

CORONAVIRUS (COVID-19) ADVISORY

IMPORTANT INSTRUCTIONS ON HOW TO PARTICPATE AND WATCH THE HERCULES CITY COUNCIL MEETING

On March 16, 2020, the Health Officer of Contra Costa County issued an Order through April 7, 2020 that directed that all individuals living in the county to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities and work for essential businesses and governmental services.

Under the Governor's Executive Order N-25-20, this meeting may utilize teleconferencing or other virtual meeting platforms. Pursuant to the Governor's Executive Order N-25-20, teleconferencing restrictions of the Brown Act have been suspended.

Beginning with the April 14, 2020 Hercules City Council meeting, the City Council will conduct its meeting utilizing ZOOM.

DUE TO THE SHELTER IN PLACE ORDERS AND PURSUANT TO EXECUTIVE ORDER N-25-20, direct public attendance or participation at council meetings has been suspended and the Council Chambers will be closed to the general public. City Council and staff will participate virtually through the ZOOM application. Applicants, consultants, and others with matters before the Council will be allowed to participate via ZOOM but must make prior arrangements with the City Clerk.

How to watch the meeting from home:

1. Comcast Channel 28
2. Livestream online at <https://hercules.legistar.com/Calendar.aspx>

We are happy to accommodate written public comments. Public Comment will be accepted by email to lmartin@ci.hercules.ca.us during the meeting, prior to the close of public comment on an item and read into the record during public comment. Additional ways to provide your public comment is to mail your comment to City of Hercules, ATTN: City Clerk – Public Comment (Meeting Date), 111 Civic Drive, Hercules, CA 94547 via USPS in time to reach the City Clerk no later than 5:45 p.m. on the day of the meeting or by telephone by calling (510) 799-8215 no later than 5:45 p.m. on the meeting date. All comments received by the close of the public comment period will be available after the meeting as supplemental materials and will become part of the official meeting record. The City cannot guarantee that its network and/or the site will not be uninterrupted. To ensure that the City Council receives your comments, you are strongly encouraged to submit your comments in writing in advance of the meeting by 5:45 p.m. on the day of the Council meeting.

Individuals wishing to address the City Council are asked to provide the following information:

1. Subject Line to contain the words "PUBLIC COMMENTS"
2. (Optional) - Name, address and contact information of person providing comments.
3. General topic or agenda item you wish to comment on.

All public comments are allowed up to 3 minutes to relay their message or concern. All public comments are recorded and become part of the public record. A limit of 30 minutes will be devoted to taking public comment during the first public comment period on the agenda. If any speaker comments have not been read into the record at the conclusion of the initial 30 minute period, time will be reserved at the conclusion of the meeting to read the remaining comments.

City of Hercules

111 Civic Drive
Hercules, CA 94547



Meeting Agenda

Tuesday, October 27, 2020

5:30 PM

Closed Session - 5:30 p.m.

Regular Session - 7:00 p.m.

Virtual Meeting Via Zoom

City Council

Mayor Roland Esquivias
Vice Mayor Chris Kelley
Council Member Dion Bailey
Council Member Dan Romero
Council Member Gerard Boulanger

David Biggs, City Manager
Patrick Tang, City Attorney

To view webcast of meetings, live or on demand, go to the City's website at www.ci.hercules.ca.us

I. SPECIAL MEETING - CLOSED SESSION – 5:30 P.M. CALL TO ORDER - ROLL CALL

II. PUBLIC COMMUNICATION - CLOSED SESSION ITEMS

III. CONVENE INTO CLOSED SESSION

The Hercules City Council will meet in Closed Session regarding the following:

1. [20-362](#) Pursuant to Government Code Section 54957(b) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: City Manager (Discuss Annual Evaluation Per Employment Agreement)

IV. REGULAR MEETING – 7:00 P.M. CALL TO ORDER - ROLL CALL

V. REPORT ON ACTION TAKEN IN CLOSED SESSION

VI. PLEDGE OF ALLEGIANCE

VII. MOMENT OF SILENCE

VIII. INTRODUCTIONS/PRESENTATIONS/COMMISSION REPORTS

1. [20-365](#) Proclamation - Recognizing Commander Thomas Koeppe Upon His Retirement For Over Twenty-Seven Year of Dedicated and Exceptional Service to the Hercules Police Department and the City of Hercules

Attachments: [Koeppe Retirement Proclamation - 102720](#)
2. [20-364](#) Proclamation - Recognizing October 2020 as Filipino American History Month in the City of Hercules

Attachments: [Proclamation - Filipino American History Month 2020](#)
3. [20-368](#) Presentation by Supervisor Gioia and Glover Regarding a new Medical Urgent Care Clinic in Pinole

IX. AGENDA ADDITIONS/DELETIONS

X. PUBLIC COMMUNICATIONS

This time is reserved for members of the public to address issues not included in the agenda. In accordance with the Brown Act, Council will refer to staff any matters brought before them at this time, and those matters may be placed on a future agenda.

Individuals wishing to address the City Council are asked to complete a form indicating the name and address of the speaker and the general topic to be addressed. Speakers must make their comments from the podium and will be allowed 3 minutes to discuss their concerns. All public comments are recorded and become part of the public record. A limit of 30 minutes will be devoted to taking public comment at this point in the agenda. If any speakers remain at the conclusion of the initial 30 minute period, time will be reserved at the conclusion of the meeting to take the remaining comments.

XI. PUBLIC HEARINGS

1. [20-369](#) **Zone Text Amendment #20-02: Update to Hercules Municipal Code, Title 10, Chapter 16, "Wireless Telecommunications Facilities," regarding small wireless equipment**

Recommendation: Consider waiving the first reading and approving introduction of the draft zone text amendments to the City's wireless telecommunications regulations.

Attachments: [Staff Report - Telecom Ordinance - Small Facilities \(ZTA 20-02\) - CC 2020-10-05 - Staff Rep](#)
[Attach 1 - Telecom Ordinance - Small Facilities \(ZTA 20-02\) - CC 2020-10-27 - Att 1 - Redlin](#)
[Attach 2 - Telecom Ordinance - Small Facilities \(ZTA 20-02\) - CC 2020-10-27 - Att 2 - Clean](#)
[Attach 3 - Telecom Ordinance - Small Facilities \(ZTA 20-02\) - CC 2020-10-27 - Att 3 - Preser](#)

XII. CONSENT CALENDAR

1. [20-367](#) **Minutes**

Recommendation: Approve the regular meeting minutes of October 13, 2020.

Attachments: [Minutes - 101320 - Regular](#)

2. [20-366](#) **Receive the Finance Commission's Annual Report on Measures B and C for Fiscal Year Ending June 30, 2019**

Recommendation: Receive and file the Finance Commission's Annual Report on Measures B and C for fiscal year ending June 30, 2019.

Attachments: [Staff Report - Measure B and C Annual Report from FC - 102720](#)
[Attach 1 - Measure B and Measure C Report](#)

3. [20-370](#) **Removal of the Marked Crosswalk on San Pablo Avenue at the East Side of the Intersection with Sycamore Avenue**

Recommendation: Receive any input from the public, discuss as needed, and adopt a Resolution authorizing the removal of the marked crosswalk on San Pablo Avenue at the east side of the intersection with Sycamore Avenue.

Attachments: [Staff Report - Sycamore & San Pablo Crosswalk Removal](#)
 [Attach 1 - Resolution - Crosswalk Removal](#)
 [Attach 2 - Notice Crosswalk Removal - San Pablo Ave](#)

XIII. DISCUSSION AND/OR ACTION ITEMS

1. [20-363](#) **SB 946 Sidewalk and Park Vending Requirements and Proposed Draft Ordinance**

Recommendation: Accept staff report, discuss, and direct staff to amend amendments to the Hercules Municipal Code to establish revised regulations for sidewalk and park vendors consistent with the requirements of SB 946.

Attachments: [Staff Report - sidewalk vending -10-27](#)
 [Attach 1 - Oct 13, 2020 Staff Report - sidewalk vending - db](#)
 [Attach 2 - SIDEWALK VENDING Hercules DRAFT 201027-REDLINE](#)
 [Attach 3 - SB 946](#)

2. [20-360](#) **Update on Parking Enforcement**

Recommended Action: Receive report, discuss, and provide direction, if any.

Attachments: [Staff Report - Parking Enforcement Update 10272020](#)
 [Attach 1 - Prior Parking Enforcement Update w attachments](#)

XIV. PUBLIC COMMUNICATIONS

This time is reserved for members of the public who were unavailable to attend the Public Communications period during Section X of the meeting, or were unable to speak due to lack of time. The public speaker requirements specified in Section X of this Agenda apply to this Section.

XV. CITY COUNCIL/CITY MANAGER/CITY ATTORNEY ANNOUNCEMENTS, COMMITTEE, SUB-COMMITTEE AND INTERGOVERNMENTAL COMMITTEE REPORTS AND FUTURE AGENDA ITEMS

This is the time for brief announcements on issues of interest to the community. In accordance with the provisions of the Brown Act, matters which do not appear on this agenda but require City Council discussion may be either (a) referred to staff or other resources for factual information or (b) placed on a future meeting agenda.

XVI. ADJOURNMENT

The next Regular Meeting of the City Council will be held on Tuesday, November 10, 2020 at 7:00 p.m. in the Council Chambers.

Agendas are posted in accordance with Government Code Section 54954.2(a) or Section 54956. Members of the public can view electronic agendas and staff reports by accessing the City website at www.ci.hercules.ca.us and can receive e-mail notification of agenda and staff report postings by signing up to receive an enotice from the City's homepage. Agendas and staff reports may also be obtained by contacting the Administrative Services Department at (510) 799-8215

(Posted: October 22, 2020)

THE HERCULES CITY COUNCIL ADHERES TO THE FOLLOWING POLICIES, PROCEDURES AND REGULATIONS REGARDING CITY COUNCIL MEETINGS

1. SPECIAL ACCOMMODATIONS: In compliance with the Americans with Disabilities Act, if you require special accommodations to participate at a City Council meeting, please contact the City Clerk at 510-799-8215 at least 48 hours prior to the meeting.

2. AGENDA ITEMS: Persons wishing to add an item to an agenda must submit the final written documentation 12 calendar days prior to the meeting. The City retains the discretion whether to add items to the agenda. Persons wishing to address the City Council otherwise may make comments during the Public Communication period of the meeting.

3. AGENDA POSTING: Agendas of regular City Council meetings are posted at least 72 hours prior to the meeting at City Hall, the Hercules Swim Center, Ohlone Child Care Center, Hercules Post Office, and on the City's website (www.ci.hercules.ca.us),

4. PUBLIC COMMUNICATION: Persons who wish to address the City Council should complete the speaker form prior to the Council's consideration of the item on the agenda.

Anyone who wishes to address the Council on a topic that is not on the agenda and is relevant to the Council should complete the speaker form prior to the start of the meeting. Speakers will be called upon during the Public Communication portion of the meeting. In accordance with the Brown Act, the City Council may not take action on items not listed on the agenda. The Council may refer to staff any matters brought before them at this time and those matters may be placed on a future agenda.

In the interests of conducting an orderly and efficient meeting, speakers will be limited to three (3) minutes. Anyone may also submit written comments at any time before or during the meeting.

5. CONSENT CALENDAR: All matters listed under Consent Calendar are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items unless requested by a member of the Council or a member of the public prior to the time the City Council votes on the motion to adopt.

6. LEGAL CHALLENGES: If you challenge a decision of the City Council in court, you may be limited to raising only those issues you or someone else raised at the meeting or in written correspondence delivered at, or prior to, the meeting. Actions challenging City Council decisions shall be subject to the time limitations contained in Code of Civil Procedure Section 1094.6.

PROCLAMATION

RECOGNIZING COMMANDER THOMAS KOEPPE UPON HIS RETIREMENT FOR OVER TWENTY-SEVEN YEARS OF DEDICATED AND EXCEPTIONAL SERVICE TO THE HERCULES POLICE DEPARTMENT AND CITY OF HERCULES

WHEREAS, Thomas Koeppe was born and raised in West Contra Costa County, and graduated from Albany High School in 1988; and

WHEREAS, in 1993, Thomas Koeppe began his law enforcement career as a Reserve Police Officer with the Hercules Police Department, volunteering his time, expertise and experience while completing Field Training and assisting Patrol; and

WHEREAS Officer Koeppe was hired as a full time Police Officer for the City of Hercules May 15th, 1994; and

WHEREAS, from 1994 to 2008 Officer Koeppe worked Patrol where he quickly established himself as an expert in DUI detection and enforcement earning the MADD DUI Award and the Department DUI Award while also focusing on general Traffic Enforcement; and

WHEREAS, Officer Koeppe worked various assignments such as a Field Training Officer, Police Academy Recruit Training Officer, Bicycle Officer, Detective, Special Response Team Member and Sniper, and in 2007 was selected by his peers as the Police Officer of the Year for Hercules PD; and

WHEREAS, Officer Koeppe was promoted to Sergeant in 2008 where he oversaw a Patrol Shift, earning a Chiefs Award for Team Excellence, was a Watch Commander, and assumed duties as a Team Leader for the Special Response Team; and

WHEREAS, Sergeant Koeppe promoted to Commander in 2012, stepping into the position when the Department was in need of additional command level leadership in tough economic times, where he supervised all of the Patrol Operations for the Department; and

WHEREAS, Commander Koeppe was heavily involved with the Hercules' Rotary Club International, and was the City's liaison for Special Olympics activities such as Bike the Bridges and the Torch Run, and was involved in numerous City events such as Community Clean-up, Fourth of July, National Night Out, and Belly Flops with the Cops; and

WHEREAS, Commander Koeppe earned his Bachelor of Science degree from Union Institute and University in 2007, attended the Sherman Block Supervisory Leadership Institute, and the POST Management School; and

WHEREAS, Commander Koeppe earned several additional Department awards including the Life Saving Award the Iron 96 Award, and the Medal of Valor for his role in apprehending a violent felon who had terrorized a Refugio Valley neighborhood, committing car jackings and shooting into occupied houses; and

WHEREAS, Commander Koeppe retired from the Hercules Police Department on October 27th, 2020, after twenty-seven and one-half years of dedicated and selfless service to the community.

NOW THEREFORE BE IT PROCLAIMED that I, Roland Esquivias, Mayor of the City of Hercules, on behalf of the entire City Council and the Hercules Community, do hereby recognize and express appreciation to Commander Thomas Koeppe for over 27 years of outstanding service to the Hercules Police Department, Hercules community, and the law enforcement profession, and extend to him sincere best wishes for continued success in all future endeavors.

In witness whereof, I hereunto set my hand and cause the Seal of the City of Hercules to be affixed this October 27th, 2020.

Roland Esquivias, Mayor

PROCLAMATION
RECOGNIZING OCTOBER 2020 AS
FILIPINO AMERICAN HISTORY MONTH IN THE CITY OF HERCULES

WHEREAS, Filipino Americans make up one of the largest Asian American ethnic groups in the United States today with 2 million residing in California and 6,700 in the City of Hercules; and

WHEREAS, the earliest documented evidence of Filipinos in continental United States occurred in October 18, 1587, when mariners called “Luzones indios” under Spanish command landed in Morro Bay, California, as published by Lorraine Jacobs Crouchett in her book, Filipinos in California (1982), which annotated John Walton Caughey’s book, California (1953) and HR Wagner’s Unamuno’s Voyage to California in 1587 in the Quarterly of the California Historical Society (July 1923); and

WHEREAS, the Filipino American National Historical Society established Filipino American History Month in 1988 and subsequently, every October, several communities throughout the United States and its territories, have celebrated this occasion, not only to commemorate the anniversary of the presence of the first Filipinos in US soil and to observe its heritage, but also to recognize the social, intellectual and economic contributions of Filipinos and Filipino Americans in this country; and

WHEREAS, the Filipino Americans of Contra Costa County, **FACCC**, founded in 1975 initiated social, recreational and educational programs to promote the physical and social well-being of the Filipino American Community preserving their cultural heritage; and

WHEREAS, the Filipino Americans of Contra Costa County instill in our communities the importance of education, history and ethnicity in creating eminent role models, in establishing a proud cultural identity and producing exceptional citizens of this nation; and

WHEREAS, this is an appropriate time to promote and reflect on Philippine history and culture to provide all Americans with the opportunity to learn and appreciate more the Filipino Americans and their historic and social contribution to the USA.

NOW, THEREFORE BE IT PROCLAIMED, I, Roland Esquivias, Mayor of the City of Hercules, on behalf of the entire City Council, do hereby recognize October 2020 to be Filipino American History Month and encourage all residents to join us in celebrating the heritage, influence, and contributions of Filipino Americans.

In witness whereof, I hereunto set my hand and cause the seal of the City of Hercules to be affixed this 27th day of October, 2020.

Roland Esquivias, Mayor



REPORT TO CITY COUNCIL

DATE: October 27, 2020

TO: Mayor Esquivias and Members of the City Council

SUBMITTED BY: Robert Reber, Community Development Director
Patrick Tang, City Attorney

SUBJECT: Zone Text Amendment #20-02—City Ordinance Updates to Hercules Municipal Code, Title 10, Chapter 16—Wireless Telecommunications Facilities, regarding small wireless equipment

RECOMMENDED ACTION:

Open the public hearing, receive staff report, take public testimony, close the public hearing, and consider waiving the first reading and approving introduction of the draft zone text amendments to the City’s wireless telecommunications regulations.

FISCAL IMPACT OF RECOMMENDATION:

There are no direct fiscal impacts associated with this item.

BACKGROUND:

Small cell wireless communication facilities, also called “5G,” are a type of wireless infrastructure. Existing wireless facilities are typically large antennas (also referred to as “macrocells”) placed high above the ground that service a wide area, measured in square miles. Conversely, the 5G antennae (“small cells”) provide spot coverage to a relatively small area up to several hundred feet away. Because of the very limited coverage areas associated with small cells, many more antennae are necessary and need to be relatively closer to the ground (compared to macrocells) and closer to homes and businesses. The telecommunications industry plans to install the vast majority of these antennae in public rights-of-way, affixed to existing pole infrastructure (streetlights, traffic signals, and utility poles), or on new purpose-built small cell poles.

On October 15, 2018, the Federal Communications Commission (FCC) issued a Final Rule (FCC-18-133, “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment” and referred to as the “FCC Order”), which implements industry demands to remove barriers and accelerate the transition to 5G deployment, accelerating the United States’ transition to 5G cellular networks. The FCC Order, which took effect on January 14, 2019, provides guidance and rules to streamline the wireless infrastructure siting review process to facilitate the deployment of next-generation wireless facilities. The Order addresses state and local consideration of aesthetic concerns, specific fee levels, and limits on review time (“shot clocks”) related to the deployment of small wireless infrastructure.

The City's own telecommunications regulations (Hercules Municipal Code Title 10, Chapter 16) were last updated on September 8, 2015, when the City Council approved Ordinance No. 487. Subsequently approved Federal regulations, including the FCC Order described above, require additions to the City's existing ordinance to address small wireless facilities. Working with the City's telecommunications consultants Rusty Monroe, Senior Partner, and Robert Ross, Technical Expert, from The Center for Municipal Solutions, City staff have incorporated all the changes that are required for the ordinance to both comply with FCC regulations and be effective immediately.¹

The City's existing ordinance is not structured to deal with small cell infrastructure, in part because the regulations do not provide guidance regarding how to best conceal equipment in the public right-of-way and attached to existing poles. Staff has determined that the specific changes shown in Attachment 1 and summarized below are needed and would be in the best interest of the City. The proposed changes would add the following subsections to Title 10, Chapter 16 of the Municipal Code ("Wireless Telecommunications Ordinance):

- Administrative Use Permit Applicability for Modifications that Qualify as Eligible Facilities
- Application Requirements for an Administrative Special Use Permit
- Design, Visibility, and Aesthetics
- Small Cell and Small Wireless Facilities (covering both existing and new structures, on both private property and public right-of-way)

At a public hearing during its regular meeting on October 5, 2020, the Planning Commission unanimously voted to approve a resolution that the City Council adopt the draft Ordinance, with only several minor clarifying edits.

ENVIRONMENTAL DETERMINATION

The adoption of the below Ordinance amendments are categorically exempt from the California Environmental Quality Act (CEQA) pursuant to §15378 and California Public Resources Code § 21065, as this ordinance is not a "project" because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment; and that, even if this ordinance qualified as a "project" subject to CEQA, pursuant to CEQA Guidelines §15061(b)(3), this Ordinance does not have the potential for causing a significant effect on the environment as it does not allow for any new or expanded uses not otherwise permitted under existing federal, state, and local regulations. The wireless communications facilities themselves are exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines.

¹ The proposed changes do not address FCC-19-126 which will not be implemented until December 2021 and which will address additional regulations regarding human exposure to radiofrequency electromagnetic fields.

ATTACHMENTS

1. Draft Ordinance with proposed changes to Municipal Code Title 10, Chapter 16—
Wireless Telecommunications Facilities (redlined with tracked changes)
2. Draft Ordinance with proposed changes to Municipal Code Title 10, Chapter 16—
Wireless Telecommunications Facilities (clean with changes incorporated)
3. Staff presentation

ORDINANCE NO. 20-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES APPROVING ZONING TEXT AMENDMENT #20-02 TO REVISE TITLE 10, CHAPTER 16 OF THE HERCULES MUNICIPAL CODE (“WIRELESS TELECOMMUNICATIONS FACILITIES”) TO CONFORM WITH CURRENT STATE AND FEDERAL STANDARDS AND TECHNOLOGIES, AND CERTIFYING THAT THESE AMENDMENTS ARE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”).

WHEREAS, in 1996 the United States Congress adopted the 1996 Federal Communications Act, which encourages the growth of the telecommunications industry through deregulation, while confirming local government’s ability to regulate the installation of personal communications services, cellular telephone facilities, and related telecommunication facilities for health, safety, and aesthetics; and

WHEREAS, on June 10, 1997, the City Council adopted Ordinance 339, adding Chapter 16, entitled “Telecommunications Facilities,” to Title 10 of the Hercules Municipal Code in response to the Federal Communications Act; and

WHEREAS, in February 2013, the City hired The Center for Municipal Solutions to assist with updating the Telecommunications Ordinance and work on behalf of the City to process telecommunication facility applications; and

WHEREAS, on October 15, 2018, the Federal Communications Commission (FCC) issued a Final Rule (FCC-18-133, “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment” and referred to as the “FCC Order”), which took effect on January 14, 2019 and implements industry demands to remove barriers and accelerate the United States’ transition to 5G cellular networks by addressing state and local consideration of aesthetic concerns, specific fee levels, and limits on review time (“shot clocks”) related to the deployment of small wireless infrastructure; and

WHEREAS, on October 5, 2020, the Planning Commission of the City of Hercules held a duly noticed public hearing and adopted a resolution recommending that the City Council approved Zone Text Amendment #20-02, an Ordinance revising Title 10, Chapter 16 of the Hercules Municipal Code (“Wireless Telecommunications Facilities”) to conform with current state and federal standards and technologies, including small wireless facilities; and

WHEREAS, on October 27, 2020, the City Council held a properly noticed public hearing to consider these amendments and related environmental review and did hear and use its independent judgment to consider all said reports, recommendations, and testimony hereinabove set forth before taking any action on these amendments.

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

SECTION 1. Compliance with California Environmental Quality Act (“CEQA”): The City Council determined that Zoning Text Amendment #20-02 is categorically exempt from CEQA, pursuant to CEQA Guidelines §15061(b)(3), as this Ordinance is covered by the ‘general rule’ and does not have the potential for causing a significant effect on the environment as it does not allow for any new or expanded uses not otherwise permitted under existing federal, state, and local regulations. The wireless communications facilities themselves are exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines.

SECTION 2.

Title 10 of the Hercules Municipal Code, Chapter 16—Wireless Telecommunications Facilities, is hereby amended as follows:

TITLE 10

Chapter 16. Wireless Telecommunications Facilities

Section 10-16.101 Purpose and Legislative Intent

The Telecommunications Act of 1996 affirmed the City of Hercules’ authority concerning the placement, construction and Modification of Wireless Telecommunications Facilities. This Chapter provides for the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless services to the public, government agencies and first responders, with the intention of furthering the public safety and general welfare.

The City of Hercules finds that wireless telecommunications facilities (facilities) may pose significant concerns to the health, safety, public welfare, character and environment of the City and its inhabitants. The City also recognizes that facilitating the development of wireless service technology can be an economic development asset to the City and of significant benefit to the City and its residents. In order to assure that the placement, construction or modification of a facility is consistent with the city’s land use policies, the city is adopting a single, comprehensive, wireless telecommunications facility application and permitting process. The intent of this Chapter is to minimize the physical impact of wireless telecommunications facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the City of Hercules.

Section 10-16.102 Severability

- a) If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void,

unconstitutional, or invalid, shall remain in full force and effect.

- b) Any special use permit issued pursuant to this Chapter shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the City.

Section 10-16.103 Location of Wireless Telecommunications Facilities

- a) New towers or other support structures shall be prohibited in residential districts, and historic districts, unless the applicant provides clear and convincing evidence demonstrating that (1) a new tower as proposed is necessary to the exclusions of any alternative or reasonable combination of alternatives; (2) that the intended area cannot be served from outside the district without a new tower or other support structure; (3) that no existing or previously approved facility can reasonably be used for antenna placement; and (4) that not to permit a new tower or other support structure would result in a significant gap in service.
- b) Applicants shall locate, site and erect all facilities and associated equipment in accordance with the following priorities, in the following order:
 - 1) On City-owned properties or facilities without increasing the height of the tower or support structure.
 - 2) On other existing structures without increasing the height of the tower or support structure.
 - 3) On City-owned properties or facilities.
 - 4) On existing structures without exceeding the maximum permitted height under this Chapter.
 - 5) On properties in areas zoned for business use.
 - 6) On properties in areas zoned for open space but not extending higher than one hundred (100) feet below any ridgelines.
 - 7) On properties in designated historic districts.
 - 8) On properties in areas zoned for residential use.
- c) If the proposed site is not proposed for the highest priority listed above, a detailed narrative and technical explanation consisting of clear and convincing technical evidence must be provided to document the need to use any lower siting priority.

- d) The person seeking such an exception must satisfactorily demonstrate the reason(s) why a special use permit or administrative special use permit should be granted for the proposed site as opposed to a site(s) higher in the priority list.
- e) Notwithstanding the priorities set forth in the preceding Section 10-16.103 (b) above, the City may approve any site located within an area in the above list of priorities, provided that the City finds that the proposed site is in the best interest of the health, safety and welfare of the City and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood. Conversely, the City may direct that the proposed location be changed to another location that is more in keeping with the goals of this Chapter and the public interest as determined by the City and that serves the intent of the Applicant.

Section 10-16.104 Exclusions

The following shall be exempt from this Chapter:

- a) Any facilities expressly exempt from the City's siting, building and permitting authority.
- b) Any wireless reception or transmission devices expressly exempted under the Telecommunications Act of 1996.
- c) Facilities, except towers, used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial telecommunications less than thirty-five (35) feet in height above the ground.
- d) Noncommercial facilities used exclusively for providing unlicensed spread spectrum technologies where (1) there is no charge for the use of the wireless service; (2) the facility does not require a new tower or increase the height of the structure being attached to; and (3) the service is not intended to be useable more than one-hundred feet (100) from the antenna(s).

Section 10-16.105 Exceptions and Existing Facilities Prior to the Adoption of this Chapter

- a) If constructed as required by the original permit, any properly permitted facility that exists on the effective date of this Chapter shall be allowed to continue as it presently exists for the term of the original permit, provided that (1) it exists and is operating as originally permitted; and (2) that any modification of the facility has been properly permitted.
- b) Any modification not properly previously permitted prior to the adoption of this Chapter must be permitted under this Chapter.
- c) Any new modification of a facility and any modification of equipment associated with the facility, must be permitted under this Chapter and will require the entire facility and any

new or modified installation to comply with this Chapter, except that any tower or other support structure properly permitted prior to the adoption of this Chapter shall have the height grandfathered and may remain at the originally permitted height.

- d) Any repair and maintenance of a wireless facility that does not (1) increase the height of the structure, (2) alter the profile, (3) change the RF emissions levels, (4) increase the footprint of the facility, or (5) otherwise exceed the conditions of the conditional or special use permit, does not require an application for a new special use permit, but may require a building permit. In no instance shall any additional construction or modification be considered to be repair or maintenance.

Section 10-16.106 Administrative Use Permit Applicability for Modifications that Qualify as Eligible Facilities

- a) Modifications for towers shall be allowed, provided that cumulatively they would not exceed the maximum allowable height as set forth in this Section, or the distance up to twenty (20) feet between antennas, as measured from the top of an existing antenna to the bottom of a proposed new antenna on the top of a tower, or individually extend more than ten feet (10) feet beyond the extremities of the tower in any direction.
- b) Modifications for support structures other than towers permitted prior to the adoption of the ordinance codified in this Chapter shall be allowed, provided that individually they do not extend more than ten feet (10) beyond the edge of the structure in any direction a horizontal direction. Vertical modifications cumulatively shall not exceed the maximum allowable height as set forth in this Section, or the distance up to twenty (20) feet between antennas, as measured from the top of an existing antenna to the bottom of a proposed new antenna on the top of a tower
- c) To comply with the concealment intent in regards to minimizing the visual impact, all modifications shall comply with and not exceed the size parameters and limitations set forth in this Chapter.

- d) Required “First Step” documents for 6409(a) Eligible Facilities shall include:

- 1) Funding of escrow account, as set by the City’s Master Fee Schedule.
- 2) Completed project information form.
- 3) Submittal of full, formal, and complete construction drawings certified by a professional engineer (PE) licensed in the State. Note: Zoning drawings are not acceptable.
- 4) Report on the physical condition/safety of the facility utilizing the most recent version of ANSI/TIA-222 (American National Standards Institute / Telecommunications Industry Association) or adopted equivalent, certified as

being true and accurate by a PE licensed in the State.

5) Insurance certificate listing the City and its consultant as additional insureds.

6) Performance bond.

7) Removal bond (updated) for the life of the facility.

8) Certificate of completion or proof of passing the final inspection for the latest previously approved permit at the location/facility.

9) Proof of property owner authorization for this modification.

10) Color-coded carrier-generated RF coverage (propagation) maps, with all appropriate legends, showing the coverage for the highest and lowest frequencies to be used by the facility.

11) Completed RF study data form provided by the City showing the 'modeling' information used to produce the RF coverage (propagation) maps for each frequency and antenna used and or proposed to be used.

12) Hazmat Plans:

a. Hazmat Plan for any storage and/or use of liquid or gas fuel or batteries.

b. CEQA report, as applicable.

Section 10-16.107 Special Use Permit Applicability

A special use permit application shall be required for the following types of structures and activities and shall comply with the requirements set forth in this Chapter:

- a) A new tower or support structure; or
- b) A substantial modification or subsequent to the adoption of this Chapter any modification that would increase the height, width, profile, structural loading on the support structure beyond the definition of eligible facility; or increase the size of the compound beyond the maximum allowed under this chapter, or does not conform with the concealment policy for towers and wireless facilities set forth in Section 10-16.108(z) (including but not limited to height, size of the profile, color and camouflage and the distance or size of extensions beyond the tower or other support structure). To protect and maintain the integrity and effect of the concealment policy, any lateral modifications that would

extend more than ten (10) feet from the lateral extremity of a tower or the width of the tower at the height of attachment, or more than three (3) feet from the edge of a non-tower support structure would be subject to a special use permit; or

- c) A facility permitted after the adoption of this Chapter that involves construction or excavation or deployment outside the compound (i.e., outside the current boundaries of the site); or
- d) Proposes more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or for towers in the public rights-of-way and base stations if the modification involves the installation of any new equipment cabinets on or below the ground if there are no pre-existing ground or below ground cabinets associated with the structure, or that involves the installation of ground or below ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the structure; or
- e) Facilities that do not comply with conditions associated with the siting approval of the original support structure and/or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the threshold for an eligible facility as defined in FCC Report and Order 14-153.

Section 10-16.108 General Policies for All Applications under this Chapter

In order to ensure that the placement, construction and modification of a facility does not endanger or jeopardize the health, safety, public welfare, environmental features, or change the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Chapter, the City hereby adopts an overall policy and related procedures with respect to the submittal, review, approval and issuance of permits or administratively granted authority for wireless facilities for the express purpose of achieving these outcomes. The following are general policy actions are intended to accomplish these goals:

General Application Process

- a) Implementing an application process and requirements; establishing procedures for examining and analyzing the contents of an application and issuing a special use permit or administrative special use permit that is both fair and consistent with this section;
- b) Promoting, and requiring wherever possible, the sharing and/or co-location of support structures among service providers;
- c) Requiring administrative special use permit for any modification of an eligible facility.
- d) Requiring a special use permit for any new tower or other support structure or any co-location or modification of a facility that is not an eligible facility pursuant to the FCC's

Report and Order 14-153 dated October 17, 2014;

- e) There shall be no towers or other support structures permitted or built on speculation, such meaning without a carrier or other wireless provider proving the need for such as required in this Section and committing in writing to attach to and provide service from the tower or other new structure immediately upon construction.
- f) No work of any kind on a facility shall be started until the application is reviewed and approved by the Commission or appropriate administrative entity and the special use permit, or administrative special use permit if applicable, has been issued and all other applicable permits have been issued.
- g) A facility or part thereof, including but not limited to ancillary structures or equipment, utilities installed to serve the facility and equipment used to construct or maintain the facility, shall not infringe on or in any manner whatsoever, at any time and for any reason other than for an official governmentally declared emergency, encumber, obstruct or interfere with the City's property and/or public rights-of-way or the use thereof without the City's express written permission.
- h) The Planning department is the officially designated agency or body of the city to whom applications for an administrative special use permit or a special use permit for a facility must be made. The City at its discretion may hire an outside consultant to accept, review, analyze, evaluate and make recommendations to staff and present the findings to the Planning Department or Planning Commission (Commission) who is authorized to make decisions with respect to granting or not granting or revoking an administrative special use permit or special use permits applied for under this Chapter respectively. The Commission shall possess the right to appeal Planning Department decisions while the City Council shall possess the sole right to hear appeals on all special use permits following the procedure outlined in Chapter 44 of the City Zoning Chapter.
- i) Pre-Application Meeting: There shall be a pre-application meeting for all intended applications. The pre-application meeting may be held either on site or telephonically as deemed appropriate. The purpose of the pre-application meeting will be to address (1) issues that will help to expedite the application review and permitting process; and (2) identify and address certain issues or concerns the City or the applicant may have.
- j) Site Visit: If there has not been a prior site visit for the requested facility within the previous six (6) months, a site visit shall be conducted. Costs of the City's consultant to prepare for and attend the pre-application meeting will be borne by the applicant and paid for out of a deposit fee set forth in the City's Master Fee Schedule, which shall have been paid to the City prior to any site visit or pre-application meeting.
- k) An application may not be filed until both a site visit, when required, a pre-application meeting are held, and any required applicable community outreach meeting has been conducted and a story pole has been erected as required, and all fees and deposits have

been delivered to the City Planning Department.

- l) Applicant(s) of Record: The owner(s) of the support structure to which antennas or related equipment are to be attached must be an official applicant of record. Notwithstanding the preceding, for a new tower or other new support structure or for a substantial modification the technical need for a new facility must be documented and substantiated by clear and convincing technical evidence showing a particular carrier's or other user-of-the-facility's technical need for what is requested. Notwithstanding the preceding, to avoid any conflict of interest as relates to City-owned facilities, the City is not permitted to be an applicant or a party to an application by a private commercial entity.
- m) The applicant must provide clear and convincing documentation to substantiate that it has the legal right to proceed as proposed on the site in the form of an executed copy of the lease with the landowner or a signed letter of agency granting authorization (which shall not constitute approval of proposed work). If the applicant owns the site, a copy of the ownership record is required.
- n) An application shall be signed on behalf of the applicant(s) by the person(s) vested with the authority to bind and commit the applicant and attesting to the truth, completeness and accuracy of the information presented.
- o) Owner Permission: An applicant intending to co-locate on an existing facility shall be required to provide written documentation of the intent of the existing facility owner and property owner to allow the intended use by the applicant.
- p) Properly Completed Application: All applicants shall closely follow the instructions for preparing an application. not closely following the instructions without permission to deviate from such shall result in the application being deemed incomplete and a tolling of the otherwise required thirty (30) day notification period of an incomplete application until the receipt of a complete and properly completed application.
- q) Amended Application: Unless expressly and boldly stated in the front of the application at the time of its submittal that the application is not complete, it shall be assumed that the applicant reviewed the application for compliance and intended the application to be complete, and therefore any subsequently submitted information intended to correct any deficiencies shall be deemed an amendment to the application.
- r) Any and all representations made by the applicant or that are made in support of the application during the application process, whether written or oral, shall be deemed to be on the record and shall be deemed to have been intended to be relied upon in good faith by the City. Any oral representation shall be treated as if it were made in writing.
- s) Single Submittal. To establish a clear and specific date certain by which to measure the time allowed the City for the review for completeness of an application, as well as the date by which action must be taken, an application must be filed as a single submittal and

not in separately subsequently provided submittals. No application shall be allowed to be filed in pieces or in a piecemeal fashion or manner over any given amount of time, unless permission to do so is expressly both requested and granted in writing.

- t) **Type of Application.** To prevent confusion and any loss of the City's rights under the FCC's "Shot Clock" rule pursuant to the FCC Report and Order 14-153 as reference to the date an application was officially filed and the start of the shot clock regarding the limited time allowed to determine if an application is complete, at the time of the initial filing of an application, it must contain a cover letter stating (1) whether the application is filed as an "eligible facility" application including the justification for such, or a "substantial modification," or involves a new support structure; and (2) a statement that the application contains all of the information required under this Chapter for that type of Application, and be signed by a person with first-hand personal knowledge of such.
- u) **Required Commitment Statements.** All applications shall include written commitment statements that:
 - 1) The applicant's facility shall at all times without exception be maintained in a safe manner, and in compliance with all conditions of the special use permit, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable City, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Commission or City Council in writing;
 - 2) The construction of the facility is legally permissible, including, but not limited to the fact that the Applicant is licensed to do business in the State.
- v) **Number of Applications:** An applicant shall submit to the City the number of completed Applications determined to be needed at the pre-application meeting as well as computerized copies of such. If Commission action is required, applications will not be transmitted to the Commission for consideration until the application is deemed complete by City staff and a recommended action report is prepared for the Commission's consideration.

Design Intent, Siting and Applicable Building and Safety Codes

- w) **Minimizing the Visual Impact:** For reasons of concealment, all proposed facilities and Modifications to Facilities shall be designed to so as to minimize the physical and visual impact on the community, including but not limited to the use of stealth or camouflaging siting techniques, so as to make the Facility substantially invisible, or as nearly so as is reasonably possible.
- x) **Least Intrusive Option:** As a matter of concealment, requiring that the facility shall be the least visually intrusive among those options available, given the facts and circumstances.
- y) **Profile:** So as to be the least visually intrusive reasonably possible given the facts and circumstances involved and create the smallest profile reasonably possible under the facts

and circumstances and thereby have the least adverse visual effect and be substantially invisible, all antennas attached to a Tower or other structure shall be flush mounted or as near to flush mounted as is possible, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.

- z) Concealment and Harmony with Surroundings: A tower or other support structure and any and all accessory or associated structures and equipment shall maximize the use of building materials, colors and textures designed to harmonize with the natural surroundings so as to make the Facility substantially invisible. This shall include the utilization of stealth or camouflage techniques or other concealment methods such as but not limited to abiding by the established or maximum permitted height.
- aa) Required Use of Existing Structures: Unless such is proven to be technologically impracticable, the City requires the co-location of new antenna arrays on existing structures, as opposed to the construction of a new support structure, or for applications submitted subsequent to the adoption of this Chapter to increase the height, footprint or profile of a facility beyond the maximum permitted height, width or overall profile. In instances involving a substantial modification, or for a new facility subsequent to the adoption of this Chapter, the Applicant shall submit a comprehensive report inventorying all existing structures fifty (50) feet or more in height within one-half (1/2) mile of the location of any proposed new Facility.

Co-located equipment shall consist only of the minimum antenna array technologically needed to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown in the form of clear and convincing evidence.

- bb) Modifications of ~~a Tower and Tower Mounted Equipment~~: So as not to defeat the concealment intent of the maximum permitted height of towers or other support structures, modifications, singly or cumulatively on a single structure, shall not exceed the height allowed under the original permit by more than ten (10) feet, nor shall any lateral modification extend more than ten (10) feet from the lateral extremity of a tower, nor more than three (3) feet from the edge of a non-tower support structure.
- cc) Effect of Lease or Option to Lease on Siting/Location Priorities. The existence of a lease or an option to lease shall not be deemed justification for not complying with the siting priorities set forth in this Chapter. An applicant may not by-pass sites of higher priority because the site proposed is under lease or an option to lease. If a site other than the number 1 priority is proposed, the applicant must provide clear and convincing technical evidence as to why co-location is technically impracticable or clear and convincing relevant information as to why it would be commercially impracticable. Build-to-suit agreements between carriers and a proposed tower owner shall not be a valid basis for any claim of exemption, exception or waiver from compliance with this Chapter.
- dd) Utilities: All utilities at a facility site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the City, including specifically, but not

limited to applicable electrical codes.

- ee) Vehicular Access: At a Facility needing vehicular access, an access road, parking and turn around space for emergency vehicles shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance, grade change and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. If the current access road or turn around space is deemed in disrepair or in need of remedial work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the application shall contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with applicable regulations, and may include the installation of gravel, asphalt or other road building materials as determined by the City Engineer or their designee.
- ff) Compliance with Applicable codes: All work at a facility shall be done in strict compliance with all versions or editions of the latest applicable building, technical, safety and safety-related codes adopted by the City, State, or United States, including but not limited to the most recent edition of the TIA ANSI Code, National Electrical Safety Code, the National Electrical Code and the Occupational and Safety and Health Administration (OSHA) regulations, recommended practices of the National Association of Tower Erectors and accepted and responsible workmanlike industry practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use. In the event of a conflict between or among any of the preceding, the more stringent shall apply.
- gg) Certifications: Where a certification is called for, such certification shall bear the signature and seal of a Professional Engineer licensed in the State of California.
- hh) Permits and Licenses: A holder of a special use permit or administrative special use permit granted under this Chapter shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.
- ii) Compliance with Law: All Facilities, must at all times comply with all applicable local, State and federal laws, rules and regulations, including but not limited to applicable safety rules, regulations and standards, ~~including but not limited to any noise control or noise abatement requirements, restrictions or standards of the City or County.~~
- jj) Distributive Access Systems (DAS) and Small Cell nodes that are owned or operated by a commercial carrier and are part of a commercial wireless system, or when activated are capable of being used for commercial purposes by the general public, are expressly included in the context of this Chapter, regardless of the location or whether the facility is located inside or outside a structure or building.

Other Policies

kk) Community Outreach Meeting. To provide an opportunity for those reasonably expected to be affected to understand what is proposed and its impact, and to have input to the applicant, at the City's option given the facts and circumstances involved, for any i) new support structure, ii) any substantial modification or iii) any modification that would increase the height of the facility by five (5) feet or more or increase the size of the profile by two (2) feet or more horizontally, a community outreach meeting may be required to be held between the applicant, the residents in the area of the proposed site or work and the City. At least two (2) weeks prior to the date of the meeting written notice of the meeting and its purpose shall be provided to all residents located within one thousand five hundred (1,500) feet of the site. The meeting shall be held on a weeknight no earlier than 7:00 p.m. and no later than 8:00 p.m. All costs related to the meeting shall be borne solely by the Applicant, including but not limited to the cost of written notification.

ll) Shared Use. The owner of a tower or other support structure, and his/her successors in interest, shall negotiate in good faith for the shared use of the facility for co-location by other wireless service providers, and shall:

- 1) Respond within 60 days to a request for information from a potential shared-use applicant;
- 2) Negotiate in good faith concerning future requests for shared use of the new wireless telecommunications facility by other telecommunications providers;
- 3) Allow shared use of the new wireless telecommunications facility if another telecommunications provider agrees in writing to pay reasonable charges.
- 4) Understand that failure to abide by the conditions outlined above may be grounds for revocation of the special use permit.

mm) Denial of a Non-Eligible Facility application: The City may, for just reason and cause, deny an application for anything that does not meet the requirements stated herein or which is otherwise not complete or as set forth in Section 10-16.115.

Section 10-16.109 Processing Fees to be Borne by Applicant

- a) The City may hire a consultant to assist the City in reviewing and evaluating Applications.
- b) The total amount of the funds needed as set forth in the City's Master Fee Schedule, as may be modified from time to time, may vary with the scope and complexity of the application, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or

modification.

- c) Preliminary informational discussion totaling less than one (1) hour cumulatively, shall be allowed to provide initial information. However, to prevent the taxpayers from having to bear the cost related to the issue of permitting and regulating wireless telecommunications facilities, an applicant shall place with the City a deposit as set forth in the City's Master Fee Schedule which shall be maintained in an escrow account for that application. The deposit is intended to cover all reasonable costs of any consultant with twenty percent (20%) overhead charge and City staff time plus twenty percent (20%) overhead in connection with the review of any Application or the permitting, inspection, construction or modification requested and an pre-application submittal review or evaluation requested by the applicant and any lease negotiations. The payment of the deposit fee with the City shall precede site visit and any work being done that is related to an intended application or lease.
- d) If at any time during the review process this escrow account has a balance less than two thousand five hundred dollars (\$2,500.00), applicant shall immediately, upon notification by the City, replenish said escrow account so that it has a balance of at least \$5,000.00 or such other amount as determined by the Planning Director to be needed given the anticipated amount of work remaining on the application. Such additional funds must be deposited with the City before any further review, action or consideration is taken on the application. In the event that the amount held in the escrow account is more than the amount of the actual billing or invoicing at the time of the grant of the certificate of completion, the remaining balance shall be promptly refunded to the applicant upon request.
- e) If an application is amended at any time prior to the grant of the permit or authorization required under this Chapter, the City reserves the right to require a separate and additional payment for review and analysis equal to, but not exceeding, the cost created for the City by the amendment of the application. Such amount shall be paid to the City prior to the issuance of the special use permit or administrative special use permit.
- f) The City will maintain an accounting for the expenditure of all such funds. The City's consultant/expert shall invoice the City for all time expended for its services in reviewing the application including the on-site inspections of the construction and modification once permitted, plus out-of-pocket expenses. Billing of consultant time will have a twenty percent (20%) administration charge added. Additionally, any City staff time with twenty percent (20%) overhead plus any hard costs such as publications, mailing, and copies shall also be tabulated and added to the total billable costs.
- g) The total amount of the funds needed as set forth in the City's Master Fee Schedule may vary with the scope and complexity and/or the completeness of the application or the amount of time spent responding to an applicant's questions as regards the requirements of this Chapter or other applicable law, rule or regulation.

Section 10-16.110 Application Requirements for an Administrative Special Use

Permit

Application requirements shall include but not be limited to the following items, be deemed complete, and must receive administrative approval by the City Planning Department, or City Manager designee, for the construction or installation of qualifying improvements prior to seeking the issuance of a Building Permit.

Ownership and Management

- a) The name, address, phone number and e-mail address of the person preparing the application;
- b) The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;
- c) The postal address and tax map parcel number of the property;
- d) A copy of the FCC license applicable for the intended use(s) of the wireless telecommunications facilities, including all FCC licensed frequency bands for the location;
- e) The applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share space on the new tower;

Zoning and Planning

- f) The zoning district or designation in which the property is situated;
- g) The size of the property footprint on which the structure to be built or attached to is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
- h) The location, size and height of all existing and proposed structures, enclosures and cabinets on the property on which the structure is located and that are related to the subject of the application;
- i) A site plan to scale showing the footprint of the support structure and the type, location and dimensions of access drives, landscaping and buffers, fencing, distances between property lines and adjacent structures and any other requirements of site plans;
- j) Elevation drawings showing the profile or the vertical rendition of the facility and identifying all existing and proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the existing grade, materials, colors and lighting;

- k) The azimuth, size and center line height location of all proposed and existing antennas on the supporting structure;
- l) The type and design of the facility, the number of antenna arrays proposed to be accommodated and the basis for the calculations of the Facility's capacity to accommodate the required number of antenna arrays for which the structure must be designed;
- m) All applications shall contain proof of a performance security and liability insurance and a letter of indemnification, in conformity with City provisions listed in this Chapter.

Design, Visibility and Aesthetics

- n) Profile and Concealment: So as to be the least visually intrusive reasonably possible given the facts and circumstances involved, and create the smallest profile reasonably possible under the facts and circumstances, all antennas attached to a tower or other structure shall be mounted inside the structure, or if such is not physically or technologically possible then flush mounted or as near to flush mounted as is possible, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.
- o) After the adoption of this Chapter, the maximum permitted width or profile of a new tower, including any attachments, shall not exceed ten (10) feet, absent clear and convincing technical evidence documenting the need for a larger profile.
- p) Flush Mounting. All new or replacement antennas, shall be flush-mounted or as close to flush-mounted on the support structure as possible, unless it can be demonstrated by clear and convincing technical evidence that such has the effect of prohibiting the provision of service to the intended service area, alone or in combination with another site(s), or unless the applicant can prove that it is technologically impracticable.
- q) Placement on Building Façade. If attached to a building, all antennas shall be mounted on the facade of the building and camouflaged so as to match the color and, if possible, the texture of the building, or in a manner so as to make the antennas and cabling as visually innocuous and undetectable as is possible given the facts and circumstances involved.
- r) Least Visually Intrusive Means. As a matter of concealment, all applications for a proposed facility applicable to this Chapter shall contain clear and convincing evidence that the facility is sited and designed so as to create the least visual intrusiveness reasonably possible to the greatest number of people, given the facts and circumstances involved, and thereby will have the least adverse visual effect on the environment and its character, on existing vegetation, and be substantially invisible to the community in the area of the facility. The City expressly reserves the right to require the use of stealth or camouflage siting and deployment techniques, including but not limited to DAS (Distributive Antenna Access System) and Small Cell nodes or the functional equivalent

of such to achieve this goal and such shall be subject to approval by the Commission, unless such can be shown to be either commercially or technologically impracticable.

- s) Facility Finish/Color: Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Chapter.
- t) Lighting. No tower or support structure constructed after the effective date of this Chapter shall be tall enough to require lighting. In the event lighting is legally unavoidable and is required, the applicant shall provide a detailed plan for lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations. In the event lighting is legally unavoidable and is required, the Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations. For any facility for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 12 degrees vertical for a distance of at least 1 mile in a level terrain situation. Such device must be compliant with or not in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA.

As of the effective date of the ordinance codified in this Chapter, in the event a tower that is lighted is modified, at the time of the modification, for purposes of concealment the City may require that the Tower be retrofitted so as to comply with the lighting requirements of this Chapter.

- u) Screening. The applicant shall provide a description in writing and a visual rendering demonstrating how it shall effectively screen from view the bottom fifteen (15) feet of the facility and all related equipment and structures associated with the facility.
- v) Visual Impact Assessment. The Applicant shall furnish a visual impact assessment, which shall include:
 - 1) A computer-generated "Zone of Visibility Map" at a minimum of one (1) mile radius from the proposed structure shall be provided to illustrate locations from which the proposed installation may be seen, with and without foliage;
 - 2) Pictorial representations (photo simulations) of "before and after" views from key viewpoints inside of the City as may be appropriate and required, including but not limited to state highways and other major roads, state and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key viewpoints at the pre-application meeting. In addition to photographic simulations to scale showing the visual impact, the applicant shall

provide a map showing the locations of where the pictures were taken and the distance(s) of each location from the proposed structure;

Safety

- w) Age. The age of the facility in years, including the date of the grant of the original permit;
- x) Description. A description of the type of tower, e.g., guyed, self-supporting lattice or monopole;
- y) Tower Details. The make, model, type and manufacturer of the tower and the structural design analysis and report, including the calculations, certified by a professional engineer licensed in the State and proving the facility's capability to safely accommodate the facilities of the applicant without change or modification;
- z) Changes Narrative. If a modification of a facility is needed whereby the height, profile or size of the facility is increased, or construction is needed outside the compound or property, a detailed narrative explaining what changes are needed and why they are needed;
- aa) Foundation. A copy of the foundation design, including a geotechnical sub-surface soils investigation report and foundation design recommendation for the tower or other structure;
- bb) Physical Condition. If modifying an existing tower or other support structure, an ANSI /TIA-222 Report regarding the current physical condition of the facility and its components done within the previous six (6) months. If such report has not been done within the previous six (6) months, one shall be done and submitted as part of the application. No Building permit shall be issued for any wireless facility or related equipment where the structure being attached to is in need of remediation to comply with the requirements of this Chapter and other adopted standards of the City, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the City Planning Department;
- cc) Structural Analysis. The applicant shall provide certified documentation in the form of a structural analysis, including any assumptions and calculations proving that the proposed facility modifications will meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict the more stringent shall apply.
- dd) RF Emissions Report. A cumulative RF Emissions study and report accounting for all RF emitting equipment at the facility, including a description of the methodology used, any assumptions made and showing the calculations;
- ee) RF Emissions On-Site Survey. In certain instances the City may deem it appropriate to have an on-site RF survey of the facility done after the construction or modification and

activation of the facility. Such survey shall be done under the observation and direction of the City or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance;

ff) RF Emissions Remediation. A signed statement that the applicant will expeditiously remedy any physical or RF interference with other wireless devices or services.

gg) FAA Determination. A written copy of an analysis completed by a qualified individual or organization to determine if the proposed wireless telecommunications facility is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. Unless already lighted, this requirement shall also be for any facility where the application proposes to increase the height of the facility. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.

Section 10-16.111 Application Requirements for a Special Use Permit

The process for permitting and the information required under this Chapter shall be the same as in the preceding Section 10-16.110 “Application Requirements for an Administrative Special Use Permit,” except the following additional items shall also be required prior to a decision being made by the Planning Commission at a public hearing prior to seeking the issuance of a Building Permit for any construction or installation of a new facility or major modification project.

Proof of Technical Need

- a) For a new tower or other new support structure the applicant shall be required to submit clear and convincing evidence that a new tower or support structure is the only type of structure within one-half (1/2) mile of the proposed tower or support structure that will enable the provision of wireless services primarily within the City.
- b) Documentation that the facility is necessary for that carrier to provide service in the community and that co-location on an existing structure is not feasible.
- c) Documentation that co-location on an existing structure is not reasonably feasible if co-location is technically or commercially impracticable or the owner of the structure is unwilling to enter into a contract for such use. Sufficient documentation in the form of clear and convincing evidence to support such claims shall be submitted with an application to determine whether co-location on existing structures is reasonably feasible and to document the need for a specific stated height, and that less height will serve to prohibit or have the effect of prohibiting the provision of service.

Design of Towers (Type, Height, Setback and Fall Zones)

- d) To enable a new tower or other new support structure to be extended in height at a future date, if needed, the wireless telecommunications facility shall be structurally designed to

accommodate at least four (4) antenna arrays, with each array to be flush mounted unless clear and convincing technical evidence demonstrates the impracticability of flush mounting.

- e) All new towers shall be of the monopole type. No new towers of a lattice or guyed type shall be permitted, unless relief is otherwise expressly requested and granted based on the provision of clear and convincing technical evidence.
- f) The maximum permitted total height of a new tower or support structure shall be thirty-five (35) feet above pre-construction ground level, unless it can be shown by clear and convincing technical evidence that such height would prohibit or have the effect of prohibiting the provision of service in the intended service area within the City. The maximum permitted height is expressly not an as-of-right height, but rather the maximum permitted height absent clear and convincing technical evidence of the technological Need for a greater height, and should take into consideration the ability to co-locate other carriers in the future.
- g) As the City has made the policy decision that more facilities of a shorter height is in the public interest, as opposed to fewer taller facilities, spacing or the distance between facilities shall be such that the service may be provided without exceeding the maximum permitted height.
- h) The applicant for a new tower shall submit clear and convincing technical evidence by a carrier or wireless service provider justifying the total height of the proposed facility and the need for such to the exclusion of all reasonable alternatives. Evidence in the form of propagation studies must include all modeling data and assumptions used to produce the studies at the requested height and at a height ten (10) feet lower to show that any lower height would have the effect of prohibiting the provision of service and should take into consideration the ability to co locate other carriers in the future.
- i) The City reserves the right to require a drive test to be conducted under the supervision of the City or its designee as evidence of the technical need for what is requested.
- j) With respect to the overall designed strength of a tower, but not with respect to height, towers shall be structurally designed to accommodate a minimum of four (4) carriers using substantially similar equipment to that used by the first carrier attaching to a tower and that can be increased in height if needed for technical reasons.
- k) Setback and Fall Zone: All proposed towers and any new proposed support structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: (1) a distance equal to the height of the proposed tower or support structure plus ten percent (10%) of the height of the tower or other structure, otherwise known as the fall zone; or (2) the existing setback requirement of the underlying zoning district, whichever is greater. Any accessory structure shall be located within the fenced compound area as approved in the special use permit and so as to comply with the applicable minimum setback requirements for the property on which

it is situated. The fall zone shall be measured from the nearest edge of the tower to the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile, as well as any property boundary lines. At the discretion of the Commission, the preceding may not apply to support structures located in the public-rights-of-way so long as required minimum distances to adjacent buildings are complied with.

- l) The nearest portion of any access road leading to a facility shall be no less than ten (10) feet from the nearest property line.
- m) There shall be no development or human occupation of habitable buildings within the setback area or fall zone.

Community Outreach in the Case of a New Tower

- n) In order to better inform the public, the applicant shall be responsible for notifying the public by mail as well as through on-site signage, placing a story pole, and producing a photo simulation report as more specifically detailed below prior to being considered by the City's approving body.
 - 1) Story Pole. The applicant shall arrange to place a "story pole" at the exact proposed tower location and raise upon a temporary mast, a minimum of ten (10) feet in length, brightly colored flags/balloons at the maximum height of the proposed new tower in the same vertical and horizontal dimensions as the proposed antenna for at least forty-eight (48) consecutive hours immediately preceding and through the end of the community meeting.
 - 2) On-Site Signage. A four (4) foot by eight (8) foot sign shall be erected prior to community meeting notices being mailed so as to be clearly visible from the road nearest the proposed site and shall be easily readable from the road by a person with 20/20 vision. Such sign shall be placed off, but as near to, the public right-of-way as is possible and contain the times and date(s) of the initial community outreach meeting and contact information.
 - 3) Draft Community Meeting Notices. At least fourteen (14) calendar days in advance of mailing community meeting notices, the applicant shall provide a one (1) page draft copy of a public outreach notice for approval to the City and its consultant, if applicable, to include the date the story pole will be in place and the date, time, and place of the community outreach meeting and description and elevation of the proposed project.
 - 4) Mailing Community Meeting Notices. The applicant shall mail the above approved community meeting notices by first-class mail to all property owners, residents, and businesses located within one thousand five hundred (1,500) feet of the nearest property line of the subject property of the proposed construction of the tower and wireless facility (with a certified/reproducible copy of the mailing

labels being provided to the City) at least fourteen (14) days, but no more than twenty-one (21) days, prior to the community outreach meeting. The applicant shall bear all costs associated with said notification.

- 5) A report with before and superimposed after photo simulations from various locations of the story pole and to scale superimposed photo simulations of the proposed facility when completed shall be provided as part of the application.

Section 10-16.112 Streamlined Process - Requirements for an Application to Co-locate on an Existing Properly Permitted Telecommunications Facility or Existing Building Structure within the Parameters of an Approved Special Use Permit, but not including the First Attachment

- a) The process for permitting and the information required under this Chapter shall be the same as in the preceding Section 10-16.110 “Application Requirements for an Administrative Special Use Permit,” for an application qualifying for the streamlined process.
- b) An application to increase the parameters of an approved wireless telecommunications facility as it relates to height, profile, number of co-locations or footprint shall not qualify for streamlined treatment under this Chapter.
- c) Small Cell Sites. An application proposing the use of small cell technology in the public rights-of-way that does not increase the height of an existing structure being attached to by more than four (4) feet shall be entitled to the streamlined process. If increasing the height of a building by between four (4) feet and eight (8) feet the application may also be reviewed under the streamlined process, provided the applicant will install an RF translucent false facade or parapet that matches the style, color and texture of the building.
- d) Attachments to Buildings. To preserve and protect the nature and character of the area and enable the site to be substantially invisible, for any attachment to a building or other structure with a facade, the antennas shall be mounted on the facade without increasing the height of the building or other structure, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exteriorly encased or exposed cabling shall match as closely as possible the color and texture of the structure.
- e) Attachments to Water Tanks. If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the applicant can prove that to locate elsewhere on the tank with less visual effect will prohibit or have the effect of prohibiting the provision of service or will create a safety hazard.

- f) The applicant shall provide a certification by a professional engineer licensed in the State, along with documentation in the form of a structural analysis, including calculations, that prove that the support structure and its foundation as proposed to be utilized are designed and were constructed to meet all City, State, Federal and ANSI/TIA-222 structural requirements for loads, including wind and ice loads.

Section 10-16.113 Small Cell and Small Wireless Facilities

- a) Administrative Review. Small wireless facilities to be located on an existing support structure that do not involve a new support structure or substantial modification of an existing facility shall qualify for an administrative application review and permitting process.

An application for a substantial modification/co-location or new support structure shall not qualify for administrative review and permitting under this Chapter.

- b) Variances. Any variance from the regulations contained in this Section shall be subject to a test of (1) technological impracticability; or (2) commercial impracticability; or (3) both, in relation to the area intended to be served by the proposed facility; and (4) any situation that would result in non-compliance with any safety or safety-related law, rule or regulation.

- c) Batched Applications. An applicant, or its agent of record, may submit applications for multiple facilities or locations with the following conditions that are intended to ensure compliance with the FCC's 'Shot Clock' requirements:

1) No single batched submittal shall contain more than five (5) applications;

2) There must be a minimum of seven days between submittals of batched applications;

3) No more than four (4) batched applications shall be accepted in any thirty (30) consecutive day period.

4) The individual locations or sites within a batched application are severable and may be treated and permitted individually.

- d) Required Application Information. The information required to be provided in an application under this Section is as follows.

1) The name, address, phone number and e-mail address of the person preparing the application;

2) The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different

than the applicant, the name and all necessary contact information shall be provided for both parties.

3) The nearest postal address and tax map parcel number of the subject property.

4) The zoning district or designation in which the subject property is situated.

5) For all new facilities, a list of the specific frequency bands to be initially activated immediately upon completion of construction.

6) For all new facilities, a separate list of all frequencies licensed for the carrier, but not intended to be initially activated.

7) A copy of the FCC licenses applicable for all the frequency bands licensed to the carrier to provide service in the City.

8) Transmission and maximum effective radiated power of the antenna(s).

9) Written commitment statements that:

a) The applicant's facility shall at all times without exception be maintained in a safe manner, and in compliance with all conditions of the special use permit, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable City, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Council in writing;

b) The construction of the facility is legally permissible, including, but not limited to the fact that the applicant is licensed to do business in the State.

c) The Applicant commits to fully and completely indemnify the City for and from the applicant's use of the City's right-of-way.

10) A general description of the proposed scope of work and the specific purpose(s) of the small wireless facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with emphasis on those matters likely to be affected or impacted by the work proposed. The description shall include at a minimum the type of equipment, number of antennas, height to top of antenna(s), statement of compliance with FCC requirements, and description and/or depiction of concealment elements.

11) Certified detailed construction drawings and site plan, including but not limited to the following information:

a) If not to be located in the public rights-of-way, the location of the nearest residential structure and any unoccupied but habitable structure.

b) If not to be located in the public rights-of-way, the location, size and height of all existing and proposed structures on the property that are more than six (6) feet in height and are not buildings.

c) If not to be located in the public rights-of-way, the location of enclosures and cabinets on the property on which the structure is or will be located that are related to the subject of the application.

d) A site plan to-scale, showing the footprint of the support structure and the type, location and dimensions of :

- 1) all boundaries;
- 2) access drives;
- 3) landscaping and buffers;
- 4) fencing;
- 5) underground utilities of any kind; and
- 6) any easements.

e) Elevation drawings showing the profile or the vertical rendition of the support structure for the facility, and identifying all existing and proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the existing grade and lighting.

f) Proposed electrical and grounding plans for the facility.

12) The azimuth, size, top of antenna height and location of all proposed and existing antennas on the support structure, including the height of the top of any equipment affixed to the top of the support structure.

13) The type of support structure to be used and a structural analysis and report, including the calculations, certified by a professional engineer licensed in the State and proving the structure's capability to safely accommodate the facilities of the applicant.

14) An ANSI/TIA-222 Maintenance and Conditions Assessment report regarding the physical condition of any existing structure to be used or modified, using the most recently officially adopted version of ANSI/TIA-222. The report shall contain tolerances including but not limited to guy tensions if applicable, plumb, twist, slip splices, and take-up devices.

15) No authorization shall be issued for any structure where the structure being attached to is in need of safety-related remediation to comply with the requirements of this Chapter and other adopted standards of the City, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the City.

16) An RF emissions report, with calculations, showing full compliance with all requirements and practices set forth by all applicable regulations, including but not limited to the latest edition of the Federal Communications Commission (FCC) OET Bulletin 65 and OSHA's regulations regarding RF emissions.

17) In certain instances, the City may deem it appropriate to have on-site RF compliance testing of the facility done after the construction or modification of the facility to determine compliance with all applicable regulations, including but not limited to OET 65 regarding RF emissions and/or OSHA's regulations regarding RF emissions. The testing shall be done under the observation and direction of the City or its designee, and an un-redacted copy of the survey results, along with all calculations, shall be provided prior to the issuance of a certificate of compliance.

18) A signed statement of commitment that the applicant will expeditiously remedy any physical or RF-related issues, including interference with other wireless devices or services.

e) Construction in the Public Rights-of-Way

1) All construction and maintenance shall at all times comply with applicable portions of all federal, State and local safety and safety-related codes, rules and regulations, as well as the City's right-of-way use and occupancy regulations.

2) No equipment or work associated with a small wireless facility shall interfere with, endanger, hamper, impede or incommode access to any utility or any other facility in the public right-of-way.

3) No wireless facility, nor any work associated with such, shall interfere with, endanger, hamper or impede the usual and customary use of the public right-of-way or any vehicular or pedestrian way.

4) All work and installations on utility poles or light poles shall fully comply with the California Public Utilities Commission general orders, including but not limited to General Order 95, as may be revised or superseded.

5) Attachment to Existing Structures in the Public Rights-of-Way

a) Utility Poles. The maximum height of the top of any antenna shall not exceed ten percent (10%) of the existing height of the utility pole to be attached to immediately prior to attachment.

b) No portion of any antenna or wireless equipment shall be less than ten (10) feet above the ground, except that above any drivable road surface, no portion of any antenna or wireless equipment shall be less than twenty four

(24) above the surface if attached to a utility pole or less than sixteen and one-half (16.5) feet above the surface if attached to a light pole

c) Light Poles. The maximum height of the top of any antenna shall not exceed ten percent (10%) of the existing height of the light pole to be attached to immediately prior to attachment.

d) No utility or light pole shall ever exceed the lesser of fifty (50) feet or the maximum permitted height for the zoning district in which it is located.

e) Except for the electric meter, all accessory equipment not directly attached to the antennas shall be installed underground in a weatherproof vault(s).

f) All construction and maintenance shall at all times comply with all applicable portions of all federal, State and local safety and safety-related codes.

g) New and Replacement Poles. Primarily but not exclusively for aesthetic reasons, the City reserves the right to in certain instances and at applicant's cost require a new pole, or a replacement pole if a new pole is needed to accommodate wireless equipment. The new or replacement pole shall be a hollow metal or non-corrodable functionally equivalent structure that is in keeping with the nature and character of the surrounding area or neighborhood.

h) Aesthetics/Appearance:

1) Antenna Size. All small cell or DAS antennas and equipment attached to and directly associated with the antenna(s), excluding cabling, shall cumulatively not exceed three cubic feet (3 cu.ft.) in volume, nor be larger than two (2) feet in height.

2) Lateral Extension. If permitted to be mounted externally, no wireless antenna or other pole-mounted equipment shall extend laterally beyond the diameter of the structure as measured at the point of attachment.

3) Point of Attachment of Antennas. If permitted to be mounted externally, the point of attachment of any antennas shall not be more than three inches (3") from the pole or other support structure, and the space between the structure and the attachment point of the antenna shall be concealed with a weather-proof material the same color as the structure or the antenna.

4) Color. Antennas shall be of a color that as closely as is reasonably possible matches that of the support structure.

5) Placement of Electronic Equipment. All electronic equipment not attached to the antenna(s) shall be placed underground in a weather-proof vault or contained in the base of the support structure.

6) All accessory equipment not directly attached to the wireless antennas shall be installed underground in waterproof vaults.

7) All transmission or distribution cable or fiber shall be installed underground.

6) New Structures in the Public Rights-of-Way

a) Any variance or relief from the following standards must be requested in writing, including a written justification demonstrating sufficient reason for the variance or relief to be granted.

b) Any relief or variance granted may contain one (1) or more conditions:

c) New support structures shall, at the Planning Director's option, be hollow metal or made of a non-conductive, non-corrodable material of sufficient interior diameter to accommodate inside it the antenna(s) and all cabling or wiring attached to the antenna, and shall be of a color in harmony with the surrounding area or neighborhood that is acceptable to the Planning Director:

d) Height: No support structure, regardless of the type of structure, may i) be taller than the immediately adjacent utility poles or public lighting structures; or ii) the lesser of the maximum permitted height for the zoning district in which it is located or fifty feet (50') in total height, including any attachments of any kind associated with the Wireless Facility:

e) Not recognizable: A small wireless facility shall not be easily recognizable as a wireless facility by a layperson:

f) Placement of antenna(s): All antennas, cabling and equipment directly associated with the antennas shall be contained inside the new support structure:

g) No antenna shall be mounted on the side of a new utility or light pole, except that any antenna that for justifiable reasons cannot be contained inside the support structure shall be mounted so as to be the least visually intrusive reasonably possible given the facts and circumstances:

- h) Lateral protrusion: No antenna or equipment directly associated with an antenna shall protrude laterally beyond the outer diameter of the support structure, unless relief is requested in writing and approved;
- i) Accessory equipment: All accessory equipment not directly attached to the antennas shall be installed underground in a weatherproof vault;
- j) Any new support structure shall be designed as a decorative structure and shall be in keeping with the nature and character of the surrounding area or neighborhood;
- k) No antenna shall be larger than two feet (2') in height with no portion extending laterally beyond the diameter of the structure as measured at the point of attachment to the structure;
- l) For any light pole that has an extending arm for the light fixture, unless mounted inside the pole or on the top of the pole, antenna shall be mounted so as not to be easily distinguishable from the light fixture.
- m) If externally mounted, the point of attachment to the top of a structure shall not be more than three inches (3") below the bottom of an antenna, and the space between the top of the structure and the attachment point of the antenna shall be concealed with a weather-proof material the same color as the structure or the antenna;
- n) Antennas and any exposed element of such shall be of a color that as closely as is reasonably possible matches that of the support structure.
- o) All equipment other than the antenna(s) shall be placed underground in a weatherproof vault or contained within the base of the support structure.
- p) A permit for any wireless telecommunications facility shall be valid for a period of ten (10) years, unless it lapses or expires sooner or is revoked.
- q) Pursuant to the preceding subsection (p), at the end of ten (10) years from the date of issuance, such permit shall automatically expire.
- r) A permittee may apply for a new permit within the one hundred and eighty (180) days prior to expiration. Said application and proposal shall comply with the City's then-current code requirements for wireless telecommunications facilities.

7) Non-Conforming Wireless Facilities in the Public Rights-Of-Way

- a) Non-conforming wireless facilities are those facilities that in one or more ways do not conform to this Chapter.

b) Non-conforming wireless facilities shall, within ten (10) years from the date such facility becomes nonconforming, be brought into conformity with all requirements of this Chapter; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this Chapter at such time, to the extent the City can require such compliance under federal and state law.

c) An aggrieved person may file an appeal of any decision of the Planning Director made pursuant to this section to the City Council. In the event of an appeal alleging that the ten (10) year amortization period is not reasonable as applied to a particular property, the City Council may consider i) the amount of investment or original cost; ii) present actual or depreciated value; iii) dates of construction; iv) amortization for tax purposes; v) salvage value vi) remaining useful life; vii) the length and remaining term of the lease under which it is maintained, if any; and viii) the harm to the public if the structure remains standing beyond the prescribed amortization period, and may set an amortization period accordingly for the specific property.

8) Construction on Private Property

a) New Structures.

Notwithstanding the requirements for new structures in public rights-of-way, the following shall apply to new structures on private property.

1. No new tower of any kind that is built to accommodate a small wireless facility may be built on private property in a single- or multi-family residentially zoned district or neighborhood, or within one-thousand (1,000) feet of the border of such a district or neighborhood. Notwithstanding anything to the contrary as regards compatible use designation, this requirement shall not be deemed in violation of any compatible use law, rule or regulation.

2. Aesthetics/Appearance:

a) Height: The maximum allowed height for new support structures, but not an as-of-right height, shall be the lesser of i) the maximum height permitted for the zoning designation in which it is to be located; or ii) fifty (50) feet above existing pre-construction grade level.

3. The support structure shall

a) be a hollow, non-wooden, non-corrodable structure of sufficient interior diameter to accommodate the antenna(s) and cabling or wiring inside it, and shall be of a color acceptable to the Planning Director;

b) not be more than three inches (3") below the bottom of an antenna that is attached to the top of the structure, and the space between the top of the structure and the attachment point of the antenna shall be concealed with a weather-proof material the same color as the structure or the antenna;

4. Antennas shall be no larger than two feet (2') in height with no portion extending laterally beyond the diameter of the structure at the top of the structure at the point of attachment;

5. Antennas shall be of a color that as closely as is reasonably possible matches that of the support structure.

6. All equipment other than the antenna(s) shall be placed underground in a weather-proof vault or contained in the base of the support structure.

Section 10-16.11~~43~~ Procedural Requirements before Action on any Application Taken

- a) The City will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities and applicable law, and shall act within the time required by applicable law.
- b) The City may refer any Application or part thereof to any advisory committee or consultant for a non-binding recommendation.

~~e) As generally discussed in the Hercules Zoning Ordinance Section 40.800, Environmental Review, all proposed projects and applications are subject to environmental review under the California Environmental Quality Act (CEQA). The City may not regulate sitings based on RF emissions to the extent that the facilities comply with FCC standards; however, this does not relieve the City from the obligation to study any significant environmental effects caused by RF emissions. The construction of wireless communication facilities is subject to environmental review under both Federal and State law and all antenna structures must comply with NEPA. Smaller facilities may be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to guidelines in Section 15303.~~

~~d)c)~~ Either after the public hearing, if a hearing is required, or after Administrative review as applicable, and after formally considering the application, the City may (1) approve; (2) approve with conditions; or (3) deny a permit or administrative authorization. The decision shall be in writing and shall be supported by substantial evidence contained in a written record. Throughout the application and permitting process, the burden of proof

for compliance with this Chapter or the need for something not allowed, shall always be upon the applicant.

- e) All application approvals shall contain various written conditions of approval that are required (1) prior to building permit issuance, **and** (2) prior to final inspections / certificate of completion, **and (3) post completion requirements such as but not limited to long-term facility and site maintenance blight abatement, graffiti abatement and nuisance abatement (which is generally defined in Section 4-10.04) and all general policies of this Chapter.**
- ~~f)~~ **d) Wireless telecommunications facilities surrounding landscaping, fencing, and related transmission equipment and building must be maintained in a neat and clean manner and in accordance with all approved plans. All graffiti on wireless communication facilities or compounds must be removed within forty-eight (48) hours of notification by the City.**
- ~~g)~~ **e) If the city approves the special use permit or administrative special use permit for the facility, then a notice of decision shall be posted within a public area of City Hall and mailed to the applicant within ten (10) working days of the City's action. the special use permit or administrative special use permit shall be effective ten (10) working days after the posting or mailing of the approval decision.**
- ~~h)~~ **f) If the City denies the special use permit or administrative special use permit for the facility or the modification, then the applicant shall be orally notified of such denial with specific reasons for such denial by the Planning Department or at the Commission Meeting depending on the reviewing body, and in writing within 30 calendar days of the decision, and shall set forth in writing the reason or reasons for the denial.**
- ~~i)~~ **g) Any discretionary decision may be appealed by the applicant or any person affected by a determination or decision. Discretionary decisions made by the Planning Department are appealable to the Planning Commission while Planning Commission decisions are appealable to City Council as outlined in the City of Hercules Zoning Chapter 44.**

Section 10-16.11**54** Procedural Requirements for Granting a Special Use Permit

- a) In addition to the above listed Section 10-16.113, "Procedural Requirements before Action on any Application Taken," the following procedures shall apply where a special use permit is requested
- b) The City shall schedule a public hearing(s) once it finds the application is complete (and that the applicant has held a community outreach meeting) and there are no issues of non-compliance with applicable law, rule or regulation. The City is not required to set a date if the Application is not complete or if there are unresolved issues of non-compliance. The City may, at any stage prior to issuing a special use permit or administrative special use permit, require such additional information as it deems necessary and is not prohibited from requiring as it relates to the issue of the siting, construction or modification of or at a wireless facility.
- c) Required Findings: Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City must make the following findings prior to approving a special use permit, unless there is clear and convincing technical evidence that the requirements in the Chapter are not possible to achieve or relief has been requested and an exception is warranted based on the facts and environmental/technical circumstances involved:

- 1) The facility does not conflict with safety and safety-related codes and requirements;
- 2) The facility conforms to the City's policy of concealment;
- 3) The facility does not conflict with the historic nature or character of a neighborhood or district;
- 4) The use or construction of the facility is not contrary to an already stated purpose of a specific zoning or land use designation;
- 5) The placement and location of the facility does not create an unacceptable safety or financial risk to residents or the safety of the general public, employees and agents of the City or employees of the service provider or other service providers, or the reasonable probability of such;
- 6) The placement and location of a facility does not result in a conflict with, compromise in or change in the nature or character of the adjacent surrounding area;
- 7) The facility does not conflict with the provisions of this Chapter;

Section 10-16.11~~65~~ Reasons for Denial

- a) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City may disapprove an application for any of the following reasons:
 - 1) Conflict with safety and safety-related codes and requirements;
 - 2) The facility would not conform to the City's policy of concealment;
 - 3) Conflict with the historic nature or character of a neighborhood or district;
 - 4) The use or construction of facilities is contrary to an already stated purpose of a specific zoning or land use designation;
 - 5) The placement and location of facilities would create an unacceptable safety or financial risk to residents or the safety of the general public, employees and agents of the City or employees of the service provider or other service providers, or the reasonable probability of such;
 - 6) The placement and location of a facility would result in a conflict with, compromise in or change in the nature or character of the adjacent surrounding area;
 - 7) Conflicts with the provisions of this Chapter;

Section 10-16.11~~76~~ Assignment/Transfer, Default/ Revocation, and Termination of Administrative Special Use Permits or Special Use Permits for Wireless Telecommunications Facilities

The extent and parameters of a special use permit or administrative special use permit for a facility shall be as follows:

- a) A special use permit or administrative special use permit shall not be assigned, transferred or conveyed without the express prior written notification to the City, such notice to be not fewer than thirty (30) business days prior to the intended assignment, transfer or conveyance.

- b) A transfer, assignment or other conveyance of the special use permit or administrative special use permit shall require the written commitment of the new holder of the special use permit or administrative special use permit to abide by all applicable laws, rules and regulations, including but not limited to this Chapter.
- c) If a support structure or facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Chapter or of the special use permit or administrative special use permit, then the City shall notify the holder of the special use permit or administrative special use permit in writing of such violation. A permit or administrative special use permit holder found to be in violation may be considered in default and subject to fines as permitted under applicable State law, and if a violation is not corrected to the satisfaction of the City in a reasonable period of time the special use permit or administrative special use permit shall be subject to revocation.
- d) Following notice and an opportunity to cure, and if not cured, a special use permit or administrative special use permit granted under this Chapter may be revoked, canceled, or terminated for a violation of the conditions and provisions of the special use permit or other applicable law, rule or regulation, and if warranted the payment of a fine(s) as shown in the penalty provisions of this Chapter.
- e) If not cured within the time frame set forth in the notice of violation, a hearing shall be held upon due prior notice to the applicant citing the violation(s) and the date, time and place of the hearing, which shall be provided by registered mail to the last known address of the holder of the special use permit and property owner of record.
- f) Following the original notice and an opportunity to cure as relates to a given Facility, subsequent or repeated violations of a substantially similar nature shall not require an opportunity to cure prior to the imposition of fines.

Section 10-16.11~~87~~ Responsible Party(s)

The owner(s) of a facility, including any support structure used to accommodate wireless facilities and equipment, and the owner of the land upon which a facility or support structure is located, shall at all times be jointly and severally responsible for: (a) the physical and safe condition of the facility and all components on the site related to the facility; (b) assuring that all activities of owners, users, or lessees occurring on the site, and all components on the site related to the facility, are at all times in compliance with all applicable laws, ordinances, rules, regulations, orders, and permits related to the facility; and (c) assuring the proper permitting as required by this Article and other City regulations by all owners of equipment, lessees and users of the facility, including but not limited to any upgrades and/or modifications of equipment. Said owner(s) shall monitor activities at the site to assure that the facility is operated in compliance with this Chapter, other City regulations, and any City issued special, administrative or conditional use permits or building permits.

Section 10-16.1~~18~~ Removal and Performance Security

- a) Support Structure Removal and Performance: The applicant and the owner of record of any proposed new tower or support structure shall, at its sole cost and expense, be

required to execute and file with the City a bond or other form of security that is acceptable to the City as to the type of security and the form and manner of execution, in an amount of at least seventy-five thousand dollars (\$75,000) for a tower or other support structure and with such sureties as are deemed adequate by the City to assure the faithful performance of the terms and conditions of this Chapter and conditions of any special use permit issued pursuant to this Chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit.

- b) Attachments Performance Security: The owner of any equipment attached to a support structure shall be required to execute and file with the City a bond or other form of security that is acceptable to the City as to the type of security and the form and manner of execution, in the amount of five thousand dollars (\$5,000).

Section 10-16.1~~2019~~ Liability Insurance

- a) A holder of a special use permit for a wireless telecommunications support structure shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in amounts as set forth below, or as modified from time to time by City Council usually in the form of a resolution:
 - 1) Commercial general liability covering personal injuries, death and property damage: two million dollars (\$2,000,000) per occurrence/\$4,000,000 aggregate; and
 - 2) Automobile Coverage: \$2,000,000.00 per occurrence/four million dollars (\$4,000,000) aggregate; and
 - 3) A three million dollar (\$3,000,000) umbrella coverage; and
 - 4) Workers' compensation and disability: statutory amounts.
- b) For a facility located on City property, the commercial general liability insurance policy shall specifically name the City and its officers, City Council, employees, Commissions and Committee members, attorneys, agents and consultants as additional insureds.
- c) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.
- d) The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least thirty (30) days' prior written notice in advance of the cancellation of the insurance.
- e) Renewal or replacement policies or certificates shall be delivered to the City at least fifteen (15) days prior to the expiration of the insurance that such policies are to renew or replace.
- f) Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than fifteen (15) days prior to the grant of the building permit, the holder of the special use permit or administrative special use permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.
- g) A certificate of insurance that states that it is for informational purposes only and does not confer rights upon the City shall not be deemed to comply with this Chapter.

Section 10-16.12~~10~~ Indemnification

- a) Any application for wireless telecommunication facilities that is proposed to be located on City property shall contain a provision with respect to indemnification of the City. Such provision shall require the applicant, to the extent permitted by applicable law, to at all times defend, indemnify, protect, save, hold harmless and exempt the City and its officers, City Council, employees, Commissions and Committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the City, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.
- b) Notwithstanding the requirements noted in subsection (a) of this section, an indemnification provision will not be required in those instances where the City itself applies for and secures a special use permit for a wireless telecommunications facility.

Section 10-16.12~~21~~ Security

All Facilities shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- a) All facilities, including antennas, towers and other supporting structures, such as guy anchor points and guy wires, shall be made inaccessible to unauthorized individuals and shall be constructed or shielded in such a manner that they cannot be climbed or collided with; and
- b) Transmitters and telecommunications control points shall be installed so that they are readily accessible only to persons authorized to operate or service them.

Section 10-16.12~~32~~ Signage

Facilities shall contain a sign no larger than four (4) square feet and no smaller than two (2) square feet in order to provide adequate warning to persons in the immediate area of the presence of RF radiation. A sign of the same size is also to be installed bearing the name(s) of the tower owner(s) and operator(s)/carrier(s) of the antenna(s), property owner name, as well as emergency phone number(s) for all such parties. The sign shall be on the equipment shelter or cabinet of the applicant and must be visible from the access point of the facility and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration sign, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

Section 10-16.12~~43~~⁵³ Reservation of Authority to Inspect Wireless Telecommunications Facilities

- a) In order to verify that the holder of a special use permit for facility and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construct and operate such facilities in accordance with all applicable technical, safety, fire, building codes, zoning codes, laws, ordinances and regulations and conditions of any permit granted under this Chapter, ~~including but not limited to general maintenance requirements to items such as fencing, landscape, blight abatement, graffiti abatement and nuisance abatement (as generally discussed in Section 4-10.04)~~ the City may inspect, or cause to have inspected by a third party, all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site, including but not limited to electrical service, wiring and components. Refusal to allow or grant access to a City representative or its designee upon reasonable notice shall be deemed a violation of this Chapter.
- b) To assure the protection of the public health and safety, the City expressly reserves the right to require that an applicant, a user of a facility or the owner of the facility verify compliance with the FCC's regulations regarding RF emissions pursuant to 10-16.128. Refusal to allow or grant access to a City representative or its designee upon reasonable notice shall be deemed a violation of this Chapter.

Section 10-16.12~~53~~⁵⁴ Removal or Moving of Wireless Telecommunications Structures and Facilities

- a) If attached to an existing structure, unless the Planning Commission deems doing so to be in the public interest, it shall be impermissible for a wireless service provider's or carrier's facilities and equipment to be moved or relocated from one structure to another, or replaced by the construction of a new facility, without proof that not to be relocated to or replaced by a facility at another location would for technical reasons prohibit or serve to prohibit the provision of service in the service area served by the existing wireless facility.
- b) If the lease for the existing co-location expires and is not renewed, thereby forcing the facility to be moved, such move shall be allowed only upon (1) the provision of convincing evidence satisfactory to the Planning Commission of the need to move or relocate the facility; and (2) convincing evidence satisfactory to the Planning Commission of the lack of impact on the neighborhood or area of intended new location. Cancellation or abandonment of a lease by a wireless service provider or carrier or other lessee, shall not be deemed a permissible reason for relocating.
- c) The owner of any facility shall be required to provide a minimum of ninety (90) days written notice to the City Clerk, City Manager, Finance Director, Planning Director, and Mayor prior to abandoning any facility.
- d) Under the following circumstances, the City may determine that the health, safety, and welfare interests of the City warrant and require the removal of facilities.
 - 1) A facility has been abandoned (i.e. not used as a wireless telecommunications facility) for a period exceeding ninety (90) consecutive days or a total of one

- hundred-eighty (180) non-consecutive days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or acts of God, in which case, repair or removal shall be completed within 90 days of abandonment;
- 2) A support structure or facility falls into such a state of disrepair that it creates a health or safety hazard or is deemed an attractive nuisance or a visual blight;
 - 3) A support structure or facility has been located, constructed, or modified without first obtaining, or in a manner not authorized by the required special use permit or administrative special use permit, and the special permit or administrative special use permit may be revoked.
 - 4) If the City makes a determination as noted in subsections (d)(2) or (3) of this section, then the City shall notify the holder of the permit or administrative special use permit for the facility within forty-eight (48) hours that said facility is to be brought into compliance and conformity within 30 days or be removed as listed below (unless immediate health and safety risk exists).
 - 5) The holder of the special use permit or administrative special use permit, or its successors or assigns, shall dismantle and remove such facility and all associated structures and equipment from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability. Restoration shall be completed within ninety (90) days of receipt of written notice from the City. However, if the owner of the property upon which the facility is located wishes to retain any access roadway to the facility, the owner may do so with the approval of the City.
 - 6) If a facility has not been removed, or substantial progress has not been made to remove the facility, within ninety (90) days after the permit holder has received notice, then the City may order officials or representatives of the City to remove the facility at the sole expense of the owner or special use permit holder.
 - 7) If the City removes, or causes Facilities to be removed, and the owner of the Facility does not claim and remove the material from the site to a lawful location within ten (10) days, then the City may take steps to declare the facility abandoned, and sell it.
 - 8) Notwithstanding anything in this Chapter to the contrary, the City may approve a temporary use permit/agreement for the facility for no more than ninety (90) days duration, during which time a suitable plan for removal, conversion, or re-location of the affected facility shall be developed by the holder of the special use permit, subject to the approval of the City, and an agreement to such plan shall be executed by the holder of the special use permit or administrative special use permit and the City. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the City may take possession of and dispose of the affected facility in the manner provided in this Chapter and utilize the performance and removal bond.

Section 10-16.12~~65~~ Penalty

- a) In the event of a violation of this Chapter, or any special use permit or administrative special use permit or building permit issued pursuant to this Chapter, the City may impose and collect, and the holder of the special use permit or administrative special use permit shall pay to the City, fines or penalties as established by the City and as allowed by State law.

- b) Notwithstanding anything in this Chapter, the holder of the special use permit or administrative special use permit for a facility may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Chapter or any section of this Chapter. An attempt to do so shall subject the holder of the special use permit to termination and revocation of the special use permit or administrative special use permit. Without limiting other remedies available to the City, the City may also seek injunctive relief to prevent the continued violation of this Chapter.
- c) Any person who violates any provision of this Chapter is liable in a civil action brought by the City Attorney on behalf of the City in the amount of one thousand dollars (\$1,000) for each such violation. Any person violating this Section shall be regarded as committing a separate offense on each day that the violation occurs or continues. If two (2) or more persons are responsible for any violation of the provisions of this Chapter, they shall be jointly and severally liable for the civil penalty set forth in this section. Amounts recovered under this Section shall be deposited into a fund carried upon the financial records of the City which shall be used exclusively for the maintenance and/or removal of telecommunications facilities, including but not limited to equipment cabinets, in the City of Hercules.
- d) Criminal Penalties for Violation. A violation of any provision of this Chapter is an infraction punishable by (1) a fine not exceeding one hundred dollars (\$100) for the first violation; (2) a fine not exceeding five hundred dollars (\$500) for a second violation within one (1) year; and (3) a fine not exceeding one thousand dollars (\$1,000) for each additional violation occurring within one (1) year as defined in Government Code Section 36900(c). Any person violating this Section shall be regarded as committing a separate offense on each day that the violation occurs or continues. At the City Attorney's discretion, serious violations may be prosecuted as misdemeanors pursuant to Government Code Section 36900.
- e) Injunctions. In addition to all other actions and remedies, civil or penal, authorized by law, the City Attorney is authorized to file an action in court seeking injunctive relief to enjoin a violation of any provision of this Chapter or to prevent a threatened violation of any provision of this Chapter. The injunctive relief sought in any such action may be prohibitory, mandatory, or both. (Ord. 339 § 1 (part), 1997)

Section 10-16.1276 Relief

- a) Any applicant desiring relief, waiver or exemption from any aspect or requirement of this Chapter shall address and identify such at the pre-application meeting. The relief or exemption must be contained in the submitted application for either a special use permit or administrative special use permit, or in the case of an existing or previously granted conditional use permit, or special use permit or administrative special use permit, a request for modification of the facility and/or equipment. Such relief may be temporary or permanent, partial or complete.
- b) If relief waiver, or exemption for any item or issue is not requested at the pre-application meeting and is requested after the submittal of the application, the City reserves the right to require a formal amendment of the application, including the payment of all fees and charges.

- c) The burden of proving the need for the requested relief, waiver or exemption shall be solely on the applicant.
- d) The applicant shall bear all costs of the City in considering the request and the relief, waiver or exemption.
- e) No relief, waiver or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the City, its residents and other service providers.

Section 10-16.12~~87~~ Adherence to State and/or Federal Rules and Regulations

- a) To the extent that the holder of a special use permit or administrative special use permit for a wireless telecommunications facility has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a special use permit or administrative special use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- b) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a special use permit or administrative special use permit for wireless telecommunications facilities, then the holder of such a special use permit or administrative special use permit shall conform the permitted facility to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

Section 10-16.12~~98~~ RF Emissions

- a) To assure the protection of the public health and safety, the City expressly reserves the right to require that an applicant, a user of a facility or the owner of the facility verify compliance with the FCC's regulations regarding RF emissions, either for individually-owned equipment or cumulatively for all equipment at the site, as may be deemed appropriate from time to time, but no longer than every five (5) years, and that all users of the facility cooperate with the party responsible for such verification.
- b) With respect to support structures other than towers, if any section or portion of the structure or the entire site or within one hundred (100) feet of the boundaries of the site, is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with brightly colored plastic chain or striped warning tape as appropriate, as well as placing RF Radiation warning signs as needed and appropriate to warn individuals of the potential danger.

Section 10-16.~~3029~~ Conflict with Other Laws

Where this Chapter differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the City, State or Federal government, this Chapter shall apply.

Section 10-16.13~~10~~ Definitions

For purposes of this Chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word “shall” is always mandatory, and not merely directory.

1. **“Accessory Facility or Structure”** means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
2. **“Administrative Special Use Permit”** means the official document or permit (processed by City Staff or their assignees in writing) by which an applicant can carry out an “Eligible Facility” project and then apply for a building permit.
3. **“Amend”, “Amendment” and “Amended”** mean and shall relate to any change, addition, correction, deletion, replacement or substitution, other than typographical changes of no effect.
4. **“Applicant”** means any Wireless service provider submitting an Application for a Special Use Permit for Wireless Telecommunications Facilities.
5. **“Application”** means all Necessary and *required* documentation that an Applicant submits in order to receive a Special Use Permit or a Building Permit for Wireless Telecommunications Facilities.
6. **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals with a single transmit and a single receive connection. It is expressly not multiple antennas, even if such are contained in a single housing or radome.
7. **“Antenna Array”** is a set of individual **antennas** used for transmitting and/or receiving radio waves, connected together in such a way that their individual currents are in a specified amplitude and phase relationship.
8. **“City”** means the City of Hercules, California.
9. **“City Council or Council”** means the City Council of the City of Hercules.
10. **“Co-location”** means the use of an approved telecommunication structure to support Antenna for the provision of multiple wireless services.
11. **“Commercial Impracticability” or “Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone and for a single site, shall not

deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable.”

12. **“Commission”** means the Planning Commission of the City of Hercules.
13. **“Complete” Application** means an Application that contains all necessary and required information and/or data necessary to enable an informed decision to be made with respect to an Application and that all information is true, accurate and correct, and all deposits have been paid to the City.
14. **“Concealment”** means a physical design or treatment that minimizes adverse aesthetic and visual impacts on the view from land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of a Wireless Telecommunications Facility, which shall mean the least visually and physically intrusive facility, so as to make it substantially invisible, and that is not technologically or commercially impracticable under the facts and circumstances.
15. **“DAS” or “Distributive Access System”** means a technology using antenna combining technology allowing for multiple carriers or Wireless Service Providers to use the same set of antennas, cabling or fiber optics.
16. **“Drive Test”** means measuring and assessing the coverage, capacity and signal strength or quality of service of a wireless service provider(s) using a mobile vehicle outfitted with drive testing measurement equipment.
17. **“Eligible Facility”** means an existing properly permitted wireless tower or base station that involves collocation of new transmission equipment or the replacement of transmission equipment that does not constitute a Substantial modification.
18. **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
19. **“FCC”** means the Federal Communications Council, or its duly designated and authorized successor agency.
20. **“Height”** means, when referring to a Tower or wireless support structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightening protection device.
21. **“Maintenance”** means plumbing, electrical or mechanical work that may require a building permit, but that does not constitute a Modification of the Facility.
22. **“Modification” or “Modify”** means, the addition, removal or change of any of the physical and/or visually discernable components or aspects of a Wireless Facility with effectively identical components of the same weight and size or less, including but not limited to antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, the color or materials of any visually discernable components, vehicular access, parking, and/or an upgrade or change-out of equipment for better or more modern equipment.. Modification and the type of Modification shall be defined as set forth in FCC Report and Order 14-153, as modified from time to time and incorporated herein by reference.
23. **“Necessary” or “Necessity” or “Need”** means what is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in prohibiting or acting in a manner that prohibits the provision of service as intended and described in the narrative of the Application. Necessary does not mean what may be desired, preferred or to comply with voluntary chosen company policies, preferences or standards.
24. **“NIER”** means Non-Ionizing Electromagnetic Radiation.

25. **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
26. **“Facility”** See definition for ‘Wireless Telecommunications Facilities’.
27. **“Personal Wireless Services” or “PWS” or “Personal Telecommunications Service” or “PTS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
28. **“Repairs and Maintenance”** means the replacement or repair of any components of a wireless facility when the replacement is effectively identical to the component being replaced or for any matters that involve a change without the addition, removal or change of any of the physical or visually discernable components or aspects of a properly permitted Wireless Facility that will change the visible appearance of the facility from that originally permitted.
29. **“Small Cell”** means a low-powered RF node, the antennas of which are significantly smaller than tradition ‘macro site’ antennas and have a significantly smaller service area, typically anywhere from 10 meters to one half (1/2) mile.
30. **“Special Use Permit”** means the official document or permit (usually in the form of a Planning Commission or City Council Resolution) by which an Applicant is allowed to file for a building permit to construct and use a Facility as granted or issued by the City, including for a Substantial Modification. Prior to the implementation of this Chapter, a Conditional Use Permit process was utilized.
31. **“State”** means the State of California.
32. **“Structural Capability” or “Structural Capacity”**, notwithstanding anything to the contrary in any other standard, code, regulation or law, means up to and not exceeding a literal 100% of the designed loading and stress capability of the support structure.
33. **Substantial Modification** means a change or Modification that
 - a. increases the existing vertical height of the structure by the greater of (a) more than ten percent (10%) or (b) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet; or (c) existing the City’s maximum permitted height or
 - b. except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance within the City’s concealment requirements; or
 - c. increases the square footage of the existing equipment compound by more than 2,500 square feet.
34. **“Telecommunications”** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
35. **“Telecommunications Site”** See definition for Wireless Telecommunications Facilities.
36. **“Telecommunications Structure”** means a structure (i.e. building, utility poles, street lights or other similar structure) used to support equipment used to provide wireless communications.

37. **“Temporary”** means not permanent in relation to all aspects and components of this Chapter, something intended to, and that does, exist for fewer than ninety (90) days.
38. **“Tower”** means any structure designed primarily to support an antenna(s) for receiving and/or transmitting a wireless signal.
39. **“Wireless Telecommunications Facility or Facilities (WTF or WTFs)”** means and includes a **“Telecommunications Site”** and **“Personal Wireless Facility”**. It means a structure, facility or location designed, or intended to be used as, or used to support Antennas or other transmitting or receiving devices. This includes without limit, Towers of all types and kinds, and structures, including but not limited to buildings, church steeples, silos, water Towers, signs or other any other structure that is used or is proposed to be used as a support structure for Antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and enclosures, cabinets and other structures associated with the Facility. It is a structure and facility, including a compound, intended for transmitting and/or receiving wireless communications, including but not limited to radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless service, permitted by the FCC.

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TITLE 10

Chapter 16. Wireless Telecommunications Facilities

Section 10-16.101 Purpose and Legislative Intent

The Telecommunications Act of 1996 affirmed the City of Hercules' authority concerning the placement, construction and Modification of Wireless Telecommunications Facilities. This Chapter provides for the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless services to the public, government agencies and first responders, with the intention of furthering the public safety and general welfare.

The City of Hercules finds that wireless telecommunications facilities (facilities) may pose significant concerns to the health, safety, public welfare, character and environment of the City and its inhabitants. The City also recognizes that facilitating the development of wireless service technology can be an economic development asset to the City and of significant benefit to the City and its residents. In order to assure that the placement, construction or modification of a facility is consistent with the city's land use policies, the city is adopting a single, comprehensive, wireless telecommunications facility application and permitting process. The intent of this Chapter is to minimize the physical impact of wireless telecommunications facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the City of Hercules.

Section 10-16.102 Severability

- a) If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
- b) Any special use permit issued pursuant to this Chapter shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the City.

Section 10-16.103 Location of Wireless Telecommunications Facilities

- a) New towers or other support structures shall be prohibited in residential districts, and historic districts, unless the applicant provides clear and convincing evidence demonstrating that (1) a new tower as proposed is necessary to the exclusions of any alternative or reasonable combination of alternatives; (2) that the intended area cannot be served from outside the district without a new tower or other support structure; (3) that no

existing or previously approved facility can reasonably be used for antenna placement; and (4) that not to permit a new tower or other support structure would result in a significant gap in service.

- b) Applicants shall locate, site and erect all facilities and associated equipment in accordance with the following priorities, in the following order:
 - 1) On City-owned properties or facilities without increasing the height of the tower or support structure.
 - 2) On other existing structures without increasing the height of the tower or support structure.
 - 3) On City-owned properties or facilities.
 - 4) On existing structures without exceeding the maximum permitted height under this Chapter.
 - 5) On properties in areas zoned for business use.
 - 6) On properties in areas zoned for open space but not extending higher than one hundred (100) feet below any ridgelines.
 - 7) On properties in designated historic districts.
 - 8) On properties in areas zoned for residential use.
- c) If the proposed site is not proposed for the highest priority listed above, a detailed narrative and technical explanation consisting of clear and convincing technical evidence must be provided to document the need to use any lower siting priority.
- d) The person seeking such an exception must satisfactorily demonstrate the reason(s) why a special use permit or administrative special use permit should be granted for the proposed site as opposed to a site(s) higher in the priority list.
- e) Notwithstanding the priorities set forth in the preceding Section 10-16.103 (b) above, the City may approve any site located within an area in the above list of priorities, provided that the City finds that the proposed site is in the best interest of the health, safety and welfare of the City and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood. Conversely, the City may direct that the proposed location be changed to another location that is more in keeping with the goals of this Chapter and the public interest as determined by the City and that serves the intent of the Applicant.

Section 10-16.104 Exclusions

The following shall be exempt from this Chapter:

- a) Any facilities expressly exempt from the City's siting, building and permitting authority.
- b) Any wireless reception or transmission devices expressly exempted under the Telecommunications Act of 1996.
- c) Facilities, except towers, used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial telecommunications less than thirty-five (35) feet in height above the ground.
- d) Noncommercial facilities used exclusively for providing unlicensed spread spectrum technologies where (1) there is no charge for the use of the wireless service; (2) the facility does not require a new tower or increase the height of the structure being attached to; and (3) the service is not intended to be useable more than one-hundred feet (100) from the antenna(s).

Section 10-16.105 Exceptions and Existing Facilities Prior to the Adoption of this Chapter

- a) If constructed as required by the original permit, any properly permitted facility that exists on the effective date of this Chapter shall be allowed to continue as it presently exists for the term of the original permit, provided that (1) it exists and is operating as originally permitted; and (2) that any modification of the facility has been properly permitted.
- b) Any modification not properly previously permitted prior to the adoption of this Chapter must be permitted under this Chapter.
- c) Any new modification of a facility and any modification of equipment associated with the facility, must be permitted under this Chapter and will require the entire facility and any new or modified installation to comply with this Chapter, except that any tower or other support structure properly permitted prior to the adoption of this Chapter shall have the height grandfathered and may remain at the originally permitted height.
- d) Any repair and maintenance of a wireless facility that does not (1) increase the height of the structure, (2) alter the profile, (3) change the RF emissions levels, (4) increase the footprint of the facility, or (5) otherwise exceed the conditions of the conditional or special use permit, does not require an application for a new special use permit, but may require a building permit. In no instance shall any additional construction or modification be considered to be repair or maintenance.

Section 10-16.106 Administrative Use Permit Applicability for Modifications that Qualify as Eligible Facilities

- a) Modifications for towers shall be allowed, provided that cumulatively they would not exceed the maximum allowable height as set forth in this Section, or the distance up to twenty (20) feet between antennas, as measured from the top of an existing antenna to the bottom of a proposed new antenna on the top of a tower, or individually extend more than ten feet (10) feet beyond the extremities of the tower in any direction.
- b) Modifications for support structures other than towers permitted prior to the adoption of the ordinance codified in this Chapter shall be allowed, provided that individually they do not extend more than ten feet (10) beyond the edge of the structure in a horizontal direction. Vertical modifications cumulatively shall not exceed the maximum allowable height as set forth in this Section, or the distance up to twenty (20) feet between antennas, as measured from the top of an existing antenna to the bottom of a proposed new antenna on the top of a tower
- c) To comply with the concealment intent in regards to minimizing the visual impact, all modifications shall comply with and not exceed the size parameters and limitations set forth in this Chapter.
- d) Required “First Step” documents for 6409(a) Eligible Facilities shall include;
 - 1) Funding of escrow account, as set by the City’s Master Fee Schedule.
 - 2) Completed project information form.
 - 3) Submittal of full, formal, and complete construction drawings certified by a professional engineer (PE) licensed in the State. Note: Zoning drawings are not acceptable.
 - 4) Report on the physical condition/safety of the facility utilizing the most recent version of ANSI/TIA-222 (American National Standards Institute / Telecommunications Industry Association) or adopted equivalent, certified as being true and accurate by a PE licensed in the State.
 - 5) Insurance certificate listing the City and its consultant as additional insureds.
 - 6) Performance bond.
 - 7) Removal bond (updated) for the life of the facility.

- 8) Certificate of completion or proof of passing the final inspection for the latest previously approved permit at the location/facility.
- 9) Proof of property owner authorization for this modification.
- 10) Color-coded carrier-generated RF coverage (propagation) maps, with all appropriate legends, showing the coverage for the highest and lowest frequencies to be used by the facility.
- 11) Completed RF study data form provided by the City showing the ‘modeling’ information used to produce the RF coverage (propagation) maps for each frequency and antenna used and or proposed to be used.
- 12) Hazmat Plans:
 - a. Hazmat Plan for any storage and/or use of liquid or gas fuel or batteries.
 - b. CEQA report, as applicable.

Section 10-16.107 Special Use Permit Applicability

A special use permit application shall be required for the following types of structures and activities and shall comply with the requirements set forth in this Chapter:

- a) A new tower or support structure; or
- b) A substantial modification or subsequent to the adoption of this Chapter any modification that would increase the height, width, profile, structural loading on the support structure beyond the definition of eligible facility; or increase the size of the compound beyond the maximum allowed under this chapter, or does not conform with the concealment policy for towers and wireless facilities set forth in Section 10-16.108(z) (including but not limited to height, size of the profile, color and camouflage and the distance or size of extensions beyond the tower or other support structure). To protect and maintain the integrity and effect of the concealment policy, any lateral modifications that would extend more than ten (10) feet from the lateral extremity of a tower or the width of the tower at the height of attachment, or more than three (3) feet from the edge of a non-tower support structure would be subject to a special use permit; or
- c) A facility permitted after the adoption of this Chapter that involves construction or excavation or deployment outside the compound (i.e., outside the current boundaries of the site); or

- d) Proposes more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or for towers in the public rights-of-way and base stations if the modification involves the installation of any new equipment cabinets on or below the ground if there are no pre-existing ground or below ground cabinets associated with the structure, or that involves the installation of ground or below ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the structure; or
- e) Facilities that do not comply with conditions associated with the siting approval of the original support structure and/or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the threshold for an eligible facility as defined in FCC Report and Order 14-153.

Section 10-16.108 General Policies for All Applications under this Chapter

In order to ensure that the placement, construction and modification of a facility does not endanger or jeopardize the health, safety, public welfare, environmental features, or change the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Chapter, the City hereby adopts an overall policy and related procedures with respect to the submittal, review, approval and issuance of permits or administratively granted authority for wireless facilities for the express purpose of achieving these outcomes. The following are general policy actions are intended to accomplish these goals:

General Application Process

- a) Implementing an application process and requirements; establishing procedures for examining and analyzing the contents of an application and issuing a special use permit or administrative special use permit that is both fair and consistent with this section;
- b) Promoting, and requiring wherever possible, the sharing and/or co-location of support structures among service providers;
- c) Requiring administrative special use permit for any modification of an eligible facility.
- d) Requiring a special use permit for any new tower or other support structure or any co-location or modification of a facility that is not an eligible facility pursuant to the FCC's Report and Order 14-153 dated October 17, 2014;
- e) There shall be no towers or other support structures permitted or built on speculation, such meaning without a carrier or other wireless provider proving the need for such as required in this Section and committing in writing to attach to and provide service from the tower or other new structure immediately upon construction.

- f) No work of any kind on a facility shall be started until the application is reviewed and approved by the Commission or appropriate administrative entity and the special use permit, or administrative special use permit if applicable, has been issued and all other applicable permits have been issued.
- g) A facility or part thereof, including but not limited to ancillary structures or equipment, utilities installed to serve the facility and equipment used to construct or maintain the facility, shall not infringe on or in any manner whatsoever, at any time and for any reason other than for an official governmentally declared emergency, encumber, obstruct or interfere with the City's property and/or public rights-of-way or the use thereof without the City's express written permission.
- h) The Planning department is the officially designated agency or body of the city to whom applications for an administrative special use permit or a special use permit for a facility must be made. The City at its discretion may hire an outside consultant to accept, review, analyze, evaluate and make recommendations to staff and present the findings to the Planning Department or Planning Commission (Commission) who is authorized to make decisions with respect to granting or not granting or revoking an administrative special use permit or special use permits applied for under this Chapter respectively. The Commission shall possess the right to appeal Planning Department decisions while the City Council shall possess the sole right to hear appeals on all special use permits following the procedure outlined in Chapter 44 of the City Zoning Chapter.
- i) Pre-Application Meeting: There shall be a pre-application meeting for all intended applications. The pre-application meeting may be held either on site or telephonically as deemed appropriate. The purpose of the pre-application meeting will be to address (1) issues that will help to expedite the application review and permitting process; and (2) identify and address certain issues or concerns the City or the applicant may have.
- j) Site Visit: If there has not been a prior site visit for the requested facility within the previous six (6) months, a site visit shall be conducted. Costs of the City's consultant to prepare for and attend the pre-application meeting will be borne by the applicant and paid for out of a deposit fee set forth in the City's Master Fee Schedule, which shall have been paid to the City prior to any site visit or pre-application meeting.
- k) An application may not be filed until both a site visit, when required, a pre-application meeting are held, and any required applicable community outreach meeting has been conducted and a story pole has been erected as required, and all fees and deposits have been delivered to the City Planning Department.
- l) Applicant(s) of Record: The owner(s) of the support structure to which antennas or related equipment are to be attached must be an official applicant of record. Notwithstanding the preceding, for a new tower or other new support structure or for a substantial modification the technical need for a new facility must be documented and substantiated by clear and convincing technical evidence showing a particular carrier's or other user-of-the-facility's technical need for what is requested. Notwithstanding the

preceding, to avoid any conflict of interest as relates to City-owned facilities, the City is not permitted to be an applicant or a party to an application by a private commercial entity.

- m) The applicant must provide clear and convincing documentation to substantiate that it has the legal right to proceed as proposed on the site in the form of an executed copy of the lease with the landowner or a signed letter of agency granting authorization (which shall not constitute approval of proposed work). If the applicant owns the site, a copy of the ownership record is required.
- n) An application shall be signed on behalf of the applicant(s) by the person(s) vested with the authority to bind and commit the applicant and attesting to the truth, completeness and accuracy of the information presented.
- o) Owner Permission: An applicant intending to co-locate on an existing facility shall be required to provide written documentation of the intent of the existing facility owner and property owner to allow the intended use by the applicant.
- p) Properly Completed Application: All applicants shall closely follow the instructions for preparing an application. not closely following the instructions without permission to deviate from such shall result in the application being deemed incomplete and a tolling of the otherwise required thirty (30) day notification period of an incomplete application until the receipt of a complete and properly completed application.
- q) Amended Application: Unless expressly and boldly stated in the front of the application at the time of its submittal that the application is not complete, it shall be assumed that the applicant reviewed the application for compliance and intended the application to be complete, and therefore any subsequently submitted information intended to correct any deficiencies shall be deemed an amendment to the application.
- r) Any and all representations made by the applicant or that are made in support of the application during the application process, whether written or oral, shall be deemed to be on the record and shall be deemed to have been intended to be relied upon in good faith by the City. Any oral representation shall be treated as if it were made in writing.
- s) Single Submittal. To establish a clear and specific date certain by which to measure the time allowed the City for the review for completeness of an application, as well as the date by which action must be taken, an application must be filed as a single submittal and not in separately subsequently provided submittals. No application shall be allowed to be filed in pieces or in a piecemeal fashion or manner over any given amount of time, unless permission to do so is expressly both requested and granted in writing.
- t) Type of Application. To prevent confusion and any loss of the City's rights under the FCC's "Shot Clock" rule pursuant to the FCC Report and Order 14-153 as reference to the date an application was officially filed and the start of the shot clock regarding the limited time allowed to determine if an application is complete, at the time of the initial

filing of an application, it must contain a cover letter stating (1) whether the application is filed as an “eligible facility” application including the justification for such, or a “substantial modification,” or involves a new support structure; and (2) a statement that the application contains all of the information required under this Chapter for that type of Application, and be signed by a person with first-hand personal knowledge of such.

- u) Required Commitment Statements. All applications shall include written commitment statements that:
 - 1) The applicant’s facility shall at all times without exception be maintained in a safe manner, and in compliance with all conditions of the special use permit, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable City, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Commission or City Council in writing;
 - 2) The construction of the facility is legally permissible, including, but not limited to the fact that the Applicant is licensed to do business in the State.
- v) Number of Applications: An applicant shall submit to the City the number of completed Applications determined to be needed at the pre-application meeting as well as computerized copies of such. If Commission action is required, applications will not be transmitted to the Commission for consideration until the application is deemed complete by City staff and a recommended action report is prepared for the Commission’s consideration.

Design Intent, Siting and Applicable Building and Safety Codes

- w) Minimizing the Visual Impact: For reasons of concealment, all proposed facilities and Modifications to Facilities shall be designed to so as to minimize the physical and visual impact on the community, including but not limited to the use of stealth or camouflaging siting techniques, so as to make the Facility substantially invisible, or as nearly so as is reasonably possible.
- x) Least Intrusive Option: As a matter of concealment, requiring that the facility shall be the least visually intrusive among those options available, given the facts and circumstances.
- y) Profile: So as to be the least visually intrusive reasonably possible given the facts and circumstances involved and create the smallest profile reasonably possible under the facts and circumstances and thereby have the least adverse visual effect and be substantially invisible, all antennas attached to a Tower or other structure shall be flush mounted or as near to flush mounted as is possible, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.
- z) Concealment and Harmony with Surroundings: A tower or other support structure and any and all accessory or associated structures and equipment shall maximize the use of building materials, colors and textures designed to harmonize with the natural

surroundings so as to make the Facility substantially invisible. This shall include the utilization of stealth or camouflage techniques or other concealment methods such as but not limited to abiding by the established or maximum permitted height.

- aa) Required Use of Existing Structures: Unless such is proven to be technologically impracticable, the City requires the co-location of new antenna arrays on existing structures, as opposed to the construction of a new support structure, or for applications submitted subsequent to the adoption of this Chapter to increase the height, footprint or profile of a facility beyond the maximum permitted height, width or overall profile. In instances involving a substantial modification, or for a new facility subsequent to the adoption of this Chapter, the Applicant shall submit a comprehensive report inventorying all existing structures fifty (50) feet or more in height within one-half (1/2) mile of the location of any proposed new Facility.

Co-located equipment shall consist only of the minimum antenna array technologically needed to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown in the form of clear and convincing evidence.

- bb) Modifications of a Tower So as not to defeat the concealment intent of the maximum permitted height of towers or other support structures, modifications, singly or cumulatively on a single structure, shall not exceed the height allowed under the original permit by more than ten (10) feet, nor shall any lateral modification extend more than ten (10) feet from the lateral extremity of a tower, nor more than three (3) feet from the edge of a non-tower support structure.
- cc) Effect of Lease or Option to Lease on Siting/Location Priorities. The existence of a lease or an option to lease shall not be deemed justification for not complying with the siting priorities set forth in this Chapter. An applicant may not by-pass sites of higher priority because the site proposed is under lease or an option to lease. If a site other than the number 1 priority is proposed, the applicant must provide clear and convincing technical evidence as to why co-location is technically impracticable or clear and convincing relevant information as to why it would be commercially impracticable. Build-to-suit agreements between carriers and a proposed tower owner shall not be a valid basis for any claim of exemption, exception or waiver from compliance with this Chapter.
- dd) Utilities: All utilities at a facility site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the City, including specifically, but not limited to applicable electrical codes.
- ee) Vehicular Access: At a Facility needing vehicular access, an access road, parking and turn around space for emergency vehicles shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance, grade change and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. If the current access road or turn around space is deemed in disrepair or in need of remedial

work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the application shall contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with applicable regulations, and may include the installation of gravel, asphalt or other road building materials as determined by the City Engineer or their designee.

- ff) Compliance with Applicable codes: All work at a facility shall be done in strict compliance with all versions or editions of the latest applicable building, technical, safety and safety-related codes adopted by the City, State, or United States, including but not limited to the most recent edition of the TIA ANSI Code, National Electrical Safety Code, the National Electrical Code and the Occupational and Safety and Health Administration (OSHA) regulations, recommended practices of the National Association of Tower Erectors and accepted and responsible workmanlike industry practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use. In the event of a conflict between or among any of the preceding, the more stringent shall apply.
- gg) Certifications: Where a certification is called for, such certification shall bear the signature and seal of a Professional Engineer licensed in the State of California.
- hh) Permits and Licenses: A holder of a special use permit or administrative special use permit granted under this Chapter shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.
- ii) Compliance with Law: All Facilities, must at all times comply with all applicable local, State and federal laws, rules and regulations, including but not limited to applicable safety rules, regulations and standards
- jj) Distributive Access Systems (DAS) and Small Cell nodes that are owned or operated by a commercial carrier and are part of a commercial wireless system, or when activated are capable of being used for commercial purposes by the general public, are expressly included in the context of this Chapter, regardless of the location or whether the facility is located inside or outside a structure or building.

Other Policies

- kk) Community Outreach Meeting. To provide an opportunity for those reasonably expected to be affected to understand what is proposed and its impact, and to have input to the applicant, at the City's option given the facts and circumstances involved, for any i) new support structure, ii) any substantial modification or iii) any modification that would increase the height of the facility by five (5) feet or more or increase the size of the profile by two (2) feet or more horizontally, a community outreach meeting may be required to be held between the applicant, the residents in the area of the proposed site or work and the City. At least two (2) weeks prior to the date of the meeting written notice

of the meeting and its purpose shall be provided to all residents located within one thousand five hundred (1,500) feet of the site. The meeting shall be held on a weeknight no earlier than 7:00 p.m. and no later than 8:00 p.m. All costs related to the meeting shall be borne solely by the Applicant, including but not limited to the cost of written notification.

- ll) Shared Use. The owner of a tower or other support structure, and his/her successors in interest, shall negotiate in good faith for the shared use of the facility for co-location by other wireless service providers, and shall:
 - 1) Respond within 60 days to a request for information from a potential shared-use applicant;
 - 2) Negotiate in good faith concerning future requests for shared use of the new wireless telecommunications facility by other telecommunications providers;
 - 3) Allow shared use of the new wireless telecommunications facility if another telecommunications provider agrees in writing to pay reasonable charges.
 - 4) Understand that failure to abide by the conditions outlined above may be grounds for revocation of the special use permit.
- mm) Denial of a Non-Eligible Facility application: The City may, for just reason and cause, deny an application for anything that does not meet the requirements stated herein or which is otherwise not complete or as set forth in Section 10-16.115.

Section 10-16.109 Processing Fees to be Borne by Applicant

- a) The City may hire a consultant to assist the City in reviewing and evaluating Applications.
- b) The total amount of the funds needed as set forth in the City's Master Fee Schedule, as may be modified from time to time, may vary with the scope and complexity of the application, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.
- c) Preliminary informational discussion totaling less than one (1) hour cumulatively, shall be allowed to provide initial information. However, to prevent the taxpayers from having to bear the cost related to the issue of permitting and regulating wireless telecommunications facilities, an applicant shall place with the City a deposit as set forth in the City's Master Fee Schedule which shall be maintained in an escrow account for that application. The deposit is intended to cover all reasonable costs of any consultant with twenty percent (20%) overhead charge and City staff time plus twenty percent (20%) overhead in connection with the review of any Application or the permitting, inspection, construction or modification requested and an pre-application submittal

review or evaluation requested by the applicant and any lease negotiations. The payment of the deposit fee with the City shall precede site visit and any work being done that is related to an intended application or lease.

- d) If at any time during the review process this escrow account has a balance less than two thousand five hundred dollars (\$2,500.00), applicant shall immediately, upon notification by the City, replenish said escrow account so that it has a balance of at least \$5,000.00 or such other amount as determined by the Planning Director to be needed given the anticipated amount of work remaining on the application. Such additional funds must be deposited with the City before any further review, action or consideration is taken on the application. In the event that the amount held in the escrow account is more than the amount of the actual billing or invoicing at the time of the grant of the certificate of completion, the remaining balance shall be promptly refunded to the applicant upon request.
- e) If an application is amended at any time prior to the grant of the permit or authorization required under this Chapter, the City reserves the right to require a separate and additional payment for review and analysis equal to, but not exceeding, the cost created for the City by the amendment of the application. Such amount shall be paid to the City prior to the issuance of the special use permit or administrative special use permit.
- f) The City will maintain an accounting for the expenditure of all such funds. The City's consultant/expert shall invoice the City for all time expended for its services in reviewing the application including the on-site inspections of the construction and modification once permitted, plus out-of-pocket expenses. Billing of consultant time will have a twenty percent (20%) administration charge added. Additionally, any City staff time with twenty percent (20%) overhead plus any hard costs such as publications, mailing, and copies shall also be tabulated and added to the total billable costs.
- g) The total amount of the funds needed as set forth in the City's Master Fee Schedule may vary with the scope and complexity and/or the completeness of the application or the amount of time spent responding to an applicant's questions as regards the requirements of this Chapter or other applicable law, rule or regulation.

Section 10-16.110 Application Requirements for an Administrative Special Use Permit

Application requirements shall include but not be limited to the following items, be deemed complete, and must receive administrative approval by the City Planning Department, or City Manager designee, for the construction or installation of qualifying improvements prior to seeking the issuance of a Building Permit.

Ownership and Management

- a) The name, address, phone number and e-mail address of the person preparing the application;
- b) The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;
- c) The postal address and tax map parcel number of the property;
- d) A copy of the FCC license applicable for the intended use(s) of the wireless telecommunications facilities, including all FCC licensed frequency bands for the location;
- e) The applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share space on the new tower;

Zoning and Planning

- f) The zoning district or designation in which the property is situated;
- g) The size of the property footprint on which the structure to be built or attached to is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
- h) The location, size and height of all existing and proposed structures, enclosures and cabinets on the property on which the structure is located and that are related to the subject of the application;
- i) A site plan to scale showing the footprint of the support structure and the type, location and dimensions of access drives, landscaping and buffers, fencing, distances between property lines and adjacent structures and any other requirements of site plans;
- j) Elevation drawings showing the profile or the vertical rendition of the facility and identifying all existing and proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the existing grade, materials, colors and lighting;
- k) The azimuth, size and center line height location of all proposed and existing antennas on the supporting structure;
- l) The type and design of the facility, the number of antenna arrays proposed to be accommodated and the basis for the calculations of the Facility's capacity to accommodate the required number of antenna arrays for which the structure must be

designed;

- m) All applications shall contain proof of a performance security and liability insurance and a letter of indemnification, in conformity with City provisions listed in this Chapter.

Design, Visibility and Aesthetics

- n) Profile and Concealment: So as to be the least visually intrusive reasonably possible given the facts and circumstances involved, and create the smallest profile reasonably possible under the facts and circumstances, all antennas attached to a tower or other structure shall be mounted inside the structure, or if such is not physically or technologically possible then flush mounted or as near to flush mounted as is possible, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.
- o) After the adoption of this Chapter, the maximum permitted width or profile of a new tower, including any attachments, shall not exceed ten (10) feet, absent clear and convincing technical evidence documenting the need for a larger profile.
- p) Flush Mounting. All new or replacement antennas, shall be flush-mounted or as close to flush-mounted on the support structure as possible, unless it can be demonstrated by clear and convincing technical evidence that such has the effect of prohibiting the provision of service to the intended service area, alone or in combination with another site(s), or unless the applicant can prove that it is technologically impracticable.
- q) Placement on Building Façade. If attached to a building, all antennas shall be mounted on the facade of the building and camouflaged so as to match the color and, if possible, the texture of the building, or in a manner so as to make the antennas and cabling as visually innocuous and undetectable as is possible given the facts and circumstances involved.
- r) Least Visually Intrusive Means. As a matter of concealment, all applications for a proposed facility applicable to this Chapter shall contain clear and convincing evidence that the facility is sited and designed so as to create the least visual intrusiveness reasonably possible to the greatest number of people, given the facts and circumstances involved, and thereby will have the least adverse visual effect on the environment and its character, on existing vegetation, and be substantially invisible to the community in the area of the facility. The City expressly reserves the right to require the use of stealth or camouflage siting and deployment techniques, including but not limited to DAS (Distributive Access System) and Small Cell nodes or the functional equivalent of such to achieve this goal and such shall be subject to approval by the Commission, unless such can be shown to be either commercially or technologically impracticable.
- s) Facility Finish/Color: Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Chapter.

- t) **Lighting.** No tower or support structure constructed after the effective date of this Chapter shall be tall enough to require lighting. In the event lighting is legally unavoidable and is required, the applicant shall provide a detailed plan for lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations. In the event lighting is legally unavoidable and is required, the Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations. For any facility for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 12 degrees vertical for a distance of at least 1 mile in a level terrain situation. Such device must be compliant with or not in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA.

As of the effective date of the ordinance codified in this Chapter, in the event a tower that is lighted is modified, at the time of the modification, for purposes of concealment the City may require that the Tower be retrofitted so as to comply with the lighting requirements of this Chapter.

- u) **Screening.** The applicant shall provide a description in writing and a visual rendering demonstrating how it shall effectively screen from view the bottom fifteen (15) feet of the facility and all related equipment and structures associated with the facility.
- v) **Visual Impact Assessment.** The Applicant shall furnish a visual impact assessment, which shall include:
- 1) A computer-generated "Zone of Visibility Map" at a minimum of one (1) mile radius from the proposed structure shall be provided to illustrate locations from which the proposed installation may be seen, with and without foliage;
 - 2) Pictorial representations (photo simulations) of "before and after" views from key viewpoints inside of the City as may be appropriate and required, including but not limited to state highways and other major roads, state and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key viewpoints at the pre-application meeting. In addition to photographic simulations to scale showing the visual impact, the applicant shall provide a map showing the locations of where the pictures were taken and the distance(s) of each location from the proposed structure;

Safety

- w) **Age.** The age of the facility in years, including the date of the grant of the original permit;
- x) **Description.** A description of the type of tower, e.g., guyed, self-supporting lattice or

monopole;

- y) Tower Details. The make, model, type and manufacturer of the tower and the structural design analysis and report, including the calculations, certified by a professional engineer licensed in the State and proving the facility's capability to safely accommodate the facilities of the applicant without change or modification;
- z) Changes Narrative. If a modification of a facility is needed whereby the height, profile or size of the facility is increased, or construction is needed outside the compound or property, a detailed narrative explaining what changes are needed and why they are needed;
- aa) Foundation. A copy of the foundation design, including a geotechnical sub-surface soils investigation report and foundation design recommendation for the tower or other structure;
- bb) Physical Condition. If modifying an existing tower or other support structure, an ANSI /TIA-222 Report regarding the current physical condition of the facility and its components done within the previous six (6) months. If such report has not been done within the previous six (6) months, one shall be done and submitted as part of the application. No Building permit shall be issued for any wireless facility or related equipment where the structure being attached to is in need of remediation to comply with the requirements of this Chapter and other adopted standards of the City, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the City Planning Department;
- cc) Structural Analysis. The applicant shall provide certified documentation in the form of a structural analysis, including any assumptions and calculations proving that the proposed facility modifications will meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict the more stringent shall apply.
- dd) RF Emissions Report. A cumulative RF Emissions study and report accounting for all RF emitting equipment at the facility, including a description of the methodology used, any assumptions made and showing the calculations;
- ee) RF Emissions On-Site Survey. In certain instances the City may deem it appropriate to have an on-site RF survey of the facility done after the construction or modification and activation of the facility. Such survey shall be done under the observation and direction of the City or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance;
- ff) RF Emissions Remediation. A signed statement that the applicant will expeditiously remedy any physical or RF interference with other wireless devices or services.

gg) FAA Determination. A written copy of an analysis completed by a qualified individual or organization to determine if the proposed wireless telecommunications facility is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. Unless already lighted, this requirement shall also be for any facility where the application proposes to increase the height of the facility. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.

Section 10-16.111 Application Requirements for a Special Use Permit

The process for permitting and the information required under this Chapter shall be the same as in the preceding Section 10-16.110 “Application Requirements for an Administrative Special Use Permit,” except the following additional items shall also be required prior to a decision being made by the Planning Commission at a public hearing prior to seeking the issuance of a Building Permit for any construction or installation of a new facility or major modification project.

Proof of Technical Need

- a) For a new tower or other new support structure the applicant shall be required to submit clear and convincing evidence that a new tower or support structure is the only type of structure within one-half (1/2) mile of the proposed tower or support structure that will enable the provision of wireless services primarily within the City.
- b) Documentation that the facility is necessary for that carrier to provide service in the community and that co-location on an existing structure is not feasible.
- c) Documentation that co-location on an existing structure is not reasonably feasible if co-location is technically or commercially impracticable or the owner of the structure is unwilling to enter into a contract for such use. Sufficient documentation in the form of clear and convincing evidence to support such claims shall be submitted with an application to determine whether co-location on existing structures is reasonably feasible and to document the need for a specific stated height, and that less height will serve to prohibit or have the effect of prohibiting the provision of service.

Design of Towers (Type, Height, Setback and Fall Zones)

- d) To enable a new tower or other new support structure to be extended in height at a future date, if needed, the wireless telecommunications facility shall be structurally designed to accommodate at least four (4) antenna arrays, with each array to be flush mounted unless clear and convincing technical evidence demonstrates the impracticability of flush mounting.
- e) All new towers shall be of the monopole type. No new towers of a lattice or guyed type shall be permitted, unless relief is otherwise expressly requested and granted based on the provision of clear and convincing technical evidence.

- f) The maximum permitted total height of a new tower or support structure shall be thirty-five (35) feet above pre-construction ground level, unless it can be shown by clear and convincing technical evidence that such height would prohibit or have the effect of prohibiting the provision of service in the intended service area within the City. The maximum permitted height is expressly not an as-of-right height, but rather the maximum permitted height absent clear and convincing technical evidence of the technological Need for a greater height, and should take into consideration the ability to co-locate other carriers in the future.
- g) As the City has made the policy decision that more facilities of a shorter height is in the public interest, as opposed to fewer taller facilities, spacing or the distance between facilities shall be such that the service may be provided without exceeding the maximum permitted height.
- h) The applicant for a new tower shall submit clear and convincing technical evidence by a carrier or wireless service provider justifying the total height of the proposed facility and the need for such to the exclusion of all reasonable alternatives. Evidence in the form of propagation studies must include all modeling data and assumptions used to produce the studies at the requested height and at a height ten (10) feet lower to show that any lower height would have the effect of prohibiting the provision of service and should take into consideration the ability to co locate other carriers in the future.
- i) The City reserves the right to require a drive test to be conducted under the supervision of the City or its designee as evidence of the technical need for what is requested.
- j) With respect to the overall designed strength of a tower, but not with respect to height, towers shall be structurally designed to accommodate a minimum of four (4) carriers using substantially similar equipment to that used by the first carrier attaching to a tower and that can be increased in height if needed for technical reasons.
- k) Setback and Fall Zone: All proposed towers and any new proposed support structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: (1) a distance equal to the height of the proposed tower or support structure plus ten percent (10%) of the height of the tower or other structure, otherwise known as the fall zone; or (2) the existing setback requirement of the underlying zoning district, whichever is greater. Any accessory structure shall be located within the fenced compound area as approved in the special use permit and so as to comply with the applicable minimum setback requirements for the property on which it is situated. The fall zone shall be measured from the nearest edge of the tower to the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile, as well as any property boundary lines. At the discretion of the Commission, the preceding may not apply to support structures located in the public-rights-of-way so long as required minimum distances to adjacent buildings are complied with.

- l) The nearest portion of any access road leading to a facility shall be no less than ten (10) feet from the nearest property line.
- m) There shall be no development or human occupation of habitable buildings within the setback area or fall zone.

Community Outreach in the Case of a New Tower

- n) In order to better inform the public, the applicant shall be responsible for notifying the public by mail as well as through on-site signage, placing a story pole, and producing a photo simulation report as more specifically detailed below prior to being considered by the City's approving body.
 - 1) Story Pole. The applicant shall arrange to place a "story pole" at the exact proposed tower location and raise upon a temporary mast, a minimum of ten (10) feet in length, brightly colored flags/balloons at the maximum height of the proposed new tower in the same vertical and horizontal dimensions as the proposed antenna for at least forty-eight (48) consecutive hours immediately preceding and through the end of the community meeting.
 - 2) On-Site Signage. A four (4) foot by eight (8) foot sign shall be erected prior to community meeting notices being mailed so as to be clearly visible from the road nearest the proposed site and shall be easily readable from the road by a person with 20/20 vision. Such sign shall be placed off, but as near to, the public right-of-way as is possible and contain the times and date(s) of the initial community outreach meeting and contact information.
 - 3) Draft Community Meeting Notices. At least fourteen (14) calendar days in advance of mailing community meeting notices, the applicant shall provide a one (1) page draft copy of a public outreach notice for approval to the City and its consultant, if applicable, to include the date the story pole will be in place and the date, time, and place of the community outreach meeting and description and elevation of the proposed project.
 - 4) Mailing Community Meeting Notices. The applicant shall mail the above approved community meeting notices by first-class mail to all property owners, residents, and businesses located within one thousand five hundred (1,500) feet of the nearest property line of the subject property of the proposed construction of the tower and wireless facility (with a certified/reproducible copy of the mailing labels being provided to the City) at least fourteen (14) days, but no more than twenty-one (21) days, prior to the community outreach meeting. The applicant shall bear all costs associated with said notification.
 - 5) A report with before and superimposed after photo simulations from various locations of the story pole and to scale superimposed photo simulations of the proposed facility when completed shall be provided as part of the application.

Section 10-16.112 Streamlined Process - Requirements for an Application to Co-locate on an Existing Properly Permitted Telecommunications Facility or Existing Building Structure within the Parameters of an Approved Special Use Permit, but not including the First Attachment

- a) The process for permitting and the information required under this Chapter shall be the same as in the preceding Section 10-16.110 “Application Requirements for an Administrative Special Use Permit,” for an application qualifying for the streamlined process.
- b) An application to increase the parameters of an approved wireless telecommunications facility as it relates to height, profile, number of co-locations or footprint shall not qualify for streamlined treatment under this Chapter.
- c) Small Cell Sites. An application proposing the use of small cell technology in the public rights-of-way that does not increase the height of an existing structure being attached to by more than four (4) feet shall be entitled to the streamlined process. If increasing the height of a building by between four (4) feet and eight (8) feet the application may also be reviewed under the streamlined process, provided the applicant will install an RF translucent false facade or parapet that matches the style, color and texture of the building.
- d) Attachments to Buildings. To preserve and protect the nature and character of the area and enable the site to be substantially invisible, for any attachment to a building or other structure with a facade, the antennas shall be mounted on the facade without increasing the height of the building or other structure, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exteriorly encased or exposed cabling shall match as closely as possible the color and texture of the structure.
- e) Attachments to Water Tanks. If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the applicant can prove that to locate elsewhere on the tank with less visual effect will prohibit or have the effect of prohibiting the provision of service or will create a safety hazard.
- f) The applicant shall provide a certification by a professional engineer licensed in the State, along with documentation in the form of a structural analysis, including calculations, that prove that the support structure and its foundation as proposed to be utilized are designed and were constructed to meet all City, State, Federal and ANSI/TIA-222 structural requirements for loads, including wind and ice loads.

Section 10-16.113 Small Cell and Small Wireless Facilities

- a) Administrative Review. Small wireless facilities to be located on an existing support structure that do not involve a new support structure or substantial modification of an existing facility shall qualify for an administrative application review and permitting process.

An application for a substantial modification/co-location or new support structure shall not qualify for administrative review and permitting under this Chapter.

- b) Variances. Any variance from the regulations contained in this Section shall be subject to a test of (1) technological impracticability; or (2) commercial impracticability; or (3) both, in relation to the area intended to be served by the proposed facility; and (4) any situation that would result in non-compliance with any safety or safety-related law, rule or regulation.
- c) Batched Applications. An applicant, or its agent of record, may submit applications for multiple facilities or locations with the following conditions that are intended to ensure compliance with the FCC's 'Shot Clock' requirements:
 - 1) No single batched submittal shall contain more than five (5) applications;
 - 2) There must be a minimum of seven days between submittals of batched applications;
 - 3) No more than four (4) batched applications shall be accepted in any thirty (30) consecutive day period.
 - 4) The individual locations or sites within a batched application are severable and may be treated and permitted individually.
- d) Required Application Information. The information required to be provided in an application under this Section is as follows.
 - 1) The name, address, phone number and e-mail address of the person preparing the application;
 - 2) The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided for both parties.
 - 3) The nearest postal address and tax map parcel number of the subject property.
 - 4) The zoning district or designation in which the subject property is situated.

- 5) For all new facilities, a list of the specific frequency bands to be initially activated immediately upon completion of construction.
- 6) For all new facilities, a separate list of all frequencies licensed for the carrier, but not intended to be initially activated.
- 7) A copy of the FCC licenses applicable for all the frequency bands licensed to the carrier to provide service in the City.
- 8) Transmission and maximum effective radiated power of the antenna(s).
- 9) Written commitment statements that:
 - a) The applicant's facility shall at all times without exception be maintained in a safe manner, and in compliance with all conditions of the special use permit, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable City, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Council in writing;
 - b) The construction of the facility is legally permissible, including, but not limited to the fact that the applicant is licensed to do business in the State.
 - c) The Applicant commits to fully and completely indemnify the City for and from the applicant's use of the City's right-of-way.
- 10) A general description of the proposed scope of work and the specific purpose(s) of the small wireless facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with emphasis on those matters likely to be affected or impacted by the work proposed. The description shall include at a minimum the type of equipment, number of antennas, height to top of antenna(s), statement of compliance with FCC requirements, and description and/or depiction of concealment elements.
- 11) Certified detailed construction drawings and site plan, including but not limited to the following information:
 - a) If not to be located in the public rights-of-way, the location of the nearest residential structure and any unoccupied but habitable structure.
 - b) If not to be located in the public rights-of-way, the location, size and height of all existing and proposed structures on the property that are more than six (6) feet in height and are not buildings.
 - c) If not to be located in the public rights-of-way, the location of enclosures and cabinets on the property on which the structure is or will be located that are related to the subject of the application.

- d) A site plan to-scale, showing the footprint of the support structure and the type, location and dimensions of :
 - 1) all boundaries;
 - 2) access drives;
 - 3) landscaping and buffers;
 - 4) fencing;
 - 5) underground utilities of any kind; and
 - 6) any easements.
 - e) Elevation drawings showing the profile or the vertical rendition of the support structure for the facility, and identifying all existing and proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the existing grade and lighting.
 - f) Proposed electrical and grounding plans for the facility.
- 12) The azimuth, size, top of antenna height and location of all proposed and existing antennas on the support structure, including the height of the top of any equipment affixed to the top of the support structure.
 - 13) The type of support structure to be used and a structural analysis and report, including the calculations, certified by a professional engineer licensed in the State and proving the structure's capability to safely accommodate the facilities of the applicant.
 - 14) An ANSI/TIA-222 Maintenance and Conditions Assessment report regarding the physical condition of any existing structure to be used or modified, using the most recently officially adopted version of ANSI/TIA-222. The report shall contain tolerances including but not limited to guy tensions if applicable, plumb, twist, slip splices, and take-up devices.
 - 15) No authorization shall be issued for any structure where the structure being attached to is in need of safety-related remediation to comply with the requirements of this Chapter and other adopted standards of the City, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the City.
 - 16) An RF emissions report, with calculations, showing full compliance with all requirements and practices set forth by all applicable regulations, including but not limited to the latest edition of the Federal Communications Commission (FCC) OET Bulletin 65 and OSHA's regulations regarding RF emissions.
 - 17) In certain instances, the City may deem it appropriate to have on-site RF compliance testing of the facility done after the construction or modification of the facility to determine compliance with all applicable regulations, including but

not limited to OET 65 regarding RF emissions and/or OSHA's regulations regarding RF emissions. The testing shall be done under the observation and direction of the City or its designee, and an un-redacted copy of the survey results, along with all calculations, shall be provided prior to the issuance of a certificate of compliance.

- 18) A signed statement of commitment that the applicant will expeditiously remedy any physical or RF-related issues, including interference with other wireless devices or services.

e) Construction in the Public Rights-of-Way

- 1) All construction and maintenance shall at all times comply with applicable portions of all federal, State and local safety and safety-related codes, rules and regulations, as well as the City's right-of-way use and occupancy regulations.
- 2) No equipment or work associated with a small wireless facility shall interfere with, endanger, hamper, impede or incommode access to any utility or any other facility in the public right-of-way.
- 3) No wireless facility, nor any work associated with such, shall interfere with, endanger, hamper or impede the usual and customary use of the public right-of-way or any vehicular or pedestrian way.
- 4) All work and installations on utility poles or light poles shall fully comply with the California Public Utilities Commission general orders, including but not limited to General Order 95, as may be revised or superseded.
- 5) Attachment to Existing Structures in the Public Rights-of-Way
 - a) Utility Poles. The maximum height of the top of any antenna shall not exceed ten percent (10%) of the existing height of the utility pole to be attached to immediately prior to attachment.
 - b) No portion of any antenna or wireless equipment shall be less than ten (10) feet above the ground, except that above any drivable road surface, no portion of any antenna or wireless equipment shall be less than twenty four (24) above the surface if attached to a utility pole or less than sixteen feet and one-half (16.5) feet above the surface if attached to a light pole
 - c) Light Poles. The maximum height of the top of any antenna shall not exceed ten percent (10%) of the existing height of the light pole to be attached to immediately prior to attachment.
 - d) No utility or light pole shall ever exceed the lesser of fifty (50) feet or the maximum permitted height for the zoning district in which it is located.

- e) Except for the electric meter, all accessory equipment not directly attached to the antennas shall be installed underground in a weatherproof vault(s).
- f) All construction and maintenance shall at all times comply with all applicable portions of all federal, State and local safety and safety-related codes.
- g) New and Replacement Poles. Primarily but not exclusively for aesthetic reasons, the City reserves the right to in certain instances and at applicant's cost require a new pole, or a replacement pole if a new pole is needed to accommodate wireless equipment. The new or replacement pole shall be a hollow metal or non-corrodable functionally equivalent structure that is in keeping with the nature and character of the surrounding area or neighborhood.
- h) Aesthetics/Appearance:
 - 1) Antenna Size. All small cell or DAS antennas and equipment attached to and directly associated with the antenna(s), excluding cabling, shall cumulatively not exceed three cubic feet (3 cu.ft.) in volume, nor be larger than two (2) feet in height.
 - 2) Lateral Extension. If permitted to be mounted externally, no wireless antenna or other pole-mounted equipment shall extend laterally beyond the diameter of the structure as measured at the point of attachment.
 - 3) Point of Attachment of Antennas. If permitted to be mounted externally, the point of attachment of any antennas shall not be more than three inches (3") from the pole or other support structure, and the space between the structure and the attachment point of the antenna shall be concealed with a weather-proof material the same color as the structure or the antenna;
 - 4) Color. Antennas shall be of a color that as closely as is reasonably possible matches that of the support structure.
 - 5) Placement of Electronic Equipment. All electronic equipment not attached to the antenna(s) shall be placed underground in a weather-proof vault or contained in the base of the support structure.
 - 6) All accessory equipment not directly attached to the wireless antennas shall be installed underground in waterproof vaults.

7) All transmission or distribution cable or fiber shall be installed underground.

6) New Structures in the Public Rights-of-Way

- a) Any variance or relief from the following standards must be requested in writing, including a written justification demonstrating sufficient reason for the variance or relief to be granted.
- b) Any relief or variance granted may contain one (1) or more conditions;
- c) New support structures shall, at the Planning Director's option, be hollow metal or made of a non-conductive, non-corrodable material of sufficient interior diameter to accommodate inside it the antenna(s) and all cabling or wiring attached to the antenna, and shall be of a color in harmony with the surrounding area or neighborhood that is acceptable to the Planning Director;
- d) Height: No support structure, regardless of the type of structure, may i) be taller than the immediately adjacent utility poles or public lighting structures; or ii) the lesser of the maximum permitted height for the zoning district in which it is located or fifty feet (50') in total height, including any attachments of any kind associated with the Wireless Facility;
- e) Not recognizable: A small wireless facility shall not be easily recognizable as a wireless facility by a layperson;
- f) Placement of antenna(s): All antennas, cabling and equipment directly associated with the antennas shall be contained inside the new support structure;
- g) No antenna shall be mounted on the side of a new utility or light pole, except that any antenna that for justifiable reasons cannot be contained inside the support structure shall be mounted so as to be the least visually intrusive reasonably possible given the facts and circumstances;
- h) Lateral protrusion: No antenna or equipment directly associated with an antenna shall protrude laterally beyond the outer diameter of the support structure, unless relief is requested in writing and approved;
- i) Accessory equipment: All accessory equipment not directly attached to the antennas shall be installed underground in a weatherproof vault;
- j) Any new support structure shall be designed as a decorative structure and shall be in keeping with the nature and character of the surrounding area or neighborhood;

- k) No antenna shall be larger than two feet (2') in height with no portion extending laterally beyond the diameter of the structure as measured at the point of attachment to the structure;
- l) For any light pole that has an extending arm for the light fixture, unless mounted inside the pole or on the top of the pole, antenna shall be mounted so as not to be easily distinguishable from the light fixture.
- m) If externally mounted, the point of attachment to the top of a structure shall not be more than three inches (3") below the bottom of an antenna, and the space between the top of the structure and the attachment point of the antenna shall be concealed with a weather-proof material the same color as the structure or the antenna;
- n) Antennas and any exposed element of such shall be of a color that as closely as is reasonably possible matches that of the support structure.
- o) All equipment other than the antenna(s) shall be placed underground in a weatherproof vault or contained within the base of the support structure.
- p) A permit for any wireless telecommunications facility shall be valid for a period of ten (10) years, unless it lapses or expires sooner or is revoked.
- q) Pursuant to the preceding subsection (p), at the end of ten (10) years from the date of issuance, such permit shall automatically expire.
- r) A permittee may apply for a new permit within the one hundred and eighty (180) days prior to expiration. Said application and proposal shall comply with the City's then-current code requirements for wireless telecommunications facilities.

7) Non-Conforming Wireless Facilities in the Public Rights-Of-Way

- a) Non-conforming wireless facilities are those facilities that in one or more ways do not conform to this Chapter.
- b) Non-conforming wireless facilities shall, within ten (10) years from the date such facility becomes nonconforming, be brought into conformity with all requirements of this Chapter; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this Chapter at such time, to the extent the City can require such compliance under federal and state law.

- c) An aggrieved person may file an appeal of any decision of the Planning Director made pursuant to this section to the City Council. In the event of an appeal alleging that the ten (10) year amortization period is not reasonable as applied to a particular property, the City Council may consider i) the amount of investment or original cost; ii) present actual or depreciated value; iii) dates of construction; iv) amortization for tax purposes; v) salvage value vi) remaining useful life; vii) the length and remaining term of the lease under which it is maintained, if any; and viii) the harm to the public if the structure remains standing beyond the prescribed amortization period, and may set an amortization period accordingly for the specific property.

8) Construction on Private Property

a) New Structures.

Notwithstanding the requirements for new structures in public rights-of-way, the following shall apply to new structures on private property.

1. No new tower of any kind that is built to accommodate a small wireless facility may be built on private property in a single- or multi-family residentially zoned district or neighborhood, or within one-thousand (1,000) feet of the border of such a district or neighborhood. Notwithstanding anything to the contrary as regards compatible use designation, this requirement shall not be deemed in violation of any compatible use law, rule or regulation.

2. Aesthetics/Appearance:

- a) Height: The maximum allowed height for new support structures, but not an as-of-right height, shall be the lesser of i) the maximum height permitted for the zoning designation in which it is to be located; or ii) fifty (50) feet above existing pre-construction grade level.

3. The support structure shall

- a) be a hollow, non-wooden, non-corrodable structure of sufficient interior diameter to accommodate the antenna(s) and cabling or wiring inside it, and shall be of a color acceptable to the Planning Director;
- b) not be more than three inches (3") below the bottom of an antenna that is attached to the top of the structure, and the space between the top of the structure and the attachment point of the antenna shall be concealed with a weather-proof material the same color as the structure or the antenna;

4. Antennas shall be no larger than two feet (2') in height with no portion extending laterally beyond the diameter of the structure at the top of the structure at the point of attachment;
5. Antennas shall be of a color that as closely as is reasonably possible matches that of the support structure.
6. All equipment other than the antenna(s) shall be placed underground in a weather-proof vault or contained in the base of the support structure.

Section 10-16.114 Procedural Requirements before Action on any Application Taken

- a) The City will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities and applicable law, and shall act within the time required by applicable law.
- b) The City may refer any Application or part thereof to any advisory committee or consultant for a non-binding recommendation.
- c) Either after the public hearing, if a hearing is required, or after Administrative review as applicable, and after formally considering the application, the City may (1) approve; (2) approve with conditions; or (3) deny a permit or administrative authorization. The decision shall be in writing and shall be supported by substantial evidence contained in a written record. Throughout the application and permitting process, the burden of proof for compliance with this Chapter or the need for something not allowed, shall always be upon the applicant.
- d) All application approvals shall contain various written conditions of approval that are required (1) prior to building permit issuance, and (2) prior to final inspections / certificate of completion
- e) If the city approves the special use permit or administrative special use permit for the facility, then a notice of decision shall be posted within a public area of City Hall and mailed to the applicant within ten (10) working days of the City's action. the special use permit or administrative special use permit shall be effective ten (10) working days after the posting or mailing of the approval decision.
- f) If the City denies the special use permit or administrative special use permit for the facility or the modification, then the applicant shall be orally notified of such denial with specific reasons for such denial by the Planning Department or at the Commission Meeting depending on the reviewing body, and in writing within 30 calendar days of the decision, and shall set forth in writing the reason or reasons for the denial.
- g) Any discretionary decision may be appealed by the applicant or any person affected by a determination or decision. Discretionary decisions made by the Planning Department are appealable to the Planning Commission while Planning Commission decisions are appealable to City Council as outlined in the City of Hercules Zoning Chapter 44.

Section 10-16.115 Procedural Requirements for Granting a Special Use Permit

- a) In addition to the above listed Section 10-16.113, “Procedural Requirements before Action on any Application Taken,” the following procedures shall apply where a special use permit is requested
- b) The City shall schedule a public hearing(s) once it finds the application is complete (and that the applicant has held a community outreach meeting) and there are no issues of non-compliance with applicable law, rule or regulation. The City is not required to set a date if the Application is not complete or if there are unresolved issues of non-compliance. The City may, at any stage prior to issuing a special use permit or administrative special use permit, require such additional information as it deems necessary and is not prohibited from requiring as it relates to the issue of the siting, construction or modification of or at a wireless facility.
- c) Required Findings: Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City must make the following findings prior to approving a special use permit, unless there is clear and convincing technical evidence that the requirements in the Chapter are not possible to achieve or relief has been requested and an exception is warranted based on the facts and environmental/technical circumstances involved:
 - 1) The facility does not conflict with safety and safety-related codes and requirements;
 - 2) The facility conforms to the City’s policy of concealment;
 - 3) The facility does not conflict with the historic nature or character of a neighborhood or district;
 - 4) The use or construction of the facility is not contrary to an already stated purpose of a specific zoning or land use designation;
 - 5) The placement and location of the facility does not create an unacceptable safety or financial risk to residents or the safety of the general public, employees and agents of the City or employees of the service provider or other service providers, or the reasonable probability of such;
 - 6) The placement and location of a facility does not result in a conflict with, compromise in or change in the nature or character of the adjacent surrounding area;
 - 7) The facility does not conflict with the provisions of this Chapter;

Section 10-16.116 Reasons for Denial

- a) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City may disapprove an application for any of the following reasons:
 - 1) Conflict with safety and safety-related codes and requirements;
 - 2) The facility would not conform to the City’s policy of concealment;
 - 3) Conflict with the historic nature or character of a neighborhood or district;
 - 4) The use or construction of facilities is contrary to an already stated purpose of a specific zoning or land use designation;

- 5) The placement and location of facilities would create an unacceptable safety or financial risk to residents or the safety of the general public, employees and agents of the City or employees of the service provider or other service providers, or the reasonable probability of such;
- 6) The placement and location of a facility would result in a conflict with, compromise in or change in the nature or character of the adjacent surrounding area;
- 7) Conflicts with the provisions of this Chapter;

Section 10-16.117 Assignment/Transfer, Default/ Revocation, and Termination of Administrative Special Use Permits or Special Use Permits for Wireless Telecommunications Facilities

The extent and parameters of a special use permit or administrative special use permit for a facility shall be as follows:

- a) A special use permit or administrative special use permit shall not be assigned, transferred or conveyed without the express prior written notification to the City, such notice to be not fewer than thirty (30) business days prior to the intended assignment, transfer or conveyance.
- b) A transfer, assignment or other conveyance of the special use permit or administrative special use permit shall require the written commitment of the new holder of the special use permit or administrative special use permit to abide by all applicable laws, rules and regulations, including but not limited to this Chapter.
- c) If a support structure or facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Chapter or of the special use permit or administrative special use permit, then the City shall notify the holder of the special use permit or administrative special use permit in writing of such violation. A permit or administrative special use permit holder found to be in violation may be considered in default and subject to fines as permitted under applicable State law, and if a violation is not corrected to the satisfaction of the City in a reasonable period of time the special use permit or administrative special use permit shall be subject to revocation.
- d) Following notice and an opportunity to cure, and if not cured, a special use permit or administrative special use permit granted under this Chapter may be revoked, canceled, or terminated for a violation of the conditions and provisions of the special use permit or other applicable law, rule or regulation, and if warranted the payment of a fine(s) as shown in the penalty provisions of this Chapter.
- e) If not cured within the time frame set forth in the notice of violation, a hearing shall be held upon due prior notice to the applicant citing the violation(s) and the date, time and place of the hearing, which shall be provided by registered mail to the last known address of the holder of the special use permit and property owner of record.
- f) Following the original notice and an opportunity to cure as relates to a given Facility, subsequent or repeated violations of a substantially similar nature shall not require an opportunity to cure prior to the imposition of fines.

Section 10-16.118 Responsible Party(s)

The owner(s) of a facility, including any support structure used to accommodate wireless facilities and equipment, and the owner of the land upon which a facility or support structure is located, shall at all times be jointly and severally responsible for: (a) the physical and safe condition of the facility and all components on the site related to the facility; (b) assuring that all activities of owners, users, or lessees occurring on the site, and all components on the site related to the facility, are at all times in compliance with all applicable laws, ordinances, rules, regulations, orders, and permits related to the facility; and (c) assuring the proper permitting as required by this Article and other City regulations by all owners of equipment, lessees and users of the facility, including but not limited to any upgrades and/or modifications of equipment. Said owner(s) shall monitor activities at the site to assure that the facility is operated in compliance with this Chapter, other City regulations, and any City issued special, administrative or conditional use permits or building permits.

Section 10-16.19 Removal and Performance Security

- a) Support Structure Removal and Performance: The applicant and the owner of record of any proposed new tower or support structure shall, at its sole cost and expense, be required to execute and file with the City a bond or other form of security that is acceptable to the City as to the type of security and the form and manner of execution, in an amount of at least seventy-five thousand dollars (\$75,000) for a tower or other support structure and with such sureties as are deemed adequate by the City to assure the faithful performance of the terms and conditions of this Chapter and conditions of any special use permit issued pursuant to this Chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit.
- b) Attachments Performance Security: The owner of any equipment attached to a support structure shall be required to execute and file with the City a bond or other form of security that is acceptable to the City as to the type of security and the form and manner of execution, in the amount of five thousand dollars (\$5,000).

Section 10-16.120 Liability Insurance

- a) A holder of a special use permit for a wireless telecommunications support structure shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in amounts as set forth below, or as modified from time to time by City Council usually in the form of a resolution:
 - 1) Commercial general liability covering personal injuries, death and property damage: two million dollars (\$2,000,000) per occurrence/\$4,000,000 aggregate; and
 - 2) Automobile Coverage: \$2,000,000.00 per occurrence/four million dollars (\$4,000,000) aggregate; and

- 3) A three million dollar (\$3,000,000) umbrella coverage; and
- 4) Workers' compensation and disability: statutory amounts.
- b) For a facility located on City property, the commercial general liability insurance policy shall specifically name the City and its officers, City Council, employees, Commissions and Committee members, attorneys, agents and consultants as additional insureds.
- c) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.
- d) The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least thirty (30) days' prior written notice in advance of the cancellation of the insurance.
- e) Renewal or replacement policies or certificates shall be delivered to the City at least fifteen (15) days prior to the expiration of the insurance that such policies are to renew or replace.
- f) Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than fifteen (15) days prior to the grant of the building permit, the holder of the special use permit or administrative special use permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.
- g) A certificate of insurance that states that it is for informational purposes only and does not confer rights upon the City shall not be deemed to comply with this Chapter.

Section 10-16.121 Indemnification

- a) Any application for wireless telecommunication facilities that is proposed to be located on City property shall contain a provision with respect to indemnification of the City. Such provision shall require the applicant, to the extent permitted by applicable law, to at all times defend, indemnify, protect, save, hold harmless and exempt the City and its officers, City Council, employees, Commissions and Committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the City, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.
- b) Notwithstanding the requirements noted in subsection (a) of this section, an indemnification provision will not be required in those instances where the City itself applies for and secures a special use permit for a wireless telecommunications facility.

Section 10-16.122 Security

All Facilities shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- a) All facilities, including antennas, towers and other supporting structures, such as guy anchor points and guy wires, shall be made inaccessible to unauthorized individuals and shall be constructed or shielded in such a manner that they cannot be climbed or collided with; and
- b) Transmitters and telecommunications control points shall be installed so that they are readily accessible only to persons authorized to operate or service them.

Section 10-16.123 Signage

Facilities shall contain a sign no larger than four (4) square feet and no smaller than two (2) square feet in order to provide adequate warning to persons in the immediate area of the presence of RF radiation. A sign of the same size is also to be installed bearing the name(s) of the tower owner(s) and operator(s)/carrier(s) of the antenna(s), property owner name, as well as emergency phone number(s) for all such parties. The sign shall be on the equipment shelter or cabinet of the applicant and must be visible from the access point of the facility and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration sign, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

Section 10-16.124 Reservation of Authority to Inspect Wireless Telecommunications Facilities

- a) In order to verify that the holder of a special use permit for facility and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construct and operate such facilities in accordance with all applicable technical, safety, fire, building codes, zoning codes, laws, ordinances and regulations and conditions of any permit granted under this Chapter, the City may inspect, or cause to have inspected by a third party, all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site, including but not limited to electrical service, wiring and components. Refusal to allow or grant access to a City representative or its designee upon reasonable notice shall be deemed a violation of this Chapter.
- b) To assure the protection of the public health and safety, the City expressly reserves the right to require that an applicant, a user of a facility or the owner of the facility verify compliance with the FCC's regulations regarding RF emissions pursuant to 10-16.128. Refusal to allow or grant access to a City representative or its designee upon reasonable notice shall be deemed a violation of this Chapter.

Section 10-16.125 Removal or Moving of Wireless Telecommunications Structures and Facilities

- a) If attached to an existing structure, unless the Planning Commission deems doing so to be in the public interest, it shall be impermissible for a wireless service provider's or carrier's facilities and equipment to be moved or relocated from one structure to another,

or replaced by the construction of a new facility, without proof that not to be relocated to or replaced by a facility at another location would for technical reasons prohibit or serve to prohibit the provision of service in the service area served by the existing wireless facility.

- b) If the lease for the existing co-location expires and is not renewed, thereby forcing the facility to be moved, such move shall be allowed only upon (1) the provision of convincing evidence satisfactory to the Planning Commission of the need to move or relocate the facility; and (2) convincing evidence satisfactory to the Planning Commission of the lack of impact on the neighborhood or area of intended new location. Cancellation or abandonment of a lease by a wireless service provider or carrier or other lessee, shall not be deemed a permissible reason for relocating.
- c) The owner of any facility shall be required to provide a minimum of ninety (90) days written notice to the City Clerk, City Manager, Finance Director, Planning Director, and Mayor prior to abandoning any facility.
- d) Under the following circumstances, the City may determine that the health, safety, and welfare interests of the City warrant and require the removal of facilities.
 - 1) A facility has been abandoned (i.e. not used as a wireless telecommunications facility) for a period exceeding ninety (90) consecutive days or a total of one hundred-eighty (180) non-consecutive days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or acts of God, in which case, repair or removal shall be completed within 90 days of abandonment;
 - 2) A support structure or facility falls into such a state of disrepair that it creates a health or safety hazard or is deemed an attractive nuisance or a visual blight;
 - 3) A support structure or facility has been located, constructed, or modified without first obtaining, or in a manner not authorized by the required special use permit or administrative special use permit, and the special permit or administrative special use permit may be revoked.
 - 4) If the City makes a determination as noted in subsections (d)(2) or (3) of this section, then the City shall notify the holder of the permit or administrative special use permit for the facility within forty-eight (48) hours that said facility is to be brought into compliance and conformity within 30 days or be removed as listed below (unless immediate health and safety risk exists).
 - 5) The holder of the special use permit or administrative special use permit, or its successors or assigns, shall dismantle and remove such facility and all associated structures and equipment from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability. Restoration shall be completed within ninety (90) days of receipt of written notice from the City. However, if the owner of the property upon which the facility is located wishes to retain any access roadway to the facility, the owner may do so with the approval of the City.
 - 6) If a facility has not been removed, or substantial progress has not been made to remove the facility, within ninety (90) days after the permit holder has received notice, then the City may order officials or representatives of the City to remove the facility at the sole expense of the owner or special use permit holder.

- 7) If the City removes, or causes Facilities to be removed, and the owner of the Facility does not claim and remove the material from the site to a lawful location within ten (10) days, then the City may take steps to declare the facility abandoned, and sell it.
- 8) Notwithstanding anything in this Chapter to the contrary, the City may approve a temporary use permit/agreement for the facility for no more than ninety (90) days duration, during which time a suitable plan for removal, conversion, or re-location of the affected facility shall be developed by the holder of the special use permit, subject to the approval of the City, and an agreement to such plan shall be executed by the holder of the special use permit or administrative special use permit and the City. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the City may take possession of and dispose of the affected facility in the manner provided in this Chapter and utilize the performance and removal bond.

Section 10-16.126 Penalty

- a) In the event of a violation of this Chapter, or any special use permit or administrative special use permit or building permit issued pursuant to this Chapter, the City may impose and collect, and the holder of the special use permit or administrative special use permit shall pay to the City, fines or penalties as established by the City and as allowed by State law.
- b) Notwithstanding anything in this Chapter, the holder of the special use permit or administrative special use permit for a facility may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Chapter or any section of this Chapter. An attempt to do so shall subject the holder of the special use permit to termination and revocation of the special use permit or administrative special use permit. Without limiting other remedies available to the City, the City may also seek injunctive relief to prevent the continued violation of this Chapter.
- c) Any person who violates any provision of this Chapter is liable in a civil action brought by the City Attorney on behalf of the City in the amount of one thousand dollars (\$1,000) for each such violation. Any person violating this Section shall be regarded as committing a separate offense on each day that the violation occurs or continues. If two (2) or more persons are responsible for any violation of the provisions of this Chapter, they shall be jointly and severally liable for the civil penalty set forth in this section. Amounts recovered under this Section shall be deposited into a fund carried upon the financial records of the City which shall be used exclusively for the maintenance and/or removal of telecommunications facilities, including but not limited to equipment cabinets, in the City of Hercules.
- d) Criminal Penalties for Violation. A violation of any provision of this Chapter is an infraction punishable by (1) a fine not exceeding one hundred dollars (\$100) for the first violation; (2) a fine not exceeding five hundred dollars (\$500) for a second violation within one (1) year; and (3) a fine not exceeding one thousand dollars (\$1,000) for each additional violation occurring within one (1) year as defined in Government Code Section 36900(c). Any person violating this Section shall be regarded as committing a separate offense on each day that the violation occurs or continues. At the City Attorney's discretion, serious violations may be prosecuted as misdemeanors pursuant to Government Code Section 36900.

- e) Injunctions. In addition to all other actions and remedies, civil or penal, authorized by law, the City Attorney is authorized to file an action in court seeking injunctive relief to enjoin a violation of any provision of this Chapter or to prevent a threatened violation of any provision of this Chapter. The injunctive relief sought in any such action may be prohibitory, mandatory, or both. (Ord. 339 § 1 (part), 1997)

Section 10-16.127 Relief

- a) Any applicant desiring relief, waiver or exemption from any aspect or requirement of this Chapter shall address and identify such at the pre-application meeting. The relief or exemption must be contained in the submitted application for either a special use permit or administrative special use permit, or in the case of an existing or previously granted conditional use permit, or special use permit or administrative special use permit, a request for modification of the facility and/or equipment. Such relief may be temporary or permanent, partial or complete.
- b) If relief waiver, or exemption for any item or issue is not requested at the pre-application meeting and is requested after the submittal of the application, the City reserves the right to require a formal amendment of the application, including the payment of all fees and charges.
- c) The burden of proving the need for the requested relief, waiver or exemption shall be solely on the applicant.
- d) The applicant shall bear all costs of the City in considering the request and the relief, waiver or exemption.
- e) No relief, waiver or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the City, its residents and other service providers.

Section 10-16.128 Adherence to State and/or Federal Rules and Regulations

- a) To the extent that the holder of a special use permit or administrative special use permit for a wireless telecommunications facility has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a special use permit or administrative special use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- b) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a special use permit or administrative special use permit for wireless telecommunications facilities, then the holder of such a special use permit or administrative special use permit shall conform the permitted facility to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed

and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

Section 10-16.129 RF Emissions

- a) To assure the protection of the public health and safety, the City expressly reserves the right to require that an applicant, a user of a facility or the owner of the facility verify compliance with the FCC's regulations regarding RF emissions, either for individually-owned equipment or cumulatively for all equipment at the site, as may be deemed appropriate from time to time, but no longer than every five (5) years, and that all users of the facility cooperate with the party responsible for such verification.
- b) With respect to support structures other than towers, if any section or portion of the structure or the entire site or within one hundred (100) feet of the boundaries of the site, is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with brightly colored plastic chain or striped warning tape as appropriate, as well as placing RF Radiation warning signs as needed and appropriate to warn individuals of the potential danger.

Section 10-16.30 Conflict with Other Laws

Where this Chapter differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the City, State or Federal government, this Chapter shall apply.

Section 10-16.131 Definitions

For purposes of this Chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

1. **"Accessory Facility or Structure"** means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
2. **"Administrative Special Use Permit"** means the official document or permit (processed by City Staff or their assignees in writing) by which an applicant can carry out an "Eligible Facility" project and then apply for a building permit.
3. **"Amend", "Amendment" and "Amended"** mean and shall relate to any change, addition, correction, deletion, replacement or substitution, other than typographical changes of no effect.
4. **"Applicant"** means any Wireless service provider submitting an Application for a Special Use Permit for Wireless Telecommunications Facilities.

5. **“Application”** means all Necessary and *required* documentation that an Applicant submits in order to receive a Special Use Permit or a Building Permit for Wireless Telecommunications Facilities.
6. **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals with a single transmit and a single receive connection. It is expressly not multiple antennas, even if such are contained in a single housing or radome.
7. **“Antenna Array”** is a set of individual **antennas** used for transmitting and/or receiving radio waves, connected together in such a way that their individual currents are in a specified amplitude and phase relationship.
8. **“City”** means the City of Hercules, California.
9. **“City Council or Council”** means the City Council of the City of Hercules.
10. **“Co-location”** means the use of an approved telecommunication structure to support Antenna for the provision of multiple wireless services.
11. **“Commercial Impracticability”** or **“Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone and for a single site, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable.”
12. **“Commission”** means the Planning Commission of the City of Hercules.
13. **“Complete” Application** means an Application that contains all necessary and required information and/or data necessary to enable an informed decision to be made with respect to an Application and that all information is true, accurate and correct, and all deposits have been paid to the City.
14. **“Concealment”** means a physical design or treatment that minimizes adverse aesthetic and visual impacts on the view from land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of a Wireless Telecommunications Facility, which shall mean the least visually and physically intrusive facility, so as to make it substantially invisible, and that is not technologically or commercially impracticable under the facts and circumstances.
15. **“DAS”** or **“Distributive Access System”** means a technology using antenna combining technology allowing for multiple carriers or Wireless Service Providers to use the same set of antennas, cabling or fiber optics.
16. **“Drive Test”** means measuring and assessing the coverage, capacity and signal strength or quality of service of a wireless service provider(s) using a mobile vehicle outfitted with drive testing measurement equipment.
17. **Eligible Facility** means an existing properly permitted wireless tower or base station that involves collocation of new transmission equipment or the replacement of transmission equipment that does not constitute a Substantial modification.
18. **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
19. **“FCC”** means the Federal Communications Council, or its duly designated and authorized successor agency.

20. **“Height”** means, when referring to a Tower or wireless support structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightening protection device.
21. **“Maintenance”** means plumbing, electrical or mechanical work that may require a building permit, but that does not constitute a Modification of the Facility.
22. **“Modification”** or **“Modify”** means, the addition, removal or change of any of the physical and/or visually discernable components or aspects of a Wireless Facility with effectively identical components of the same weight and size or less, including but not limited to antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, the color or materials of any visually discernable components, vehicular access, parking, and/or an upgrade or change-out of equipment for better or more modern equipment.. Modification and the type of Modification shall be defined as set forth in FCC Report and Order 14-153, as modified from time to time and incorporated herein by reference.
23. **“Necessary”** or **“Necessity”** or **“Need”** means what is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in prohibiting or acting in a manner that prohibits the provision of service as intended and described in the narrative of the Application. Necessary does not mean what may be desired, preferred or to comply with voluntary chosen company policies, preferences or standards.
24. **“NIER”** means Non-Ionizing Electromagnetic Radiation.
25. **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
26. **“Facility”** See definition for ‘Wireless Telecommunications Facilities’.
27. **“Personal Wireless Services”** or **“PWS”** or **“Personal Telecommunications Service”** or **“PTS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
28. **“Repairs and Maintenance”** means the replacement or repair of any components of a wireless facility when the replacement is effectively identical to the component being replaced or for any matters that involve a change without the addition, removal or change of any of the physical or visually discernable components or aspects of a properly permitted Wireless Facility that will change the visible appearance of the facility from that originally permitted.
29. **“Small Cell”** means a low-powered RF node, the antennas of which are significantly smaller than tradition ‘macro site’ antennas and have a significantly smaller service area, typically anywhere from 10 meters to one half (1/2) mile.
30. **“Special Use Permit”** means the official document or permit (usually in the form of a Planning Commission or City Council Resolution) by which an Applicant is allowed to file for a building permit to construct and use a Facility as granted or issued by the City, including for a Substantial Modification. Prior to the implementation of this Chapter, a Conditional Use Permit process was utilized.
31. **“State”** means the State of California.
32. **“Structural Capability”** or **“Structural Capacity”**, notwithstanding anything to the contrary in any other standard, code, regulation or law, means up to and not exceeding a literal 100% of the designed loading and stress capability of the support structure.
33. **Substantial Modification** means a change or Modification that

- a. increases the existing vertical height of the structure by the greater of (a) more than ten percent (10%) or (b) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet; or (c) existing the City's maximum permitted height or
 - b. except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance within the City's concealment requirements; or
 - c. increases the square footage of the existing equipment compound by more than 2,500 square feet.
34. **"Telecommunications"** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
35. **"Telecommunications Site"** See definition for Wireless Telecommunications Facilities.
36. **"Telecommunications Structure"** means a structure (i.e. building, utility poles, street lights or other similar structure) used to support equipment used to provide wireless communications.
37. **"Temporary"** means not permanent in relation to all aspects and components of this Chapter, something intended to, and that does, exist for fewer than ninety (90) days.
38. **"Tower"** means any structure designed primarily to support an antenna(s) for receiving and/or transmitting a wireless signal.
39. **"Wireless Telecommunications Facility or Facilities (WTF or WTFs)"** means and includes a **"Telecommunications Site"** and **"Personal Wireless Facility"**. It means a structure, facility or location designed, or intended to be used as, or used to support Antennas or other transmitting or receiving devices. This includes without limit, Towers of all types and kinds, and structures, including but not limited to buildings, church steeples, silos, water Towers, signs or other any other structure that is used or is proposed to be used as a support structure for Antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and enclosures, cabinets and other structures associated with the Facility. It is a structure and facility, including a compound, intended for transmitting and/or receiving wireless communications, including but not limited to radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless service, permitted by the FCC.



City of Hercules Title 10 Chapter 16 Telecommunications Ordinance Amendments for Small Cells/5G

October 2020



Overview

- Purpose of revising the Telecommunications Ordinance
- Types of existing telecommunication facilities in Hercules
- Type of potential new small cells
- Current issues in telecommunications technology, policy & Federal regulations
- Community & Commission input & feedback (Concerns, recommendations, Q&A)





Existing Telecom Ordinance

- ▶ Adopted in 2015
- ▶ Purposes included:
 - Prevent visual blight
 - Protect residents from adverse health effects
 - Ensure competitive & broad range of high-quality telecom services & infrastructure
 - Ensure effective emergency response network
 - Shorten and simplify permit process
 - Preserve City's ability to recover application costs and collect franchise fees





Existing Telecom Facilities in Hercules

- Dedicated Tower
- Co-Located Tower
- Co-Located Utility/ Private
- Building-Mounted (Public)
- Faux Tree (“Mono-pine”)
- Pylon Sign (Exposed)
- Pylon Sign (Concealed)



Current Facility Types: Dedicated Tower



Current Facility Types: Co-Located Tower



Facility Types: Co-Located Utility/ Private



Facility Types: Building-Mounted (Private)





Facility Types: Building-Mounted (Public)



Facility Types: Faux Tree (“Mono-pine”)



Facility Types: Pylon Sign (Exposed)



Facility Types: Pylon Sign (Concealed)





Small Cells

- What changes are needed to the Ordinance to ensure the City is covered
- Where are the Small Cells potentially going to be placed
- What do they look like in other municipalities



Existing Small Cells

“**WITHOUT**” a proper Ordinance



Existing Small Cells

“**WITH**” a proper Ordinance





Recommendations

- Adopt resolution approving the revised Ordinance
- Develop and approve the design of the new light standards for the city
 - *City must have a design standard on record before a small cell application appears, or the applicant can use whatever they want as a support structure.*
- Direct staff to develop separate ordinance comprehensively addressing encroachments in public right-of-way



City of Hercules

111 Civic Drive
Hercules, CA 94547

Meeting Minutes

City Council

Mayor Roland Esquivias
Vice Mayor Chris Kelley
Council Member Dion Bailey
Council Member Dan Romero
Council Member Gerard Boulanger

David Biggs, City Manager
Patrick Tang, City Attorney

Tuesday, October 13, 2020

5:30 PM

Virtual Meeting Via Zoom

CLOSED SESSION - 5:30 P.M.
REGULAR SESSION - 7:00 P.M.

I. SPECIAL MEETING - CLOSED SESSION – 5:30 P.M. CALL TO ORDER - ROLL CALL

Mayor Esquivias called the meeting to order at 5:30 p.m.

Present: 4 - Mayor R. Esquivias, Council Member D. Bailey, Council Member D. Romero, and Council Member G. Boulanger

Absent: 1 - Vice Mayor C. Kelley

II. PUBLIC COMMUNICATION - CLOSED SESSION ITEMS

City Clerk Martin read aloud a public comment from Pil Orbison.

III. CONVENE INTO CLOSED SESSION

City Attorney Tang announced the items listed on the agenda to be discussed in closed session.

Mayor Esquivias recessed the meeting at 5:40 p.m.

1. [20-349](#) Pursuant to Government Code Section 54957(b) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: City Manager (Discuss Annual Evaluation Per Employment Agreement)
2. [20-350](#) Pursuant to Government Code Section 54957.6 Conference With Labor Negotiators - City Negotiators: David Biggs, City Manager; Edwin Gato, Director of Finance; Lori Martin, Director of Administrative Services relative to the following employee groups:
 - a. Teamsters Local 315 Employee Organizations

IV. REGULAR MEETING – 7:00 P.M. CALL TO ORDER - ROLL CALL

Mayor Esquivias called the meeting to order at 7:00 p.m.

Present: 4 - Mayor R. Esquivias, Council Member D. Bailey, Council Member D. Romero, and Council Member G. Boulanger

Absent: 1 - Vice Mayor C. Kelley

V. REPORT ON ACTION TAKEN IN CLOSED SESSION

City Attorney Tang reported that the closed session item related to the City Manager evaluation was not discussed and was continued to the next meeting. City Attorney Tang stated that there were no final or reportable actions for the closed session item related to the labor negotiations, however there is an action item on the open session meeting related to labor negotiations.

VI. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Esquivias.

VII. MOMENT OF SILENCE

Mayor Esquivias called for a moment of silence for the October 7, 2020 passing of San Francisco Firefighter Paramedic, Jason Cortez. Mr. Cortez died after sustaining injuries from a training accident.

VIII. INTRODUCTIONS/PRESENTATIONS/COMMISSION REPORTS

1. [20-346](#) Presentation by Bio-Rad on their Going Green and Solar Project
Troy Clement and Oscar Gomez from Bio-Rad gave a presentation regarding the company's Going Green and Solar project.

IX. AGENDA ADDITIONS/DELETIONS

City Manager Biggs stated that there were no additions or deletions to the agenda.

X. PUBLIC COMMUNICATIONS

City Clerk Martin read aloud public comments received from: Pil Orbison; Elanor Gumban; Celsa Taraya; Lori Chinn; Alma Yee.

XI. PUBLIC HEARINGS

None.

XII. CONSENT CALENDAR

MOTION: A motion was made by Council Member Romero, seconded by Council Member Boulanger, to adopt the Consent Calendar. The motion carried by the following vote:

Aye: 4 - Mayor R. Esquivias, Council Member D. Bailey, Council Member D. Romero, and Council Member G. Boulanger

Absent: 1 - Vice Mayor C. Kelley

1. [20-348](#) **Minutes**
Recommendation: Approve the regular meeting minutes of September 22, 2020.
Approved.
2. [20-343](#) **Conflict of Interest Code Biennial Review**
Recommendation: Adopt a Resolution amending the City's Conflict of Interest Code for designated employees, consultants, boards, committees and commissions for the City of Hercules.
Approved.
3. [20-359](#) **Surplus Vehicles**
Recommendation: Adopt a Resolution declaring six (6) City fleet vehicles as surplus property and authorize the disposal of the vehicles.
Approved.

XIII. DISCUSSION AND/OR ACTION ITEMS

1. [20-340](#) **Business License Tax Structure**
Recommendation: Receive report, discuss, and provide direction, if any.

City Manager Biggs introduced the item and provided a staff report. Council Member Boulanger consulted with City Attorney Tang to ask if he can participate in the discussion since he has a business license with the City. City Attorney Tang stated that because this discussion is related to all businesses and not just his that he does not have a conflict and can participate in the discussion.

City Council asked questions and provided comments. City Manager Biggs stated that he will reach out to Avenu to obtain an updated list of business licenses by business type and bring that information back to City Council at a future meeting. City Manager Biggs stated that he will also invite representatives of Avenu to attend the Council Meeting and be available to answer questions.

2. [20-341](#) **SB 946 Sidewalk and Park Vending Requirements and Proposed Draft Ordinance**
Recommendation: Accept staff report, discuss, and direct staff to agendaize amendments to the Hercules Municipal Code to establish revised regulations for sidewalk and park vendors consistent with the requirements of SB 946.

City Manager Biggs introduced the item. City Attorney Tang provided a staff report. City Council asked questions and provided comments.

City staff will update the proposed draft ordinance based on the discussion and bring this item back for further review at the October 27, 2020 City Council meeting.
3. [20-342](#) **Acceptance of the Classification and Compensation Report dated November 22, 2019**
Recommendation: Staff recommends the City Council:
 1. Approve updated job descriptions as listed in Attachment 1;
 2. Approve the recommended changes to the classification plan in Attachment 2;
 3. Approve salary increases as follows: Recreation Manager 5.3% based on market data and City policy;
 4. Approve reclassification to best meet operational needs: Community Development Specialist 5%, and Associate Engineer (new classification) 5%;
 5. Approve freezing or "y-rating" the salary range for the classification of Maintenance Worker II based on market data and City policy.
City Manager Biggs introduced the item and City Clerk Martin provided a staff report. City Council asked questions and provided comments.

MOTION: A motion was made by Council Member Romero, seconded by Council Member Boulanger, to approve the updated job descriptions in Attachment 1 and approving the recommended changes to the Classification Plan in Attachment 2 of the Classification and Compensation Study, dated November 22, 2019. The motion carried by the following vote:

Aye: 4 - Mayor R. Esquivias, Council Member D. Bailey, Council Member D. Romero, and Council Member G. Boulanger

Absent: 1 - Vice Mayor C. Kelley
4. [20-344](#) **Approve Memorandum of Understandings (MOUs) with the Teamsters Local 315 Full-Time and Part-Time Units and Approve Updated FY 2020-21 Salary Schedules**
Recommendation: Adopt a Resolution approving Memorandum of Understandings (MOUs) with Teamsters Local 315 full-time and part-time units; and adopt the updated FY 2020-21 salary schedules for 1) Teamsters full-time and part-time represented employees; 2) Updated FY

2020-21 salary schedule for unrepresented part-time employees; 3) Updated FY 2020-21 salary schedule for Senior Management and Unrepresented employees; 4) Updated salary schedule for Mid-Management Employees.

City Manager Biggs introduced the item and City Clerk Martin provided a staff report. Finance Director Gato provided additional fiscal information on this item. City Council asked questions and provided comments.

MOTION: A motion was made by Council Member Romero, seconded by Council Member Bailey, to adopt Resolution 20-062 including the revised attached salary schedules. The motion carried by the following vote:

Aye: 4 - Mayor R. Esquivias, Council Member D. Bailey, Council Member D. Romero, and Council Member G. Boulanger

Absent: 1 - Vice Mayor C. Kelley

5. [20-345](#)

Continued Discussion Regarding Accessory Dwelling Units (ADUs)

Recommendation: Receive report, review proposed changes to City's ADU Ordinance, and direct staff to (1) prepare any additional amendments to the City's ADU Ordinance consistent with state law, and (2) bring any such changes back to the Council for initial review, or in the alternative, take to the Planning Commission for consideration and recommendation before introduction and adoption by the Council.

City Manager Biggs introduced the item and Community Development Director Reber provided a staff report. Assistant City Attorney Crowl added additional information. City Council asked questions and provided comments. City Council provided direction to staff to incorporate the changes discussed tonight and refer this item to the Planning Commission for their review and recommendation to City Council on the Ordinance amendment. After Planning Commission review, this item will come before City Council as a public hearing for an Ordinance amendment.

Public Comment: a public comment was submitted by Stephen Lawton and was provided to City Council and staff with a copy posted to the city's website.

MOTION: A motion was made by Council Member Boulanger, seconded by Council Member Bailey, directing staff to incorporate changes discussed at the October 13, 2020 City Council meeting to the draft Ordinance and then refer to Planning Commission for review and recommendation to City Council. The motion carried by the following vote:

Aye: 4 - Mayor R. Esquivias, Council Member D. Bailey, Council Member D. Romero, and Council Member G. Boulanger

Absent: 1 - Vice Mayor C. Kelley

XIV. PUBLIC COMMUNICATIONS

None.

**XV. CITY COUNCIL/CITY MANAGER/CITY ATTORNEY ANNOUNCEMENTS,
COMMITTEE, SUB-COMMITTEE AND INTERGOVERNMENTAL COMMITTEE REPORTS
AND FUTURE AGENDA ITEMS**

No reports or announcements were made due to the late hour. No future agenda items were requested.

XVI. ADJOURNMENT

Mayor Esquivias adjourned the meeting at 11:19 p.m.

Roland Esquivias, Mayor

Attest:

Lori Martin, MMC
Administrative Services Director/City Clerk



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of October 27, 2020

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager
Edwin Gato, Director of Finance

SUBJECT: Receive the Finance Commission's Annual Report on Measures B and C for Fiscal Year Ending June 30, 2019

RECOMMENDED ACTION: Receive the Finance Commission's Annual Report on Measures B and C for Fiscal Year Ending June 30, 2019

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION: The Finance Commission recommends that the City Council receive their Fiscal Year Ending June 30, 2019 Annual Report on Measures B and C.

FISCAL IMPACT OF RECOMMENDATION: None as a result of this action, though Measures B and C provide a significant level of revenues in support of the City's General Fund.

DISCUSSION: The City's Finance Commission serves as the citizen's oversight body for Measures B and C, which are voter approved local sales tax and utility user tax measures respectively. Each year, the Finance Commission undertakes a review of the revenues generated in the prior fiscal year by these Measures as required by the Measures. The Finance Commission review takes place after the City's independent auditors completed their annual audit and the Agreed-Upon-Procedures (AUP) Report for each measure.

The Finance Commission reviewed the annual report at their July 15th meeting and recommended it to the City Council which the City Council considered on July 28, 2020. At that meeting, the City Council requested that the Commission consider some changes. The Commission approved an amendment to the report on their September 16th meeting. A copy of the final report is attached for the City Council's review and receipt. The only change was under recommendation in monitoring revenue from Measure B & C shall become a part of every regularly scheduled meeting bi-monthly. Finance Department will provide a report bi-monthly to the Finance Commission on the actual revenue received.

ATTACHMENT:

1. Finance Commission Annual Report on Measures B and C

City of Hercules Finance Commission
Measure B and Measure C Annual Report
Fiscal Year Ending June 30, 2019

Purpose

This is the Annual Report by the Finance Commission as the Oversight Committee for Measure B - Transactions and Use Tax Revenues (originally adopted as Measure O in June 2012) and Measure C - Utility Users Tax Rate Revenues (originally adopted as Measure A in June 2013). This report fulfills the Finance Commission requirements specified in City of Hercules Municipal Code to:

- Provide oversight under Title 8 (Finance Revenue and Taxation), Chapter 9 (Temporary Transaction and Use Tax).
- Provide oversight under Title 8 (Finance Revenue and Taxation), Article 4 (Continuation of Increase to Utility Users Tax Rate).

Conclusions

Measure B:

For Fiscal Year ending June 30, 2019, local add-on half cent (0.50%) transaction and sales tax revenues approved by Hercules voters were spent in accordance with the voter approved Measure O adopted in June 2012 and subsequently extended by the voter approved Measure B adopted November 2015. Measure B would retain the half cent (0.50%) add-on until such time as the City Council determines it is no longer necessary.

Henceforth in this document, we will use Measure B to reference this voter approved measure.

Measure C:

For Fiscal Year ending June 30, 2019, incremental two percent (2%) Utility User Tax (UUT) funds approved by Hercules voters were spent in accordance with the voter approved Measure A adopted in June 2013 and subsequently extended by the voter approved Measure C adopted November 2015.

The City of Hercules established a UUT of six percent (6%) which will expire on January 1, 2025. In 2013 voters approved measure A which established a two percent (2%) increase to the UUT to a total of eight percent (8%) which would expire in 2018. In 2015 voters approved measure C which would extend the two percent (2%) UUT increase until January 1, 2025.

Henceforth in this document, we will use Measure C to reference this voter approved measures.

City of Hercules Finance Commission
Measure B and Measure C Annual Report
Fiscal Year Ending June 30, 2019

Recommendations

- Recommend that the incremental sale and transaction use tax provided for in Measure B be retained since the City of Hercules has not yet achieved long term financial stability with adequate financial reserves.
- Recommend that the incremental Utility User tax provided for in Measure C be retained since the City of Hercules has not yet achieved long term financial stability with adequate financial reserves.
-
- Monitoring of revenue from Measures B and C shall become a part of every regularly scheduled meeting of the Finance Commission.

Reporting Period and Scope

This annual report covers the Fiscal Year ending June 30, 2019.

This report focuses on the General Fund because this fund provides the funding for the concerns expressed on the Measure B and Measure C ballot measures.

Actions Taken

The Finance Commission provided Oversight for Measure “B” and Measure “C” by the following actions:

1. Met on the dates listed below.
 - a. Two meetings in 2020: January 15, February 19.
 - b. Six meetings in 2019: March 21, May 20, June 17, July 17, November 20, December 9.
2. Reviewed the Budgets, Financial Reports and variance analyses for the Fiscal Year ending June 30, 2019.
3. Reviewed periodic Long-Term Forecasts and Working Cash Balance reports prepared by City of Hercules Finance staff.
4. Reviewed City of Hercules audited Annual Financial Reports for the fiscal years ending June 30, 2019.
5. Reviewed CliftonLarsonAllen, LLP report on “Measure B – Transaction and Use Tax Revenues, Agreed-Upon Procedures”, November 21, 2019.
6. Reviewed CliftonLarsonAllen, LLP report on “Measure C – Utility Users Tax Rate Revenues – Agreed-Upon Procedures”, November 21, 2019.
7. Formed a sub-committee to develop this report.

City of Hercules Finance Commission
Measure B and Measure C Annual Report
Fiscal Year Ending June 30, 2019

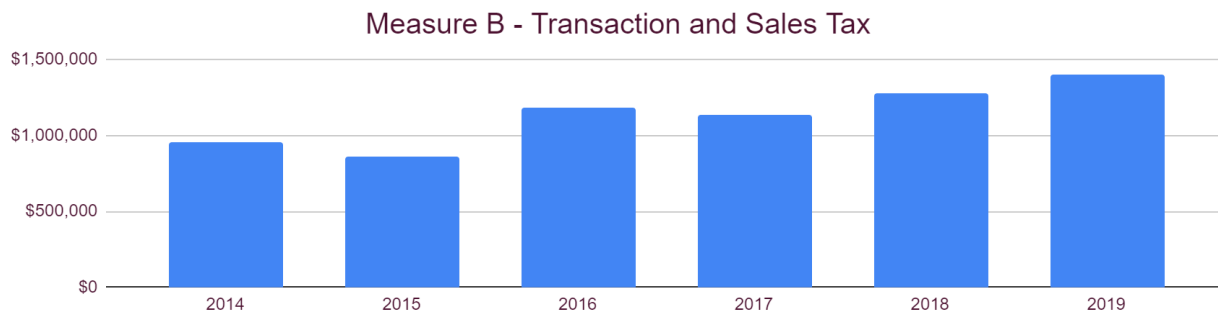
Findings

Measure B:

Measure B Transaction and Use Tax Revenue receipts are summarized as follows:

- Fiscal Year 2014 and Fiscal Year 2015 were based on Gallina, LLP reports on Agreed Upon Procedures – Measure B for the periods July 1, 2012 through June 30, 2015
- For periods July 1, 2016 through June 30, 2018 were based on CliftonLarsonAllen, LLP report on Agreed Upon Procedures – Measure O for the period ending June 30, 2016 and Agreed Upon Procedures- Measure B for the period ending June 30, 2017 and June 30, 2018.
- For period July 1, 2018 through June 30, 2019 is based on CliftonLarsonAllen, LLP report “Measure B – Transaction and Use Tax Revenues, Agreed-Upon Procedures”, November 21, 2019.

Fiscal Year	Actual Received Per General Ledger
Fiscal Year 2014 (ending June 30, 2014)	\$952,255
Fiscal Year 2015 (ending June 30, 2015)	\$863,323
Fiscal Year 2016 (ending June 30, 2016)	\$1,181,605
Fiscal Year 2017 (ending June 30, 2017)	\$1,130,251
Fiscal Year 2018 (ending June 30, 2018)	\$1,275,479
Fiscal Year 2019 (ending June 30, 2019)	\$1,403,874



Transaction and Use Tax revenue received in Fiscal Year 2019 under Measure B has been properly collected and paid into the General Fund as required per Ordinance 470 Section 8.9.12 “Use of Tax Proceeds” which states that “All proceeds of the tax levied and imposed under this Article shall be paid into the general fund for use by the City of Hercules.” This conclusion is based on the Finance Commission’s review of the City’s audited Annual Financial Reports, the Quarterly Financial Statements, and the CliftonLarsonAllen, LLP’s report “Measure B – Transaction and Use Tax Revenues, Agreed-Upon Procedures”, November 21, 2019, which states that proceeds of taxes

City of Hercules Finance Commission
Measure B and Measure C Annual Report
Fiscal Year Ending June 30, 2019

levied and confirmed under Measure B were paid into the City's General Fund for use by the City with no exceptions.

City of Hercules Finance Commission
Measure B and Measure C Annual Report
Fiscal Year Ending June 30, 2019

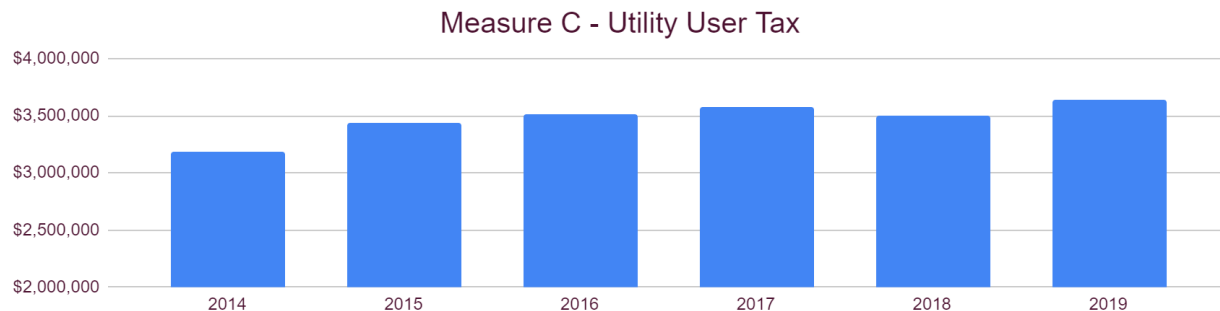
Findings (cont)

Measure C:

Measure C Utility Users Tax (UUT) Rate Revenues are summarized as follows:

- For the periods July 1, 2013 through June 30, 2015 based on Gallina LLP's reports on Agreed Upon Procedures for Measure A
- For FY 2016 the CliftonLarsonAllen, LLP's report "Agreed-Upon Procedures Measure A – Utility Users Tax Rate Revenues, June 30, 2016"
- For FY 2017 and 2018 "Agreed Upon Procedures Measure C- Utility Users Tax Rate Revenues, June 30, 2017 and June 30, 2018"
- For period July 1, 2018 through June 30, 2019 is based on CliftonLarsonAllen, LLP report on Agreed Upon Procedures – Measure C for the period ending June 30, 2019.

Fiscal Year	Actual UUT with Measure C	Estimated UUT w/o Measure C	Increase in Revenue due to Measure C
Fiscal Year 2014 (ended June 30, 2014)	\$3,182,013	\$2,201,950	\$980,063
Fiscal Year 2015 (ended June 30, 2015)	\$3,439,914	\$2,163,601	\$1,276,313
Fiscal Year 2016 (ended June 30, 2016)	\$3,515,565	\$2,224,000	\$1,291,565
Fiscal Year 2017 (ended June 30, 2017)	\$3,576,053	\$2,306,607	\$1,269,446
Fiscal Year 2018 (ended June 30, 2018)	\$3,502,264	\$2,219,720	\$1,282,545
Fiscal Year 2019 (ended June 30, 2019)	\$3,642,120	\$2,310,030	\$1,332,091



Utility Users Tax revenue received under Measure C has been properly collected and paid into the General Fund per Ordinance 481, Section 8-8.402 "Use of Additional Tax Proceeds" which states that "All proceeds of the tax levied and imposed under this Article shall be paid into the general fund for use by the City of Hercules". This conclusion is based on the Finance Commission's review of the City's audited Annual Financial Report for the Fiscal Year ending June 30, 2019, and CliftonLarsonAllen, LLP's report "Measure C – Utility Users Tax Rate Revenues – Agreed-Upon Procedures", November 21, 2019.

City of Hercules Finance Commission
Measure B and Measure C Annual Report
Fiscal Year Ending June 30, 2019

Findings (cont)

Effect on General Fund:

The General Fund had a surplus in Fiscal Years ending June 30, 2014-June 30, 2019 as shown by the Annual Reports for each respective year.

	2014	2015	2016	2017	2018	2019
General Fund Revenue	\$12,638,059	\$13,573,615	\$14,018,112	\$14,859,520	\$16,490,956	\$17,563,562
General Fund Expenses	\$11,200,782	\$10,213,252	\$11,046,540	\$11,784,637	\$12,929,170	\$14,615,734
Surplus	\$1,437,277	\$3,360,363	\$2,971,572	\$3,074,883	\$3,561,786	\$2,947,828

Measure B and Measure C revenues increased revenue to the General Fund starting in Fiscal Year 2014.

The following is a summary for the fiscal years ending June 30, 2014 through June 30, 2019:

Revenue Source	Actual FY					
	2014 ^{2,3}	2015 ^{2,3}	2016 ^{2,3}	2017 ^{4,5}	2018 ^{4,5}	2019 ^{6,7}
General Fund	\$10,844,803	\$11,588,959	\$11,544,942	\$12,459,823	\$13,883,386	\$14,827,597
Measure B	\$952,256	\$863,323	\$1,181,605	\$1,130,251	\$1,275,479	\$1,403,874
Measure C	\$841,000	\$1,121,333	\$1,291,565	\$1,269,446	\$1,332,091	\$1,332,091
Total ¹	\$12,638,059	\$13,573,615	\$14,018,112	\$14,859,520	\$16,490,956	\$17,563,562

Revenue Source	Actual FY					
	2014 ^{2,3}	2015 ^{2,3}	2016 ^{2,3}	2017 ^{4,5}	2018 ^{4,5}	2019 ^{6,7}
General Fund	85.8%	85.4%	82.4%	83.9%	84.2%	84.4%
Measure B	7.5%	6.4%	8.4%	7.6%	7.7%	8.0%
Measure C	6.7%	8.3%	9.2%	8.5%	8.1%	7.6%
Total ¹	100%	100%	100%	100%	100%	100%

Notes to tables above:

1. Total General Fund Revenue per audited Financial Statements for each year.
2. Measure B Transactions and Use Tax Revenues per Gallina (FY14-15) and CliftonLarsonAllen (FY16) agreed upon procedures report for Measure O.
3. Measure C Utility Users Tax Rate Revenues per Gallina (FY14-15) and CliftonLarsonAllen (FY16) agreed upon procedures report for Measure A.
4. Measure B revenue based on agreed upon procedures report for Measure A or Measure C for each respective year.
5. Measure C revenue based on agreed upon procedures report for Measure O or Measure B for each respective year.
6. Measure B revenue based on CliftonLarsonAllen, LLP report on "Measure B – Transaction and Use Tax Revenues, Agreed-Upon Procedures", November 21, 2019.
7. Measure C revenue based on CliftonLarsonAllen, LLP report on "Measure C – Utility Users Tax Rate Revenues – Agreed-Upon Procedures", November 21, 2019.

City of Hercules Finance Commission
Measure B and Measure C Annual Report
Fiscal Year Ending June 30, 2019

Findings (cont)

Without the Measure B or Measure C revenues, the City would have had a deficit in Fiscal Year 2014 and would have had much smaller surpluses for the Fiscal Years 2015 through 2019.

The following is a summary for Fiscal Years ending June 30, 2014 to June 30, 2019 if Measure B and C Revenues were excluded.

General Fund	Actual FY					
	2014	2015	2016	2017	2018	2019
Revenue (excluding Measures B & C)	\$10,844,803	\$11,588,959	\$11,544,942	\$12,459,823	\$13,883,386	\$14,827,597
Expenditures	\$11,200,782	\$10,213,252	\$11,046,540	\$11,784,637	\$12,929,170	\$14,615,734
(Deficit) / Surplus	\$(355,979)	\$1,375,707	\$498,402	\$675,186	\$954,216	\$211,863

The Annual Financial Report for the Fiscal Year ending June 30, 2019 summarized the objectives of the General Fund.

“General Fund - This fund is used to account for all revenue and expenditures necessary to carry out basic governmental activities of the City that are not accounted for through other funds. For the City, the General Fund includes such activities such as police, planning, engineering, public works, operations and maintenance, and legal and administrative services”.

The General Fund provides the funding for the issues expressed in the Measure “O” and Measure “A” ballot language:

- Measure O (MeasureB):** "Local Temporary Emergency Funding Measure. To address Hercules' Fiscal Emergency, stabilize city finances, offset budget shortfalls/the impact of State budget cuts on local services, prevent reductions to the number of police officers/crime investigators, protect/maintain crime prevention, childcare, youth sports and recreation programs and other general City services, shall the City of Hercules establish a 1/2 cent sales tax legally ending after 4 years.
- Measure A (Measure C):** “City of Hercules Fiscal Accountability/Services Protection Measure. To restore Hercules to financial stability, enhance fiscal accountability, continue to maintain our own local Police Department, and prevent drastic cuts to neighborhood police officers, youth/senior programs, and other services, shall Hercules modernize its utility users tax with equal treatment of taxpayers regardless of technology, increase the rate by 2% for 5 years, maintain current low-income exemptions, with citizens’ oversight, independent audits, and local control of revenues.”

City of Hercules Finance Commission
Measure B and Measure C Annual Report
Fiscal Year Ending June 30, 2019

Findings (cont)

Based on the impartial ballot analysis by the City Attorney, Measure “O” did not limit use of Measure “O” funding to a specific purpose:

“Because Measure O does not limit the use of tax revenue to a specific purpose, the proposed tax is a general tax, requiring a majority vote (approval by more than fifty percent (50%) of City voters voting in the election) for passage. Therefore, the City shall use the funds for a variety of purposes, including but not limited to addressing the City's Fiscal Emergency; increasing police officer staffing, which is below Recommended Safety Levels; maintaining current levels of emergency services; providing additional funding for neighborhood police patrols, emergency response times, crime prevention and investigation resources; earthquake preparedness; after-school programs for children and teens; senior services; and parks.”

Based on the impartial ballot analysis by the City Attorney, Measure “A” did not limit the Measure “A” funding to a specific purpose:

“Because Measure A does not limit the use of tax revenue to a specific purpose, the City may use the funds for a variety of purposes, including but not limited to maintaining financial stability and accountability; maintaining the Hercules Police Department; maintaining neighborhood police patrols, improving 9-1-1 response times; expanding neighborhood crime prevention programs; attracting business to Hercules; and preventing cuts to street maintenance.”

The City Council approved the City of Hercules budget for Fiscal Year 2019. However, the budget for Fiscal Year 2019 did not include any specific priorities for the use of Measure B or Measure C funds.

The City of Hercules increased its balance in the Fiscal Neutrality Fund to \$3,883,282 from June 30, 2018 to June 30, 2019. This balance as of June 30, 2019 equals 13.5% of the Final Total Expenditures for Fiscal Year ending June 30, 2019 of \$28,671,900.

Finance Commission Members:

Zania Harris, Chair, MS-HR, MPA

Lori Tretasco, Vice-Chair

Diana Galieva

Edward Ulle

Finance Commission Measure B and Measure C Sub-Committee:

Diana Galieva

Edward Ulle

Report approved by the Finance Commission on Sept. 16, 2020

City of Hercules Finance Commission
Measure B and Measure C Annual Report
Fiscal Year Ending June 30, 2019

Appendices

No.	Title	Page(s)
1	Measure “O” Background	10
2	Measure “A” Background	11
3	Measure “B” and Measure “C” Background	12
4	Finance Commission Background	13

City of Hercules Finance Commission
Measure B and Measure C Annual Report
Fiscal Year Ending June 30, 2019

Appendix 1: Measure “O” Background

On July 24, 2012, Measure O, “Transactions and Use Tax Revenues” was passed by a majority vote of the City of Hercules and the Hercules City Council passed, approved and adopted Ordinance 470 amending the Hercules Municipal Code by establishing a four year temporary transactions and use tax of 0.50% to be administered by the State Board of Equalization.

Per Section 8.9.13 of Ordinance 470:

“A Citizen’s Oversight Committee is hereby established to oversee expenditures of the revenues received by the City from the sales and use taxes imposed pursuant to this chapter, and to ensure that tax revenues are spent by the City in a manner consistent with the voter approved measure adopting this chapter as well as any voter approved or council approved priorities adopted to implement the provisions of this chapter.”

Per Section 8-9.17 paragraph (a) of Ordinance 470:

“The Committee is charged with the following responsibilities:

- (1) Reviewing all appropriations of revenues received by the City from the sales and use taxes imposed pursuant to the provisions of this chapter to determine whether such funds are to be used as provided for in this chapter and the voter approved measure that adopted this chapter;
- (2) Reviewing the audit prepared by an independent auditor retained by the City to perform the City’s Comprehensive Annual Financial Report to determine whether such funds have been spent as provided for in this chapter and the voter approved measure; and
- (3) Prepare and issue the committee’s own annual report settling forth their findings in regard to the foregoing.”

On August 20, 2014, the Measure O Citizen’s Oversight Committee approved the Measure O Annual Report for the Fiscal Year 2013 (July 1, 2012 to June 30, 2013).

City of Hercules Finance Commission
Measure B and Measure C Annual Report
Fiscal Year Ending June 30, 2019

Appendix 2: Measure “A” Background

On June 4, 2013, Measure A “Utility Users Tax Rate Revenues” was passed by a majority vote of the City of Hercules and the Hercules City Council passed, approved, and adopted Ordinance 475 modernizing Title 8, Chapter 8 of the Hercules Municipal Code with respect to the existing 6% Utility Users Tax, and establishing a five year temporary increase of 2% to the Utility Users Tax. The Ordinance established citizens’ oversight with the existing Citizens Finance Advisory Committee (which became the Citizen’s Finance Commission) appointed by the Hercules City Council.

Per Section 8-8.404 of Ordinance 475, “The Citizens Finance Advisory Committee, which is appointed by the City Council, shall meet at least monthly and review all revenue and expenditures under this Chapter in order to ensure that the funds are spent in accordance with the voter approved measure adopting this Chapter as well as any voter approved or council approved priorities adopted to implement the provisions of this Chapter. The City Manager shall appoint an ex-officio staff person to serve as secretary of the Committee and to ensure that meetings are held in a timely fashion.”

Per Section 8-8.406 of Ordinance 475:

“(a) The Committee is charged with the following responsibilities:

- (1) Reviewing all appropriations of revenues received by the City from the sales and use taxes imposed pursuant to the provisions of this Chapter to determine whether such funds are to be used as provided for in this Chapter and the voter approved measure that adopted this Chapter;
- (2) Reviewing the audit prepared by an independent auditor retained by the City to perform the City’s Comprehensive Annual Financial Report to determine whether such funds have been spent as provided for in this Chapter and the voter approved measure; and
- (3) Prepare and issue the committee’s own annual report settling forth their findings in regard to the foregoing.”

City of Hercules Finance Commission
Measure B and Measure C Annual Report
Fiscal Year Ending June 30, 2019

Appendix 3: Measure “B” and Measure “C” Background

On July 28, 2015 the Hercules City Council unanimously approved placing the City of Hercules Financial Stability and Essential Services Continuation Measures, on the November 3, 2015 ballot to protect and maintain essential city services and fiscal stability.

On November 3, 2015, Measure B, “Transactions and Use Tax Revenues” was passed by a majority vote of the City of Hercules. Measure B extends indefinitely the Measure “O” half-cent per dollar local sales tax previously scheduled to end in 2016.

Measure B states, “Whereas the tax extension would be in effect until the Finance Commission finds, and the City Council approves by a 2/3 vote, that the City has achieved long term financial stability with adequate financial reserves.”

On November 3, 2015, Measure C “Utility Users Tax Rate Revenues” was passed by a majority vote of the City of Hercules. Measure C extends the Measure “A” 2 percent utility user’s tax that was previously scheduled to sunset in 2018, now scheduled to sunset in 2025.

Measure C states, “**Measure C** would extend the 2013 voter approved two percent (2%) UUT increase. If adopted, Measure C would make the eight percent (8%) total rate effective until January 1, 2025. The City Council could terminate the two percent (2%) increase at any time before January 1, 2025 and reduce the total UUT rate to six percent (76%) either on its own initiative or at the recommendation of the City’s Finance Commission upon a determination that the additional two percent (2%) increase provide for in **Measure C** is no longer necessary because the City has met its goal of achieving long term financial stability with adequate financial reserves.”

City of Hercules Finance Commission
Measure B and Measure C Annual Report
Fiscal Year Ending June 30, 2019

Appendix 4: Finance Commission Background

On November 23, 2014, the Hercules City Council passed and adopted Ordinance 481 to amend the Hercules Municipal Code as follows:

1. Added Title 2, article 6, Section 202.601 through Section 2-2.609 to create the Finance Commission.
2. Amended Title 8, Chapter 8, Article 4, to provide for the Finance Commission oversight of Measure A, "Utility Users Tax Rate Revenues"
3. Amended Title 8, Chapter 8, Article 9, to provide for the Finance Commission oversight of Measure O, "Transactions and Use Tax Revenues"

Per Section 2.2.609 of Ordinance 481, "The Finance Commission shall be advisory to the City Council with no authority to direct staff and shall have the following duties:

- (a) Quarterly review of City's financial status; review and comment on audit reports; review and comment on the proposed budget; and review and comment on items of extraordinary financial impact.
- (b) Make recommendations to the City Council with respect to budget priorities.
- (c) Review and comment on the City's annual operating and capital improvement budgets
- (d) Advise the City Council on matters of policy and public interest related to the management of the City's finances and budget.
- (e) Serve as the Oversight Committee for Measure "A" including providing an annual report to ensure that Utility User Tax funds are spent in accordance with the Voter Approved Measure adopted in June, 2013.
- (f) Serve as the Oversight Committee for Measure "O", including providing an annual report, to ensure that the Sales Tax revenues approved by Hercules voters are spent in accordance with the Voter Approved Measure adopted in June 2012.
- (g) Take on any additional review and advisory functions assigned by the City Council by duly adopted Resolution."

On November 25, 2014, the Hercules City Council appointed the two members of the Measure O Citizens Oversight Committee and the three members of the Citizens Finance Committee to the Finance Commission.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of October 27, 2020

TO: Members of the City Council

SUBMITTED BY: Michael Roberts, Public Works Director/City Engineer

SUBJECT: Removal of the Marked Crosswalk on San Pablo Avenue at the East Side of the Intersection with Sycamore Avenue

RECOMMENDED ACTION:

Receive any input from the public, discuss as needed, and adopt a Resolution authorizing the removal of the marked crosswalk on San Pablo Avenue at the east side of the intersection with Sycamore Avenue.

FISCAL IMPACT OF RECOMMENDATION:

There is no cost to the City associated with the removal of the crosswalk and associated work, which will be completed as part of the adjacent Safeway Shopping Center private development project currently under construction.

DISCUSSION:

The crosswalk removal was recommended by the City Council Public Safety/Traffic Subcommittee meeting in August 2018 and subsequently approved by City Council in October 2018. The primary reason for removing the crosswalk is to reduce the potential for pedestrian-vehicle collisions at the eastern leg of the intersection where vehicles traveling northbound on Sycamore Avenue have a signalized, double right turn to travel eastbound on San Pablo Avenue towards John Muir Parkway.

This item is being brought back to Council to satisfy California Vehicle Code 21950.5, which requires that a notice of the planned crosswalk removal be posted onsite and a subsequent opportunity to be heard be provided at least 30 days prior to the removal. A notice (Exhibit 1) was previously posted on-site, at each end of the crosswalk, from September 17 to October 17 and as of October 21, no comments have been received.

In addition to grinding out the painted crosswalk, the work also includes removing the pedestrian signal heads and push-buttons from the existing traffic signal heads and installing "No Pedestrian Xing" barricades.

ATTACHMENTS:

1. Exhibit - Notice of Public Comment

Financial Impact

Description:

Funding Source:

Budget Recap:

Total Estimated cost:

New Revenue:

\$

Amount Budgeted:

Lost Revenue:

\$

New funding required:

New Personnel:

\$

Council Policy Change: Yes ☐ No ☒

RESOLUTION NO. 20-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERCULES AUTHORIZING THE REMOVAL OF THE MARKED CROSSWALK ON SAN PABLO AVENUE AT THE EAST SIDE OF THE INTERSECTION WITH SYCAMORE AVENUE

WHEREAS, removing the crosswalk will reduce the potential for pedestrian-vehicle collisions at the eastern leg of the intersection where vehicles traveling northbound on Sycamore Avenue have a signalized, double right turn to travel eastbound on San Pablo Avenue towards John Muir Parkway; and

WHEREAS, the crosswalk removal was recommended by the City Council Public Safety/Traffic Subcommittee meeting in August 2018 and subsequently approved by City Council in October 2018; and

WHEREAS, this item is being brought back to Council to satisfy the requirements of California Vehicle Code 21950.5 which stipulates that a notice of the planned removal be posted onsite and a subsequent opportunity to be heard be provided at least 30 days prior to the removal of the crosswalk; and

WHEREAS, a notice was previously posted on-site, at each end of the crosswalk, from September 17 to October 17; and

WHEREAS, should Council authorize the removal of the crosswalk tonight it will not be removed earlier than 30 days from today.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hercules that the City Council hereby authorizes the removal of the marked crosswalk on San Pablo Avenue at the east side of the intersection with Sycamore Avenue.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the 27th day of October, 2020 by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

Roland Esquivias, Mayor

ATTEST:

Lori Martin, MMC
Administrative Services Director/City Clerk

CITY OF HERCULES NOTICE OF PUBLIC COMMENT

REMOVAL OF MARKED CROSSWALK ON SAN PABLO AVENUE AT SYCAMORE AVENUE – EAST SIDE

NOTICE IS HEREBY GIVEN that the City of Hercules will hold a public comment period regarding the removal of the marked crosswalk at San Pablo Avenue at Sycamore Avenue – East side. The purpose of said public comment period is to comply with California Vehicle Code Section 21950.5. All other three marked crosswalk in the intersection will remain.

All interested persons are invited to provide written comments regarding the removal of the marked crosswalk a San Pablo Avenue and Sycamore Avenue – East side. Your written comments can be sent to:

City of Hercules
Public Work Department
111 Civic Drive
Hercules, CA 94547
Attn: Mike Roberts, City Engineer

You are also welcome to email your comments to Mike Roberts at mikeroberts@ci.hercules.ca.us.

All written or emailed comments will be accepted until **October 17, 2020**.

If you have any questions regarding this notification, please contact the Engineering Division at 510.799.8241.

Date Posted: September 17, 2020





STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of October 27, 2020

TO: Mayor Esquivias and Members of the City Council

SUBMITTED BY: Patrick Tang, City Attorney
Robert Reber, Community and Economic Development Director
Michael Roberts, Public Works Director/City Engineer

SUBJECT: Continued Discussion of SB 946 Sidewalk and Park Vending Requirements and Proposed Draft Ordinance

RECOMMENDED ACTION:

Accept staff report, further discuss, and direct staff to amend amendments to the Hercules Municipal Code to establish revised regulations for sidewalk and park vendors consistent with the requirements of SB 946.

FISCAL IMPACT OF RECOMMENDATION:

None as a result of this report. If Council approves proposed license requirements for sidewalk vendors, there would be some cost associated with administering and enforcing those requirements.

BACKGROUND:

Senate Bill 946 (SB 946) was signed into law on September 18, 2018 and became effective on January 1, 2019. It prohibits cities and counties from regulating sidewalk vendors unless an ordinance is adopted in accordance with the state legislation. The implications of this new legislation on the City's ability to regulate sidewalk vendors was initially presented and discussed at the City Council meeting of October 13, 2020. A draft ordinance was included with the agenda materials for Council consideration.

In drafting the proposed ordinance, staff reviewed sidewalk vending ordinances from a number of jurisdictions, and selected as a primary model an example that, in staff's opinion, would be consistent with the goals of SB 946, protect the health and safety of the residents of Hercules and, in consideration of limited staffing, allow for a simple administrative and enforcement scheme.

DISCUSSION:

At the October 13, 2020 City Council meeting, the Council directed staff to schedule additional discussion of this matter, with modifications to the draft ordinance as follows:

- Extend the distances for parking near crosswalks and bus zones from five to fifteen feet.
- Include language similar to current ice cream truck regulations to prevent sidewalk vending near schools while school is in session.

- Provide information to all applicants regarding penalties for engaging in human trafficking.
- Provide that both vendors and all employees of vendors be listed on permit applications, and subject to background checks as deemed appropriate by the Chief of Police.

The requested changes are included in the Revised Draft Ordinance, provided as Attachment 2 to this Report. It should be noted that the existing municipal code provisions restricting ice cream truck vending during school hours east of Interstate 80 and south of State Route 4 arguably conflict with the provisions of SB 946, and thus cannot be applied to sidewalk and park vendors. However, a more narrowly tailored restriction that would be consistent with SB 946 requirements has been crafted by staff for Council consideration and is contained in the attached redlined draft ordinance.

On a related note, the draft ordinance also includes minor amendments to the existing definition of Mobile Food Vehicle in Hercules Municipal Code Section 3-4.1012(a), to clarify that, with the new sidewalk vendor requirements, mobile food vehicle regulations would no longer apply to “push carts”.

As discussed during the October 13, 2020 meeting, in conjunction with any new code requirements adopted by the City Council, staff would also prepare administrative Sidewalk Vending Rules and Regulations to assist vendors and potential vendors to better understand program requirements. The administrative rules and regulations would track the proposed Municipal Code requirements, with additional detail pertinent to the vendors.

SUMMARY:

The ordinance if adopted would:

- require a vendor to obtain a license that would need to be renewed annually,
- require providing contact information of any persons employed by a vendor,
- require applicants and employees to undergo background checks if requested by the Police Department,
- require inspection and approval by the County Health Department,
- regulate the size and dimensions of any vending cart or kiosk,
- regulate the signage used by vendors,
- impose requirements regarding trash and noise,
- regulate what locations within the city stationary or roaming carts could operate and the hours of operation,
- limit operation of vendors near schools during school hours, and
- regulate placement of carts to avoid blocking pedestrian use of sidewalks.

ATTACHMENTS:

1. October 13, 2020 Staff Report
2. Revised Draft Ordinance
3. SB 946



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of October 13, 2020

TO: Mayor Esquivias and Members of the City Council

SUBMITTED BY: Patrick Tang, City Attorney
Robert Reber, Community and Economic Development Director
Michael Roberts, Public Works Director/City Engineer

SUBJECT: SB 946 Sidewalk and Park Vending Requirements and Proposed Draft Ordinance

RECOMMENDED ACTION:

Accept staff report, discuss, and direct staff to agendize amendments to the Hercules Municipal Code to establish revised regulations for sidewalk and park vendors consistent with the requirements of SB 946.

FISCAL IMPACT OF RECOMMENDATION:

None as a result of this report. If Council approves proposed license requirements for sidewalk vendors, there would be some cost associated with administering and enforcing those requirements.

BACKGROUND:

Senate Bill 946 (SB 946) was signed into law on September 18, 2018 and became effective on January 1, 2019. It prohibits cities and counties from regulating sidewalk vendors unless an ordinance is adopted in accordance with the legislation.

DISCUSSION:

SB 946 requires a local authority to adopt a sidewalk vending program to enable regulation of vending on sidewalks in order to protect the health, safety, and welfare of the public. The proposed Sidewalk Vending Ordinance outlines:

- Key definitions associated with sidewalk vending;
- Permit requirements;
- Application requirements;
- Operational parameters;
- Vending prohibitions; and
- Administrative Citations and license revocation for failure to comply.

In conjunction with any new code requirements adopted by the City Council, staff would also prepare administrative Sidewalk Vending Rules and Regulations to assist vendors and potential vendors to better understand program requirements. The administrative rules and regulations would track the proposed Municipal Code requirements, with additional detail pertinent to the vendors.

In drafting the proposed ordinance, staff reviewed sidewalk vending ordinances from a number of jurisdictions, and selected as a primary model an example that, in staff's opinion, would be consistent with the goals of SB 946, protect the health and safety of the residents of Hercules and, in consideration of limited staffing, and allow for a simple administrative and enforcement scheme.

The ordinance if adopted would among other requirements, require a vendor to obtain a license that would need to be renewed annually, undergo background checks if requested by the Police Department, submit to inspection and approval by the County Health Department, regulate the size and dimensions of any vending cart or kiosk, regulate the signage used by vendors, impose requirements regarding trash and noise, regulate what locations within the city stationary or roaming carts could operate and the hours of operation, and regulate placement of carts to avoid blocking pedestrian use of sidewalks.

ATTACHMENTS:

1. Draft Ordinance
2. SB 946

SIDEWALK VENDING ORDINANCE

WHEREAS, Senate Bill No. 946 (“SB 946”), effective January 1, 2019, provides that cities may not regulate sidewalk vending except in accordance with its provisions which are codified in Government Code sections 51036 through 51039; and

WHEREAS, the City seeks to adopt an enforceable sidewalk vending program that responds to the objective needs and circumstances of the City, and protects the public health, safety and welfare; and

WHEREAS, considering the specific provisions for sidewalk vending in state law, regulating sidewalk vending through a local permit license specific to the activity will enable the City to more effectively comply with state mandates; and

WHEREAS, regulating sidewalk vending will benefit the City by promoting entrepreneurship and a dynamic streetscape, while ensuring the protection of the public health, safety, and welfare; and

WHEREAS, unless properly regulated, vending in the public right-of-way and in public parks creates the potential for increased safety risks including, but not limited to interfering with the performance of police, firefighter and paramedic services; contributing to traffic congestion; and interfering with the ability of pedestrians and persons with disabilities to follow a safe path of travel by obstructing the right-of-way with vending equipment or by increasing congestion; and

WHEREAS, requiring sidewalk vendors engaged in the sale of food to comply with applicable sanitation requirements will protect the public health and safety against the accumulation of litter and food products or food by products being left on the City’s sidewalks and surrounding areas; and

WHEREAS, regulations related to the collection and disposal of trash or other debris generated by sidewalk vending are necessary to ensure that such trash or debris is not left, thrown, discarded, or deposited on City streets, sidewalks, pathways, gutters, or storm drains, or upon public or private lots, so that the same might be or become a pollutant; and

WHEREAS, requiring sidewalk vendors to undergo background checks may be necessary as determined by the Police Department to ensure vendors meet the requirements of a license to operate in or near parks, schools, residences, and other places frequented by children; and

WHEREAS, restrictions on sidewalk vending in public parks is necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities, and to prevent an undue concentration of commercial activity that would unreasonably interfere with the scenic and natural character of these parks; and

WHEREAS, the City Council hereby finds that the regulation of sidewalk vendors set forth herein is directly related to protecting the health, safety and welfare of the Hercules community.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HERCULES AS FOLLOWS:

SECTION 1. The above recitals are true and correct.

SECTION 2. Environmental Review. The City Council exercises its independent judgment and finds that the proposed ordinance is not subject to the California Environmental Quality Act (CEQA), pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), and section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because the subject regulations have no potential for resulting in any significant physical change to the environment, either directly or indirectly.

SECTION 3. Chapter 4 of Title 3 of the Hercules Municipal Code regulating mobile food vendors, Section 3-4.1012(a), is hereby amended to delete reference to "push-carts" from the definition of "mobile food vehicle" and shall read as follows:

(a) Definitions. As used in this section:

"Mobile food vehicle" means any lunch wagon, eating cart or food truck, or ice cream truck, ~~or push-cart~~ from which foodstuffs are sold on public streets, alleys, or highways within the City of Hercules.

"Mobile food vendor" means any person who conducts, permits or causes the operation of, or owns, operates, controls, manages, or leases, any mobile food vehicle.

"Ice cream truck" means any mobile food vehicle equipped or primarily used for retail sales of ice cream, ice milk, popsicles, frozen yogurt, frozen dessert products, and confections of any kind on public streets, alleys, or highways within the City of Hercules.

SECTION 4. Chapter 4 is hereby added to Title 6 of the Hercules Municipal Code to read as follows:

Title 6, Chapter 4 – SIDEWALK VENDING

Sections:

6-4.01 – Purpose.

The purpose of this Chapter is to establish a sidewalk vending program within the city while maintaining objective regulations that are directly related to public health, safety, and welfare.

6-4.02 – Definitions.

The following definitions apply to this Chapter:

“Business tax certificate” means a business license issued by the city to conduct business in the city.

“California Retail Food Code” means Part 7 of Division 104 of the California Health and Safety Code (commencing at Section 113700).

“Cart” means any pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, and includes a stationary cart or a roaming cart.

“Cart permit” means a permit issued by the city for a cart to vend food or merchandise within the city.

“Director” means the director of the Public Works Department.

“Food” means any type of edible substance or beverage.

“Goods” or “merchandise” means any item that is not food.

“Health Department” means the Contra Costa County Environmental Health Division.

“Person” or “persons” means one or more natural persons, individuals, groups, businesses, business trusts, companies, corporations, joint ventures, joint stock companies, partnership, entities, associations, clubs or organizations composed of two or more individuals (or the manager, lessee, agent, servant, officer or employee of any of them), whether engaged in business, nonprofit or any other activity.

“Roaming sidewalk vendor” has the same meaning as set forth in Government Code section 51036(b), and includes a sidewalk vendor who moves from place to place and stops only to complete a transaction.

“Roaming vending cart” means a pushcart, pedal-driven cart, wagon, or other nonmotorized conveyance used by a roaming sidewalk vendor, to be moved from place to place, and with stops only to complete a transaction.

“Rules and regulations” means the rules and regulations, if any, established by the Director and adopted by city council resolution, concerning the sidewalk vending

program that are intended to clarify and aid in the administration and enforcement of this Chapter.

“Sidewalk” means any paved surface in the public right-of-way provided for the use of pedestrians and includes pedestrian paths.

“Sidewalk vending program” means the program established by this Chapter that is applicable to sidewalk vending-related activities.

“Sidewalk vendor” has the same meaning as set forth in Government Code section 51036(a), and includes a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path.

“State seller’s permit” means a permit issued by the California Department of Tax and Fee Administration.

“Stationary sidewalk vendor” has the same meaning as set forth in Government Code section 510361, and includes a sidewalk vendor who vends from a fixed location.

"Stationary vending cart" means a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, kiosk, or other nonmotorized conveyance, that is intended to be operated from a fixed location by a stationary sidewalk vendor“.

"Vend" means to sell, offer for sale, expose or display for sale, solicit offers to purchase, barter, or exchange anything of value, even if the transaction is characterized as a donation.

"Vending permit" means a form of Encroachment Permit issued by the city to vend food or merchandise within the city in accordance with this Chapter.

"Contra Costa County Environmental Health Division permit" means any and all licenses, permits, certifications, and courses required and issued by the Environmental Health Division of the County of Contra Costa to vend food within the city in accordance with this Chapter.

6-4.03 - Administration.

- A. The Public Works Department is authorized to issue sidewalk vending permits in accordance with this Chapter.
- B. The Director is authorized to develop, and enforce, the rules and regulations regarding the permitting and operation of sidewalk vending, in accordance with this Chapter.
- C. The Director, in coordination with the Chief of Police, shall at the time of permit issuance and permit renewal, provide information to permit applicants regarding criminal penalties for human trafficking.

6-4.04 - Vending permit required.

No sidewalk vendor may vend or operate anywhere within the city without first obtaining a sidewalk vending permit. Sidewalk vendors must comply with the terms and conditions set forth in the sidewalk vending permit. The Director shall promulgate additional administrative regulations consistent with this Chapter as needed for use of vending carts applicable to both stationary and roaming vending activities, including but not limited to permissible hours and days of operation.

6-4.05 - Application requirements.

- A. To obtain or to renew a sidewalk vending permit, a sidewalk vendor must provide the following as part of the application:
1. Valid identification, such as a State of California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number, or any other government-issued identification card.
 2. The name, address and telephone number of the sidewalk vendor, and if employees are hired by the applicant to vend from sidewalk vendor's stationary or roaming cart, the names, addresses, and telephone numbers of such employees. This information is required to be updated within five (5) business days when the sidewalk vendor's address or telephone number changes or when new employees are hired.
 3. Proposed hours and days of operation.
 4. Whether the sidewalk vendor intends to operate a stationary vending cart or a roaming vending cart.
 5. Proposed location of operation.
 - a. An application for placement of a stationary cart in a commercial or industrial area of the city must contain the proposed location, marked by major cross streets, and a photo or detailed sketch of such location.
 - b. An application for a roaming vending cart must include a map showing the areas in the City in which they plan to operate.
 6. The type of merchandise or food offered for sale or exchange.
 7. Proof of a valid City of Hercules business license.
 8. Proof of liability insurance and signed indemnification in favor of the city, in an amount not less than five hundred thousand dollars for property damage and injuries, including injury resulting in death, caused by the operation of the vending business.
 9. The application or renewal fee.

10. A valid California Department of Tax and Fee Administration seller's permit and additional licenses from state or local agencies to the extent required by law.
 11. A permit from the health department for food-related vending, if applicable.
 12. Proof of a completed background check, if required by the Police Department.
 13. A declaration that the information provided to the city is true and correct.
 14. Any other information as may be required by the Director including compliance with administrative regulations regarding vending carts.
- B. Vending permits will expire one year after the date of issuance.
- C. Vending permits are not transferable.
- D. A person whose vending permit is revoked may not renew their vending permit for one year.
- E. In accordance with Government Code section 51038(c)(4), identification numbers, such as social security numbers, will be confidential and will not be disclosed.

6-4.06 - Operational requirements.

- A. Every cart used to vend food must be approved by the health department. A cart may only vend the types of food that are listed and approved by the health department under the health department permit.
- B. A cart used for sidewalk vending must obtain, possess, and prominently display a valid cart permit and all other required permits that are issued by other public agencies such as a health department permit.
- C. A cart used for sidewalk vending must be placed and used at all times in compliance with the terms and conditions of the vending license and all other applicable laws and regulations, including the California Retail Food Code if food is sold.
- D. No cart that is used for sidewalk vending may exceed a length of one hundred-eight inches, a width of fifty-four inches, or a height, including roof or awning, of seventy-eight inches.
- E. A vending cart must operate according to its approved hours of operation. The Public Works Director may impose reasonable hours of operation for sidewalk vendors. For sidewalk vending in nonresidential areas, the Director may limit the hours of operation in a manner consistent with other businesses or uses on the same street(s) in those nonresidential areas.
- F. No vending cart or trash receptacle may be left on the sidewalk after the sidewalk vendor's stated closing time.
- G. A sidewalk vendor must maintain a clean and trash-free ten-foot radius from a stationary cart during hours of operation and must leave the area clean by the approved closing time.

- H. Sidewalk vendors that vend food items must provide a trash receptacle for customers and must ensure proper disposal of customer trash. The trash receptacle must be large enough to accommodate customer trash without resorting to existing trash receptacles located on any block for use by the general public. Sidewalk vendors shall not leave any location without first picking up, removing, and disposing of all trash or refuse from their operation.
- I. Vendors must comply with all applicable federal, state, and local laws, regulations, and ordinances.
- J. No signs that are not attached to the vending cart may be used or displayed.
- K. Vending carts must be self-contained, including any power, cooking and heating equipment. Sidewalk vendors may not set up tables, chairs, tents or other structures, unless otherwise approved by the city. One chair and one umbrella per vendor may be provided for the purpose of allowing the vendors to be seated in shade. Sidewalk vendors may not access a city or private power source without authorization from the city or such private property owner or agent.
- L. No sidewalk vendor or vending cart may use any device that produces a loud noise, nor may the vendor use or operate any loudspeaker, public address system, radio, sound amplifier, or other similar device.
- M. Before non-electric generators or auxiliary power may be used to power a vending cart, the sidewalk vendor must obtain permission, as applicable, from the Contra Costa County Air Pollution Control District.
- N. Vending of services is prohibited.

6-4.07 - Vending near schools and in residential areas.

- A. Vending in residential areas. No stationary vending cart may be used to vend within a residential zoned area. However, a roaming sidewalk vendor may use a roaming vending cart within a residential zone as defined in Chapter 13-6 of the Hercules Municipal Code, and must move continuously except when necessary to complete a sale.
 - B. Vending near schools. No sidewalk vendor or vending cart may be used to vend within 300 feet of any school property before 4:00 p.m. during weekdays (Monday through Friday) except on days when school facilities are closed and schools are not in session.
- #### 6-4.08 - Prohibitions on placement of stationary or roaming carts.

- A. No sidewalk vendor may place or leave any vending cart:
 - 1. Within fifteen feet of a marked crosswalk.
 - 2. Within fifteen feet of the curb return of an unmarked crosswalk.
 - 3. Within fifteen feet of any fire hydrant.

4. Within fifteen feet ahead and forty-five feet to the rear of a sign designating a bus stop.
 5. Within a marked bus zone.
 6. Within ten feet of a bench or shelter used for public transit.
 7. Within fifteen feet of a driveway or driveway apron.
 8. Within twenty feet of an outdoor dining or patio dining area.
 9. Where placement impedes the flow of vehicular traffic such as on public streets or public highways.
- B. No vending cart may be chained or fastened to any utility pole, sign, tree, or other object in the public right-of-way or left unattended.
 - C. No vending cart may impede the flow of pedestrian traffic by reducing the path of travel to less than four feet, or impede access to or restrict the use of abutting property, including, but not limited to, residences and places of business, in accordance with the Americans with Disabilities Act (ADA).
 - D. Notwithstanding any specific regulations in this Chapter, no sidewalk vendor may install, use or maintain a vending cart where placement endangers the safety of persons or property.

6-4.09 - Sidewalk vending related to parks and special events.

- A. No sidewalk vending is allowed within three hundred feet of a city-permitted event within the time period commencing two hours before until one hour after the event except as expressly allowed by the event's permit. Permitted events include certified farmers markets, and any event that requires an encroachment permit or special event permit, or any other permit or authorization required by the city.
- B. The city may by resolution adopt additional requirements consistent with Government Code section 51038(b)(2)(B) for city-owned or operated parks, effective after signs are posted giving notice of such additional requirements.

6-4.10 - Fines.

Sidewalk vending in violation of this Chapter will not be punishable as a criminal infraction or misdemeanor, but will be subject to an administrative citation pursuant to Title 1, Chapter 4 of the Hercules Municipal Code.

Fines assessed pursuant this Section may be reduced to twenty percent of the original fine amount upon submission of proof of inability to pay at an adjudication hearing if requested by the person pursuant to Government Code section 51039(f).

6-4.11 - Removal of cart.

The city may request a sidewalk vendor remove any cart that is in violation of this Chapter. If the sidewalk vendor refuses to remove the cart, or if a cart has been abandoned, the city may cause the cart to be removed and may subsequently dispose of the cart (including any associated merchandise and food) if not claimed by the vendor within thirty days of removal by the city, or if an administrative appeal is filed related to the cart removal, then thirty days after a final decision in the administrative appeal (including the payment of any outstanding administrative fine).

SECTION 5. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6. Publication. The City Clerk is directed to certify this ordinance and cause it to be published in the manner required by law.

PASSED, APPROVED, AND ADOPTED _____, 2020.

Senate Bill No. 946

CHAPTER 459

An act to add Chapter 6.2 (commencing with Section 51036) to Part 1 of Division 1 of Title 5 of the Government Code, relating to sidewalk vendors.

[Approved by Governor September 17, 2018. Filed with
Secretary of State September 17, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 946, Lara. Sidewalk vendors.

Existing law authorizes a local authority, by ordinance or resolution, to adopt requirements for the public safety regulating any type of vending and the time, place, and manner of vending from a vehicle upon a street.

This bill would prohibit a local authority, as defined, from regulating sidewalk vendors, except in accordance with the provisions of the bill. The bill would provide that a local authority is not required to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the provisions of the bill. The bill would apply these provisions to a chartered or general law city, county, or city and county.

The bill would require a local authority that elects to adopt a sidewalk vending program to, among other things, not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns, and not restrict sidewalk vendors to operate only in a designated neighborhood or area, except as specified. The bill would authorize a local authority to, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending, as specified, if the requirements are directly related to objective health, safety, or welfare concerns. The bill would also authorize a local authority to prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market and a permitted swap meet, as specified, and to restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, as specified. A violation would be punishable only by an administrative fine, as specified, pursuant to an ability-to-pay determination, and proceeds would be deposited in the treasury of the local authority.

The bill would require the dismissal of any criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors that have not reached final judgment. The bill would also authorize a person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk

vending, as specified, to petition for dismissal of the sentence, fine, or conviction.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities.

(2) Sidewalk vending increases access to desired goods, such as culturally significant food and merchandise.

(3) Sidewalk vending contributes to a safe and dynamic public space.

(4) The safety and welfare of the general public is promoted by encouraging local authorities to support and properly regulate sidewalk vending.

(5) The safety and welfare of the general public is promoted by prohibiting criminal penalties for violations of sidewalk vending ordinances and regulations.

(6) This act applies to any city, county, or city and county, including a charter city. The criminalization of small business entrepreneurs, and the challenges that those entrepreneurs face as a result of a criminal record, are matters of statewide concern. Further, unnecessary barriers have been erected blocking aspiring entrepreneurs from accessing the formal economy, harming California's economy in the process, and disrupting the regulation of business, which is a matter of statewide concern. Moreover, California has an interest in the regulation of traffic, a matter of statewide concern, whether in ensuring the appropriate flow of traffic or in ensuring the safety of pedestrians on the road or the sidewalk.

(b) It is the intent of the Legislature to promote entrepreneurship and support immigrant and low-income communities.

SEC. 2. Chapter 6.2 (commencing with Section 51036) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 6.2. SIDEWALK VENDORS

51036. For purposes of this chapter, the following definitions apply:

(a) "Sidewalk vendor" means a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path.

(b) "Roaming sidewalk vendor" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

(c) "Stationary sidewalk vendor" means a sidewalk vendor who vends from a fixed location.

(d) "Local authority" means a chartered or general law city, county, or city and county.

51037. (a) A local authority shall not regulate sidewalk vendors except in accordance with Sections 51038 and 51039.

(b) Nothing in this chapter shall be construed to affect the applicability of Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code to a sidewalk vendor who sells food.

(c) Nothing in this chapter shall be construed to require a local authority to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the requirements in this chapter.

51038. (a) A local authority may adopt a program to regulate sidewalk vendors in compliance with this section.

(b) A local authority's sidewalk vending program shall comply with all of the following standards:

(1) A local authority shall not require a sidewalk vendor to operate within specific parts of the public right-of-way, except when that restriction is directly related to objective health, safety, or welfare concerns.

(2) (A) A local authority shall not prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority, except the local authority may prohibit stationary sidewalk vendors from vending in the park only if the operator of the park has signed an agreement for concessions that exclusively permits the sale of food or merchandise by the concessionaire.

(B) Notwithstanding subparagraph (A), a local authority may adopt additional requirements regulating the time, place, and manner of sidewalk vending in a park owned or operated by the local authority if the requirements are any of the following:

(i) Directly related to objective health, safety, or welfare concerns.

(ii) Necessary to ensure the public's use and enjoyment of natural resources and recreational opportunities.

(iii) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

(3) A local authority shall not require a sidewalk vendor to first obtain the consent or approval of any nongovernmental entity or individual before he or she can sell food or merchandise.

(4) (A) A local authority shall not restrict sidewalk vendors to operate only in a designated neighborhood or area, except when that restriction is directly related to objective health, safety, or welfare concerns.

(B) Notwithstanding subparagraph (A), a local authority may prohibit stationary sidewalk vendors in areas that are zoned exclusively residential, but shall not prohibit roaming sidewalk vendors.

(5) A local authority shall not restrict the overall number of sidewalk vendors permitted to operate within the jurisdiction of the local authority,

unless the restriction is directly related to objective health, safety, or welfare concerns.

(c) A local authority may, by ordinance or resolution, adopt additional requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns, including, but not limited to, any of the following:

- (1) Limitations on hours of operation that are not unduly restrictive. In nonresidential areas, any limitations on the hours of operation for sidewalk vending shall not be more restrictive than any limitations on hours of operation imposed on other businesses or uses on the same street.
 - (2) Requirements to maintain sanitary conditions.
 - (3) Requirements necessary to ensure compliance with the federal Americans with Disabilities Act of 1990 (Public Law 101-336) and other disability access standards.
 - (4) Requiring the sidewalk vendor to obtain from the local authority a permit for sidewalk vending or a valid business license, provided that the local authority issuing the permit or business license accepts a California driver's license or identification number, an individual taxpayer identification number, or a municipal identification number in lieu of a social security number if the local authority otherwise requires a social security number for the issuance of a permit or business license, and that the number collected shall not be available to the public for inspection, is confidential, and shall not be disclosed except as required to administer the permit or licensure program or comply with a state law or state or federal court order.
 - (5) Requiring the sidewalk vendor to possess a valid California Department of Tax and Fee Administration seller's permit.
 - (6) Requiring additional licenses from other state or local agencies to the extent required by law.
 - (7) Requiring compliance with other generally applicable laws.
 - (8) Requiring a sidewalk vendor to submit information on his or her operations, including, but not limited to, any of the following:
 - (A) The name and current mailing address of the sidewalk vendor.
 - (B) A description of the merchandise offered for sale or exchange.
 - (C) A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true.
 - (D) The California seller's permit number (California Department of Tax and Fee Administration sales tax number), if any, of the sidewalk vendor.
 - (E) If the sidewalk vendor is an agent of an individual, company, partnership, or corporation, the name and business address of the principal.
- (d) Notwithstanding subdivision (b), a local authority may do both of the following:
- (1) Prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market or a permitted swap meet during the limited operating hours of that certified farmers' market or swap meet. A "certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the

Food and Agricultural Code and any regulations adopted pursuant to that chapter. A “swap meet” means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

(2) Restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by the local authority, provided that any notice, business interruption mitigation, or other rights provided to affected businesses or property owners under the local authority’s temporary special permit are also provided to any sidewalk vendors specifically permitted to operate in the area, if applicable. For purposes of this paragraph, a temporary special permit is a permit issued by the local authority for the temporary use of, or encroachment on, the sidewalk or other public area, including, but not limited to, an encroachment permit, special event permit, or temporary event permit, for purposes including, but not limited to, filming, parades, or outdoor concerts. A prohibition of sidewalk vendors pursuant to this paragraph shall only be effective for the limited duration of the temporary special permit.

(e) For purposes of this section, perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern.

51039. (a) (1) A violation of a local authority’s sidewalk vending program that complies with Section 51038 is punishable only by the following:

(A) An administrative fine not exceeding one hundred dollars (\$100) for a first violation.

(B) An administrative fine not exceeding two hundred dollars (\$200) for a second violation within one year of the first violation.

(C) An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one year of the first violation.

(2) A local authority may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations.

(3) (A) If a local authority requires a sidewalk vendor to obtain a sidewalk vending permit from the local authority, vending without a sidewalk vending permit may be punishable by the following in lieu of the administrative fines set forth in paragraph (1):

(i) An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation.

(ii) An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one year of the first violation.

(iii) An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one year of the first violation.

(B) Upon proof of a valid permit issued by the local authority, the administrative fines set forth in this paragraph shall be reduced to the administrative fines set forth in paragraph (1), respectively.

(b) The proceeds of an administrative fine assessed pursuant to subdivision (a) shall be deposited in the treasury of the local authority.

(c) Failure to pay an administrative fine pursuant to subdivision (a) shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in subdivision (a) shall not be assessed.

(d) (1) A violation of a local authority's sidewalk vending program that complies with Section 51038, or a violation of any rules or regulations adopted prior to January 1, 2019, that regulate or prohibit sidewalk vendors in the jurisdiction of a local authority, shall not be punishable as an infraction or misdemeanor, and the person alleged to have violated any of those provisions shall not be subject to arrest except when permitted under law.

(2) Notwithstanding any other law, paragraph (1) shall apply to all pending criminal prosecutions under any local ordinance or resolution regulating or prohibiting sidewalk vendors. Any of those criminal prosecutions that have not reached final judgment shall be dismissed.

(e) A local authority that has not adopted rules or regulations by ordinance or resolution that comply with Section 51037 shall not cite, fine, or prosecute a sidewalk vendor for a violation of any rule or regulation that is inconsistent with the standards described in subdivision (b) Section 51038.

(f) (1) When assessing an administrative fine pursuant to subdivision (a), the adjudicator shall take into consideration the person's ability to pay the fine. The local authority shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

(2) If the person meets the criteria described in subdivision (a) or (b) of Section 68632, the local authority shall accept, in full satisfaction, 20 percent of the administrative fine imposed pursuant to subdivision (a).

(3) The local authority may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.

(g) (1) A person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under the act that added this section had that act been in effect at the time of the offense, may petition for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case.

(2) Upon receiving a petition under paragraph (1), the court shall presume the petitioner satisfies the criteria in paragraph (1) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in paragraph (1), the court shall grant the petition to dismiss the sentence or fine, if applicable, and dismiss and seal the conviction, because the sentence, fine, and conviction are legally invalid.

(3) Unless requested by the petitioner, no hearing is necessary to grant or deny a petition filed under paragraph (1).

(4) If the court that originally sentenced or imposed a fine on the petitioner is not available, the presiding judge shall designate another judge to rule on the petition.

(5) Nothing in this subdivision is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner.

(6) Nothing in this subdivision or related provisions is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this chapter.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 51038 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The Legislature finds and declares that in order to protect the privacy of a sidewalk vendor with regard to his or her California driver's license or identification number, individual taxpayer identification number, or municipal identification number, when that number is collected in lieu of a social security number for purposes of the issuance of a permit or business license, it is necessary that the sidewalk vendor's number be confidential, except as provided in this act.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of October 27, 2020

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager
William Imboden, Chief of Police

SUBJECT: Update on Parking Enforcement

RECOMMENDED ACTION: Receive Report, Discuss, and Provide Direction, if any.

FISCAL IMPACT OF RECOMMENDATION: None as a direct result of this item. Parking Enforcement is a budgeted expense in the Police Department budget with one half-time position. The issuance of parking tickets and some level of tow activity does result in revenue generation as described further in the report.

DISCUSSION: The City Council last received an update on Parking Enforcement on October 8, 2019, and that staff report is attached as background. Since that time, staff had proposed the addition of a second part-time parking enforcement officer as part in the 20/21 budget consideration process in the form of DP 21-4, though that was ultimately not approved as part of the final budget.

Parking Enforcement has been impacted by several factors related to the COVID-19 Pandemic, including the reluctance of the Court system to act upon certain types of activity and the goal of limiting staff exposure.

For a short period earlier this year, we did have a second person working on Parking Enforcement as we had a Police Officer Trainee waiting to start the Academy who was assigned to Parking Enforcement. However, as of October, that employee has been in the Academy full-time.

Updated data regarding parking enforcement activity since the past update is provided below.

	FY 17-18	FY 18-19	FY 19-20
Parking Fines Collected	56,318.69	69,307.81	89,994.79
Police Services/Towed Vehicle Release Fees Collected	29,395.30	24,990.84	18,780.00
Total	85,731.99	94,298.65	108,774.79
Parking Citations Issued	2247	2007	2324
Abandoned Vehicles Tagged	877	453	453

ATTACHMENTS:

1. Parking Enforcement Update from October 8, 2019.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of October 8, 2019

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager
Edwin Gato, Finance Director
William Imboden, Police Chief
Mike Roberts, Public Works Director
Holly Smyth, Planning Director

SUBJECT: Update on Parking Enforcement

RECOMMENDED ACTION: Receive Report, Discuss, and Provide Direction, if any.

FISCAL IMPACT OF RECOMMENDATION: None as a result of this report. Parking enforcement does generate revenues to support the cost of parking enforcement.

DISCUSSION: Enforcement of parking laws and regulations continues to be a matter of community concern. This report is being provided to share information on the current status of the City's parking enforcement efforts, how parking enforcement works and is funded, our current priorities regarding parking enforcement, and opportunities to revise or enhance our parking enforcement efforts. In addition, there is some misunderstanding in the community as to how parking enforcement works and constraints associated with parking enforcement and these factors will be discussed in this report as well.

Given concerns about parking enforcement, the 2017/18 Budget included Decision Package 17-15 which was approved which funded a 20 hour per week Parking Enforcement Officer. The Decision Package as approved is set forth below:

Decision Package # 17-15: Parking Enforcement Officer P/T – The City currently relies on volunteers for parking enforcement. It is proposed to fund one part-time 20 hour per week parking Enforcement Officer to upgrade our parking enforcement activities. Increased revenues are expected to cover the increased costs. Revenue Increase: \$25,000; Expense Increase: \$19,750

The part-time Parking Enforcement Officer was designed to supplement the limited amount of parking enforcement undertaken by our Patrol Officers. Patrol Officers continue to a level of parking enforcement, with majority of parking enforcement being done by the part-time Parking Enforcement Officer. Since July, 2016, we have generally had the part-time parking Enforcement Officer position

filled, though there have been some periods where it has been vacant due to turnover. The position is currently filled.

	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Parking Fines	11,510.92	11,593.05	14,844.61	29,936.90	56,318.69	69,307.81
Police Services/Towed Vehicle Release Fees	46,354.13	39,967.93	33,311.16	28,148.82	29,395.30	24,990.84
Total	57,865.05	51,290.98	48,155.77	58,085.72	85,731.99	94,298.65

As you can see, parking fine revenue has increased by more than the annual amount anticipated in DP #17-15. Tow revenues have declined over this same period, as discussed further below, though the net revenue between parking and tows is overall higher. Though annual cost for the Parking Enforcement Officer is now approximately \$31,000, net revenues have increased by more than the cost of the Parking Enforcement Officer.

The ability to tow vehicles and the reduction in tow revenues has been directly impacted by what is referred to as the Community Caretaker Doctrine, which rises out of the Fourth Amendment. The courts have ruled that towing a vehicle is a seizure under the Fourth Amendment and that absent a warrant or exigent circumstances, it is illegal to tow a vehicle in conjunction with an arrest. The exception is if towing the vehicle is in the best interest of the owner, to prevent it from being damaged or stolen, or the vehicle is in a position to create a danger to the public (e.g. parked/stopped in an unsafe manner on the side of the road). Towing the vehicle is deemed taking care of the community under this exception. If the driver stops in a legal parking area, and is parked safely, there are very few sections the vehicle can be towed for anymore. Simply arresting the driver is no longer a valid reason for towing the vehicle. The Community Caretaker Doctrine as delineated by the courts has been codified under California law with the passage of AB 2876, which went into effect January 1, 2019 and amends California Vehicle Code 22650 to limit the City's authority to tow vehicles except under limited circumstances consistent with the Community Caretaker Doctrine.

Given the enforcement and financial success of the part-time parking enforcement officer as provided in DP 17-15, in future budgets, we may want to consider adding a second part-time parking enforcement officer if warranted.

The existing part-time Parking Enforcement Officer works Monday through Friday, and does flex his hours to address specific parking issues and for targeted enforcement activities as necessary. However, he does not generally work weekends.

Unfortunately, given limited staffing and higher priorities, the Police Department does not track the types of the parking citations issued, except on a very gross basis.

FY 17/18	Sworn: 1117	PEO: 1130	Total: 2247
FY 18/19	Sworn: 904	PEO: 1103	Total: 2007

Parking enforcement priorities for the Police Department change and are often impacted by outside forces, so the first directive to the Parking Enforcement Officer is to be flexible. The Department

gives complaint driven enforcement the top priority, while also focusing on known or reported hot spots in town. The Parking Enforcement Officer's goal is to apply uniform enforcement throughout town, but everyone who is authorized to issue parking tickets has been given the directive to "enforce it if they see it". The expectation is that the Patrol Officers will issue parking citations if they see a violation and not rely on the Parking Enforcement Officer to handle it. The statistics for the prior two fiscal years bear out this commitment by Patrol.

The focus of the Parking Enforcement Officer has recently been west of San Pablo Ave, with lighter attention given to the older sections off Refugio Valley Road and Sycamore. In the last few weeks, he has been giving more attention to the Birds, the Trees, the Flowers, and the Gems in response to community concerns.

In addition, the Parking Enforcement Officer also undertakes additional duties of value to the Police Department including prison transport which allows Patrol Officers to remain on the streets to respond to calls and engage in pro-active patrol. He also responds to neighboring counties to pick up prisoners that have been arrested on our warrants, to bring them to our County Jail for prosecution. This can sometimes take his entire shift.

Parking enforcement on public streets, which is the role of our Parking Enforcement Officer and sworn Police Officers, is governed by two types of law. The California Vehicle Code is the main prescriber of parking regulations and rules. The main examples enforced here in Hercules are:

- Time Limits
- Parking in a Red, Yellow, or Blue Zone
- Parking on a corner
- Unregistered Vehicle
- Blocking the crosswalk
- Blocking a driveway

The City's Municipal Code is also a source of certain local parking restrictions. These include the following prohibitions:

- No parking on a public street for more than 72 hours HMC 3-4.1005
- No parking of vehicles being advertised for sale HMC 3-4.1006
- No parking vehicles in the streets for the purpose of repairing, greasing, or dismantling HMC 3-4.1007
- No parking of Recreational Vehicles, trailers, or boats, unless actively loading/unloading and then for no more than 3 hours HMC 3-4.1018
- No commercial vehicle parking on public streets HMC 3-4.1019

There are also limitations on when and how vehicles can be towed for parking related matters.

In addition to the restrictions applied through the Community Caretaker Doctrine, the Hercules Municipal Code also specifies when a parked vehicle can be towed for violations of the code. The most common is the *Abandoned Vehicle Abatement* section (HMC 3-4.1005), most commonly referred to as a "72 hour tow".

In order to meet the requirements of this towing authority, the vehicle has to be marked in such a way as to confirm it has not been moved when the officer returns in 72 hours. Officers mark vehicles which may be a problem, at that time. Additionally the vehicle has to have a warning tag placed on it each time the 72 hour clock is started, and it must be placed in a conspicuous manner to give the owner as much notice as possible regarding the violation. Many residents know this rule and once their vehicle has been tagged they move it just enough to avoid a ticket or they remove the markings.

The other more common towing authority for parked vehicles is found in the Vehicle Code under section 22651(o): Registration Expired over Six months. Any vehicle parked on public property is required to have current registration. If the registration is expired over 6 months the vehicle can be towed under this authority. However, because of inefficiencies in the DMV, the courts have established the following guideline for enforcing this law:

The vehicle cannot be towed until the registration is expired for 90 days past the first day of the next month after the registration expired. For example, if the registration expired February 20th the vehicle would not be eligible to be towed until November 29th. This is confusing as in reality a registration has to be expired for 9 months before it can be towed, but is enforceable.

There are also restrictions regarding parking of vehicles on private parking. These restrictions are not enforced by the City's Parking Enforcement Officer, and generally fall into the Code Compliance process. The City currently has a three-tier Code Compliance process in place, and which relies upon volunteers to identify and address issues, in addition to those complaints which are received from the public.

Examples of common parking restrictions found in the Municipal Code, and for which we get complaints include:

Inoperable or Unregistered Vehicles stored in front yards or driveways (vehicles are required to in the garage or behind a fence)
Vehicles parked on front lawns/yards
Trailers, boats, RV can only be stored on private property behind a fence

In addition, the formation of a Residential Preferential Parking District generates an additional set of regulations to be enforced. The City currently has one Parking District in place which is around the Aventine Building. This district has a combination of hour's restrictions and permit requirements. While the enabling law for the formation of these Districts is found in the Municipal Code, the enforcement of these restrictions does fall to the Parking Enforcement Officer or Patrol Officers since they apply on public streets. The Preferential Parking District has a far higher fine than regular parking tickets of \$100 for first offense, \$200 for second offense, and \$500 for the third offense and each offense thereafter. This is compared to the normal parking tickets fines of \$57.50, though some offenses are significantly higher.

Parking and parking enforcement is an issue of concern in most communities. The City's current approach has evolved based on changes which have taken place in the community and will continue

to evolve. The City Council has recently engaged in an outreach effort to address specific parking concerns in select neighborhoods, and this report may be of use as part of those efforts.

ATTACHMENTS:

<i>Financial Impact</i>			
Description:			
Funding Source:			
Budget Recap:			
Total Estimated cost:	\$	New Revenue:	\$
Amount Budgeted:	\$	Lost Revenue:	\$
New funding required:	\$	New Personnel:	\$
Council Policy Change: Yes <input type="checkbox"/> No <input type="checkbox"/>			