

**CITY COUNCIL OF THE CITY OF NOVATO
ORDINANCE NO. 1654**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NOVATO, PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION
36937(b), ESTABLISHING REGULATIONS FOR SMALL WIRELESS
FACILITIES, AND FINDING THIS ACTION TO BE EXEMPT FROM
ENVIRONMENTAL REVIEW UNDER CEQA GUIDELINES SECTIONS
15061(b)(3), 15301, 15303, AND/OR 15305**

WHEREAS, this Ordinance is adopted as an urgency ordinance pursuant to Government Code Section 36937(b); and

WHEREAS, Government Code Section 36937(b) authorizes the adoption of an urgency ordinance for the immediate preservation of the public peace, health or safety; and

WHEREAS, the City Council of the City of Novato deems it necessary to adopt an urgency ordinance pursuant to Government Code Section 36937(b) to add regulations regarding the placement of small wireless facilities in the public rights-of-way, finding the urgency to do so based upon the following facts:

1. The global wireless telecommunications industry has developed and is starting to install “small wireless facilities” primarily in public rights-of-way. Small wireless facilities are designed to accommodate “5G” technology. Wireless telecommunications providers have made inquiries with the City of Novato and other California cities about installing small wireless facilities in Novato’s rights-of-way, and other California cities have already received applications for such facilities.

2. The Federal Telecommunications Act of 1996 preempts and declares invalid all state and local rules that restrict entry or limit competition in both local and long-distance telephone service, and the Federal Communications Commission has adopted regulations for the implementation of that Act.

3. The City of Novato currently regulates wireless telecommunications facilities pursuant to Novato Municipal Code (“NMC”) Title 19 (“Zoning”), Section 19.38, which was last revised in 2012. Among other provisions, these regulations impose design, height, general location, setbacks and separation, as well as other standards for installation of wireless facilities primarily on private property, establish ministerial and discretionary review processes, and require submittal of radiofrequency emissions reports.

4. Section 7901 of the California Public Utilities Code authorizes telephone and telegraph corporations to construct telephone or telegraph lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or

interrupt the navigation of the waters.

5. Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner and may involve the imposition of fees.

6. On September 26, 2018, the Federal Communications Commission adopted its “Declaratory Ruling and Third Report and Order” (hereafter, the “FCC Ruling”) expressly to “*reduce regulatory barriers to the deployment of wireless infrastructure and to ensure that our nation remains the leader in advanced wireless services and wireless technology.*” (FCC Ruling, ¶29.) The FCC Ruling is intended to facilitate the spread, growth, and accumulation of small wireless facilities over a short period of time in order to enable deployment of technology that the FCC Ruling claims will enable increased competition in healthcare, Internet of Things applications, lifesaving car technologies, and creation of jobs.

7. Small wireless facilities are primarily installed within public rights-of-way and as such create significant and far-reaching local concerns about traffic and pedestrian safety, land use conflicts and incompatibilities including excessive height of poles and towers; creation of visual and aesthetic blights arising from excessive size, heights, noise or lack of camouflaging of wireless facilities including the associated pedestals, meters, equipment and power generators, and protection and preservation of public property, all of which may negatively impact the unique quality and character of the City and the public health, safety and welfare thereof. Accordingly, regulating the installation of small wireless facilities in the public right-of-way is necessary to protect and preserve the aesthetics in the community, as well as the values of properties within the City, and to ensure that all wireless telecommunications facilities are installed using the least intrusive means possible.

8. The FCC Ruling, which went into effect January 14, 2019, sets forth new limitations on state and local government regulation of small wireless facilities that are placed on existing or new utility poles and street light standards located in the public right-of-way. Specifically, the FCC Ruling: a) limits the level of local permitting and discretion; b) establishes new shorter “shot clock” rules (e.g., time limits and deadlines) for processing and action on local permits; and c) limits the fees that can be charged for the facilities.

9. The current regulations in NMC Section 19.38 are primarily focused on large cellular wireless telecommunications facilities located on private property, and the existing Code provisions were not specifically designed to address the unique legal and practical issues that arise in connection with deployment of small wireless facilities in the public right-of-way pursuant to the new limitations established in the FCC Ruling.

10. Without the immediate implementation through an urgency ordinance of regulations specific to the siting of small wireless facilities in the public right-of-way, the City would be forced to process applications for these facilities under the existing regulations which did not foresee denser networks or deployment in the public right of way. The consequence will be that under the new “shot clock” rules, applications will need to be approved within either 60 or

90 days of the application being submitted and will not be subject to the City's process or requirements for new facilities.

WHEREAS, adoption of this Ordinance is consistent with the City's General Plan policies; and

WHEREAS, pursuant to California Environmental Quality Act ("CEQA") Guidelines Section 15301, which exempts existing facilities where there is negligible or no expansion of an existing use; Section 15303, which exempts the installation of new, small equipment and facilities in small structures; and Section 15305, which exempts minor encroachment permits, the project is exempt from environmental review. The proposed Ordinance also falls within the "common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."; and

WHEREAS, for all the foregoing reasons, the City Council finds and declares that adoption of this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared.

NOW THEREFORE, the City Council of the City of Novato does hereby ordain as follows:

Section 1. Recitals Made Findings. The above recitals are hereby declared to be true and correct and represent the findings of the City Council of the City of Novato, made in the exercise of its independent judgment. Said findings are incorporated by this reference.

Section 2. Applicability and Definitions.

A. Notwithstanding any other provision of this Title as provided herein, all small wireless facilities as defined by the Federal Communications Commission in 47 C.F.R. § 1.6002(l), as may be amended or superseded, are subject to a permit approval.

B. Applicability

1. **Applicable Wireless Facilities.** Except as expressly provided for otherwise in this Ordinance, the provisions in this Ordinance shall be applicable to all existing small wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate or otherwise deploy small wireless facilities within the City's jurisdictional and territorial boundaries within the public rights-of-way or on private property.
2. **Special Provision for Eligible Facilities Requests.** Notwithstanding Section B.1, immediately above, and irrespective of whether the existing tower or base station is a small wireless facility, all requests for approval to collocate, replace, or remove transmission equipment at an existing wireless tower or base station pursuant to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 will be

reviewed consistent with the standards required by law. All determinations will be made by the Director.

C. Definitions

1. "Antenna" means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded, which defines the term as an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of Title 47.
2. "Antenna equipment" means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.
3. "Arterial street" means a road designated as an arterial street in the 1996 Novato General Plan, TR Table 2: Street Classification System.
4. "Base Station" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(1), as may be amended, which defines that term as a structure or equipment at a fixed location that enables FCC- licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.6100(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.6100(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.6100(b)(1)(i)-(ii).
5. "Building-mounted" means mounted to the side or facade, but not the roof, of a building or another structure such as a water tank, pump station, church steeple, freestanding sign, or similar structure.

6. "Cellular" means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.
7. "Collocation" means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded, which defines the term as (1) mounting or installing an antenna facility on a pre-existing structure; and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
8. "Concealed" or "concealment" means camouflaging techniques that meet the design standards in Section 7 and integrate the transmission equipment into the surrounding natural and/or built environment such that the average, untrained observer cannot directly view the equipment but would likely recognize the existence of the wireless facility or concealment technique. Camouflaging concealment techniques include, but are not limited to: (1) façade or rooftop mounted pop-out screen boxes; (2) antennas mounted within a radome above a streetlight; (3) equipment cabinets in the public rights-of-way painted or wrapped to match the background; and (4) an isolated or standalone faux tree.
9. "Decorative pole" means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public right-of-way in which the pole is located.
10. "Director" means the Community Development Director for the City of Novato or the Director's designee.
11. "Eligible Facilities Request" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(3), as may be amended, which defines that term as any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (A) collocation of new transmission equipment; (B) removal of transmission equipment; or (C) replacement of transmission equipment.
12. "Eligible Support Structure" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4), as may be amended, which defines that term as any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.
13. "Existing" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4), as may be amended, which provides that a constructed tower or base station is existing for purposes of the FCC's Section 6409(a) regulations if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

14. "FCC" means the Federal Communications Commission or its duly appointed successor agency.
15. "FCC Shot Clock" means the presumptively reasonable time frame within which the City must act on a wireless application, as defined by the FCC and as may be amended from time to time.
16. "Modification" means any change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, modification, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, a change in size, shape, color, visual design, or exterior material. Modification does not include repair, replacement, or maintenance if those actions do not involve a change to the existing facility involving any of the following: collocation, expansion, modification, alteration, enlargement, intensification, reduction, or augmentation.
17. "Personal wireless services" means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services. As an illustration and not a limitation, personal wireless services are typically services that are offered directly to the public or a class of people for a fee. At the adoption of the Telecommunications Act of 1996, these services generally meant cellular, specialized mobile radio (SMR) and broadband personal communications services (PCS).
18. "Personal wireless service facilities" means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as facilities that provide personal wireless services. As an illustration and not a limitation, personal wireless service facilities are the physical infrastructure - antennas, support structures, radios, wires and base station equipment - that are used to provide personal wireless services.
19. "Public Right-of-Way or "Right-of-Way" means any public street, public way, public alley or public place, laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, under the jurisdiction of the City.
20. "Radio Frequency" or "RF" means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.
21. "Roof-mounted" means mounted directly on the roof of any building or structure, above the eave line of such building or structure.
22. "Section 6409" means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.

23. "Site" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(6), as may be amended, which provides that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.
24. "Small Wireless Facility" means a small wireless facility as defined by the 47 C.F.R § 1.6002(1), as may be amended, and that meets the following requirements:
 - a. Meet one of the following mounting requirements:
 1. are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or
 2. are mounted on structures no more than 10 percent taller than other adjacent structures, or
 3. do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
 - b. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three cubic feet in volume;
 - c. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.
25. "Structure" for this Ordinance, means the same as defined by the FCC in 47 C.F.R. § 1.6002(m), as may be amended or superseded, which defines the term as a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).
26. "Substantial Change" means the same as defined by the FCC in 47 C.F.R. §1.6100(b)(7), as may be amended, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC's criteria and thresholds for a substantial change according to the wireless facility type and location.
27. "Telecommunications Tower" or "Tower" means a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and primarily used to support wireless telecommunications facility antennas.
28. "Transmission Equipment" means the same as defined by the FCC in 47 C.F.R. §1.6100(b)(8), as may be amended, which defines that term as equipment that facilitates transmission for any FCC-licensed or authorized wireless communication

service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

29. "Utility Pole" means a pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission.

30. "Wireless Services" means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

Section 3. Required Permits and Applications

A. **Small Cell Use Permit.** A "Small Cell Use Permit" or "small cell permit" subject to the Director's prior review and approval, is required for any small wireless facility proposed on an existing, new, or replacement support structure.

B. **Other Permits and Approvals.** In addition to the above a small cell use permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or approvals issued by other City departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility must contain a valid permit for the proposed facility. Any application submitted without such small cell permit will be denied without prejudice. Furthermore, any permit or approval granted under this Ordinance shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals.

C. Application Contents

1. **Application Form.** The applicant shall submit a complete, duly executed Planning Division Application for Zoning/Planning/Subdivision Action form and Cost Recovery Agreement.

2. **Application Fee.** The applicant shall submit the applicable small cell permit application fee established by City Council resolution for a Use Permit. Batched applications must include the applicable small cell permit application fee for each small wireless facility in the batch. If no small cell permit application fee has been established, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to reimburse the City for its reasonable costs incurred in connection with the application.

3. **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and

conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (A) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (B) identify all structures within 250 feet from the proposed project site and call out such structures' overall height above ground level; (C) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (D) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.

4. **Site Survey.** For any small wireless facility proposed to be located within the public rights-of-way, the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 250 feet from the proposed project site, which includes without limitation all: (A) traffic lanes; (B) all private properties and property lines; (C) above and below grade utilities and related structures and encroachments; (D) fire hydrants, roadside call boxes and other public safety infrastructure; (E) streetlights, decorative poles, traffic signals and permanent signage; (F) sidewalks, driveways, parkways, curbs, gutters and storm drains; (G) benches, trash cans, mailboxes, kiosks and other street furniture; and (H) existing trees, planters and other landscaping features.
5. **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point.
6. **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a "small wireless facility" as defined by the FCC in 47 C.F.R. § 1.6002(/). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met. Bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (A) whether and why the proposed support is a structure as defined by the FCC in 47 C.F.R. § 1.6002(m); and (B) whether and why the proposed wireless facility meets each required finding for a small cell permit as provided in Section 4(C).

7. **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed small wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts effective radiated power (ERP)) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
8. **Public Notices.** The applicant shall submit a mailing list and envelopes, stamped and addressed, for all properties and record owners of properties entitled to receive notice under Section 4(A). Insufficient postage and/or illegible addressing shall be a basis to deem the application incomplete.
9. **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the small wireless facility proposed in the application.
10. **Site Agreement.** For any small wireless facility proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant shall submit a partially executed site or license agreement on a form prepared by the City that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the City's form site or license agreement except as may be indicated on the form itself. Any unpermitted changes to the City's form site agreement shall be deemed a basis to deem the application incomplete. If Applicant intends to retain ownership of any structure upon which small cell wireless facilities are to be affixed, Applicant shall execute an agreement with the City for non-exclusive use and other required provisions as stated herein or mutually agreed to.
11. **Title Report and Property Owner's Authorization.** For any small wireless facility proposed to be installed on any private property not owned or controlled by the City, the applicant must submit: (A) a title report issued within 30 days from the date the applicant filed the application; and (B) if the applicant is not the property owner, a written authorization signed by the property owner identified in the title report that authorizes the applicant to submit and accept a small cell permit in connection with the subject property.
12. **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by an engineer for the proposed small wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance

with the City's noise ordinance (NMC Section 19.22.070). The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.

D. Requirements for a Duly Filed Application. Any application for a small cell permit will not be considered duly filed unless submitted in accordance with the requirements in this subsection (D.).

1. **Submittal Appointment.** All applications must be submitted to the City at a pre-scheduled appointment with the Director. Applicants may generally submit one application per appointment, or up to five individual applications per appointment for batched applications subject to subsection (G). Applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The Director shall use reasonable efforts to provide the applicant with an appointment within five working days after the Director receives a written request. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed.

2. **Pre-Submittal Conferences.** The City strongly encourages, but does not require, applicants to schedule and attend a pre-submittal conference with the Director for all proposed projects that involve more than five (5) small wireless facilities. This voluntary pre-submittal conference does not cause the FCC Shot Clock to begin and is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The Director shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the services rendered in the pre-submittal conference.

E. Application Completeness Review. Within 10 calendar days after the Director receives a duly filed small cell permit application, the Director shall review the application for completeness and, if any application does not contain all the materials required in Section 3(C) or any other publicly stated requirements, send a written notice to the applicant that identifies the missing or incomplete requirements.

F. Applications Deemed Withdrawn. To promote efficient review and timely decisions, and to mitigate unreasonable delays or barriers to entry caused by chronically incomplete

applications, any application governed under this Ordinance will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the Director within 60 calendar days after the Director deems the application incomplete in a written notice to the applicant. As used in this subsection (D), a "substantive response" must include the materials identified as incomplete in the Director's notice.

- G. **Batched Applications.** Applicants may submit up to five individual applications for a small cell permit in a batch; provided, however, that small wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each application in the batch. If any application in a batch is incomplete, the entire batch shall be deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch, the entire batch shall be deemed withdrawn. If any application in a batch fails to meet the required findings for approval, the entire batch shall be denied.
- H. **Additional Procedures.** The City Council authorizes the Director to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments with applicants, as the Director deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice. The Director is authorized to prepare forms and instructions for applications to be made for permits issued under this Ordinance. Any applications submitted be made in accordance with such instructions and be made on such forms as the Director may prescribe.

Section 4. Approvals and Denials; Notices

- A. **Public Notice.** Prior to any approval, conditional approval, or denial, public notice shall be mailed to all properties and record owners and occupants of properties within a 600-foot radius of the project site. The notice shall contain: (1) a general project description; (2) the applicant's identification and contact information as provided on the application submitted to the City; (3) contact information for the Project Planner; (4) a statement that the Director will act on the application without a public hearing, but will for a minimum of ten (10) days from the date of the notice accept written public comments that evaluate the application for compliance with the standards in this Ordinance; and (5) a statement that the FCC requires the City to act on small wireless facility applications, which includes any administrative appeals, within 60 days for attachments to existing structures and 90 days for new structures, unless the applicant voluntarily agrees to toll the timeframe for review.
- B. **Administrative Review.** Not less than 10 calendar days after the public notice required in subsection (A), the Director shall approve, conditionally approve, or deny a complete and duly filed small cell permit application without a public hearing.
- C. **Required Findings.** The Director may approve or conditionally approve a complete and duly filed application for a small cell permit when the Director finds:
 - 1. The proposed project meets the definition for a "small wireless facility" as defined by

the FCC;

2. The proposed project would be in the most preferred location provided in Section 6(B) or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 500 feet would be technically infeasible;
 3. The proposed project would not be located on a prohibited support structure identified in this Ordinance;
 4. The proposed project would be on the most preferred support structure provided in Section 6(C) or 6(D) or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) within 500 feet would be technically infeasible;
 5. The proposed project complies with all applicable design standards in this Ordinance;
 6. The applicant has demonstrated that the proposed project will be in compliance with all applicable health and safety regulations, which include without limitation the Americans with Disabilities Act and all FCC regulations and guidelines for human exposure to RF emissions; and
 7. All public notices required for the application have been given.
- D. **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or California laws, nothing in this Ordinance is intended to limit the Director's ability to conditionally approve or deny without prejudice any small cell permit application as may be necessary or appropriate to ensure compliance with this Ordinance.
- E. **Decision Notices.** Within one (1) working day after the Director acts on a small cell permit application or before the FCC Shot Clock expires (whichever occurs first), the Director shall notify the applicant of such decision by written notice. If the Director denies the application (with or without prejudice), the written notice must contain the reasons for the decision.
- F. **Appeals.** Any decision to approve, conditionally approve, or deny a small wireless facility shall be appealable directly to the City Council. Appeals shall be filed within five (5) working days after notification of a decision has made to the applicant. Any such appeal shall include a letter identifying the name, address, and contact information for the appellant and provide the reason(s) for the appeal based on the alleged noncompliance with the required findings in Section 4(C). Any such appeal shall be subject to the appeal fees established in the City's adopted fee schedule. Appeals of approval will not be permitted to the extent that the appeal is based on environmental effects from RF emissions that comply with all applicable FCC regulations.

Section 5. Standard Conditions of Approval

- A. **General Conditions.** In addition to all other conditions that may be adopted by the Director for a small cell permit, all such permits issued under this Ordinance shall be automatically subject to the conditions in this subsection (A).

1. **Permit Term.** This small cell permit will automatically expire 10 years and one day from its issuance. Any other permits or approvals issued in connection with any collocation, modification, or other change to this small wireless facility, which includes without limitation any permits or other approvals deemed granted or deemed approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law. To the extent that this small cell permit is issued in connection with any structure owned or controlled by the City and located in the public rights-of-way, this small cell permit shall be coterminous with the cancellation, termination, or expiration of the agreement between the applicant and the City for access to the subject City structure.
2. **Permit Renewal.** Not more than one year before this small cell permit expires, the permittee may apply for permit renewal. The permittee must demonstrate that the subject small wireless facility complies with all the conditions of approval associated with this small cell permit and all applicable provisions in the Municipal Code and this Ordinance that exist at the time the decision to renew or not renew the permit is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with this Ordinance. Upon renewal, this small cell permit will automatically expire 10 years and one day from its issuance.
3. **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility approved or deemed-approved, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
4. **Build-Out Period.** This small cell permit will automatically expire six (6) months from the approval date (the "build-out period") unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved small wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the small wireless facility or its use. If this build-out period or the construction permit expires, the permit automatically terminates and the City will not extend the build-out period or the permit, but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.
5. **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences, and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this small cell permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

6. **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("laws") applicable to the permittee, the subject property, the small wireless facility, or any use or activities in connection with the use authorized in this small cell permit, which includes without limitation any laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Novato Municipal Code, this Ordinance, any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with all applicable provisions in the Novato Municipal Code, this Ordinance, any permit, any permit condition, or any applicable law or regulation.
7. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue, or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Novato Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The Director may issue a stop work order for any activities that violates this condition in whole or in part.
8. **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.
9. **Permittee's Contact Information.** Within 10 days from the final approval of this small cell permit, the permittee shall furnish the Director with accurate and up-to-date contact information for a person responsible for the small wireless facility, which includes without limitation, such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and promptly provide the Director with updated contact information if either the responsible person or such person's contact

information changes.

10. **Indemnification.** The permittee and, if applicable, the property owner (if not on City-owned infrastructure) upon which the small wireless facility is installed shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (1) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this small cell permit, and (2) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this small cell permit or the small wireless facility. The indemnification responsibilities shall be inclusive of claims related to, connected with, or arising out of the construction, maintenance, operation, repair, alteration, or improvement of the small wireless facility of located within a public right-of-way. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. Within ten calendar days of the service of a claim, the permittee shall execute a letter of agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this small cell permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this small cell permit.
11. **Performance Bond.** Before the City issues any permits required to commence construction in connection with this small cell permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the small wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code Section 65964(a), the Director shall take into consideration any information provided by the permittee regarding the cost to remove the small wireless facility to a

standard compliant with applicable laws. The performance bond shall expressly survive the expiration, revocation or other termination of this small cell permit to the extent required to completely remove the equipment and improvements, restore the affected areas, and perform all other obligations in accordance with this condition.

12. **Permit Revocation.** Any permit granted under this Ordinance may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before the Director may conduct a public hearing to revoke any permit granted under this Ordinance, the Director must issue a written notice to the permittee that specifies (A) the facility; (B) the violation(s) to be corrected; (C) the timeframe in which the permittee must correct such violation(s); and (D) that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s). A permit granted under this Ordinance may be revoked only by the City Council after a duly notice public hearing. The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

13. **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the small cell permit application, small cell permit, RF report, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the small cell permit (collectively, "records"). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

14. **Abandoned Wireless Facilities.** The small wireless facility authorized under this small cell permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a small wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Novato Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
15. **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance, or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree and consistent with the City's list of pre-approved street trees. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
16. **Cost Reimbursement.** The permittee acknowledges and agrees that (A) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (B) the applicant/permittee shall be responsible to enter into a cost recovery agreement and reimburse the City for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection, and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility of any kind or nature including engineers', attorneys', or technical consultants' fees and costs incurred by the City in connection with the permittee's request; (C) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (D) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.
17. **Cooperation with RF Compliance Evaluations.** At all times relevant to this permit, the permittee and the property owner shall reasonably cooperate with efforts by the City to evaluate whether the wireless facility complies with all applicable FCC rules and regulations for human exposure to RF emissions. Such cooperation shall be at no cost to the City and may include, but is not limited to: (1) furnishing the City with a written affidavit signed by an RF engineer certifying the wireless facility's compliance with applicable FCC rules and regulations; (2) providing technical data such as the

frequencies in use, power output levels and antenna specifications, reasonably necessary to evaluate compliance with maximum permissible exposure levels set by the FCC; (3) allowing the City or its designee to have supervised access to the areas near the wireless facility for inspections and field measurements; and (4) promptly responding to all requests by the City or its designee for information and/or cooperation with respect to any of the foregoing. The City may conduct random tests to ensure compliance with the FCC's rules and regulations. In the event that the City determines that permittee is not in compliance with any legal requirements or conditions, the permittee shall be responsible for all costs and expenses incurred by the City in connection with the investigation, enforcement and/or remediation of such noncompliance.

B. Conditions for Small Wireless Facilities in the Public Rights-of-Way. In addition to all conditions in subsection (A), all small cell permits for small wireless facilities in the public rights-of-way issued under this Ordinance shall be automatically subject to the conditions in this subsection (B).

1. **Future Undergrounding Programs.** If other public utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility is located, the permittee must underground its equipment, except the antennas, any electric meter, and any other equipment that must be placed above ground to function. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function are not exempt from this condition and shall be undergrounded: Small wireless facilities installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the CPUC for undergrounding costs.
2. **Electric Meter Upgrades.** If the commercial electric utility provider adopts or changes its rules removing the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
3. **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (1) change any street grade, width or location; (2) add, remove or otherwise change any improvements in, on, under, or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric, or telecommunications; and/or (3) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this small cell permit. If

the Public Works Director determines that any City work will require the permittee's small wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility within a reasonable time after the Public Works Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's small wireless facility without prior notice to permittee when the Public Works Director determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within ten (10) days after a written demand for reimbursement and reasonable documentation to support such costs.

Section 6. Location Requirements

- A. **Preface to Location Requirements.** This subsection (A) provides guidance as to how to interpret and apply the location requirements in this Section 6. To better assist applicants and decision-makers to understand and respond to the community's aesthetic preferences and values, subsections (B), (C) and (D) set out listed preferences for locations and support structures to be used in connection with small wireless facilities in ordered hierarchies. Applications that involve least-preferred locations or structures may be approved so long as the applicant demonstrates that either: 1) no more preferred locations or structures exist within 500 feet from the proposed site; or 2) any more preferred locations or structures within 500 feet from the proposed site would be technically infeasible as supported by clear and convincing evidence in the written record. Subsection (E) identifies prohibited support structures on which the City shall not approve any small cell permit application for any competitor or potential competitor.
- B. **Location Preferences.** The City prefers small wireless facilities to be installed in locations, ordered from most preferred to least preferred, as follows:
1. **Most Preferred Locations in Order of Preference.**
 - a. Any parcel or public right-of-way location in Commercial/Industrial (CI), Light Industrial/Office (LIO), Research/Education-Institutional (REI) zoning districts, or Planned District (PD) zoning districts consistent with the CI, LIO, or REI General Plan land use designations;
 - b. Any parcel or public right-of-way location in General Commercial (CG), Downtown Core Retail (CDR), Downtown Core Business (CDB) zoning district or a Planned District (PD) zoning district consistent with the CG or CD General Plan land use designations;
 - c. Any parcel or public right-of-way location in the Mixed Use (MU) zoning district or a Planned District (PD) zoning district consistent with the MU General Plan land use designation; and

2. Less Preferred Locations in Order of Preference.

- a. Any parcel or public right-of-way location in Community Facilities (CF), Agricultural (A), Open Space (OS), Parkland (PL), Restricted Open Space (ROS), or Conservation (C) zoning districts;
- b. Any parcel or public right-of-way location in the Neighborhood Commercial (CN) zoning district, or Planned District (PD) zoning districts consistent with the CN General Plan land use designations;
- c. Any public right-of-way location in the Rural Residential (RR), Very Low Density Residential (RVL), Low Density Residential (R1), Medium Density Detached Residential (R4), Medium Density Residential (R5), Medium Density Multi-Family Residential (R10), or High Density Multi-Family Residential (R20) zoning districts, or a Planned District (PD) zoning district consistent with a Residential General Plan land use designation on or along roads designated as arterial roads;

3. Least Preferred Locations in Order of Preference.

- a. Any public right-of-way location in the Rural Residential (RR), Very Low Density Residential (RVL), Low Density Residential (R1), Medium Density Detached Residential (R4), Medium Density Residential (R5), Medium Density Multi-Family Residential (R10), or High Density Multi-Family Residential (R20) zoning districts, or a Planned District (PD) zoning district consistent with a Residential General Plan land use designation not on or along roads designated as arterial roads;
- b. Any parcel located in the Rural Residential (RR), Very Low Density Residential (RVL), Low Density Residential (R1), Medium Density Detached Residential (R4), Medium Density Residential (R5), Medium Density Multi-Family Residential (R10), or High Density Multi-Family Residential (R20) zoning districts, or a Planned District (PD) zoning district consistent with a Residential General Plan land use designation; and,
- c. Any parcel or public right-of-way location within 500 feet of a school site.

For purposes of these location preferences, the applicant's proposed location in the public right-of-way shall be classified by the same zoning district that applies to the nearest adjacent parcel.

C. Support Structures in the Public Rights-of-Way. The City prefers small wireless facilities to be installed on support structures in the public rights-of-way, ordered from most preferred to least preferred, as follows:

1. Existing or replacement streetlight poles;
2. Existing or replacement wood utility poles;
3. New, non-replacement streetlight poles;
4. New, non-replacement poles for small wireless facilities

- D. Support Structures Outside the Public Rights-of-Way.** The City prefers small wireless facilities to be installed on support structures outside the public rights-of-way, ordered from most preferred to least preferred, as follows:
1. Existing buildings or other non-tower structures previously approved for use as a support structure for personal wireless service facilities;
 2. Other existing buildings or non-tower structures;
 3. Existing or replacement poles or towers;
 4. New, non-replacement towers for small wireless facilities.
- E. Prohibited Support Structures.** The City prohibits small wireless facilities to be installed on the following support structures, whether located in the public rights-of-way or not:
1. Existing decorative poles;
 2. Traffic signals, signs, poles, cabinets and related devices;
 3. Any utility pole scheduled for removal or relocation within 12 months from the time the Director acts on the small cell permit application;
 4. New, non-replacement wood poles.

Section 7. Design Standards

A. General Standards.

1. **Noise.** Small wireless facilities and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations in Novato Municipal Code Section 19.22.070, and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable district.
2. **Lights.** Small wireless facilities shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this Ordinance.
3. **Landscape Features.** Small wireless facilities shall not displace any existing landscape features unless: (A) such displaced landscaping is replaced with native and/or drought resistant plants, trees or other landscape features approved by the Director; and (B) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscape maintenance must be performed in

accordance with Novato Municipal Code Section 19.28.040.J.

4. **Site Security Measures.** Small wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The Director shall not approve any barbed wire, razor ribbon, electrified fences, or any similarly dangerous security measures. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials.
5. **Signage; Advertisements.** All small wireless facilities must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number, and a toll-free number to the owner/operator's network operations center. Small wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law, or recommended under FCC, OSHA, or other United States governmental agencies for compliance with RF emissions regulations.
6. **Compliance with Health and Safety Regulations.** All small wireless facilities shall be designed, constructed, operated, and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions, the Americans with Disabilities Act, California Building Standards Code and the Novato Municipal Code.

B. **Small Wireless Facilities in the Public Right-of-Way**

1. **Overall Height.** Small wireless facilities may not exceed either (A) the minimum separation from electrical lines required by applicable safety regulations (such as CPUC General Order 95), plus four feet, or (B) four feet above the existing support structure. However, at no point shall an existing support structure be increased by more than 10 feet above existing height.
2. **Antennas.**
 - a. **Concealment.** All antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be graffiti-resistant and painted a flat, non-reflective color to match the underlying support structure.
 - b. **Antenna Volume.** Each individual antenna may not exceed three cubic feet in volume and all antennas may not exceed six cubic feet in volume.

C. **Accessory Equipment**

1. **Installation Preferences.** All non-antenna accessory equipment, including radios, shall be installed in accordance with the following preferences, ordered from most preferred to least preferred:
 - a. underground in any area in which the existing utilities are primarily located underground;

- b. integrated into the base of the pole or support structure; or
- c. on the pole or support structure.

Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that the more preferred installation location would be technically infeasible as supported by clear and convincing evidence in the written record.

2. **Undergrounded Accessory Equipment.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Applicants shall not be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced.
3. **Pole-Mounted Accessory Equipment.** All pole-mounted accessory equipment must be installed at least 10 feet above grade and flush to the pole to minimize the overall visual profile. If any applicable health and safety regulations prohibit flush-mounted equipment, the maximum separation permitted between the accessory equipment and the pole shall be the minimum separation required by such regulations. All pole-mounted equipment and required or permitted signage must be placed and oriented away from adjacent sidewalks and structures. Pole-mounted equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. All cables, wires, and other connectors must be routed through conduits within the pole, and all conduit attachments, cables, wires, and other connectors must be concealed from public view. To the extent that cables, wires, and other connectors cannot be routed through the pole, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying support structure.
4. **Base-Mounted Accessory Equipment.** All base-mounted accessory equipment must be installed within a shroud, enclosure or pedestal integrated into the base of the support structure. All cables, wires, and other connectors routed between the antenna and base-mounted equipment must be concealed from public view.
5. **Ground-Mounted Accessory Equipment.** The Director shall not approve any ground-mounted accessory equipment including, but not limited to, any utility or transmission equipment, pedestals, cabinets, panels or electric meters.
6. **Accessory Equipment Volume.** All accessory equipment associated with a small wireless facility installed above ground level shall not cumulatively exceed: (A) nine (9) cubic feet in volume if installed in a residential district or within 500 feet from any structure approved for a residential use; or (B) seventeen (17) cubic feet in volume if installed in a non-residential district. The volume calculation shall include any shroud, cabinet or other concealment device used in connection with the non-antenna accessory equipment. The volume calculation shall not include any equipment or other

improvements placed underground.

- D. **Streetlights.** Applicants that propose to install small wireless facilities on an existing streetlight must remove and replace the existing streetlight with one substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment, unless the existing streetlight has been designed and engineered to support a small wireless facility in accordance with applicable health and safety regulations. To mitigate any material changes in the streetlighting patterns, the replacement pole must: (A) be located as close to the removed pole as possible; (B) be aligned with the other existing streetlights; and (C) include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. All antennas must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.
- E. **Wood Utility Poles.** Applicants that propose to install small wireless facilities on an existing wood utility pole must install all antennas above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the side-arm mount or extension arm. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.
- F. **New, Non-Replacement Poles.** Applicants that propose to install small wireless facilities on a new, non-replacement pole must demonstrate that any existing structures within 500 feet from the proposed site would be technically infeasible as supported by clear and convincing evidence in the written record. Any new, non-replacement pole must be a new streetlight substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister-style shroud or radome.
- G. **Encroachments over Private Property.** Small wireless facilities may not encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.
- H. **Backup Power Sources.** Fossil-fuel based backup power sources shall not be permitted within the public rights-of-way; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.
- I. **Obstructions; Public Safety.** Small wireless facilities and any associated equipment or improvements shall not physically interfere with or impede access to any: (A) worker access to any above-ground or underground infrastructure for traffic control, streetlight or

public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (B) access to any public transportation vehicles, shelters, street furniture, or other improvements at any public transportation stop; (C) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (D) fire hydrant or water valve; (E) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or (F) access to any fire escape.

- J. **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through and concealed from view within: (A) internal risers or conduits if on a concrete, composite or similar pole; or (B) a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. The Director shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
- K. **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
- L. **Electric Meters.** Small wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. The Director shall not approve a separate ground-mounted electric meter pedestal.
- M. **Street Trees.** To preserve existing landscaping in the public rights-of-way, all work performed in connection with small wireless facilities shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees, consistent with the City's list of pre-approved street trees, at the site for the duration of the permit term.

Section 8. Small Wireless Facilities Outside the Public Right-of-Way

- A. **Overall Height.** Small wireless facilities on private property may not exceed the applicable height limit for structures in the applicable zoning district or overlay district.
- B. **Setbacks.** Small wireless facilities on private property may not encroach into any applicable setback for main structures in the subject zoning district.
- C. **Backup Power Sources.** The Director shall not approve any permanently-placed fossil-fuel powered generators; provided, however, the Director may approve receptacles, sockets, or other connections used for temporary backup power generators used in an emergency declared by federal, state, or local officials.

- D. **Parking; Access.** Any equipment or improvements constructed or installed in connection with any small wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, small wireless facilities must use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements must be the minimum size necessary to reasonably accommodate the proposed use, and shall be consistent with NMC Division 19.30.
- E. **Towers, Poles and Other Freestanding Small Wireless Facilities.** All new towers, poles or other freestanding structures that support small wireless facilities must be made from a metal or composite material capable of concealing all the accessory equipment, including cables, mounting brackets, radios, and utilities, either within the support structure or within an integrated enclosure located at the base of the support structure. All antennas must be installed above the pole in a single, canister-style shroud or radome. The support structure and all transmission equipment must be painted with flat/neutral colors that match the support structure. The pole height shall not exceed thirty-five (35) feet or the height limit for the applicable zoning district or overlay zone, whichever is less. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches.
- F. **Building-Mounted Small Wireless Facilities.**
1. **Preferred Concealment Techniques.** All applicants must propose new non-tower small wireless facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, if the applicant demonstrates with clear and convincing evidence that integration with existing features is technically infeasible, the applicant may propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, steeples and chimneys).
 2. **Facade-Mounted Equipment.** When small wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the Director may approve facade-mounted equipment in accordance with this subsection (F)(2). All facade-mounted equipment must be concealed behind screen walls and mounted flush to the facade. The Director may not approve "pop-out" screen boxes. Except in industrial zones, the Director may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade.

Section 9. California Environmental Quality Act (CEQA)

This Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to the State CEQA Guidelines Sections 15301, 15303, 15305. The ordinance also falls within the common sense exemption pursuant to CEQA Guidelines Section 15061(b)(3) since it can be seen

with certainty that there is no possibility that this Ordinance or its implementation would have a significant effect on the environment (14 Cal. Code Regs. Section 15061(b)(3), ‘common sense’ provision).

Section 10. Severability

If any provision of this Ordinance or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Ordinance, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Ordinance are severable.

Section 11. Fees

All applications shall be accompanied by an executed cost recovery agreement and deposit as set forth in the City’s adopted fee schedule.

Section 12. Effective Date and Duration.

This Ordinance is hereby declared to be an urgency measure and shall become effective immediately upon adoption by at least a four-fifths (4/5) vote of the City Council unless extended in accordance with applicable law, pursuant to Government Code section 36937(b).

Section 13. Posting This ordinance shall be published in accordance with applicable provisions of law, by either:


Publishing the entire ordinance once in a newspaper of general circulation, published in the City of Novato, within fifteen (15) days after its passage and adoption, or

Publishing the title or appropriate summary in a newspaper of general circulation, published in the City of Novato, at least five (5) days prior to adoption, and a second time within fifteen (15) days after its passage and adoption with the names of those City Councilmembers voting for and against the ordinance.

* * * * *

This urgency ordinance was read and adopted on the 8th day of October, 2019, by the following vote:

AYES: Councilmembers Eklund, Athas, Drew, Lucan
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers



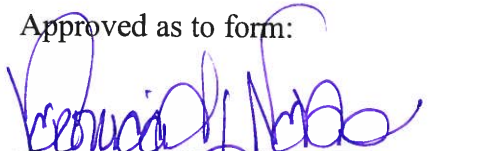
Mayor of the City of Novato

Attest:



City Clerk of the City of Novato

Approved as to form:



City Attorney of the City of Novato