

ORDINANCE NO. 1873

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO ADDING CHAPTER 8.36 TO THE CITY OF SAN BRUNO MUNICIPAL CODE ESTABLISHING REGULATIONS FOR SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND WITHIN UTILITY EASEMENTS IN PUBLIC AND PRIVATE PROPERTIES

The City Council of the City of San Bruno **ORDAINS** as follows:

SECTION 1. FINDINGS.

WHEREAS, the Legislature of the State of California has in Government Code Sections 65302, 65560, and 65800 conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, it is in the public interest for the City to establish reasonable, uniform and comprehensive regulations of Small Wireless Facilities in the Public Right-of-Way and utility easements in public and Private Properties in response to Federal and California State law and FCC Order 18-133 which permits small wireless facility infrastructure deployment through relaxation of barriers, affecting the local permit process; and

WHEREAS, the regulations would not increase impediments for the installation of small wireless facilities under Federal Telecommunications Act of 1996 but illustrate the desired level of design quality and configuration of any proposed small wireless facility; and

WHEREAS, Title 8 of the City's Municipal Code governs the permitting, installation, and regulation of obstructions within the City's public rights-of-way (ROW) and within utility easements in public and private properties; and

WHEREAS, the City's public rights-of-way and utility easements are a uniquely valuable public resource, closely linked with the City's character, making the regulation of small wireless facilities in the public rights-of-way and within utility easements in public and private properties necessary to protect and preserve the aesthetics of the community; and

WHEREAS, on June 11, 2019, at 7:00 p.m. at the San Bruno Senior Center located at 1555 Crystal Springs Road, San Bruno, California, the San Bruno City Council at a regular meeting by a vote of 4-0 waived the first reading and introduced the Ordinance adding Chapter 8.36 (Small Wireless Facilities in the Public Right-of-Way and Utility Easements in Public and Private Properties) to Title 8 of the San Bruno Municipal Code (Streets, Sidewalks, and Rights-of-Way).

SECTION 2. REGULATION.

Chapter 8.36 (Small Wireless Facilities in the Public Right-of-Way and utility easements in public and Private Properties) is hereby added to Title 8 (Streets, Sidewalks, and Rights-of-Way) of the San Bruno Municipal Code. This regulation shall prevail over any conflicting provisions of the San Bruno Municipal Code or the other ordinances, resolutions, policies, and regulations of the City of San Bruno.

CHAPTER 8.36

SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND WITHIN UTILITY EASEMENTS IN PUBLIC AND PRIVATE PROPERTIES

Sections:

- 8.36.010 Purpose and Intent
- 8.36.020 General Definitions
- 8.36.030 Administration
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- 8.36.130 Breach; Termination of Permit
- 8.36.140 Special Provisions for Section 6409 Approval

8.36.010 Purpose and Intent

A. The City of San Bruno intends this Chapter 8.36 to establish reasonable, uniform and comprehensive standards and procedures for wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's territorial boundaries in the public right-of-way, consistent with and to the extent permitted under Federal and California State law.

The standards and procedures contained in this chapter are intended to, and should be applied to, protect and promote public health, safety and welfare, and also balance the benefits that flow from robust, advanced wireless services with the City's local values, which include, without limitation, the aesthetic character of the City, its neighborhoods and community. This chapter is also intended to reflect and promote the community interest by: (1) protecting the City's visual character from potential adverse impacts or visual blight created or exacerbated by wireless communications infrastructure; (2) protecting and preserving the City's environmental resources; and (3) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors.

B. This is the only San Bruno Municipal Code Chapter that applies to wireless facilities in the public-right-of-way and public utility easements on private properties, and any provisions of Chapter 12.220 that apply to wireless facilities in the right-of-way and public utility easements on public and private properties do not apply.

C. Appeals of wireless facility permits and any associated permits shall be heard under the provisions of this chapter, and no other San Bruno Municipal Code provisions related to appeals shall apply.

8.36.020 General Definitions

The abbreviations, phrases, terms and words used in this chapter will have the meanings assigned to them in this section unless context indicates otherwise. In the event that any definition assigned to any phrase, term or word in this section conflicts with any Federal- or State-mandated definition, the Federal- or State-mandated definition will control.

- A. "Accessory equipment" means any equipment other than the antenna(s) associated with a wireless facility, which includes, but is not limited to, cabling, generators, fans, air conditioning units, electrical panels, equipment cabinets, pedestals, meters, vaults, splice boxes and surface location markers.
- B. "Approval authority" means the commission, board or official responsible for review of permit applications and vested with the authority to approve or deny such applications. The approval authority for a wireless permit is the Public Works Director or designee, on appeal, the City Manager. The approval authority for a Section 6409 approval or a temporary wireless permit is the Public Works Director.
- C. "Base station" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b) (1), as may be amended.
- D. "City Manager" means the City Manager of the City of San Bruno, or the City Manager's designee.
- E. "Collocation" means the same as defined by the FCC in 47 C.F.R. § 1.6.002(g) (1) and (2), as may be amended.
- F. "CAPON" means a certificate of public convenience and necessity granted by the CPUC or its duly appointed successor agency pursuant to California Public Utilities Code § 1001 et seq., as may be amended.
- G. "CPUC" means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
- H. "Department" means the Department of Public Works of the City of San Bruno or its duly appointed successor agency.
- I. "Director" means the Director of Public Works of the City of San Bruno, or the Director's designee.
- J. "Eligible Facilities Request" means the same as defined in shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b) (3), or any successor provision.
- K. "FCC" means the Federal Communications Commission or its duly appointed successor agency.
- L. "FCC shot clock" means the time frame within which the City generally must act on a given wireless application, as defined by 47 C.F.R. 1.6003(c) (1) and 1.6100(c) (2) and as may be amended from time to time.
- M. "Independent Consultant" means a consultant hired by the City of San Mateo to process or review wireless facility applications.
- N. "Personal wireless services" means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.
- O. "Personal wireless service facilities" means the same as defined in 47 U.S.C. § 332(c) (7) (C) (i), as may be amended, which defines the term as facilities that provide personal wireless services.
- P. "Public right-of-way" has the same meaning as "street" in San Bruno Municipal Code Section 8.04.110.C.
- Q. "RF" means radio frequency or electromagnetic waves.
- R. "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.

- S. "Section 6409 Collocation" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b) (2), as may be amended.
- T. "Support Structure" means any structure capable of supporting a base station.
- U. "Temporary wireless facilities" means portable wireless facilities intended or used to provide wireless services on a temporary or emergency basis, such as a large-scale special event in which more users than usual gather in a confined location or when a disaster disables permanent wireless facilities. Temporary wireless facilities include, without limitation, cells-on-wheels ("COWs"), sites-on-wheels ("SOWs"), cells-on-light-trucks ("COLTs") or other similarly portable wireless facilities not permanently affixed to the site on which they are located. Specific time limits for the placement of temporary wireless facilities are addressed in San Bruno Municipal Code Section 8.36.120.
- V. "Tower" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b) (9), as may be amended.
- W. "Transmission equipment" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(8), as may be amended
- X. "Utility Pole" means a support structure in the public right-of-way designed to support electric, telephone, and similar utility lines. A tower is not a utility pole
- Y. "Wireless" means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.
- Z. "Wireless Facility" means the antennas and associated equipment used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s). For the purpose of this Ordinance, this includes Small Wireless Facilities as defined by the FCC in 47 C.F.R. 1.6002 (l), as may be amended.

8.36.030 Administration.

A. Director of Public Works. The Director or their designee is responsible for administering this Chapter and establishing rules and regulations for this purpose. All such rules and regulations must be in written form and posted on the City's website or otherwise made publicly available to prospective applicants. As part of the administration of this Chapter, the Director may:

1. Interpret the provisions of this Chapter; and
2. Establish reasonable rules and regulations, 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; and
3. Develop and implement standards and procedures governing the placement and modification of wireless facilities consistent with the requirements of this Chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities; and
4. Develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this Chapter; and
5. Determine the amount of and collect, as a condition of the completeness of any application, any fee established by this Chapter; and
6. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations; and
7. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued; and

8. Require, as part of, and as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure; and
9. Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and
10. Take such other steps as may be required to timely act upon applications for placement of wireless facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

8.36.040 Applicability

A. **Applicable Wireless Facilities.** The provisions in this chapter shall be applied to all existing wireless facilities within the City's public rights-of-way and all applications to construct, install, operate, collocate, modify, reconstruct, relocate or otherwise deploy wireless facilities within the City's public rights-of-way, except as may be expressly provided otherwise in this chapter.

B. **Exempt Wireless Facilities.** Notwithstanding subsection (A), the provisions in this chapter will not be applicable to: (1) wireless facilities not proposed or currently located in the public right-of-way; (2) wireless facilities owned and operated by the City for public purposes; (3) amateur radio facilities; and (4) wireless facilities or equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power generation, transmission and distribution facilities subject to CPUC General Order 131-D.

C. **Pre-existing Facilities in the Public Right-of-Way.** Any wireless facility already existing in the Public Right-of-Way as of the date of this Chapter's adoption shall remain subject to the provisions of the City Code in effect prior to this Chapter, unless and until a renewal of such facility's then-existing permit is granted, at which time the provisions of this Chapter shall apply in full force going forward as to such facility. The review of any request for a renewal of a permit for such pre-existing facilities shall be conducted pursuant to this Chapter, rather than the portion(s) of the City Code under which it was previously reviewed.

D. **Special Provisions for Section 6409 Approvals.** Notwithstanding subsection (a), all requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station located in the public right-of-way and submitted pursuant to Section 6409 will be reviewed under the application procedures in Section 8.36.060 and the standards in Section 8.36.140. If the applicant's request does not qualify for approval under Section 6409, the applicant may submit the same or a substantially similar application for a wireless facility permit under the general provisions in this chapter.

8.36.050 Required Approvals

A. **Wireless Facility Permit.** A wireless facility permit, subject to the Director's review and approval in accordance with the procedures and design regulations in this chapter, is required for:

1. Any new wireless facility proposed on an existing, new, or replacement support structure with accessory equipment in the public right-of-way;
2. Any collocations, modifications or other changes to an existing wireless facility not subject to Section 6409 in the public right-of-way; and
3. Any wireless facility installed on City-owned support structures or other personal property in the public rights-of-way pursuant to a valid master license agreement with the City.

B. **Temporary Wireless Facility Permit.** A temporary wireless facility permit, subject to the Director's prior review and approval in accordance with the procedures and standards in Section 8.36.130 is required for any temporary wireless facility, unless deployed in connection with an emergency pursuant to Section 8.36.120(B).

C. **Section 6409 Approval.** A Section 6409 approval (addressed in Municipal Code Section 8.36.140) is required for applications submitted pursuant to Section 6409.

D. Other Permits and Regulatory Approvals. In addition to any wireless facility permit, Section 6409 approval, temporary wireless facility permit or other permit or approval required under this chapter, 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 other permits and/or approvals issued by other City departments or divisions. Furthermore, any permit or approval granted under this chapter or deemed granted or deemed approved by law shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or approvals.

8.36.060 Application Requirements

A. Application Required. The approval authority shall not approve any request for a wireless facility permit, Section 6409 approval or temporary wireless facility permit except upon a complete and duly filed application consistent with this section and any other written rules the City or the Director may establish from time to time in any publicly-stated format.

B. Application Content. All applications for a wireless facility permit, Section 6409 approval or temporary wireless facility permit must include all the information and materials required by the Director for the application. All applications shall, at a minimum: (1) require the applicant to demonstrate that the proposed project will be in planned compliance with all applicable health and safety laws, regulations or other rules, which includes, without limitation, all building codes, electric codes and all FCC rules for human exposure to RF emissions; and (2) contain sufficient evidence (such as a valid CPCN) of the applicant's regulatory status as a telephone corporation under the California Public Utilities Code.

C. Procedures for a Duly Filed Application. Any application for a wireless facility permit or Section 6409 approval will not be considered duly filed unless submitted in accordance with the procedures in this section. Any application for a temporary wireless facility permit must be filed in accordance with the procedures in Section 8.36.120.

1. Voluntary Pre-Submittal Conference. Before application submittal, the applicant is strongly encouraged to schedule and attend a pre-submittal conference with the Director or his/her designee for all proposed projects. The voluntary pre-submittal conference 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 or existing wireless facility, 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 Department shall use reasonable efforts to provide the applicant with an appointment within ten 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.
2. 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 but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The Director shall provide the applicant with an appointment within a reasonable time 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 unless the applicant received a written exemption from the Director at a pre-submittal conference.

D. Denials Without Prejudice. To promote efficient review and timely decisions, if the applicant fails to tender a substantive response to the Department within 90 calendar days after the Director deems the application incomplete in a written notice to the applicant, the Director may, in the Director's discretion, either deny the application without prejudice or grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.

E. Peer and Independent Consultant Review.

1. Authorization. The City Council authorizes the Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection with any permit application.
2. Scope. The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include, without limitation: (a) permit application completeness and/or accuracy; (b) pre-construction planned compliance with applicable regulations for human exposure to RF emissions; (c) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (d) whether and to what extent any technically feasible and/or potentially available alternative sites or concealment techniques may exist; (e) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the City's discretion to review; and (f) any other issue identified by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant complete any required work, including written reports and attendance at meetings with City staff and/or the applicant.
3. Consultant Fees—Deposit. In the event that the Director elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include, without limitation, any costs incurred by the independent consultant to attend and participate in any meetings or hearings. Before the independent consultant may perform any services, the applicant shall tender to the City a deposit in an amount equal to the estimated cost for the services to be provided, as determined by the Director. The Director may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant's services. In the event that the deposit exceeds the total costs for consultant's services, the Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection by the appropriate City official or designee. In the event that the reasonable costs for the independent consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The City shall not issue any construction or encroachment permit to any applicant with any unpaid deposit requests or invoices.

8.36.070 Public Notice Requirements

A. Notice Requirements for Wireless Facility Permit Applications. Once an application for a Wireless Facility Permit is submitted, a public notice shall be mailed by the Approval Authority to all owners of real property and the site address (if different) if any part of which is located within three hundred (300) feet of the proposed wireless facility location. The notices will be distributed through the United States mail using the recipient list prepared by the City. The notice must contain, at minimum: (1) a general description of the proposed project, including the project location, plans, photo simulations, or renderings that depict the wireless facility installation in context of the natural and built environment; (2) the applicant's name and contact information as provided on the application form; and (3) contact information for the Department and (4) how to request a copy of the Decision Notice referenced in 8.36.070(C). In addition to the mailed public notice, a notice shall be placed on the utility pole, the traffic signal control pole, the streetlight, or other proposed facility location, as feasible. This notice shall be posted for a minimum of ten (10) calendar days.

B. Notice Regarding FCC shot clock. Not less than 15 calendar days and no more than 30 calendar days prior to the date when the applicant believes that the applicable FCC shot clock expires, and in addition to any public notice required prior to a decision, an applicant for a wireless facility permit must provide written notice to the Approval Authority that contains: (1) a statement indicating the date the applicant believes the applicable FCC shot clock expires; (2) a general description for the proposed project and any assigned application number; and (3) the applicant's name and contact information.

C. Decision Notices. Before the applicable FCC shot clock expires, the approval authority or its designee shall send a written notice of decision ("Decision Notice") to the applicant and all parties who requested a copy of the Decision Notice on the application. In the event that the approval authority denies the application (with or without prejudice), the written notice must contain: (1) the reasons for the decision and (2) instructions for how and when to file an appeal.

8.36.080 Decisions-Exceptions

A. Required Findings for Approval. The approval authority may approve or conditionally approve an application for a wireless facility permit submitted under this chapter when the approval authority finds all of the following:

1. The proposed wireless facility complies with all applicable design and siting guidelines; and
2. The applicant has demonstrated that its proposed wireless facility will be in compliance with all applicable FCC rules and regulations for human exposure to RF emissions; and
3. The applicant has proposed to place the wireless facility in the most-preferred location or, if the wireless facility is not proposed in the most-preferred location, the applicant has demonstrated a good-faith effort that the more-preferred alternative won't serve the service objectives and/or is technically infeasible; and

B. Conditional Approvals; Denials without Prejudice. Subject to any applicable Federal or California laws, nothing in this chapter is intended to limit the approval authority's ability to conditionally approve or deny without prejudice any application governed under this chapter as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the General Plan and any specific plan, the San Bruno Municipal Code and/or this section.

C. Exceptions. Decisions on applications for placement of wireless facilities in the public right-of way shall, at a minimum, ensure that the requirements of 8.36.060 are satisfied, unless it is determined that applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter may be waived on a one-time basis, but only to the minimum extent required to avoid the prohibition or violation.

8.36.090 Standard Conditions of Approval

A. Conditions of Approval Adopted by City Council Resolution. The City Council may, either on its own motion or upon a recommendation from the Director, adopt by resolution standard conditions of approval for wireless facilities subject to this chapter. All wireless facilities, whether approved by the approval authority or deemed approved or deemed granted by law shall be automatically subject to all such standard conditions of approval as may be adopted in a resolution by the City Council.

B. Modifications to Standard Conditions. The approval authority (or the appellate authority) shall have discretion to modify or amend any standard conditions of approval on a case-by-case basis as may be necessary or appropriate to protect and promote the public health, safety and welfare, allow for the proper operation of the approved wireless facility, maintain compliance with applicable laws and/or to advance the goals or policies in the General Plan and any specific plan, the San Bruno Municipal Code and/or this chapter.

8.36.100 Appeals.

A. Appeals. Any person adversely affected by the decision of the Director pursuant to this Chapter may appeal the decision to the City Manager, who may decide *de novo*, and whose written decision will be the final decision of the City.

B. Decisions Granting Exceptions. Where the Director grants an application based on an exception, the decision shall be automatically appealed to the City Manager.

C. Timing. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law. All appeals must be filed within five (5) business days of the written decision of the Director, unless the Director extends the time therefor. An extension may not be granted when the extension would result in approval of the application by operation of law.

8.36.110 Design Standards.

A. Generally Applicable Design Standards. All new wireless facilities and collocations, modifications or other changes to existing wireless facilities not covered under Section 6409 must conform to the generally applicable design and siting guidelines adopted by resolution of the City Council.

B. Administrative Design and Engineering Standards and Application Requirements. The Director may develop, and from time to time amend, design and engineering standards and application requirements consistent with the generally applicable design regulations to clarify the aesthetic and public safety goals and standards in this chapter for City staff, applicants and the public. In the event that a conflict arises between the design and siting guidelines adopted by City Council by resolution and the administrative design and engineering standards adopted by the Director, the design and siting guidelines adopted by City Council by resolution shall control.

8.36.120 Temporary Wireless Facilities.

A. General Requirements for Temporary Wireless Facilities. Except as provided in this section, the requirements, procedures and standards in this section shall be applicable to all applications for a temporary wireless permit for a temporary wireless facility.

1. Applications for Temporary Wireless Facilities. The Director shall not approve any temporary wireless facility subject to a temporary wireless permit except upon a duly filed application consistent with this section and any other written application requirements or procedures the Director may publish in any publicly-stated format. Applicants for a temporary wireless permit must submit, at a minimum: (a) a temporary wireless permit application on the most current form prepared by the Department; (b) the applicable fee for the application; (c) a site plan that shows the proposed temporary wireless facility and its equipment, physical dimensions and placement on the proposed site relative to property lines and existing structures; (d) an RF compliance report in accordance with the City's requirements; and (e) an insurance certificate for general commercial liability that names the City as an additional insured, includes coverage for the time period in which the temporary wireless facility will be placed and carries at least \$1,000,000.00 in coverage per occurrence. Applications must be submitted in person to the Director unless the Director grants written consent to receive an application by mail or electronic means. No pre-submittal conference or appointment is required for a temporary wireless permit application.
2. Administrative Review for Temporary Wireless Facilities. After the Director receives a duly filed application for a temporary wireless permit, the Director shall review the application for completeness. After the Director deems the application complete, the Director shall review the application for conformance with the required findings in this section and render a written decision to the applicant. Any denials must include the reasons for the denial. The review shall be administrative in nature and shall not require notice or a public hearing.
3. Required Findings for Temporary Wireless Facilities. The Director may approve or conditionally approve a temporary wireless permit for a temporary wireless facility only when the Director finds all of the following:
 - a. The proposed temporary wireless facility will not exceed 50 feet in overall height above ground level; and
 - b. The proposed temporary wireless facility will be placed as far away from adjacent property lines as possible, or otherwise in a location that will be least likely to cause adverse impacts on adjacent properties; and
 - c. Any excavation or ground disturbance associated with the temporary facility will not exceed two feet below grade; and

- d. The proposed temporary wireless facility will be compliant with all generally applicable public health and safety laws and regulations, which includes, without limitation, compliance with maximum permissible exposure limits for human exposure to RF emissions established by the FCC; and
- e. The proposed temporary wireless facility will not create any nuisance or violate any noise limits applicable to the proposed location; and
- f. The proposed temporary wireless facility will be identified with a sign that clearly identifies the: (i) site operator, (ii) the operator's site identification name or number, and (iii) a working telephone number answered 24 hours per day, seven days per week by a live person who can exert power-down control over the antennas; and
- g. The proposed temporary wireless facility will be removed within 30 days after the Director grants the temporary wireless permit, or such longer time as the Director finds reasonably related to the applicant's need or purpose for the temporary wireless facility; and
- h. The applicant has not been denied a wireless permit for any permanent wireless facility in the same or substantially the same location within the previous 365 days.

B. **Temporary Wireless Facilities for Emergencies.** Temporary wireless facilities may be placed and operated within the City without a temporary wireless permit only when a duly authorized Federal, State, County or City official declares an emergency within a region that includes the City in whole or in part. Any temporary wireless facilities placed pursuant to this section must be removed within 15 days after the date the emergency is lifted, as determined by the City Council. Any person or entity that places temporary wireless facilities pursuant to this section must send a written notice that identifies the site location and person responsible for its operation to the Director as soon as reasonably practicable and prior to any actual placement of the facilities. The Director, or a designee, may modify or disallow the placement of the temporary wireless facilities as is needed to ensure public health and safety and when it is in the best interest of the City.

8.36.130 Breach; Termination of Permit.

A. **For breach.** A wireless permit may be revoked by the Director for failure to comply with the conditions of the permit or applicable law. Upon revocation, the wireless facility must be removed within the time frame designated by the City; provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.

B. **For installation without a permit.** A wireless facility installed without a wireless permit (except for those exempted by this Chapter) must be removed; provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.

C. **Municipal Infraction.** Any violation of this Chapter will be subject to the same penalties as a violation of the San Bruno Municipal Code Title 5 Nuisances – Chapter 5.08 Enforcement, Nuisance Abatement and Cost Recovery.

8.36.140 Special Provisions for Section 6409 Approvals.

A. **Applicability.** This section applies to all eligible facilities requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station located in the public rights-of-way submitted pursuant to Section 6409.

B. **Additional Section 6409 Definitions.** In addition to the definitions in Section 8.36.020, the abbreviations, phrases, terms and words used in this section will have the following meanings assigned to them unless context indicates otherwise. In the event that any definition assigned to any phrase, term or word in this section conflicts with any Federal or State-mandated definition, the Federal or State-mandated definition will control.

1. "Eligible facilities request" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b) (3), as may be amended.
2. "Eligible support structure" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b) (4), as may be amended.
3. "Existing" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b) (5), as may be amended.
4. "Site" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b) (6), as may be amended.
5. "Substantial change" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b) (7), as may be amended.

C. Required Approval. Eligible facilities requests shall require an administrative approval in such form determined by the Director consistent with all valid and enforceable terms and conditions of the underlying permit or other prior regulatory authorization for the tower or base station. Each application for approval of an eligible facilities request shall be subject to the Director's review and approval, conditional approval or denial pursuant to the standards and procedures in this section.

D. Decisions.

1. Administrative Review. The Director shall administratively review applications for approval of an eligible facilities request, and may act on such application without prior notice or a public hearing.
2. Decision Notices. The Director shall send a written notice of decision to the applicant before the Section 6409 FCC shot clock expires. In the event that the Director denies the application, the written notice to the applicant must contain: (a) the reasons for the decision; and (b) a statement identifying the applicable FCC shot clock.
3. Required Findings for Approval. The Director may approve or conditionally approve any application for approval of an eligible facilities request when the Director finds that the proposed project:
 - a. Involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station;
 - b. Does not substantially change the physical dimensions of the existing wireless tower or base station; and
 - c. Remains in compliance with all applicable FCC RF standards.
4. Criteria for Denial. Notwithstanding any other provision in this chapter, and consistent with all applicable Federal laws and regulations, the Director may deny any application for approval of an eligible facilities request when the Director finds that the proposed project:
 - a. Does not meet the findings required in subsection (d)(3);
 - b. Involves the replacement of the entire support structure; or
 - c. Violates any legally enforceable law, regulation, rule, standard or permit condition reasonably related to public health or safety.
5. Conditional Approvals. Subject to any applicable limitations in Federal or State law, nothing in this section is intended to limit the Director's authority to conditionally approve an eligible facilities request to protect and promote the public health and safety.

SECTION 3. NO MANDATORY DUTY OF CARE. This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or parties within the city or outside of the city, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, invalid or ineffective by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 5. CEQA EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3) and 15378 (b) (5), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project that has the potential for causing a significant effect on the environment. The Council therefore directs that the Planning Division may file a Notice of Exemption with the San Mateo County Clerk.


SECTION 6. EFFECTIVE DATE. This Ordinance shall take effect thirty (30) days from and after the date of its adoption.

SECTION 7. PUBLICATION. The City Clerk is directed to cause publication of this Ordinance as required by law.

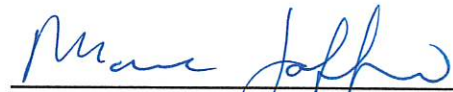
ATTEST:



Rico E. Medina, Mayor


Melissa Thurman, CMC
City Clerk

APPROVED AS TO FORM:


Marc Zafferano, City Attorney


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I hereby certify that foregoing **Ordinance No. 1873** was introduced at a regular meeting of the San Bruno City Council on June 11, 2019, and adopted by the San Bruno City Council at a regular meeting on June 25, 2019, by the following vote:

AYES: Councilmembers: Davis, M. Medina, O'Connell, Salazar, Mayor R. Medina

NOES: Councilmembers: None

ABSENT: Councilmembers: None


Melissa Thurman, CMC
City Clerk