



Town of Moraga	Agenda Item
Resolutions, Ordinances, Requests for Action	11. B.

Meeting Date: March 24, 2021

**TOWN OF MORAGA**

**STAFF REPORT**

**To: Honorable Mayor and Councilmembers**

**From: Cynthia Battenberg, Town Manager  
Denise Bazzano, Assistant Town Attorney**

**Subject: Discuss the Process to Amend the Town’s Small Cell Wireless Facilities Regulations Within Section 8.144.035 of Chapter 8.144, “Wireless Communications Facilities, Satellite Dishes and Miscellaneous Antennas” and Provide Direction to Staff; and**

**Consider Resolution \_\_\_ - 2021 Appropriating \$20,000 from General Fund Reserves for Legal Fees Associated with an Amendment to the Town’s Small Cell Wireless Facilities Ordinance**

**Background**

On September 27, 2018, the Federal Communications Committee (“FCC”) issued a Declaratory Ruling and Third Report and Order (FCC 18-133) in the rulemaking proceeding entitled *Accelerating Wireless Broadband by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79* (the “Order”). The Order made significant changes to federal regulations relating to small cell wireless facilities to implement industry demands to remove barriers and accelerate 5G deployment for small cell wireless facilities.

The Order clarifies FCC’s interpretation on various provisions of the Telecommunications Act of 1996 (“Act”) and confirms that a state or local legal requirement constitutes an effective prohibition if it “materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”<sup>1</sup> The Order also provides that a wireless provider need not show a complete or insurmountable barrier to service to prove a prohibition of service, only that the legal requirement materially inhibits the provision of services.<sup>2</sup> The Order also imposes a number of other limitations on local regulations of small cell facilities including the following: requiring that aesthetic regulations be objective and no more burdensome than those applied to other

<sup>1</sup> Declaratory Ruling and Third Report and Order adopted September 26, 2018 (WT Docket No. 17-79; WC Docket No. 17-84) ¶ 34-42.

<sup>2</sup> *Id.* at ¶ 34.

1 infrastructure deployments; and new deadlines for issuance of all siting authorizations,  
2 which must be done within 60 or 90 days, depending on whether the facility is a collocation  
3 proposed on an existing structure (60 days) or a facility on a new structure (90 days)  
4 (collectively "shot clock") and remedies for violations of the shot clock.<sup>3</sup> Although the  
5 Order went into effect on January 14, 2019, the Order established a deadline of April 15,  
6 2019 for local jurisdictions to publish compliant aesthetic standards.

7  
8 As a result of the deadline imposed by the Order to establish compliant aesthetic  
9 standards, Planning Staff presented to the Town Council on March 13, 2019 various  
10 options for revisions to MMC Chapter 8.144 " –Wireless Communications Facilities,  
11 Satellite Dishes and Miscellaneous Antennas", in response to the Order. Staff noted that,  
12 at that time, the Town had regulations in place regarding wireless communications  
13 facilities in MMC Chapter 8.144 but no regulations pertaining to small cell facilities and  
14 did not reflect the various changes that had been made to federal regulations relating to  
15 other types of wireless communications facilities since the initial adoption of Chapter  
16 8.144 in 1999.

17  
18 The Town followed a two-tiered approach to the adoption of aesthetic criteria and  
19 development standards. This two-tiered approach included first adopting an urgency  
20 Ordinance on April 10, 2019 to establish aesthetic and development standards for small  
21 cell facilities, found primarily in Moraga Municipal Code ("MMC") section 8.144.035 ahead  
22 of the April 15, 2019 deadline established by the Order, followed by the second step of  
23 conducting a more comprehensive update to Chapter 8.144 to address all of the  
24 provisions currently in Chapter 8.144 that are inconsistent with FCC regulations.

25  
26 The urgency Ordinance was introduced at the April 10, 2019 meeting, with the second  
27 reading of the Ordinance being conducted on April 24, 2019 ("Ordinance No. 282"). At  
28 the time Ordinance No. 282 was adopted, Council continued to express a desire to update  
29 the entire Chapter 8.144 and also to monitor the legal efforts by other cities and counties  
30 to challenge the Order. The amendments contained in Ordinance No. 282 were intended  
31 to establish new standards pertaining to the installation of small cell wireless facilities that  
32 adhere to the limitations of the Order while still protecting the aesthetic character of the  
33 Town, to the extent allowed.

34  
35 Although the Order was challenged by a number of cities and other public agencies,  
36 including the City and County of San Francisco, San Jose and Burlingame the Ninth  
37 Circuit Court of Appeals upheld most of the provisions of the Order.<sup>4</sup> However, the Ninth  
38 Circuit did vacate and remand certain portions of the Order relating to the requirement  
39 that aesthetic regulations be objective and no more burdensome than those applied to  
40 other infrastructure deployments stating that the FCC lacked a reasoned explanation.<sup>5</sup>

41  
42 On January 13, 2021, the Town Council received a report on the Planning Department's  
43 activities which included an update on a comprehensive update to the Town's Wireless  
44 Facilities Ordinance and expressed a desire to update Chapter 8.144 but prioritized other  
45 planning projects to commence before that update. At the January 27, 2021 Council

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<sup>3</sup> *Id.* at ¶¶ 105, 116.

<sup>4</sup> *City of Portland et al. v. United States*, 969 F.3d 1020 (9th Cir. 2020).

<sup>5</sup> *Id.* at pp. 1041-1042.

1 meeting discussion of goals and priorities, the Council again discussed the desire to  
2 update Chapter 8.144, but did not include this project as a Council goal due to other  
3 higher priority planning projects.

#### 4 5 **Discussion**

6  
7 At the March 10, 2021 Council meeting, Council directed staff to prepare a brief report for  
8 an action item to be included on the March 24, 2021 Council agenda for discussion of  
9 what is needed to update the Town's small cell wireless facility ordinance, including a  
10 project timeline and cost estimate. In an effort to prepare this agenda item, staff reviewed  
11 the public comments submitted to the Town relating to small wireless facilities and  
12 identified some areas of public concern that could be considered as part of a review for  
13 potential amendments to the Town's small wireless regulations and procedures set forth  
14 in MMC 8.144.035. These key areas of review proposed by staff would be as follows:

#### 15 16 *Developmental Standards*

- 17 • Location Preferences- add, delete, modify existing standards;
- 18 • Aesthetic and Landscaping requirements- add, delete, modify existing standards;
- 19 • Noise- potentially add standards; and
- 20 • Radiofrequency monitoring and insurance requirements- potentially add  
21 standards.

#### 22 23 *Procedural Standards*

- 24 • Public Notice-potentially add standards; and
- 25 • Use of technical consultants and licensed engineers in review process-potentially  
26 add standards.

27  
28 While the foregoing list is not intended to be an exclusive list of the areas of review, it will  
29 provide targeted areas of review to the existing small wireless facilities ordinance. If  
30 Council provides direction to proceed with preparation of a draft Ordinance, the process  
31 for drafting the Ordinance would be to undertake a comparison of other jurisdictions'  
32 regulations relating to small cells in the foregoing key areas of review to determine  
33 potential revisions that could be made to MMC section 8.144.035 in light of current  
34 applicable law relating to small cell wireless facilities.

35  
36 It is important to note that the foregoing process for updating the small wireless facilities  
37 Ordinance would not address the other areas of regulation in Chapter 8.144 identified as  
38 a planning initiative on January 13, 2021.

#### 39 40 **Timeline**

41 Staff believes that the draft Ordinance will take approximately 60 days to finalize. During  
42 this drafting process, staff could meet with various stakeholders in the community for input  
43 on specific issues. Once a draft is finalized, staff could bring the draft Ordinance to the  
44 Planning Commission for a recommendation and then to Council for consideration. Staff  
45 anticipates that the draft Ordinance could be presented to Council in June or July 2021.

1 Estimate of Legal Costs

2 The estimated cost for Burke, Williams, & Sorensen to prepare a draft ordinance with  
3 revisions to the small cell wireless facilities Ordinance is estimated to be between \$7,000  
4 and \$10,000.

5  
6 Although the estimate for preparation of a draft Ordinance would be between \$7,000 and  
7 \$10,000, staff anticipates that there would be legal services provided by Burke, Williams  
8 & Sorensen beyond simply drafting the Ordinance such as meeting attendance and  
9 reviewing and responding to community and Councilmember concerns as the draft  
10 Ordinance is considered by the Planning Commission and the Council. As such, the total  
11 projected legal costs to revise the small cell wireless facilities Ordinance is estimated at  
12 up to \$20,000.

13  
14 The Fiscal Year 2020/21 Budget includes \$120,000 for General Legal Services. \$88,000  
15 has been incurred for the first seven months of the fiscal year, including \$32,000 for the  
16 Moraga Center Specific Plan Implementation Project. To ensure sufficient budget for  
17 legal fees this fiscal year, staff recommends that \$20,000 be appropriated to Account 101-  
18 520-026-14 Legal Fees – General from the General Fund Reserve.

19  
20 Suggestions for Further Discussion

21 While the Town Attorney's office has prepared many ordinances and amendments related  
22 to wireless facilities, there have been questions raised about the need for a  
23 telecommunications expert to assist in reviewing and advising on the above-described  
24 amendment. Should the Council desire to hire a telecommunications expert to advise on  
25 the proposed amendments and other technical aspects of the ordinance, the Town  
26 Attorney's Office would propose retaining Harriett A. Steiner of Best, Best and Krieger  
27 ("BB&K").

28  
29 BB&K's Telecommunications practice group represents local agencies across the country  
30 on issues involving placement of wireless facilities within and outside of the rights-of-way.  
31 The BB&K team is highly experienced in providing telecommunications legal services to  
32 local governments and understands that the placement of wireless facilities is  
33 controversial, and it is complicated by the fact that many critical state and federal legal  
34 issues being litigated now will determine whether applications for placement must or  
35 should be granted (and if granted, on what terms and conditions). BB&K attorneys are  
36 experienced in reviewing and advising on local regulations and Ordinances, including  
37 wireless Ordinances and design guidelines; assisting in the conduct of local hearings on  
38 applications; working with cities to develop conditions on applications that anticipate  
39 potential changes in federal and state standards governing placement; and defending  
40 against challenges to local decisions in the courts (and representing communities in  
41 mediation).

42  
43 Ms. Steiner has represented cities on wireless issues for over 20 years. During that time,  
44 she has advised to cities on both macro wireless facilities and right of way wireless facility  
45 applications; drafted and reviewed wireless ordinances and design guidelines, and  
46 defended cities against challenges in litigation related to wireless applications. Among  
47 the cities she represents are Piedmont, Davis, Roseville and Danville. Ms. Steiner has  
48 represented Piedmont, Davis and Danville in federal court challenges filed by wireless

1 providers against those cities. She has also provided educational programs on wireless  
2 laws, leasing for wireless facilities, federal and state laws on wireless siting, and similar  
3 topics. Ms. Steiner could provide Council with another layer of independent technical  
4 expertise on this project and advice on issues pertaining to small wireless facilities  
5 regulation.

6  
7 If Council wishes to utilize Ms. Steiner, her services could be limited to an amount directed  
8 by the Council and the Town Attorney's Office would retain her legal services on behalf  
9 of the Town.

10  
11 **Fiscal Impact**

12  
13 To cover the unanticipated \$20,000 cost to update the small cell wireless facilities  
14 ordinance, appropriation of \$20,000 to Account 101-520-026-14 Legal Fees - General  
15 from the General Fund Reserves is recommended.

16  
17 **Recommendations**

- 18  
19 • Discuss the Process to Amend the Town's Small Cell Wireless Facilities  
20 Regulations Within Section 8.144.035 of Chapter 8.144, "Wireless  
21 Communications Facilities, Satellite Dishes and Miscellaneous Antennas" and  
22 Provide Direction to Staff; and,  
23  
24 • Adopt Resolution \_\_\_-2021 Appropriating \$20,000 from General Fund Reserves  
25 for Legal Fees Associated with an Amendment to the Town's Small Cell Wireless  
26 Facilities Ordinance

27  
28  
29 **Attachments:**

- 30 A. Resolution \_\_\_ - 2021 Appropriating \$20,000 from General Fund Reserves for  
31 Legal Fees Associated with an Amendment to the Town's Small Cell Wireless  
32 Facilities Ordinance  
33 B. Moraga Municipal Code Chapter 8.144 Wireless Communications Facilities,  
34 Satellite Dishes and Miscellaneous Antenna

# **ATTACHMENT A**

Resolution \_\_\_\_ - 2021 Appropriating \$20,000 from General Fund Reserves for Legal Fees Associated with an Amendment to the Town's Small Cell Wireless Facilities Ordinance

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In The Matter Of:

Appropriating \$20,000 from General Fund )  
Reserves for Legal Fees Associated with an )  
Amendment to the Town's Small Cell Wireless )  
Facilities Ordinance )

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Resolution No. \_\_\_\_ - 2021

**WHEREAS**, on September 27, 2018, the Federal Communications Committee ("FCC") issued a Declaratory Ruling and Third Report and Order (FCC 18-133) in the rulemaking proceeding entitled *Accelerating Wireless Broadband by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79 (the "Order") which made significant changes to federal regulations relating to small cell wireless facilities to implement industry demands to remove barriers and accelerate 5G deployment for small cell wireless facilities; and

**WHEREAS**, on April 10, 2019, the Moraga Town Council adopted an urgency Ordinance to establish aesthetic and development standards for small cell wireless facilities found primarily in Moraga Municipal Code ("MMC") section 8.144.035 with the second reading being conducted on April 24, 2020 ("Ordinance No. 282"); and

**WHEREAS**, Ordinance No. 282 made changes to MMC Chapter 8.144 to address all of the provisions that were inconsistent with FCC regulations and to establish new standards pertaining to the installation of small cell wireless facilities that adhere to the limitations of the Order while still protecting the aesthetic character of the Town, to the extent allowed; and

**WHEREAS**, on January 13 and 27, 2021 the Council discussed their desire to complete a comprehensive update of the Town's wireless facilities Ordinance, which is tentatively scheduled to occur in 2022; and

**WHEREAS**, at the March 10, 2021 Council meeting, Council directed staff to prepare a report outlining a process to update the Town's small cell wireless facilities Ordinance; and

**WHEREAS**, at the March 24, 2021 Council meeting, the Council considered and discussed the process, timeline and costs associated with the preparation of an Ordinance to update the Town's small cell wireless facilities and the estimate of legal costs to draft revisions to the small cell wireless facilities Ordinance and respond to community and Councilmember concerns, which is estimated to be approximately \$20,000; and

**WHEREAS**, \$20,000 is a cost that was not anticipated in the Town's Fiscal Year 2020/21 Adopted Budget.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of Moraga that the Town Manager is hereby authorized to appropriate \$20,000 to Account "101-520-026-14 Legal Fees – General" from the General Fund Reserves which are projected to be \$4,870,297 on June 30, 2021, (equating to a General Fund Reserve of 50.67%).

**PASSED AND ADOPTED** by the Town Council of the Town of Moraga at a regular meeting held on March 24, 2021 by the following vote:

**AYES:**  
**NOES:**  
**ABSTAIN:**  
**ABSENT:**

\_\_\_\_\_  
Mike McCluer, Mayor

Attest:

\_\_\_\_\_  
Marty C. McInturf, Town Clerk

# **ATTACHMENT B**

Moraga Municipal Code Chapter 8.144 Wireless  
Communications Facilities, Satellite Dishes and  
Miscellaneous Antenna

Chapter 8.144 - WIRELESS COMMUNICATIONS FACILITIES, SATELLITE DISHES AND MISCELLANEOUS ANTENNAS

**Sections:**

Article 1. - Wireless Communications Facilities

8.144.010 - Purpose and intent.

The purpose of this article is to regulate wireless communication transmission and/or reception facilities (hereinafter called "wireless communications facilities") to minimize the potential health, safety and aesthetic impacts of such facilities on the community, as follows:

- A. To establish development standards to regulate the placement and design of wireless communication facilities so as to preserve the unique visual character of the town;
- B. To establish development standards of wireless communications facilities in accordance with federal laws, including small cell wireless facilities as defined herein;
- C. To acknowledge the community benefit associated with the provision of wireless communications facilities within the town and to provide incentives for well-designed and well-placed facilities;
- D. To pursue additional benefits from the facilities to the public by encouraging the leasing of publicly owned properties where feasible for the development of wireless communication facilities; and
- E. Encourage the location of wireless communications facilities in commercial districts and generally discourage the location of such facilities in residential districts and visually sensitive areas.

(Ord. 176 § 1 (part), 1999: prior code § 8-6001)

(Ord. No. 282 , § 2, 4-24-2019)

8.144.020 - Definitions.

As used in this article:

"Antenna" is any system of poles, panels, rods, reflecting discs, wires or similar devices used for the transmission or reception of radio frequency signals of any mode.

"Collocation" is the location of two or more wireless communication facilities on a single support structure or otherwise sharing a common location. Collocation shall also include the location of wireless communication facilities with other types of pre-existing structures including, but not limited to water tanks, light standards, outbuildings and other utility facilities and structures.

"Equipment cabinet" is a cabinet, structure or building used to house equipment associated with a wireless communication facility.

"Federal Communication Commission (FCC)" is an independent United States government agency responsible for the regulation of interstate and international communications by radio, television, wire, satellite and cable.

"Hilltop" is any prominent high point of land exposed to view from the surrounding low-lying areas.

"Monopole" is a single, free-standing pole, post piling, tower or similar structure over fifteen (15) feet in height used to support equipment associated with a wireless communication facility.

"Moraga Open Space Ordinance (MOSO)" is a voter-approved ballot initiative which regulates development on lands within the town designated as open space-MOSO.

"Related equipment" means all equipment ancillary to the transmission and reception of any signal via radio frequencies. Such equipment may include, but is not limited to, cable, guy wires, conduit, conductors and power lines and their supporting poles.

"Ridgeline" means a crest or peak as defined in Chapter 8.128.

"Service provider" means any authorized provider of wireless communications services.

"Silhouette" means a representation of the outline or profile of the antenna associated with a telecommunication facility, as seen from an elevation perspective.

"Small cell wireless facility" is a wireless communications facility that meets the following criteria:

1. The facility:
  - a. Is mounted on a structure fifty (50) feet or less in height including its antennas as defined in Section 1.1320(d) of Title 47 of the Code of Regulations; or
  - b. Is mounted on a structure no more than ten percent taller than other adjacent structures; or
  - c. Does not extend the existing structure on which it is located to a height of more than fifty (50) feet or by more than ten percent, whichever is greater.
2. Each antenna associated with the facility, excluding associated antenna equipment, is no more than three cubic feet in volume.
3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than twenty-eight (28) cubic feet in volume.

"Stealth design" is a design, which blends in with the surrounding environment by means of screening, concealment or camouflage.

"Wireless communications facility" means wireless facilities that transmit and/or receive electromagnetic signals, including, but not limited to the following technologies: cellular, personal communication services (PCS), general mobile radio services (GMRS), family radio service (R/C), interactive video and data services (IVDS), low power radio service (LPRS) and paging systems. It includes antennas and all other types of equipment used in the transmission or receipt of such signals, structures designed and placed specifically to support this equipment; associated equipment cabinets and/or buildings; and other accessory development. It does not include radio and television towers, antennas or related equipment for commercial broadcast or amateur use; citizens band and any other miscellaneous telemetric and control communications systems.

(Ord. 176 § 1 (part), 1999; prior code § 8-6002)

(Ord. No. 282 , § 2, 4-24-2019)

#### 8.144.030 - General development standards.

The following development standards shall apply to the development of all new wireless communication facilities except small cell wireless facilities.

- A. Ground Mounted Equipment. All ground mounted wireless communication equipment, antennas, poles, dishes, cabinets, structures, towers or other appurtenances shall be:
  1. Of a minimal functional height or no greater than twenty (20) feet, whichever is less;
  2. Have a nonreflective finish and shall be painted or otherwise treated to minimize visual impacts;
  3. Shall be sited to be screened by existing development, topography or vegetation to the extent consistent with proper operation of the wireless communication facility. Additional new

vegetation and its proper irrigation where practical, or other screening may be required as a condition of approval.

- B. Roof and Building Mounted Equipment. Roof and building mounted equipment, including monopoles and antennas shall:
  - 1. Be located as far away as feasible and aesthetically practicable from the outer edge of a building. Antennas attached to a building shall be painted or treated to match the exterior of the building or background visible beyond the antenna;
  - 2. Avoid being mounted on the peaks of roofs to the greatest extent possible and all other related equipment shall be screened or hidden from view.
- C. A wireless communication facility shall comply with all applicable FCC standards for radio frequency emissions and shall not adversely affect the public health, safety or welfare.
- D. All new wireless communication facilities shall be collocated with existing and/or with other planned new facilities whenever feasible and aesthetically desirable. Collocation is discouraged when it will increase visual impacts. Service providers are encouraged to collocate with other facilities such as light standards, utility poles and other structures where the collocation is found to minimize the overall visual impact.
- E. Any exterior lighting shall be manually operated and used only during night maintenance or emergencies. The lighting shall be constructed or located so that only the intended area is illuminated and off-site glare is fully controlled.
- F. Where feasible, the location of commercial wireless communication facilities shall be encouraged to be located on publicly-owned property or public easement or right-of-way.
- G. All equipment associated with a wireless communication facility shall be removed within thirty (30) days of the discontinuation of use and the site shall be restored to its original preconstruction condition in a manner consistent with continued use by any collocated facility. The town shall be given thirty (30) days' notice of intent to discontinue use of the facility prior to discontinuation of use.
- H. All proposals for wireless communications facilities shall include a description of the site selection process undertaken, including coverage objectives and alternative site analysis.
- I. Antennas and equipment buildings shall not be located closer than three hundred (300) feet from a residential structure and one hundred (100) feet from residential property line.

(Ord. 176 § 1 (part), 1999; prior code § 8-6003)

(Ord. No. 282 , § 2, 4-24-2019)

#### 8.144.035 - General development standards and procedures for small cell wireless facilities.

- A. A small cell wireless facility may be constructed in all zoning districts upon issuance of a small cell site permit in accordance with this section, instead of an issuance of a conditional use permit under Section 8.144.080. The following development standards shall apply to the issuance of a small cell site permit, except for applications for an eligible facilities request as defined in 47 U.S.C. § 1455(a):
  - 1. Location of Small Cell Wireless Facilities.
    - a. Order of Preference. The order of preference for the location of small cell wireless facility installations in the town, from most preferred to least preferred, is:
      - i. Community commercial, planned development-commercial, and research and development district zones;

- ii. Limited commercial, mixed commercial, institutional district (non-school) and suburban office district zones;
    - iii. Mixed commercial and residential zones; and
    - iv. Residential, institutional district (schools), MOSO and non-MOSO open space district zones.
  - b. Colocation. Colocation of small cell wireless facilities on approved structures with compatible pre-existing small cell wireless facilities is encouraged, where feasible, to minimize the visual impacts of small cell wireless facilities upon the public right-of-way. In the absence of compatible pre-existing small cell wireless facilities, small cell wireless facilities are preferred to be located on pre-existing approved structures, where possible.
2. All small cell wireless facilities proposed to be installed in the public right-of-way shall require submittal and ministerial design review approval of a small cell site permit application by the planning director or his or her designee prior to building permit approval for such facility. Additionally, applicants shall obtain any permits required under Chapter 12.06 and Chapter 14.04.
  3. Any applicant proposing to install a small cell wireless facility within the public right-of-way shall pay the fee for a small cell site permit established by town council resolution.
  4. All proposed installations on existing utility poles, street lights, traffic signals, electric, gas, and other utility structures, and other similar facilities as defined in Section 12.06.020 (jointly, "approved structures"), located within the public right-of-way shall use the design techniques set forth in this section to minimize visual impacts to the public right-of-way. Antennas and pole-mounted equipment shall be screened, concealed or disguised with shrouding matching the appearance of the existing structure or be integrated into the structure of the proposed facility so as to be hidden from view. Screening/concealing equipment shall be of minimal, functional size necessary to achieve concealment objectives under this subsection. Cabling and conduit shall be hidden from view by integrating such cabling or conduit into existing equipment where technically feasible, and visible spooling of cable shall be prohibited.
  5. All cables or wiring associated with a facility shall be concealed within a sleeve between the bottom of the antenna and the mounting bracket.
  6. All pole-mounted equipment and antennas shall be painted to match the color of the pole or other type of support structure to which it is attached.
  7. All small cell wireless facilities shall include signage that accurately identifies the facility's owner/operator, the site name or identification number, and a phone number to the owner/operator's network operations center. No other signage except that required by law or recommended by FCC, OSHA or other federal government agency for compliance with radio-frequency emissions regulations shall be allowed on any small cell wireless facility.
  8. All non-antenna equipment, including equipment which is susceptible to being installed in an equipment cabinet, shall be installed underground unless the installation of such equipment underground is not technically feasible. This undergrounding requirement shall not apply to cabling and conduit necessary to mount the antenna of a small wireless facility on a new or existing pole, nor apply to non-antenna equipment concealed from public view by being structurally integrated into the construction of a new or existing pole for any utility.
  9. All vents, exhausts and similar features for undergrounded equipment shall be flush to grade to the maximum extent feasible.
  10. In no case shall a small wireless facility block any public sidewalk or functionally impede an accessible path of travel.
  11. All disturbed or damaged pavement and/or landscaping within or adjacent to the public right-of-way shall be replaced and areas of bare or disturbed soils must be revegetated upon completion of an installation.

12. Landscaping shall be required to provide screening to minimize visual impacts where site conditions allow for installation of new landscaping. Landscaping shall not be required where installation shall be entirely on existing paved surfaces. New landscaping shall be drought-tolerant and designed and installed to be natural in appearance.
  13. The town shall be given thirty (30) days' notice of intent to discontinue use of the facility by the service provider or its designee prior to the discontinuation. All equipment associated with a discontinued facility shall be removed within sixty (60) days of the discontinuation of use and the site shall be restored to its original preconstruction condition in a manner consistent with continued use by any collocated facility. The town may deem a facility abandoned and discontinued under this subsection if the permittee fails to respond within thirty (30) calendar days to a written notice sent by certified U.S. mail, return receipt requested, from the planning director that states the basis for the planning director's belief that the facility has been abandoned or discontinued for a continuous period of one hundred eighty (180) days. A decision of the planning director to deem a facility abandoned shall be provided to the service provider in writing, by certified U.S. mail, return receipt requested, and shall be subject to appeal in accordance with Section 1.16.010. A permit shall not be rescinded for discontinuance until the completion of the applicable appeal or the end of the applicable appeal period if no timely appeal is filed.
- B. All applications for small cell wireless facilities shall be subject to the following procedures:
1. Any applicant proposing to install a small cell wireless facility within the public right-of-way shall submit an application to the planning department and pay the fee for a small cell site permit established by town council resolution.
  2. An application for small cell wireless facilities must include:
    - a. Detailed site and engineering plans for each proposed small cell installation, including all associated equipment necessary for its operation;
    - b. Documents showing the geographic service area for the proposed small cell installation(s), and all of applicant's existing or proposed installations in the town;
    - c. Photographs of all proposed small cell wireless facility equipment;
    - d. Certification by a certified radio-frequency engineer that the small cell installation will be in compliance with the FCC standards for RF emissions as they relate to the general public, as to both (i) the individual small cell wireless facility installed by the applicant, and (ii) the total emissions that will be generated by all radio-frequency emitting equipment collocated on the same structure after installation of the new small cell wireless facility;
    - e. Documentation demonstrating the explanation as to the reason(s) for failure to locate any small cell wireless facility in accordance with the preferred installation locations described in Section 8.144.035 A.1. of this chapter to the extent feasible.
  3. Within ten days of submission of any application, the planning director or designee shall determine whether the application is complete, and if not complete, shall provide the applicant notice that the application is incomplete and identify materials or information needed to complete the application.
  4. The planning director shall approve an application ministerially and without a public hearing.
  5. The planning director may approve an application when he/she finds that:
    - a. The proposed project meets the definition of a small cell wireless facility as defined Section 8.144.020;
    - b. The proposed project complies with all applicable requirements prescribed in Section 8.144.035(A) to the greatest extent possible without resulting in an effective prohibition of service;

- c. The applicant has demonstrated that the proposed project will comply with all applicable health and safety regulations, which include without limitation the Americans with Disabilities Act and all FCC regulations relating to radio frequency emissions; and
    - d. Conditions of approval imposed by the planning director shall be limited to compliance with requirements set forth in this section, other sections of the town code applicable to infrastructure deployments, or requirements necessary to comply with applicable state or federal law.
  6. Within five calendar days after the planning director acts on an application or before the FCC shot clock expires (whichever occurs first), he/she shall notify the applicant of such action by written notice. If the planning director denies the application (with or without prejudice), the written notice must contain the reason(s) for the denial.
  7. A permit issued for a small cell wireless facility shall be valid for a ten year period following its issuance, and it shall automatically expire on the ten year anniversary of its issuance unless renewed prior to its expiration.
  8. Any decision to approve or deny a small cell wireless facility shall be appealable directly to the town council. Appeals shall be filed within five business days of a decision having been rendered. Any such appeal shall include a letter identifying the appellant's name, address and contact information and providing the basis for the appeal. All appeals shall be subject to the appeal fees established in the town's master fee schedule. Appeals of an approval shall not be permitted to the extent that the appeal is based on the environmental effects of radio frequency emissions, unless the appeal is filed on the basis that the facility does not comply with FCC regulations on radio frequency emissions. Appeals shall be decided in accordance with time periods and procedures established by applicable laws and regulations, including, but not limited to, decisions of the Federal Communications Commission.
- C. The planning director shall review all applications for new small cell wireless facility to determine if the application is for an eligible facilities request for modification of an eligible support structure, as those terms are defined in 47 U.S.C. § 1455(a). If the planning director determines that the application meets the requirements of an eligible facilities request, the planning director shall ministerially approve the application in accordance with requirements under 47 C.F.R. § 1.40001. The grant or approval of a small cell site permit to such eligible facilities request shall not be deemed to extend the underlying permit term.
- D. Standard Conditions of Approval for Small Cell Site Permits. In addition to any other conditions of approval permitted under federal and state law and this code that the director deems appropriate or required under this code, all small cell site permits under this subsection shall include the following conditions of approval:
  1. As-Built Plans. The applicant shall submit to the director an as-built set of plans and photographs depicting the entire small cell wireless facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.
  2. Indemnification. To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless the town, its elected and appointed officials, employees, and agents, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the small cell site permit and the issuance of any permit or entitlement in connection therewith. The applicant shall pay such obligations as they are incurred by the town, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the town reasonably determines necessary to protect the town from exposure to fees, costs or liability with respect to such claim or lawsuit.

3. Compliance with Applicable Laws. The applicant shall comply with all applicable provisions of this code, any permit issued under this code, and all other applicable federal, state, and local laws. Any failure by the town to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.
4. Compliance with Approved Plans. The proposed project shall be built in compliance with the approved plans on file.
5. Violations. The small cell wireless facility shall be developed, maintained, and operated in full compliance with the conditions of the small cell site permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this code, the conditions of approval for the small cell site permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this section shall be cumulative and the town may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

(Ord. No. 282 , § 2, 4-24-2019)

#### 8.144.040 - Business and commercial district development standards.

Wireless communication facilities may be allowed and siting shall be encouraged to be located in business and commercial districts. In addition to the general development standards provided in Section 8.144.030, the following development standards shall apply to the development of all new wireless communication facilities in business and commercial districts, unless the planning commission finds that there is no other alternative location for the carrier to provide adequate coverage.

- A. Antennas and the associated mountings shall generally not project beyond a maximum of eighteen (18) inches from the face of the building.
- B. Roof mounted antennas shall be located in the least visible location and shall not exceed twenty (20) feet above the parapet line of the building or the maximum building height of the district, whichever is less.
- C. Facade or building mounted antennas shall be painted to match the background or shall be designed to match architectural features of the building.

The facilities shall comply with the above development standards unless the applicant establishes and it is determined by the planning commission that there is no other optimal location for the carrier to provide adequate coverage, and it is determined that compliance with these standards would violate federal law. The burden shall be on the applicant to prove to the satisfaction of the planning commission that there is no optimal locations where adequate coverage could be provided.

(Ord. 176 § 1 (part), 1999: prior code § 8-6004)

#### 8.144.050 - Residential district development standards.

A wireless communication facility shall not be located in a residential district unless it is determined by the planning commission that there is no other alternative location for the carrier to provide adequate coverage. In addition to the general development standards provided in Section 8.144.030, the following development standards shall apply to the development of all new wireless communication facilities in residential districts.

- A. A minimum lot size of one acre or larger is required.

- B. Freestanding roof mounted antennas shall not be allowed on residential buildings.
- C. All facilities shall be substantially screened from view by existing or new landscaping.

The facilities shall comply with the above development standards unless the applicant establishes and it is determined by the planning commission that there is no other optimal location for the carrier to provide adequate coverage, and it is determined that compliance with these standards would violate federal law. The burden shall be on the applicant to prove to the satisfaction of the planning commission that there is no optimal locations where adequate coverage could be provided.

(Ord. 176 § 1 (part), 1999: prior code § 8-6005)

8.144.060 - Open space and open space MOSO district development standards.

- A. In addition to the general development standards provided in Section 8.144.030, facilities proposed to be located within the town's open space and ridgeline areas as defined by Chapter 8.128 and the general plan shall comply with the following development standards.
  - 1. No wireless communication facilities which do not as of the effective date of the ordinance codified in this chapter have a conditional or temporary use permit shall be located within five hundred (500) feet of a major ridgeline as defined in the Moraga open space ordinance (MOSO).
  - 2. No wireless communication facilities which do not as of the effective date of said ordinance have a conditional or temporary use permit shall be located on the crest of a minor ridge with an elevation of eight hundred (800) feet or greater as defined in the Moraga open space ordinance (MOSO), nor shall the silhouette of an antenna be visible above the ridge as viewed from a lower elevation perspective generally available to the public.
  - 3. No wireless communications facilities which do not as of the effective date of said ordinance have a conditional or temporary use permit shall be located on areas where the slope has a grade of twenty (20) percent or greater in MOSO open space.
  - 4. Special design considerations such as designing facilities to appear as natural features found in the immediate area, such as rocks or trees, shall be considered in approving facilities for such use.
- B. The facilities shall comply with the above development standards unless the applicant establishes and it is determined by the planning commission that there is no other optimal location for the carrier to provide adequate coverage, and it is determined that compliance with these standards would violate federal law. The burden shall be on the applicant to prove to the satisfaction of the planning commission that there is no optimal locations where adequate coverage could be provided.
- C. Notwithstanding the foregoing, any temporary use permits which are valid as of the effective date of said ordinance must receive approval by the planning commission of a conditional use permit in order to be in compliance with this chapter.

(Ord. 176 § 1 (part), 1999: prior code § 8-6006)

8.144.070 - General conditions of approval.

In determining whether to grant or deny approval for a wireless communications facility, the planning commission may require more stringent standards than the development standards of this chapter. The planning commission may attach such conditions as it considers necessary to ensure visual and land use compatibility with the surroundings so as to avoid adverse effects on the health, safety, and welfare of the town's residents, to protect existing vegetation, and to minimize the proliferation of such facilities, including but not limited to:

- A. Wireless communications facilities shall have a nonreflective finish and be painted to be compatible with the surrounding area and landscaped to minimize visual impacts;
- B. If not screened from view, equipment enclosures shall be compatible with the design scale, materials, colors and landscaping of other existing structures on the site; and
- C. Stealth design of antennas shall be required as necessary to minimize visual impact.
- D. Wireless communication facilities shall be constructed and operated in such a manner as to minimize noise impacts on nearby residents and the public. Noise reduction shall be accomplished through the following measures:
  - 1. A maximum allowable exterior noise level of sixty (60) dB at the property line of the facility must not be exceeded.
  - 2. Any maintenance or testing that will create noise that is audible from residences and other nearby sensitive receptors shall occur between the hours of eight a.m. to five p.m. Monday through Friday, excluding emergency repairs.
  - 3. Backup generators shall comply with the same noise standards referenced above and shall only be operated during power outages, emergency occurrences, or for testing and maintenance in accordance with subsection (D)(2) of this section.
- E. Additional landscaping or other screening shall be provided.

(Ord. 176 § 1 (part), 1999: prior code § 8-6007)

#### 8.144.080 - Review and approval.

- A. A wireless communication facility is permitted in all zoning districts on the issuance of a conditional use permit subject to findings stated in Section 8.12.120. Any decision denying an application for a wireless communication facilities shall be in writing.
- B. All conditional use permits for wireless communications facilities shall be valid for an initial period of five years; provided that within thirty (30) days after completion of the wireless communication facility, and on an annual basis thereafter, the service provider shall conduct tests to verify compliance with FCC radio frequency emissions standards and provide such test results to the town. Such testing shall be conducted during normal business hours and on a nonholiday weekday with the facility operating at maximum power and shall measure total emissions from the cell site. The conditional use permit may be extended by the planning commission for an additional five year period following a public hearing and verification of continued compliance with the conditions of approval and a showing that the facility has been upgraded to minimize its impact, including community aesthetics, to the greatest extent permitted by the technology that exists at the time of renewal and is consistent with the provisions of federal law.
- C. All applications for wireless communications facilities shall include a five-year wireless communications facilities master plan. The master plan shall consist of the following components:
  - 1. A large-scale map of the town showing the five-year plan for wireless communication facility sites and planned coverage;
  - 2. A written list of existing, proposed and anticipated wireless communication facility sites of the service provider over a five year period; and
  - 3. A description of the location of each site and the types of installations, including antennas and equipment.
- D. The planning commission may require technical evaluations and other technical assistance for the purpose of making any determination required by this chapter, including but not limited to confirming compliance with FCC radio frequency emission standards, the electromagnetic frequency need of the

applicant and identifying alternative solutions and sites that better meet the criteria and legislative intent of this chapter. The cost of these technical services shall be borne by the applicant.

- E. Any modifications to the master plan require an approval by the planning commission.

(Ord. 176 § 1 (part), 1999: prior code § 8-6008)

#### 8.144.090 - Exemptions.

- A. Exempt facilities shall include private, noncommercial wireless communications facilities or systems which are contained entirely on the site for the purpose of serving the premises upon which the facility is located and having no potential visual, noise, thermal or radio frequency interference impacts to surrounding properties or the community.
- B. Replacement of duly permitted facilities or equipment of a minor nature which does not increase the number or height of antennas or significantly expand the size or capacity of the equipment cabinet or ancillary related equipment shall be exempt.

(Ord. 176 § 1 (part), 1999: prior code § 8-6009)

#### Article 2. - Satellite Dish and Miscellaneous Antennas

#### 8.144.100 - Purpose and intent.

The purpose of this article is to regulate the installation of radio towers, antennas or related equipment for commercial broadcast or amateur use; television, citizens band and other miscellaneous telemetric and control communications systems and related equipment in all zoning districts within the town. Such installations, unless controlled, may adversely affect the aesthetics of the town's open space, residential and commercial areas and may adversely affect the health and safety of the town's residents. Therefore, the installation of these wireless communications facilities is regulated to protect views from public right-of-ways and other properties, while not preventing installation of such systems in a manner which would compromise suitable performance.

(Ord. 176 § 1 (part), 1999: prior code § 8-6020)

#### 8.144.110 - Definitions.

As used in this article:

"Antenna" is any system of poles, panels, rods, reflecting discs, wires or similar devices used for the transmission or reception of radio frequency signals of any mode.

"Tower" is an open frame, grid constructed structure and supporting antennas or other equipment that transmits or receives electromagnetic signals that are part of an AM, FM or television signal or which supports antennas necessary for a cable system.

"Hilltop" is any prominent high point of land exposed to view from the surrounding low-lying areas.

"Monopole" is a single, free-standing pole, post or similar structure over fifteen (15) feet in height used to support equipment associated with a wireless communication facility.

"Moraga open space ordinance (MOSO)" is a voter-approved ballot initiative which regulates development on lands within the town designated as open space-MOSO.

"Ridgeline" means a crest or peak as defined in Chapter 8.128.

"Satellite dish antenna" is any device incorporating an electromagnetic reflective surface that is solid, open mesh, shallow dish, cone or bowl shaped and is used to transmit or receive electromagnetic signals transmitted directly from a satellite.

"Silhouette" means a representation of the outline or profile of the antenna, as seen from an elevation perspective.

(Ord. 176 § 1 (part), 1999: prior code § 8-6021)

#### 8.144.120 - Open space and open space MOSO district development standards.

In addition to the general development standards of Article 1 of this chapter, satellite dish and miscellaneous antennas proposed to be located within the town's open space and ridgeline areas as defined by Chapter 8.128 and the general plan shall comply with the following development standards set forth in this district.

- A. No satellite dish or miscellaneous antennas shall be located within five hundred (500) feet of a major ridgeline as defined in the Moraga open space ordinance (MOSO).
- B. No satellite dish or miscellaneous antennas shall be located on the crest of a minor ridge with an elevation of eight hundred (800) feet or greater as defined in the Moraga open space ordinance (MOSO), nor shall the silhouette of an antenna be visible above the ridge as viewed from a lower elevation perspective generally available to the public.
- C. No satellite dish or miscellaneous antennas shall be located on areas where the slope has a grade of twenty (20) percent or greater in MOSO open space.
- D. All standards set forth in Section 8.144.130.

The facilities shall comply with the above development standards unless the applicant establishes and it is determined by the planning commission that there is no other optimal location for the operator to provide adequate coverage, and it is determined that compliance with these standards would violate federal law. The burden shall be on the applicant to prove to the satisfaction of the planning commission that there is no optimal locations where adequate coverage could be provided.

(Ord. 176 § 1 (part), 1999: prior code § 8-6022)

#### 8.144.130 - Development standards.

- A. Along with the general development standards set forth in Article 1 of this chapter, the following standards shall apply in all zoning districts for satellite dish antennas greater than one meter in any dimension.
  1. Approval. Installation of a satellite dish antenna shall require approval of a permit by the zoning administrator.
  2. Number. No more than one satellite dish antenna shall be permitted per parcel unless approved by the zoning administrator.
  3. Height. A satellite dish antenna shall be no higher than twelve (12) feet above the ground at any point.
  4. Signage. No signage of any kind shall be posted or display on any satellite dish antenna.
  5. Color. All satellite dish antennas that are not screened shall be painted with as unobtrusive a color as possible given the location.
  6. Location. Satellite dish antennas in excess of one meter in any dimension shall not be located on the roof of a structure and shall otherwise meet the building setbacks of the property. Dishes shall

be located in rear yards and be substantially screened from view off-site. Satellite dish antennas shall not be located in the front yard area.

- B. Antennas expressly designed for private residential reception of satellite television signals, which have an overall size of less than one meter in any dimension are exempt.

(Ord. 176 § 1 (part), 1999: prior code § 8-6023)

#### 8.144.140 - Amateur radio and miscellaneous wireless communication facilities exemptions.

The following installations in all zoning districts (except MOSO districts) are exempt from this article, provided they are located on or behind a structure and meet the following standards:

- A. A ground or building mounted receive-only radio or television antenna including any mast, if the height (post and antenna) does not exceed thirty-five (35) feet above ground level;
- B. A ground or building mounted citizen band radio antenna or antenna operated by a federally licensed amateur radio operator as part of the amateur radio service including any, supporting structure, if the total height (structure and antenna) does not exceed thirty-five feet above ground level unless a conditional use permit is approved by the planning commission, subject to findings stated in Section 8.12.120.

(Ord. 176 § 1 (part), 1999: prior code § 8-6024)

#### 8.144.150 - Towers.

- A. Approval of any tower including commercial broadcast tower for radio or television shall require approval of a conditional use permit.
- B. Towers shall be of a minimum functional height or shall not exceed the building height limit for the zoning district, whichever is less.
- C. Broadcast towers shall not be located closer than three hundred (300) feet from a residential structure and one hundred (100) feet from a residential property line.
- D. All other towers are subject to the provisions of Section 8.144.030.

(Ord. 176 § 1 (part), 1999: prior code § 8-6025)