



Town of Moraga	Agenda Item
CONSENT	6.9

2 **Meeting Date: December 8, 2021**

## **TOWN OF MORAGA**

## **STAFF REPORT**

**To:** Honorable Mayor and Councilmembers

**From:** Afshan Hamid, AICP, Planning Director  
Denise Bazzano, Assistant Town Attorney

**Subject:** Consider Waiving the Second Reading and Adopting Ordinance \_\_\_\_\_  
Amending Sections 8.144.010, "Purpose and Intent," 8.144.020,  
"Definitions," and 8.144.035, "General Development Standards and  
Procedures for Small Cell Wireless Facilities" within Chapter 8.144,  
"Wireless Communications Facilities, Satellite Dishes and  
Miscellaneous Antennas" of Title 8, Planning and Zoning, of the  
Moraga Municipal Code to Revise Applicable Definitions, Standards  
and Procedures Pertaining to Small Cell Wireless Facilities

**CEQA Status:** This project is categorically exempt from the California Environmental Quality Act (CEQA) under various provisions of the CEQA Guidelines as this is not considered a project under CEQA guidelines.

## Executive Summary

On November 10, 2021 Town Council conducted a second public hearing on Small Cell Wireless Ordinance update and by a vote of 5-0 conducted the first reading of the proposed ordinance. Prior to the first reading, however, the Council made some modifications to the standard condition of approval contained in the proposed Ordinance, Section 8.144.035(F)(7). Specifically, that condition requires that Small Cell Site Permittees ensure that the Small Cell Wireless Facility complies with the most current applicable RF emissions standards adopted by the FCC and that the Small Cell Wireless Facility be tested by the Permittee at time of construction of the facility. The Council removed the requirement for testing one year after installation of the Small Cell Wireless Facility. Additionally, Council added language to Section 8.144.035 (F)(7), "The foregoing testing shall also be conducted at the time of renewal of a Small Cell Site permit".

A thorough background on the Small Cell Wireless Ordinance update is provided in the November 10, 2021 staff report (see Attachment B).

1    **Discussion**

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3    If adopted, the proposed Ordinance would provide a focused update to the Small Cell  
4    Wireless Facilities Ordinance section of Moraga Municipal Code Chapter 8.144  
5    Wireless Communications Facilities, Satellite Dishes and Miscellaneous Antennas.  
6    Among other things, the Ordinance updates RF emissions testing at installation and  
7    renewal, general development standards and procedures, and definitions. At the  
8    September 8, 2021 public hearing Council requested additional information on:  
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- 10    • Periodic RF emission testing (possibly every three years);
- 11    • Engineer to provide input and potential risks relating to RF emissions;
- 12    • Potential requirements for a failsafe device if facility exceeds FCC RF emission  
13    standards;
- 14    • City of Lafayette requirements relating RF emissions testing; and

15    Staff provided updates to Town Council on each of the above items at the November 10  
16    meeting from experts in the field Hammett & Edison, Inc. Michael Afflerbach for  
17    Council's review.

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19    After the Council discussed the proposed Ordinance and based on recommendations  
20    from the Planning Commission and staff, specific modifications to Section 8.144.035  
21    (F)(7) were incorporated into the Ordinance. Those modifications are identified below in  
22    red and are included in the Ordinance for adoption (see Attachment A):  
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24    7. At all times the permit is in effect, the Permittee shall ensure that the Small  
25    Cell Wireless Facility complies with the most current applicable regulatory and  
26    operational standards, including, but not limited to, radio frequency emissions  
27    standards adopted by the FCC. The Small Cell Wireless Facility shall be tested  
28    by the Permittee at time of construction of the Facility ~~and one year from the date~~  
29    ~~of issuance of the Small Cell Site Permit~~ to verify compliance with FCC radio  
30    frequency emissions standards and the Permittee shall provide proof of  
31    certification of the testing results to the Town. Testing shall be conducted with  
32    the Facility operating at maximum power and shall measure total emissions from  
33    the Small Cell Wireless Facility site. Such testing shall be conducted during  
34    normal business hours and on a non-holiday weekday. ~~The foregoing testing~~  
35    ~~shall also be conducted at the time of renewal of a Small Cell Site Permit.~~

36  
37    **California Environmental Quality Act**

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39    The proposed action is not a project under CEQA pursuant to CEQA Guidelines section  
40    15061(b)(3) (the activity is covered by the general rule that CEQA applies only to  
41    projects which have the potential for causing a significant effect on the environment), in  
42    that it can be seen with certainty that there is no possibility that the adoption of this  
43    Ordinance will result in a significant effect on the environment, because the proposed  
44    Ordinance would make revisions to a comprehensive permitting scheme and does not  
45    authorize any specific development or installation, and in the alternative, pursuant to  
46    Sections 15301 (Existing Facilities, which allows alteration of existing public or private  
47    structures, facilities, mechanical equipment, or topographical features, involving

1 negligible or no expansion of use), 15303 (New Construction or Conversion of Small  
2 Structures, which allows the construction and location of new, small facilities or  
3 structures and the installation of small new equipment and facilities in small structures),  
4 15304 (Minor alterations to land) and 15305 (Minor alterations in Land Use Limitations)  
5 of the CEQA Guidelines.

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7 **Fiscal Impact**

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9 The adoption of this Ordinance is a procedural function and will not have any  
10 anticipated fiscal impact.

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12 **Recommendation**

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14 Consider Waiving the Second Reading and Adopting Ordinance \_\_\_\_ Amending  
15 Sections 8.144.010, "Purpose and Intent," 8.144.020, "Definitions," and 8.144.035,  
16 "General Development Standards and Procedures for Small Cell Wireless Facilities"  
17 within Chapter 8.144, "Wireless Communications Facilities, Satellite Dishes and  
18 Miscellaneous Antennas" of Title 8, Planning and Zoning, of the Moraga Municipal Code  
19 to Revise Applicable Definitions, Standards and Procedures Pertaining to Small Cell  
20 Wireless Facilities (CEQA Status: Exempt).

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22 **Report reviewed by: Cynthia Battenberg, Town Manager**

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24 **Attachments:**

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26       A. Ordinance Amending Sections 8.144.010, "Purpose and Intent,"  
27           8.144.020, "Definitions," and 8.144.035, "General Development Standards  
28           and Procedures for Small Cell Wireless Facilities" within Chapter 8.144,  
29           "Wireless Communications Facilities, Satellite Dishes and Miscellaneous  
30           Antennas" of Title 8, Planning and Zoning, of the Moraga Municipal Code  
31           to Revise Applicable Definitions, Standards and Procedures Pertaining to  
32           Small Cell Wireless Facilities

33       B. November 10, 2021 Council Meeting Staff Report

## **ATTACHMENT A**

Ordinance Amending Sections 8.144.010, "Purpose and Intent," 8.144.020, "Definitions," and 8.144.035, "General Development Standards and Procedures for Small Cell Wireless Facilities" within Chapter 8.144, "Wireless Communications Facilities, Satellite Dishes and Miscellaneous Antennas" of Title 8, Planning and Zoning, of the Moraga Municipal Code to Revise Applicable Definitions, Standards and Procedures Pertaining to Small Cell Wireless Facilities (CEQA Status: Exempt).

## BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the matter of:

Amending Sections 8.144.010, )  
"Purpose and Intent," 8.144.020, )  
"Definitions," and 8.144.035, )  
"General Development Standards )  
and Procedures for Small Cell )  
Wireless Facilities" within Chapter )  
8.144, "Wireless Communications )  
Facilities, Satellite Dishes and )  
Miscellaneous Antennas" of Title 8, )  
Planning and Zoning, of the Moraga )  
Municipal Code to Revise Applicable )  
Definitions, Standards and )  
Procedures Pertaining to Small Cell )  
Wireless Facilities (CEQA Status: )  
*Exempt*) )

ORDINANCE NO. \_\_

**WHEREAS**, on April 28, 1999 the Town Council adopted Ordinance No. 176 establishing Chapter 8.144 – Wireless Communications Facilities, Satellite Dishes and Miscellaneous Antennas (previously codified as Chapter 8-60) of the Moraga Municipal Code, which regulates wireless communications facilities, satellite dishes and antennas to minimize the potential health, safety and aesthetic impacts of such facilities on the community; and

**WHEREAS**, the Federal Communications Commission (FCC) regularly establishes new and updated regulations aimed at improving wireless broadband communications infrastructure across the nation for the purpose of making available to all the people of the United States rapid, efficient, nationwide, and world-wide wire and radio communication services, as well as for the purposes of national defense and promoting public safety through the use of such communications; and

**WHEREAS**, on September 26, 2018 the FCC adopted its Declaratory Ruling and Third Order Report (the "Order") regarding the regulation of small cell wireless facilities which aims to facilitate the deployment of such facilities across the nation in order to help fulfill the purposes described above by requiring local governments to relax various standards governing the installation and operation of such facilities; and

**WHEREAS**, The Town Council adopted an urgency Ordinance at the April 10, 2019 meeting, with the second reading of the Ordinance being conducted on April 24, 2019 ("Ordinance No. 282") 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**, at the time Ordinance No. 282 was adopted, Council continued to express a desire to update the entire Chapter 8.144 and also to monitor the legal efforts by other cities and counties to challenge the Order; and

**WHEREAS**, at the March 24, 2021 Council meeting, the Town Council directed staff to prepare a draft Ordinance updating the Town's small cell wireless facility Ordinance in certain key areas; and

**WHEREAS**, Town staff and the Town Attorney's Office have prepared an Ordinance making revisions to Chapter 8.144 in those key areas identified by Town Council on March 24, 2021, and staff has engaged with community stakeholders and representatives of Verizon Wireless to discuss and revise the proposed Ordinance; and

**WHEREAS**, on July 6, 2021, the Planning Commission held a duly noticed public hearing and took public testimony on the proposed amendments and considered evidence submitted in the form of the staff report, received comments from the public and interested parties, closed the public hearing and discussed the matter; and

**WHEREAS**, following the public hearing on July 6, 2021, the Planning Commission adopted Resolution No. 07-2021, recommending that the Town Council adopt proposed amendments to Sections 8.144.010, "Purpose and Intent," 8.144.020, "Definitions," and 8.144.035, "General Development Standards and Procedures for Small Cell Wireless Facilities" within Chapter 8.144, "Wireless Communications Facilities, Satellite Dishes and Miscellaneous Antennas" of Title 8, Planning and Zoning, of the Moraga Municipal Code to Revise Applicable Definitions, Standards and Procedures Pertaining to Small Cell Wireless Facilities; and

**WHEREAS**, the Planning Commission also recommended that the Town Council include a provision relating to RF emissions testing at the time of renewal of a Small Cell Site Permit; and

**WHEREAS**, notice of this public hearing was posted at 329 Rheem Boulevard, the Hacienda de las Flores (2100 Donald Drive) and the Moraga Commons Park (1425 St. Mary's Road) and published in the East Bay Times on August 27, 2021 and October 29, 2021, in accordance with Government Code Sections in accordance with Government Code Sections 65853, 65854, 65090, 65092, 65093, and 65094 and Moraga Municipal Code §8.12.070; and

**WHEREAS**, after a duly noticed public hearing, on September 8, 2021, the item was continued and on November 10, 2021, the Town considered waiving the first reading and introducing by title only an Ordinance amending Sections 8.144.010, "Purpose and Intent," 8.144.020, "Definitions," and 8.144.035, "General Development Standards and Procedures for Small Cell Wireless Facilities" within Chapter 8.144, "Wireless Communications Facilities, Satellite Dishes and Miscellaneous Antennas" of Title 8, Planning and Zoning, of the Moraga Municipal Code to Revise Applicable Definitions, Standards and Procedures Pertaining to Small Cell Wireless Facilities.

**THE TOWN COUNCIL OF THE TOWN OF MORAGA DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** CEQA determination:

The proposed action is not a project under CEQA pursuant to CEQA Guidelines section 15061(b)(3) (the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment), in that it can be seen with certainty that there is no possibility that the adoption of this Ordinance will result in a significant effect on the environment, because the proposed Ordinance would make revisions to a comprehensive permitting scheme and does not authorize any specific development or installation, and in the alternative, pursuant to Sections 15301 (Existing Facilities, which allows alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use), 15303 (New Construction or Conversion of Small Structures, which allows the construction and location of new, small facilities or structures and the installation of small new equipment and facilities in small structures), 15304 (Minor alterations to land) and 15305 (Minor alterations in Land Use Limitations) of the CEQA Guidelines.

**SECTION 2.** Findings:

- A. The above recitals are true and correct and Town Council hereby adopts them as findings in support of this Ordinance to be incorporated herein as though set forth in this section.
- B. The purpose of the this Ordinance 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 to the extent permitted under federal and California State law, as follows:
  1. To establish development standards to regulate the placement and design of Wireless Communication Facilities so as to preserve the unique aesthetic and visual character of the Town;
  2. To establish development standards of Wireless Communications Facilities in accordance with federal laws, including small cell wireless facilities as defined herein;
  3. 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;
  4. To pursue additional benefits from the Wireless Communication Facilities to the public by encouraging the leasing of publicly owned properties where feasible for the development of Wireless Communication Facilities; and
  5. 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.

C. This article is not intended to, nor shall it be interpreted or applied to:

1. Prohibit or effectively prohibit any personal wireless Service Provider's ability to provide personal Wireless Services;
2. Prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and non-discriminatory rules, regulations or other legal requirements;
3. Unreasonably discriminate among providers of functionally equivalent services;
4. Deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; and
5. Otherwise authorize the Town to regulate in areas preempted by any applicable federal or California State law.

**SECTION 3.** The Town Council hereby amends the Moraga Municipal Code, as shown in Exhibit A, attached hereto and incorporated herein by reference.

**SECTION 4.** Effective Date. This Ordinance becomes effective thirty (30) days after its final passage and adoption.

**SECTION 5.** Publication. The Clerk shall publish this Ordinance in accordance with the law.

**SECTION 6.** Severability. If any provision of the Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provisions or applications of the Ordinance. To this end, the provisions of this Ordinance are severable. This Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

The foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Moraga, California, held on November 10, 2021, and was adopted and ordered published at a regular meeting of the Town Council held on December 8, 2021 by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

**AFFIRMED:**

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Mike McCluer, Mayor

**ATTEST:**

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Marty C. McInturf, Town Clerk

EXHIBIT A- PROPOSED ORDINANCE

DRAFT

## EXHIBIT A

### 8.144.010 - Purpose and intent.

A. 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 to the extent permitted under federal and California State law, as follows:

1. To establish development standards to regulate the placement and design of Wireless Communication Facilities so as to preserve the unique aesthetic and visual character of the Town;
2. To establish development standards of Wireless Communications Facilities in accordance with federal laws, including small cell wireless facilities as defined herein;
3. 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;
4. To pursue additional benefits from the Wireless Communication Facilities to the public by encouraging the leasing of publicly owned properties where feasible for the development of Wireless Communication Facilities; and
5. 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.

B. This article is not intended to, nor shall it be interpreted or applied to:

1. Prohibit or effectively prohibit any personal wireless Service Provider's ability to provide personal Wireless Services;
2. Prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and non-discriminatory rules, regulations or other legal requirements;
3. Unreasonably discriminate among providers of functionally equivalent services;
4. Deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; and
5. Otherwise authorize the town to regulate in areas preempted by any applicable federal or California State law.

**8.144.020 - Definitions.**

As used in this article:

"Antenna" means a device for transmitting and receiving radiofrequency signals. Antenna includes panel antennas, reflecting discs, microwave dishes, whip antennas, directional and non-directional antennas, multiple antenna configurations, or other similar devices and configurations. Antenna includes a distributed antenna system (DAS), which is a network of spatially-separated antenna sites connected to a common source that provides wireless service within a geographic area or structure.

"Arterial Street" means any street that collects Collector Streets with a traffic volume of seven thousand five hundred to fifteen thousand (7,500 to 15,000) vehicles per day, including but not limited to Canyon Road, Moraga Road, Moraga Way, Rheem Boulevard, and St. Mary's Road.

"Applicant" means those qualified applicants who meet the requirements of Moraga Municipal Code section 8.12.030.

"Approval Authority" means the commission, board or official responsible for review of permit applications and vested with the authority to approve or deny such applications.

"Collector Street" means any street that collects local streets and feeds into Arterial Streets with a typical traffic volume of two thousand to seven thousand five hundred (2,000 to 7,500) vehicles per day, including but not limited to Bollinger Canyon, Calle La Mesa, Camino Pablo, Camino Ricardo, Campolindo Drive, Corliss Drive, Country Club Drive, De La Cruz, portions of Donald Drive, Fernwood Drive, Larch Avenue, Natalie Drive, Paseo Del Rio, Paseo Grande, Rimer Drive, Sanders Drive, School Street, Shuey Drive, Tharp Drive, and Via Granada.

"Collocation" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), as may be amended or superseded.

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

"Eligible Facilities Request" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(3), as may be amended or superseded.

"Eligible Support Structure" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4), as may be amended or superseded.

"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.

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

"Permittee" means any person, contractor, utility or public agency that has been issued a permit pursuant to this article, including any lawful successor, transferee, or assignee of the original Permittee. All obligations, responsibilities, and other requirements of the Permittee shall be binding on successors in interest of the original Permittee.

"Persons Entitled to Notice" means the record owners and legal occupants of all properties within 300- feet from the proposed project site. Notice to the legal occupants shall be deemed given when mailed to the property's physical address.

"Planning Director" means the Planning Director for the Town or the Planning Director's designee.

"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 Site Permit" is a permit issued by the Town of Moraga for the installation of a Small Cell Wireless Facility.

"Small Cell Wireless Facility" is a Wireless Communications Facility that meets the definition set forth in FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded.

"Stealth Design" means a Small Cell Facility designed to look like something other than a Wireless Communications Facility and is concealed from view by being designed as a structure, improvement or feature that is consistent with the surrounding environment in which is located, such as a flag pole or tree.

"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.

“Wireless Services” has the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i), as may be amended or superseded.

“Working Days” shall mean days the Town of Moraga Town Offices are opened for business.

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

- A. **Applicability.** This Section applies to all Small Cell Wireless Facilities seeking to locate in the Town, including, but not limited to, those Small Cell Wireless Facilities located in the public right-of-way, outside the public right-of-way, stand-alone facilities, collocations and Small Cell Wireless Facilities installed on buildings, structures and utility poles.
- B. **Approvals Required.** A Small Cell Wireless Facility may be constructed 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 Planning Director shall act as the Approval Authority for the issuance of the Small Cell Site Permit. All Small Cell Wireless Facilities proposed to be installed shall require submittal and ministerial review and approval by the Planning Director prior to building permit approval for such Facilities. Additionally, Applicants shall obtain any permits required under Chapter 12.06 and Chapter 14.04 for installation of Small Cell Wireless Facilities in the public right-of-way. The applicant may, but is not required, to submit applications for any other permits required for the Small Cell Wireless Facility at the same time and if the Applicant files complete application for these permits, the complete permit applications shall be reviewed concurrently with the Small Cell Site Permit application.
- C. **Development Standards.** The following development standards shall apply to the issuance of a Small Cell Site Permit, except for applications for an Eligible Facilities Request:
  - 1. **Location of Small Cell Wireless Facilities.** Small Cell Wireless Facilities are encouraged to be located in commercial, industrial and public/semi-public zoning districts whenever feasible.
    - a. **Zoning District Order of Preference.** The order of preference for the zoning district for Small Cell Wireless Facility installations in the town, from most preferred to least preferred, is as follows:
      - i. Community Commercial, MCSP Commercial, Planned Development-Commercial, and Research and Development district zones;
      - ii. Limited Commercial, Institutional district (non- school) and Suburban Office district zones;
      - iii. Mixed zones, including MCSP Mixed Office/Residential and MCSP Mixed Retail/Residential;
      - iv. MOSO and non-MOSO Open Space district zones; or

- v. Residential and Institutional district (schools) zones.
- b. Configuration of Small Cell Wireless Facilities within Each Zoning District- Order of Preference. The order of preference for the configuration for Small Cell Wireless Facilities on public property outside the right of way or on private property, from most preferred to least preferred, is as follows:
  - i. Collocations in locations already containing Wireless Communication Facilities;
  - ii. Collocations in locations already containing existing Support Structures but not containing Wireless Communication Facilities;
  - iii. New Monopoles or other new support structures.
- c. For Small Cell Wireless Facilities outside of the public right-of-way, in addition to the foregoing preferences, Small Cell Wireless Facilities outside of the public right-of-way are also encouraged to be located at least 500 feet from the nearest other Small Cell Wireless Facility.
- d. Location Within the Public Right-of-Way- Order of Preference. The order of preference for the location of a Small Cell Wireless Facility in the public right-of-way, from most preferred to least preferred as follows:
  - i. Installations on Arterial Streets;
  - ii. Installations on Collector Streets; or
  - iii. Installations on streets that are not Arterial Streets or Collector Streets.

2. Any Applicant proposing to install a Small Cell Wireless Facility shall pay the fee for a Small Cell Site Permit established by Town Council Resolution.

3. 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 or some other method to match the appearance of the existing structure or be integrated into the support structure of the proposed facility and utilize nonreflective materials and colors that match the approved structure to which is attached 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.

4. All cables or wiring associated with a facility shall be concealed within a sleeve between the bottom of the Antenna and the mounting bracket.

5. 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.

6. All non-antenna equipment, other than radios and electric meters, including equipment which is susceptible to being installed in an Equipment Cabinet, for Small Cell Wireless Facilities in the public right-of-way, shall be installed underground in any area in which the existing utilities are primarily located underground, unless the installation of such equipment underground is not technically feasible. If the applicant contends that undergrounding is technically infeasible, the applicant shall submit documentation to the Planning Director sufficient for the Planning Director to make a determination of whether and to what extent such undergrounding is technically feasible. In all other areas, equipment shall be installed underground when the Planning Director finds that the above-ground equipment would impede pedestrian travel or cause the right-of-way to be inaccessible to pedestrian travel. This undergrounding requirement shall not apply to cabling and conduit necessary to mount the Antenna of a Small Cell 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.

7. All vents, exhausts and similar features for undergrounded equipment shall be flush to grade to the maximum extent feasible.

8. In no case shall a Small Cell Wireless Facility block any public sidewalk or functionally impede an accessible path of travel.

9. All disturbed or damaged pavement, soils and/or landscaping within or adjacent to the public right-of-way shall be replaced.

10. New landscaping shall be required for Small Cell Wireless Facility installations outside of the public right-of-way to provide screening to conceal any equipment, including but not limited to an Equipment Cabinet, that is installed on the ground from view. New landscaping shall be drought-tolerant and designed and installed to be natural in appearance. New landscaping shall not be required for installations in the public right-of-way.

11. Noise. All Small Cell Wireless Facilities must comply with all applicable noise control standards and regulations in the General Plan and the Municipal Code, Chapter 7.12 (Noise Control), and shall not cause, either individually or cumulatively with other noise-emitting uses, the ambient noise to exceed those standards provided in the General Plan or the Municipal Code.

12. Small Cell Wireless Facilities outside of the public right-of-way shall be designed as Stealth Design facilities and all equipment shall be designed to achieve concealment objectives under this subsection. The Small Cell Wireless Facility shall be architecturally integrated to the extent technically feasible to match the underlying structure in proportion, quality and architectural style and finish. Cabling and conduit shall be hidden from public view where technically feasible, and visible spooling of cable shall be prohibited. The applicant shall submit documentation to the Planning Director sufficient for the Planning Director to make a determination of whether and to what extent such architectural integration and concealment of cable and conduit is technically feasible.

13. The town shall be given thirty (30) days' notice of intent to discontinue use of any Small Cell Wireless Facility by the Service Provider or its designee prior to the discontinuation. All equipment associated with a discontinued Small Cell Wireless Facility shall be removed within ninety (90) 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.

D. 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 shall submit an application to the Planning Department for a Small Cell Site Permit and pay the applicable fee for a Small Cell Site Permit established by Town Council Resolution.
2. The application requirements shall include the following:
  - a. Detailed site and engineering plans for each proposed Small Cell Wireless Facility installation, including all Related Equipment necessary for its operation signed and stamped by a licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project;
  - b. Documents showing the geographic service area for the proposed Small Cell Wireless Facility installation, and all of Applicant's existing site installations in the Town or proposed site installations which are pending review by the Town at the time the application is submitted;
  - c. Depictions of all proposed Small Cell Wireless Facility Related Equipment and photo simulations of the proposed Small Cell Wireless Facility in the proposed site;
  - d. Certification by a certified radio-frequency engineer that the Small Cell Wireless Facility 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 compliance with the location preference standards in Section 8.144.035 (C)(1) or the explanation as to the reason(s) for the failure to locate the Small Cell Wireless Facility in accordance with the preferred installation preferences.
- f. The Town Council further authorizes the Planning Director to establish other reasonable rules and regulations, which may include without limitation application form, regular hours for appointments with applicants, as the Planning Director deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide applicants with prior notice.

3. The Town may retain a consultant, at the sole expense of the Applicant, with specialized training, experience and/ or expertise in telecommunications issues satisfactory to the Planning Director in connection with the review of any permit application. The Planning Director may request an independent consultant review any issue that involves specialized or expert knowledge in connection with the review of the Small Cell Wireless Facilities application, including but not limited to, whether and to what extent a proposed project will comply with applicable laws relating to radio frequency emissions. Consultant fees shall be limited to the actual and reasonable cost for the services to be provided, as determined by the Planning Director.

4. 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 and the specific rule or regulation creating the obligation to submit such materials or information.

5. The Planning Director shall approve an application ministerially and without a public hearing.

6. The Planning Director may approve an application when they find that:

- a. The proposed project meets the definition of a Small Cell Wireless Facility as defined Section 8.144.020; and
- b. The proposed project complies with all applicable requirements prescribed in Section 8.144.035(C) to the greatest extent possible without resulting in an effective prohibition of service; and
- 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.

7. Decision Notices: Within five Working Days after the Planning Director acts on an application or before the FCC shot clock expires (whichever occurs first), they

shall notify the Applicant of such action by written notice. If the Planning Director denies the application, the written notice must contain the reason(s) for the denial and information on how to file an appeal.

8. 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.

9. 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 Small Cell Wireless 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.

E. Notice. Within five (5) Working Days after a Small Cell Site Permit application is deemed complete, and prior to any approval or denial, the Town shall mail public notice to all Persons Entitled to Notice. The notice must contain: (1) a general project description; (2) the Applicant's identification and contact information as provided on the application submitted to the Town; (3) contact information for the Planning Department for interested parties to submit comments; (4) a statement that the Planning Director will act on the application without a public hearing but that any interested person or entity may appeal the Planning Director's decision directly to the Town Council; and (5) a general statement that the FCC requires the Town take final action on such applications within certain time periods established by the FCC, including all appeals; and (6) general information regarding the process for any decision of the Planning Director pursuant to MMC Chapter 8.12.

F. 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 Planning Director deems appropriate or required under this code, all Small Cell Site Permits under this subsection shall include the following standard conditions of approval:

1. As-Built Plans. The Permittee shall submit to the Planning Director an as-built set of plans and photographs depicting the entire Small Cell Wireless Facility as modified, including all Related Equipment and all utilities, within ninety (90) days after the completion of construction.

2. Indemnification. To the fullest extent permitted by law, the Permittee and, if applicable, the owner of the property upon which the Small Cell Wireless Facility is installed, shall defend, indemnify and hold harmless the Town, its agents, officers,

officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, lawsuits, writs of mandamus, and other actions or proceedings brought against the Town or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the Town's approval of the Small Cell Site Permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, lawsuits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the Permittee or, if applicable, the property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the Town becomes aware of any such actions or claims, the Town shall promptly notify the Permittee and, if applicable, the property owner and shall reasonably cooperate in the defense. The Town shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the Town's defense, and the property owner and/or Permittee (as applicable) shall reimburse Town for any costs and expenses directly and necessarily incurred by the Town in the course of the defense.

3. **Compliance with Applicable Laws.** The Permittee 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 Permittee 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 Permittee 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.

6. **Insurance.** Permittee shall, at all times relevant to the Small Cell Site Permit issued, obtain and maintain insurance coverage at least as broad as follows:

a. **Commercial General Liability.** Insurance Services Office Form CG 00 01 covering Commercial General Liability ("CGL") on an "occurrence" basis, with limits not less than \$ 2,000,000 per occurrence or \$5,000,000 in the aggregate. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general

aggregate limit shall be twice the required occurrence limit. CGL insurance must include coverage for the following: Bodily Injury and Property Damage; Personal Injury/Advertising Injury; Premises/Operations Liability; Products/ Completed Operations Liability; Aggregate Limits that Apply per Project; Explosion, Collapse and Underground ("UCX") exclusion deleted; Contractual Liability with respect to the permit; Broad Form Property Damage; and Independent Consultants Coverage. The policy shall contain no endorsements or provisions limiting coverage for (i) contractual liability; ii) cross liability exclusion for claims or suits by one insured against another; (iii) products/ completed operations liability; or (iv) contain any other exclusion contrary to the conditions in the permit.

b. **Automotive Insurance.** Insurance Services Office Form Number CA 00 01 covering, Code 1 (any auto), or if Permittee has no owned autos, Code 8(hired) and 9 (non- owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

c. **Workers' Compensation.** The Permittee shall certify that it is aware of the provisions of California Labor Code § 3700, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and further certifies that the Permittee will comply with such provisions before commencing work under this permit. To the extent the Permittee has employees at any time during the term of this permit, at all times during the performance of the work under this permit the Permittee shall maintain insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

d. **Errors and Omissions Policy.** The Permittee shall maintain Professional Liability (Errors and Omissions) Insurance appropriate to the Permittee's profession, with limit no less than \$ 1,000,000 per occurrence or claim. This insurance shall be endorsed to include contractual liability applicable to the permit and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Permittee. "Covered Professional Services" as designed in the policy must specifically include work performed under the permit.

e. **Umbrella Policy.** If an umbrella or excess liability insurance policy is used to satisfy the minimum requirements for CGL or Automobile Liability insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf," with defense costs payable in addition to policy limits. Permittee shall provide a "follow form" endorsement or schedule of underlying coverage satisfactory to the Town indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

f. Endorsements. The relevant policy(ies) shall name the Town, its elected/ appointed officials, commission members, officers, representatives, and employees as additional insureds. If requested, the Permittee shall provide the Town with a Certificate of Insurance to provide evidence of insurance as requested by the Town. Licensee will endeavor to provide the Town with thirty (30) days prior written notice of cancellation upon receipt of notice thereof from its insurer(s).

7. At all times the permit is in effect, the Permittee shall ensure that the Small Cell Wireless Facility complies with the most current applicable regulatory and operational standards, including, but not limited to, radio frequency emissions standards adopted by the FCC. The Small Cell Wireless Facility shall be tested by the Permittee at time of construction of the Facility to verify compliance with FCC radio frequency emissions standards and the Permittee shall provide proof of certification of the testing results to the Town. Testing shall be conducted with the Facility operating at maximum power and shall measure total emissions from the Small Cell Wireless Facility site. Such testing shall be conducted during normal business hours and on a non-holiday weekday. The foregoing testing shall also be conducted at the time of renewal of a Small Cell Site Permit.

G. Eligible Facilities Request. An Eligible Facilities Request for modification of an existing wireless tower or base station that involves a Small Cell Wireless Facility on an Eligible Support Structure, as those terms are defined in 47 CFR § 1.6100 or any modification of an Eligible Facilities Request for an existing Small Cell Wireless Facility that has been permitted shall be ministerially approved by the Planning Director if the Planning Director determines that the application meets the requirements of an Eligible Facilities Request in accordance with requirements under 47 C.F.R. § 1.16100. The grant or approval of such an Eligible Facilities Request shall not be deemed to extend the underlying permit term. An application for an Eligible Facilities Request shall not be subject to the notice requirements in section 8.144.035(E).

H. Changes in Law. Following any changes in applicable federal or state law pertaining to Small Cell Wireless Facilities, the Planning Director may consider such changes in the review of the pending application, as allowed by law. If a Small Cell Wireless Facility is seeking a renewal of its Small Cell Site Permit, the renewal application shall be reviewed based on applicable current federal or state law.

## **ATTACHMENT B**

November 10, 2021 Council Meeting Staff Report



<b>Town of Moraga</b>	<b>Agenda Item</b>
<b>PUBLIC HEARINGS</b>	<b>9. A.</b>

1  
2 **TOWN OF MORAGA**

3 **STAFF REPORT**

4  
5  
6 **To:** Honorable Mayor and Councilmembers  
7  
8 **From:** Afshan Hamid, AICP, Planning Director  
9 Denise Bazzano, Assistant Town Attorney  
10  
11 **Subject:** Consider Waiving the First Reading and Introducing by Title Only an  
12 Ordinance Amending Sections 8.144.010, "Purpose and Intent,"  
13 8.144.020, "Definitions," and 8.144.035, "General Development  
14 Standards and Procedures for Small Cell Wireless Facilities" within  
15 Chapter 8.144, "Wireless Communications Facilities, Satellite Dishes  
16 and Miscellaneous Antennas" of Title 8, Planning and Zoning, of the  
17 Moraga Municipal Code to Revise Applicable Definitions, Standards  
18 and Procedures Pertaining to Small Cell Wireless Facilities  
19

20  
21 **CEQA Status:** This project is categorically exempt from the California  
22 Environmental Quality Act (CEQA) under various provisions of the CEQA  
23 Guidelines as this is not considered a project under CEQA guidelines.  
24

25 **Executive Summary**

26  
27 On January 27, 2021 at the Town Council Goal Setting Session for 2021, staff proposed  
28 to work on a comprehensive wireless Ordinance update as part of the 2022 work  
29 program for the Planning Department. Council discussed, as an alternative to the  
30 comprehensive wireless Ordinance update, a focused update to the Small Cell Wireless  
31 Facilities Ordinance and to defer the comprehensive review of Moraga Municipal Code  
32 ("MMC") Chapter 8.144 to a future undetermined date.  
33

34 On March 10, 2021, in response to a request from GTE Mobilnet of California Limited  
35 Partnership d/b/a Verizon Wireless ("Verizon") to enter into a master license agreement  
36 ("MLA") for the use of Town Poles to install a number of small wireless facilities in the  
37 public right-of-way, a staff report was prepared with background information on the  
38 regulations relating to small wireless facilities and the use of public property for  
39 installation of small wireless facilities. The Council did not discuss the item at the  
40 meeting, but requested a future agenda item to discuss a review of the Town's Small  
41 Cell Wireless Facilities Ordinance.  
42  
43

1 Staff presented a plan to amend the Town's Small Cell Wireless Facilities Ordinance at  
2 the March 24, 2021 Council meeting, which included consideration of other jurisdictions'  
3 regulations as part of the review. Council gave direction to staff to commence efforts to  
4 prepare that update and adopted Resolution 16-2021 appropriating \$20,000 from  
5 General Fund Reserves for Legal Fees associated with an amendment to the Town's  
6 Small Cell Wireless Facilities Ordinance.

7

8 The proposed Ordinance was considered by the Planning Commission ("PC") on July 6,  
9 2021 and by a vote of 5-0, the PC recommended the approval of the Ordinance to Town  
10 Council, with recommendations for consideration relating to testing of radio frequency  
11 ("RF") emissions, as discussed further below.

12

13 The Ordinance presented to the PC and Council includes revisions to Section  
14 8.144.035(D)(2)(d) that would require the applicant to submit certification by a certified  
15 radio frequency engineer that the Small Cell Wireless Facility installation will be in  
16 compliance with the Federal Communications Commission ("FCC") standards for RF  
17 emissions. Additionally, the proposed Ordinance would add, as a standard condition of  
18 approval pursuant to Section 8.144.035(F)(7), that Small Cell Site Permittees ensure  
19 that the Small Cell Wireless Facility complies with the most current applicable RF  
20 emissions standards adopted by the FCC and that the Small Cell Wireless Facility be  
21 tested by the Permittee at time of construction of the facility and one year from the date  
22 of issuance of the Small Cell Site Permit. The Permittee would be required to provide  
23 proof of certification of the testing results to the Town.

24

25 On September 8, 2021, the proposed Ordinance was considered by the Council  
26 (Attachment B). Much of the discussion at that meeting centered around RF emission  
27 testing. At the conclusion of the public hearing, the Council continued the item to date  
28 uncertain to allow staff time to respond to Councilmembers' requests for more  
29 information. Staff has researched the foregoing and provides the information requested  
30 by the Council below.

31

## **Discussion**

32

### ***RF Emissions Testing***

33

34 Federal law prohibits the Town from regulating wireless facilities based on the  
35 environmental effects of RF emissions.

36

37

38 Specifically, the 1996 Telecommunications Act ("Act") states in relevant part as follows:  
39       No State or local government or instrumentality thereof may regulate the  
40       placement, construction, and modification of personal wireless service facilities  
41       ***on the basis of the environmental effects of radio frequency emissions to***  
42       ***the extent that such facilities comply with the [Federal Communications]***  
43       ***Commission's regulations concerning such emissions.***<sup>1</sup>

---

44

45

<sup>1</sup> 47 U.S.C. § 332(c)(7)(B)(iv) (emphasis added).

1 The FCC has promulgated specific guidelines for human exposure to RF radiation.<sup>2</sup>  
2 Furthermore, courts have held that the FCC has exclusive jurisdiction over RF  
3 interference issues and thus local zoning Ordinances and permit conditions cannot  
4 regulate RF interference.<sup>3</sup>

5  
6 Given the foregoing, local governments typically limit their role in the area of RF  
7 emissions to requiring evidence of compliance with the FCC RF emission guidelines.

8  
9 At the PC meeting on July 6, 2021, the PC considered public comments both for and  
10 against more RF emission testing. Representatives of Verizon objected to the  
11 requirement for RF emission testing one year after installation while members of the  
12 public asserted that more thorough and frequent RF emission testing was necessary.  
13 Ultimately, the PC recommended that the Council consider adding a testing requirement  
14 for RF emission testing at the end of the term of the Small Cell Site Permit (10 years) if  
15 renewal of the Permit is sought.

16  
17 At the Council meeting on September 8, 2021, public comments were again heard both  
18 for and against more RF emission testing. A suggestion was made that the Council  
19 consider periodic RF emission testing or testing at longer intervals from issuance of the  
20 Small Cell Site Permit be included in the proposed Ordinance. At the conclusion of the  
21 public hearing, Council continued the item to a date uncertain to allow staff to research  
22 certain areas relating to RF emission, which are summarized as follows:

23  
24 • Periodic RF emission testing (possibly every three years);  
25 • Engineer to provide input and potential risks relating to RF emissions;  
26 • Potential requirements for a failsafe device if facility exceeds FCC RF emission  
27 standards;  
28 • City of Lafayette requirements relating RF emissions testing; and  
29 • Number of small wireless facilities in Town.

30  
31 Since the September 8, 2021 meeting, staff has contacted experts in the field of RF  
32 emissions to determine the efficacy of periodic testing, including RF Engineers,  
33 Hammett & Edison, Inc. Founded in 1952, Hammett & Edison, Inc., provides services  
34 to wireless telecommunications carriers, to municipal agencies, to broadcast stations,  
35 and to private landlords. They specialize in providing third party testing to ensure RF  
36 exposure compliance with FCC requirements. At staff's request, Hammett & Edison  
37 has provided a report (Attachment C, "H&E Report").

38  
39 As indicated in the H&E Report, they are able to conduct testing in a number of  
40 accessible areas with broadband exposure meters, under current calibration, covering  
41 the frequency range of the installed facilities. At antennas on municipal light or utility  
42 poles, measurements at the antennas themselves are taken to confirm that the facility is  
43 in operation and the antenna signal patterns match what was proposed. Measurements  
44 for a person at ground are also taken, typically within a block in all directions.

---

<sup>2</sup> 47 C.F.R. § 1.1310; see also [OET Bulletin No. 65](#), Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields (2<sup>nd</sup> ed. Aug. 1997).

<sup>3</sup> *Southwestern Bell Wireless, Inc. v. Johnson County Board of County Commissioners*, 199 F.3d 1185 (10th Cir. 1999).

1 According to the H&E Report, they have conducted over 20,000 site evaluations since  
2 1985, including projections of anticipated exposure levels and measurement of existing  
3 levels. Projections are based on several conservative factors, which tend to overstate  
4 actual levels, and since the assumption is primarily that the radio transmitters operate at  
5 their maximum rated power, it would not be possible for projected power levels to  
6 increase, unless new transmitters were installed. They have not found any wireless  
7 telecommunication base station or "small cell" node, constructed and operated as  
8 designed, at which measured levels exceeded the projected levels. In fact, measured  
9 levels are typically several times below the projected levels.

10  
11 Staff also spoke with Michael Afflerbach, an RF Specialist/Senior Analyst with CTC and  
12 CTC Media Group. Mr. Afflerbach also indicated that radio transmitters were designed  
13 to be able to operate at maximum rated power and, as long as the facility was properly  
14 installed and sited, RF exposure would still fall well below the FCC emission standards  
15 for public exposure. It is not likely for a completed facility to later exceed the FCC  
16 emission standards after the wireless facility had been constructed, without some  
17 external modification.

18  
19 Given the foregoing, it does not appear that an annual or even periodic RF emissions  
20 testing requirement would provide any meaningful information since the RF emissions  
21 are not likely to exceed the FCC RF emission limits. Due to the technical design of the  
22 wireless facilities and the FCC RF emission standards, staff does not recommend  
23 requiring annual or periodic testing in the proposed Ordinance and recommends that  
24 Council revise Section 8.144.035(F)(7) to remove the requirement for RF emission  
25 testing one year after installation to read as follows:

26  
27 7. At all times the permit is in effect, the Permittee shall ensure that the Small  
28 Cell Wireless Facility complies with the most current applicable regulatory and  
29 operational standards, including, but not limited to, radio frequency emissions  
30 standards adopted by the FCC. The Small Cell Wireless Facility shall be tested  
31 by the Permittee at time of construction of the Facility ~~and one year from the date~~  
32 ~~of issuance of the Small Cell Site Permit~~ to verify compliance with FCC radio  
33 frequency emissions standards and the Permittee shall provide proof of  
34 certification of the testing results to the Town. Testing shall be conducted with  
35 the Facility operating at maximum power and shall measure total emissions from  
36 the Small Cell Wireless Facility site. Such testing shall be conducted during  
37 normal business hours and on a non-holiday weekday.

38  
39 *Fail-Safe Device*

40  
41 During the September 8 Council meeting, it was suggested that wireless carriers install  
42 a fail-safe device which would be triggered if a wireless facility exceeded RF emission  
43 standards. Staff discussed this type of proposed device with RF emission experts, Bill  
44 Hammett as well as Michael Afflerbach, both of whom indicated that they were not  
45 aware of the existence of such a fail-safe device. Additionally, both experts indicated  
46 that there would not be a need for such a device given that the wireless facilities are  
47 designed to be within the applicable FCC limits, even while operating at maximum  
48 power.

1    ***Lafayette RF Emission Testing Requirements***

2

3    At the September 8, 2021 meeting, Councilmembers also discussed the City of  
4    Lafayette's regulations relating to RF emissions. Staff contacted the City of Lafayette  
5    Planning Department and determined that their Ordinance currently has language to  
6    require RF emission testing at the time of installation and then three years after  
7    construction. However, given the small number of small wireless facilities installed in  
8    Lafayette, there have not been any post-construction requirements that violate FCC  
9    emission standards that would warrant additional inspection or compliance. Lafayette  
10   also indicated that the three year provision is very challenging given staff capacity and  
11   work load and provided guidance that any Ordinance carefully consider burden on staff  
12   and implementation.

13

14    ***Small Cell Wireless Facilities in Moraga***

15

16   The Planning Department also conducted a review of permit data issued to all wireless  
17   facilities throughout the Town. As a result of this review, staff determined that there are  
18   currently no Small Cell Site Permit applications or approved Permits in the Town.

19

20   Although Verizon has indicated a desire to finalize an MLA with the Town to allow the  
21   installation of small wireless facilities on Town property in the public right-of-way,  
22   Verizon has not provided specific information about the number of sites it anticipates  
23   needing and has not filed any applications for a Small Cell Site Permit within the Town.

24

25    **General Plan and Housing Element Conformance**

26

27   The Town's General Plan contains several core values commonly held by the  
28   community. Two of those core values relate to living in an attractive, semi-rural  
29   community having high design standards, and living in a safe environment.  
30   Furthermore, one of the primary goals contained in the Community Design Chapter of  
31   the General Plan, CD1.7 – Wireless Communications Facilities, states:

32

33        "Regulate the location and design of wireless communications facilities, satellite  
34        dishes and other miscellaneous antennas in accordance with the Town's Ordinance  
35        176 and the Federal Communications Act."

36

37   Adoption of the proposed Ordinance would be consistent with these goals in that it  
38   would revise design standards for Small Cell Wireless Facilities to maintain the integrity  
39   of the Town's scenic and aesthetic character in a manner consistent with the limitations  
40   of the FCC Order, while also enhancing public safety and welfare by improving wireless  
41   communications service and regulations relating to the processing of applications for,  
42   and the installation of, Small Cell Wireless Facilities.

43

44    **California Environmental Quality Act**

45

46   The proposed action is not a project under CEQA pursuant to CEQA Guidelines section  
47   15061(b)(3) (the activity is covered by the general rule that CEQA applies only to  
48   projects which have the potential for causing a significant effect on the environment), in

1 that it can be seen with certainty that there is no possibility that the adoption of this  
2 Ordinance will result in a significant effect on the environment, because the proposed  
3 Ordinance would make revisions to a comprehensive permitting scheme and does not  
4 authorize any specific development or installation, and in the alternative, pursuant to  
5 Sections 15301 (Existing Facilities, which allows alteration of existing public or private  
6 structures, facilities, mechanical equipment, or topographical features, involving  
7 negligible or no expansion of use), 15303 (New Construction or Conversion of Small  
8 Structures, which allows the construction and location of new, small facilities or  
9 structures and the installation of small new equipment and facilities in small structures),  
10 15304 (Minor alterations to land) and 15305 (Minor alterations in Land Use Limitations)  
11 of the CEQA Guidelines.

12

13 **Fiscal Impact**

14

15 The adoption of this Ordinance is a procedural function and will not have any  
16 anticipated fiscal impact.

17

18 **Alternatives**

19

20 1. Waive the First Reading and Introduce an Ordinance Amending Sections  
21 8.144.010, "Purpose and Intent," 8.144.020, "Definitions," and 8.144.035,  
22 "General Development Standards and Procedures for Small Cell Wireless  
23 Facilities" within Chapter 8.144, "Wireless Communications Facilities, Satellite  
24 Dishes and Miscellaneous Antennas" of Title 8, Planning and Zoning, of the  
25 Moraga Municipal Code to Revise Applicable Definitions, Standards and  
26 Procedures Pertaining to Small Cell Wireless Facilities, with amendments to  
27 Section 8.144.035(F)(7), as recommended by staff, or

28

29 2. Waive the First Reading and Introduce an Ordinance Amending Sections  
30 8.144.010, "Purpose and Intent," 8.144.020, "Definitions," and 8.144.035,  
31 "General Development Standards and Procedures for Small Cell Wireless  
32 Facilities" within Chapter 8.144, "Wireless Communications Facilities, Satellite  
33 Dishes and Miscellaneous Antennas" of Title 8, Planning and Zoning, of the  
34 Moraga Municipal Code to Revise Applicable Definitions, Standards and  
35 Procedures Pertaining to Small Cell Wireless Facilities, without amendments to  
36 Section 8.144.035(F)(7), or

37

38 3. Provide alternate direction to staff.

39

40 **Recommendation**

41

42 Consider waiving the first reading and introducing by title only an Ordinance Amending  
43 Sections 8.144.010, "Purpose and Intent," 8.144.020, "Definitions," and 8.144.035,  
44 "General Development Standards and Procedures for Small Cell Wireless Facilities"  
45 within Chapter 8.144, "Wireless Communications Facilities, Satellite Dishes and  
46 Miscellaneous Antennas" of Title 8, Planning and Zoning, of the Moraga Municipal Code  
47 to Revise Applicable Definitions, Standards and Procedures Pertaining to Small Cell

1 Wireless Facilities, with amendments to Section 8.144.035(F)(7), as recommended by  
2 staff (CEQA Status: Exempt)

3

4

5

6 **Report reviewed by: Cynthia Battenberg, Town Manager**

7

8 **Attachments:**

9

10       **A.** Draft Ordinance Amending Sections 8.144.010, "Purpose and Intent,"  
11           8.144.020, "Definitions," and 8.144.035, "General Development Standards  
12           and Procedures for Small Cell Wireless Facilities" within Chapter 8.144,  
13           "Wireless Communications Facilities, Satellite Dishes and Miscellaneous  
14           Antennas" of Title 8, Planning and Zoning, of the Moraga Municipal Code  
15           to Revise Applicable Definitions, Standards and Procedures Pertaining to  
16           Small Cell Wireless Facilities

17       **B.** September 8, 2021 Council Staff Report

18       **C.** Report from Hammett & Edison