.

c. Mapping Data. Applicants shall provide to the City engineer information indicating the horizontal and approximate vertical location, relative to the boundaries of the Public ROW, of all equipment which it owns or over which it has control, and which is located in any Public ROW. Mapping data shall be provided with the specificity and in the format requested by the City engineer for inclusion in the mapping system used by the City engineer.

d. Existing Utility Easements in the Public Right of Way.

1. Applicants will work with the City engineer to coordinate and protect existing utilities in the Public ROW.
2. Applicants will coordinate with the City engineer all public safety considerations

prior to and during installation in the Public ROW to ensure public safety response in the case of gas line, water line, sewer line or electricity disturbance.

**Section 2401.6 Attachment to and Replacement of Decorative Poles.**

Notwithstanding anything to the contrary in this Article, an Applicant may install a Small Wireless Facility on a Decorative Pole, or may Replace a Decorative Pole with a new Decorative Pole that is in keeping with the aesthetics of the existing Decorative Pole, in the event the existing Decorative Pole will not structurally support the attachment, the attachment may be made only upon satisfaction of the following additional requirements:

- A. Issuance of a Permit under Subsection 2401.2.a above.
- B. The attachment and/or the Replacement Pole is in keeping with the aesthetics of the Decorative Pole in the judgment of the City.

**Section 2401.7 Batch Applications.**

An Applicant may submit simultaneously not more than fifteen (15) Applications for a network of multiple Communications Facilities within adjacent, related geographic areas of the City. Alternatively, Applicant may file a single, consolidated Application covering such facilities.

**Section 2402. Governance of Deployment Outside the Public ROW**

**Section 2402.1 Administrative Review of Permitted Communications Facility Uses; Application and Fees.**

- a. Permitted Use. The following uses outside the Public ROW, on privately-owned property (including within any Utility Easement, to the extent expressly set forth below), shall be a permitted use, subject to Administrative Review only and issuance of a Permit as set forth in this Section 2402.1, and subject to Applicant's legal right to install and operate the Communications Facility on the property or structure:
  - 1. Collocation of a Small Wireless Facility or a Collocation that qualifies as an Eligible Facilities Request on privately-owned property including, without limitation, within a Utility Easement, consistent with the height and other limitations set forth in Subsection 2401.3.c above;
  - 2. Modification of a Pole, Tower or Support Structure, or Replacement of a Pole or Tower, for Collocation of a Communications Facility on privately-owned property (including within a Utility Easement that contains other existing Poles) that qualifies as an Eligible Facilities Request or involves a Small Wireless Facility that does not exceed the limitations set forth in Subsection 2401.3.c.1(A)(i) above. All other such modifications or Replacements require a minor use permit pursuant to Section 9262.
  - 3. Construction of a new Pole (or monopole Tower), within a Utility Easement on which there currently exist adjacent Poles that are unavailable for Collocation

due to structural, accessibility or other reasons, to be used for Collocation of a Small Wireless Facility (that does not exceed the maximum height set forth in Subsection 2401.3.c.1(A)(i) above), and the new Pole (or monopole Tower) is similar in design, size and scale to those of the existing, adjacent Poles; and

4. Construction of a Communications Facility, other than those set forth in subparagraphs 1,2 or 3 in this Subsection 2402.1.a, involving the installation of coaxial, fiber-optic or other cabling, that is installed underground in accordance with applicable City standards or aboveground between two or more Poles or a Pole and a Tower and/or Support Structure, and related equipment and appurtenances.
- b. Permit Required. No Person shall place a facility described in Subsection 2402.1(a) or perform any construction activities above without first filing an Application for same and obtaining a Permit therefor, except in Subsection 2400.2(s) or as otherwise expressly provided in this Article.
- c. Proprietary or Confidential Information in Application. The City shall make accepted Applications publicly available. Notwithstanding the foregoing, Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential” by clearly marking each portion of such materials accordingly, and the City shall treat the information as proprietary and confidential, subject to applicable State and local “freedom of information” or “sunshine” Laws and the City’s determination that the Applicant’s request for confidential or proprietary treatment of an Application material is reasonable.
- d. Administrative Review Application Requirements. The Application shall be made by the applicable Provider or its duly authorized representative and shall contain the following:
  1. The Applicant’s name, address, telephone number, and e-mail address, including emergency contact information of record.
  2. A certification by the Applicant that it has the legal right to install and operate the Communications Facility on the property or structure.
  3. The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application.
  4. A general description of the proposed work and the purposes and intent of the proposed facility. The scope and detail of such description shall be appropriate to the nature and character of the physical work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed.
  5. Detailed construction drawings regarding the proposed facility.
  6. To the extent the proposed facility involves Collocation on a Pole, Tower or

Support Structure, a structural report performed by a duly licensed engineer evidencing that the Pole, Tower or Support Structure will structurally support the Collocation or that the Pole, Tower or Support Structure will be modified to meet structural requirements) in accordance with Applicable Codes.

7. For any aboveground facilities, visual depictions or representations, if not included in the Construction drawings.
- e. Ordinary Maintenance, Repair and Replacement. An Application shall not be required for Ordinary Maintenance, Repair and Replacement, other than to the extent required for applicable Permits described in Subsection 2401.5b(iii) above.
- f. Information Updates. Any material change to information contained in an Application shall be submitted in writing to the City within thirty (30) days after the change necessitating the change.

## **Section 2402.2      Action on Administrative Review Application.**

- a. Review of Applications for Administrative Review.
  - (i) The City shall review the Application in light of its conformity with applicable provisions of this Article, and shall issue a Permit on nondiscriminatory terms and conditions, subject to the following requirements:
    - (A) Within ten (10) days of receiving an Application, the City must determine and notify the Applicant whether the Application is complete; or if an Application is incomplete, the City must specifically identify the missing information, and may toll the approval interval in Subsection 2402.2(a)(i)(B). The Applicant may resubmit the completed Application within twenty (20) days without additional charge, and the subsequent review will be limited to the specifically identified missing information subsequently completed, except to the extent material changes to the proposed facility have been made by the Applicant (other than those requested or required by the City) in which case a new Application and Application Fee for same must be submitted; and
    - (B) The City must make its final decision to approve or deny the Application within sixty (60) days for a collocation, and ninety (90) days for any new structure, after the Application is complete, or deemed completed (These time limits for acting on applications are called "shot clocks"); and
    - (C) The City must advise the Applicant in writing of its final decision, and in the final decision document the basis for a denial, including specific code provisions on which the denial was based. A decision to deny an application shall be in writing and supported by substantial evidence contained in a written record, publicly released, and sent to the applicant. The written decision, supported by such substantial evidence, shall constitute final action by City. The review period or "shot clock" shall run until the written decision, supported by substantial evidence, is released and sent to the Applicant contemporaneously. The Applicant

may cure the deficiencies identified by the City and resubmit the Application within thirty (30) days of the denial without paying an additional Application Fee, unless denial was issued due to noncompliance with Design Guidelines or other requirements under this Article (in which case a new Application Fee must be paid). The City shall approve or deny the revised Application within thirty (30) days of receipt of the revised Application. The subsequent review by the City shall be limited to the deficiencies cited in the original denial.

- (ii) If the City fails to act on an Application within the shot clock referenced in Subsection 2402.2(a)(i)(B) above, the Applicant may provide the City written notice that the time period for acting has lapsed, and the City then has twenty (20) days after receipt of such notice within which to render its written decision, failing which the Application is then deemed approved by passage of time and operation of law.
- (iii) An Applicant seeking to construct, modify or replace a network of Communications Facilities may, at the Applicant's discretion and subject to the City's batch Application requirements and process under Section 2401.7 above, file a consolidated Application and receive a single Permit for multiple Communications Facilities, or multiple Permits. The City's denial of any site or sites within a consolidated Application shall not affect other sites submitted in the same Application. The City shall grant a Permit(s) for any and all sites in a consolidated Application that it does not otherwise deny, subject to the requirements of this Section.

b. Effect of Permit.

- (i) Authority Granted; No Property Right or Other Interest Created. A Permit from the City authorizes an Applicant to undertake only certain activities in accordance with this Article, and does not create a property right or grant authority to the Applicant to impinge upon the rights of others who may own or have other interests in the Utility Easement or other privately- owned property.
- (ii) Duration. Any Permit for construction issued under this Article III shall be valid for a period of six (6) months after issuance, provided that the six month period shall be extended for up to an additional 6 months upon written request of the Applicant (made prior to the end of the initial 6 month period) if the failure to complete construction is delayed as a result of circumstances beyond the reasonable control of the Applicant.

**Section 2402.3 Eligible Facilities Requests.**

- a. Review of Eligible Facilities Requests. Notwithstanding any other provision of this Article, the City shall approve and may not deny Applications for Eligible Facilities Requests within sixty (60) days according to the procedures established under 47 C.F.R. 1.6100(c).

**Section 2402.4 Applications Requiring Discretionary Review and Approval.**

- a. Discretionary Review Required. The following uses on private property including, without limitation, on any Utility Easement, shall require compliance with, and issuance

of a minor use permit under Section 9262:

- (i) Collocation of Wireless Facilities that do not qualify as Eligible Facilities Requests.
- (ii) All other uses not expressly set forth or referenced in Subsection 2402.1(a) above.

**Section 2402.5 Temporary and Emergency Installations.**

- a. A Deployable may be operated for a period of not more than one hundred and twenty (120) days, when operated in connection with a special event after issuance by the City of a Permit based upon an Administrative Review only. Deployable operated in conjunction with a special event shall meet reasonable setbacks determined by the [City engineer], shall be subject to receipt of a valid building Permit, if applicable, shall meet uniform fire code requirements, and shall be removed within seventy-two (72) hours of completion of the event.
- b. A Deployable may be operated in any zoning district after a declaration of an emergency or a disaster by the City executive.

**Section 2402.6 Design Standards.**

All aboveground Communications Facilities to be installed outside of the Public ROW and requiring Administrative Review only shall conform to the design standards in Resolution No. 2019-14 or any amendments thereto.

**Section 2402.7 Violation of this Article:**

- a. Civil penalty. A violation of any of the provisions of this Article by an Applicant or Provider shall be subject to a civil penalty of One Thousand Dollars \$1,000 for each violation which continues more than thirty (30) days after written notice of such violation is provided to the Applicant or Provider by the City. Each day, after such notice, that a violation occurs or is permitted to exist by the Applicant or Provider constitutes a separate offense.
- b. Violation as a public nuisance. Any Pole, Tower, Antenna, Communications Facility, or Support Structure (collectively, "Facilities") built, erected, or constructed, altered, enlarged, converted, moved, set up, or maintained contrary to the provisions of this Article and any use thereof established, conducted, operated or maintained contrary to the provisions of this Article, shall be and the same is hereby declared to be unlawful and a public nuisance; and the City Attorney shall, upon order of the City Council, immediately commence action or proceedings for the abatement and removal and enjoinder thereof, in the manner provided by law, and shall take such other steps and shall apply to such courts as may have jurisdiction to grant such relief as will abate and remove such Facilities and restrain and enjoin any person, firm or corporation from setting up, erecting, building, maintaining or using any Facilities contrary to the provisions of this Article.
- c. Remedies Cumulative. The penalties and remedies contained in this Section 2402.7

shall be cumulative and not exclusive. The City may use any one or more of the penalties and remedies provided herein when enforcing the provisions of this Article.

**Section 2402.9 Exceptions to Applicability of this Article.**

Notwithstanding anything to the contrary in this Article, the following facilities are not subject to the provisions of this Article: (1) antennas used by residential households solely for broadcast radio and television reception; (2) satellite antennas used solely for residential or household purposes; and (3) television and AM/FM radio broadcast Towers and associated facilities.

**SECTION TWO**

1. **SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. The City Council hereby declares that it would have adopted this Ordinance and any section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or otherwise invalid.
2. **EFFECTIVE DATE.** This Ordinance shall be published as required by law in a newspaper of general circulation in the City of Ukiah, and shall become effective thirty (30) days after its adoption

Introduced on July 17, 2019, by the following roll call vote:

AYES: Councilmembers Orozco, Brown, Crane, and Mayor Mulheren  
NOES: Councilmember Scalmanini  
ABSENT: None  
ABSTAIN: None

Adopted on August 7, 2019, by the following roll call vote:

AYES: Councilmembers Orozco, Brown, Crane, and Mayor Mulheren  
NOES: Councilmember Scalmanini  
ABSENT: None  
ABSTAIN: None

  
Maureen Mulheren, Mayor

ATTEST:

  
Kristine Lawler, City Clerk