

URGENCY ORDINANCE NO. 1410-U

URGENCY ORDINANCE 1410-U OF THE CITY COUNCIL OF THE CITY OF SIERRA MADRE AMENDING TITLE 17, CHAPTER 17.93 (STANDARDS AND CRITERIA FOR WIRELESS COMMUNICATIONS FACILITIES) OF THE SIERRA MADRE MUNICIPAL CODE TO COMPLY WITH FEDERAL REQUIREMENTS FOR SMALL WIRELESS FACILITIES AND DECLARING THE URGENCY THEREOF IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 36934 AND 36937

WHEREAS, on September 26, 2018, the Federal Communications Commission adopted a Declaratory Ruling and Report and Order (FCC 18-133) adopting 47 C.F.R. section 1.6001 et seq.; and

WHEREAS, 47 C.F.R. section 1.6001 et seq. implements 47 U.S.C. sections 332(c)(7) and 1455, regulating the collocation, modification, and deployment of wireless facilities; and

WHEREAS, FCC 18-133 is intended to streamline the process of collocating and deploying small wireless facilities necessary to support the 5G network infrastructure; and

WHEREAS, FCC 18-133 shortens the shot clock for reviewing small wireless facility permit applications, limits the amount of fees that can be assessed for the review, regulates aesthetic requirements, among others; and

WHEREAS, FCC 18-133 took effect on January 14, 2019, and preempts any and all conflicting local ordinances and regulations; and

WHEREAS, FCC 18-133 requires cities to have small cell facility regulations in place by April 15, 2019; and

WHEREAS, given the short time period before the effective date of the new regulations, which require that the City approve applications for small wireless facilities, time is of the essence to avoid the City being unable to timely review and evaluate applications brought under this new federal regulatory scheme; and

WHEREAS, the adoption of an administrative regulatory process to review, evaluate, and approve if warranted, applications for small wireless facilities is necessary to protect the public's health, safety, and welfare by complying with federal law, thereby preserving to the maximum extent possible the City's ability to regulate the collocation to existing structures and the deployment to new structures; and

WHEREAS, the City Council finds that this Ordinance regulating permits for small cell wireless communications facilities is consistent with the goals, policies, and actions of the General Plan and will not conflict with the General Plan; and

WHEREAS, this Ordinance implements the General Plan's visions and desire for the community, is adopted in the public's interest, and is otherwise consistent with federal and state law; and

WHEREAS, the City Council finds that this Ordinance will not be detrimental to the public interest, health, safety, convenience, or welfare of the City, and is further consistent with Sierra Madre Municipal Code Section 17.93.010, which states that the City intends to regulate wireless facilities to the greatest extent feasible under applicable federal law and regulations; and

WHEREAS, the proposed actions are in compliance with the provisions of the California Environmental Quality Act (CEQA) because this project is categorically exempt from environmental review in accordance with Section 21084 of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines and because the proposed action is not a project under Section 15378(b)(5) of the CEQA Guidelines. A Notice of Exemption is prepared and will be filed in accordance with the CEQA guidelines.

WHEREAS, Government Code Section 36937(b) authorizes the adoption of ordinances that take effect immediately for the purpose of preserving the public peace, health or safety, provided such ordinances are approved by four-fifths (4/5) vote of the City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SIERRA MADRE, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The recitals above are true and correct and incorporated herein by reference.

SECTION 2. Urgency Findings: The City Council finds as follows, pursuant to Government Code Section 36937(b):

- A. The development and utilization of additional wireless telecommunication sites are critical in providing access to emergency services.
- B. The provisions of FCC 18-133 took effect on January 1, 2019, and require the City to abide as of April 15, with its requirements governing review and approval timelines for small wireless facility applications.
- C. Without adopting these amendments via an urgency ordinance, there will not be any provisions in the Sierra Madre Municipal Code that fully implement the requirements of federal and state law governing review and approval of applications for small wireless facilities, meaning that the City would not be able to enforce its existing performance and development standards for small

wireless facilities in all cases, including standards that protect the City's aesthetic and visual character, preserve its existing community character, and protect the public's health and safety. Accordingly, the adoption of this Urgency Ordinance is necessary to immediately preserve the public peace, health, and safety, pursuant to Government Code Section 36937(b).

Title 17, Chapter 17.93 (Standards and Criteria for Wireless Telecommunications Facilities) of the Sierra Madre Municipal Code is amended to read as follows. Additions are denoted by underlined text and deletions are denoted by ~~struck-through text~~.

SECTION 3. Chapter 17.93 - STANDARDS AND CRITERIA FOR WIRELESS COMMUNICATION FACILITIES

17.93.020 - Definitions.

In addition to the other definitions used in this title, the following words and phrases shall have the following meanings when used in this chapter unless the context clearly requires otherwise:

"Accessory equipment" means any equipment installed, mounted, operated or maintained in close proximity to a *wireless* telecommunication facility to provide power to the *wireless* telecommunication facility or to receive, transmit or store signals or information received by or sent from a *wireless* telecommunication facility.

"Antenna" means any system of poles, panels, rods, reflecting disks, wire or similar devices used for the transmission or reception of electromagnetic signals. "Antenna" does not include an antenna structure or any device that is not affixed to land or the exterior of a structure.

"Antenna structure" means any structure, including a pole, mast, or tower, whether freestanding or mounted on another building or structure that supports an antenna or an array of antennas. The height of an antenna structure is measured to the highest point of any antenna mounted upon it or to any higher point of the antenna structure.

"Base station" means a non-tower supporting 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 herein or any equipment associated with a tower. Base station includes, without limitation:

- A. 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.
- B. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems ("DAS") and small-cell networks).
- C. Any structure other than a tower that, at the time the relevant application is filed with the city under this section, supports or houses equipment described in

paragraphs (A) and (B) that has been reviewed and approved under 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 that support.

The term "base station" does not include any structure that, at the time the relevant application is filed with the city under this section, does not support or house equipment described in [subsections] (A), (B) of this definition.

"Changes in height" should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act. Title 47, United States Code, section 1455.

"Co-location" means a situation in which a single support structure or building supports more than one antenna, which antennas are owned or operated by more than one public or private entity and includes the mounting or installation of additional *wireless* transmission equipment at an existing *wireless* facility.

"Director" means the Sierra Madre Planning and Community Preservation Director or his or her designee.

"Equipment cabinet" means any transmission or other equipment other than an antenna housed within a protective case. An equipment cabinet may be indoors or outdoors, large or small, movable or immovable. Any equipment case with a heat sink or other cooling mechanism for the equipment inside qualifies as an equipment cabinet.

"Exempt facilities" means those *wireless* telecommunication facilities identified in Section 17.93.030 of this chapter.

"FCC" means the Federal Communications Commission or any successor to that agency.

"Height" means the distance from the existing grade at the base of an antenna structure or, in the case of a roof-mounted antenna, from the grade at the exterior base of the building, to the highest point, when fully extended, of any antenna mounted on that structure or of the antenna structure itself.

"Monopole" means a freestanding antenna structure, with a single continuous footing, designed to be self-supporting without the use of guywires.

"Non-tower supporting structure" means any structure, whether built for *wireless* communications purposes or not, that supports *wireless* transmission equipment under a valid permit at the time an applicant submits an application for a permit under this Code and which is not a *wireless* tower.

"Section 6409" means Title 47, United States Code, section 1455.

"Site" for applications which the applicant contends are protected by Section 6409, Title 47, United States Code section 1455, means, the current boundaries of the leased or owned property surrounding the tower (other than towers in the public rights-of-way)

and any access or utility easements currently related to the site, and, for other support structures, is further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

"Small wireless facility" means

1. The facilities:
 - a. Are mounted on structures 50 feet or less in height including their antennas, or
 - b. Are mounted on structures no more than 10 percent taller than other adjacent structures, or
 - c. 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;
2. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume;
3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment, is no more than 28 cubic feet in volume;
4. The facilities do not require antenna structure registration under 47 C.F.R. section 17.1 et seq
5. The facilities are not located on Tribal lands, as defined under 36 C.F.R. § 800.16(x); and
6. The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).

"Stealth facility" means a *wireless* communication facility designed to blend into the surrounding environment, to be minimally visible and to appear as a natural feature, such as a tree or rock or other natural or architectural feature, so that no portion of any equipment cabinet, transmission equipment, or any other apparatus associated with facility's function is visible from publicly accessible areas. A stealth facility may be incorporated into an architectural feature such as a steeple, parapet wall, light standard, equipment screen or landscaping.

"Transmission equipment" means 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.

"Tower" or "*wireless* tower" means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for *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, and the associated site.

"*Wireless*" means any Federal Communications Commission licensed or authorized *wireless* telecommunications service.

"Wireless communication facility," "wireless facility," or "facility" means any device or system for transmitting and/or receiving electromagnetic signals, including, but not limited to, radio waves and microwaves for cellular technology, personal communication services, mobile services, paging systems and related technologies. Facilities include towers, utility poles, transmitters, microwave dishes, antennas and parabolic antennas, and all other types of equipment used in transmitting or receiving signals; antenna structures, associated buildings, base stations, emergency power systems or cabinets which house support equipment; and other accessory development.

SECTION 4. A new Section 17.93.100 – “Small Wireless Facilities” of Chapter 17.93 of Title 17 of the Sierra Madre Municipal Code is hereby added to read as follows. Additions are denoted by underlined text and deletions are denoted by ~~struck-through text~~.

- A. Purpose. This section is intended to comply with the city’s obligations under 47 C.F.R. section 1.6001 et seq., which implements 47 U.S.C. sections 332(c)(7) and 1455. This section creates a process for the city to review an application for a small wireless facility permit submitted by an applicant who asserts that a proposed collocation of a small wireless facility using an existing structure or the deployment of a small wireless facility using a new structure, and the modifications of such small wireless facilities, is covered by federal law and to determine whether the city must approve the proposed collocation or deployment.
- B. Applicability. An applicant seeking approval of a collocation to an structure or a deployment to a new structure which the applicant contends is within the protection of Title 47, United States Code, sections 332(c)(7) and 1455 and 47 C.F.R. section 1.6001 et seq. shall apply for the following at the same time: (i) a small wireless facility permit, (ii) an encroachment permit from the public works department (if required by applicable provisions of the city’s Municipal Code), and (iii) any other permit required by applicable provisions of the Code including a building permit or an electrical permit.
- C. Application Content: All applications for a small wireless facility permit must include the following items:
 - 1. Application Form. The city’s standard application form, available on the city’s website or from the community development department, as may be amended.
 - 2. Application Fee. An application fee of \$500, or such other amount as may be established by the city council by resolution.
 - 3. Independent Consultant Deposit. An independent consultant fee deposit of \$500, or such other amount as may established by the city council by resolution, to reimburse the City for its costs to retain an independent consultant to review the technical aspects of the application.
 - 4. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.

- a. A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
 - b. A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
 - c. A depiction of all existing and proposed utility runs and points of contact.
 - d. A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.
 - e. For proposed collocation or deployment to wireless towers, the plans must include scaled plan views and all four (4) elevations that depict the physical dimensions of the wireless tower as it existed on
 - f. A demolition plan.
1. Visual Simulations. A visual analysis that includes (1) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four (4) angles, together with a map that shows the location of each view angle; (2) a color and finished material palate for proposed screening materials; and (3) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.
 2. Statement Asserting that 47 C.F.R. section 1.6001 et seq. Applies. A written statement asserting that the proposed collocation or deployment meets the federal, state and City standards and qualifications for a small wireless facility and explaining why those standards are met.
 3. Prior Permits. True and correct copies of all previously issued permits, including all required conditions of approval and a certification by the applicant that the proposal will not violate any previous permit or conditions of approval or why any violated permit or conditions does not prevent approval under Title 47, United States Code, section 1455 and the Federal Communications Commission's regulation implementing this federal law.
 4. Affirmation of Radio Frequency Standards Compliance. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, because it will not cause members of the general public to be exposed to RF levels that exceed the MPE levels deemed safe by the FCC. A copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the application. All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power."

5. Structural Analysis. A structural analysis, prepared, signed, and sealed by a California-licensed engineer, for the proposed small wireless facility including, but not limited to, equipment, such as air conditioning units and back-up generators; or a written statement signed and sealed by a California-licensed engineer indicating that the proposed facility will not alter the existing noise levels or operational equipment which creates noise.
 6. Other Permits. An application for a small wireless facility permit shall include all permit applications with all required application materials for each and every separate permit required by the City for the proposed collocation or deployment, including a building permit, an encroachment permit (if applicable) and an electrical permit (if applicable).
- A. Application Review. Each application for a new or modified small wireless facility permit shall be reviewed by the director. The city must approve or deny an application for a small wireless facility permit, together with any other City permits required for a proposed small wireless facility, within sixty (60) days after the applicant submits an application to collocate a small wireless facility using an existing structure, and within ninety (90) days after the applicant submits an application to deploy a small wireless facility using a new or replacement structure. The director shall provide written notice to all property owners within 500 feet of the site of a proposed small wireless facility upon receipt of an application for a small wireless facility permit.
 - B. Tolling Period. Unless a written agreement between the applicant and the city provides otherwise, the application is tolled when the city notifies the applicant within ten (10) days of the applicant's submission of the application that the application is materially incomplete and identifies the missing documents or information. The shot clock may again be tolled if the city provides notice within ten (10) days of the application's resubmittal that it is materially incomplete and identifies the missing documents or information. For an application to deploy small wireless facilities, if the city notifies the applicant on or before the tenth (10th) day after submission that the application is materially incomplete, and identifies the missing documents or information and the rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation will restart at zero on the date the applicant submits a completed application.
 - C. Standards Governing Approval by Director
 - a. The director shall approve or deny an application to collocate a small wireless facility using an existing structure by evaluating the following standards:
 - i. The existing structure was constructed and maintained with all necessary permits in good standing.
 - ii. The existing structure is fifty (50) feet or less in height, including any antennas, or the existing structure is no more than ten (10) percent taller than other adjacent structures.
 - iii. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume.

- iv. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment serving the facility, is no more than 28 cubic feet in volume.
- v. The small wireless facilities do not extend the existing structure on which they are located to a height of more than fifty (50) feet or by more than ten (10) percent, whichever is greater.
- vi. The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.
- vii. The small wireless facility is not located on Tribal lands, as defined under 36 C.F.R. section 800.16(x).
- viii. The proposed collocation is consistent with the wireless facility permit location requirements of Section 17.93.060.
- ix. The proposed collocation is consistent with the development requirements and standards of section 17.93.070.
- x. The proposed collocation is consistent with the conditional use and encroachment permit requirements of section 17.93.080.
- xi. The proposed collocation is consistent with the operation and maintenance standards provisions of section 17.93.090.
- xii. The proposed collocation would be in the most preferred location and configuration within 250 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location or configuration within 250 feet would be technically infeasible, applying the preference standards of this section.
- xiii. The proposed collocation is designed as a stealth facility, to the maximum feasible extent. All facilities shall include appropriate stealth and concealment techniques given the proposed location, design, visual environment, and nearby uses and/or structures. All equipment shall be placed underground to the maximum extent feasible. All wires, cables, and any other connections shall be completely concealed from public view to the maximum extent feasible.
- b. The director shall approve or deny an application to deploy a small wireless facility using a new or replacement structure by evaluating the following standards:
 - i. The new or replacement structure was constructed and maintained with all necessary permits in good standing;
 - ii. The new or replacement structure is fifty (50) feet or less in height, including any antennas, or the new or replacement structure is no more than ten (10) percent taller than other adjacent structures

- iii. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume;
 - iv. All other wireless equipment associated with the facility, including the wireless equipment associated with the antenna and any pre-existing equipment associated with the facility, is no more than 28 cubic feet in volume;
 - v. The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.
 - vi. The small wireless facility is not located on Tribal lands, as defined under 36 C.F.R. section 800.16(x);
 - vii. The proposed facility is consistent with the wireless facility permit location requirements of Section 17.93.060.
 - viii. The proposed facility is consistent with the development requirements and standards of section 17.93.070.
 - ix. The proposed facility is consistent with the conditional use and encroachment permit requirements of section 17.93.080.
 - x. The proposed facility is consistent with the operation and maintenance standards provisions of section 17.93.090.
 - xi. The proposed facility would be in the most preferred location and configuration within 250 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location or configuration within 250 feet would be technically infeasible, applying the preference standards of this section.
 - xii. The proposed facility is designed as a stealth facility, to the maximum feasible extent. All facilities shall include appropriate stealth and concealment techniques given the proposed location, design, visual environment, and nearby uses and/or structures. All equipment shall be placed underground to the maximum extent feasible. All wires, cables, and any other connections shall be completely concealed from public view to the maximum extent feasible. Stealth and concealment techniques for small wireless facilities do not include incorporating faux-tree designs.
- c. Small Cell Location and Configuration Preferences. The city prefers that small wireless facilities in the public right of way be configured on the following support structures, in order of preference from most to least preferred: existing or replacement street light standard; existing or replacement concrete or steel utility pole; existing or replacement wood utility pole; new street light standard; new utility pole. The city prefers that small wireless facilities outside the public right of way be configured on the following support structures, in order of preference from most to least preferred: on existing, approved wireless facility support structures operating

in compliance with the Municipal Code; on existing buildings or non-tower structures; on existing or replacement utility poles or towers; in new towers meeting the height requirements of the applicable FCC regulations.

D. Conditions of Approval for Small Wireless Facility Permits. In addition to any other conditions of approval permitted under federal and state law and the Municipal Code that the director deems appropriate or required under this code, all small wireless facility permits under this subsection issued by the City of deemed approved by operation of law shall include the following conditions of approval:

1. No Automatic Renewal. The grant or approval of a small wireless facility permit shall not renew or extend the underlying permit term.
2. Compliance with Previous Approvals. The grant or approval of a small wireless facility permit shall be subject to the conditions of approval of the underlying permit.
3. As-Built Plans. The applicant shall submit to the director an as-built set of plans and photographs depicting the entire small wireless facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.
4. Indemnification. To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless city, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the wireless facility minor modification permit and the issuance of any permit or entitlement in connection therewith. The applicant shall pay such obligations as they are incurred by city, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the city reasonably determines necessary to protect the city from exposure to fees, costs or liability with respect to such claim or lawsuit.
5. Compliance with applicable laws. The applicant shall comply with all applicable provisions of the city's municipal code, any permit issued under the Code, and all other applicable federal, state, and local laws. Any failure by the City to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under the Municipal Code, any permit issued under the Code, or all other applicable laws and regulations.
6. Compliance with approved plans. The proposed project shall be built in compliance with the approved plans on file with the planning division.
7. Violations. The small wireless facility shall be developed, maintained, and operated in full compliance with the conditions of the small wireless facility permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the

applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of the code, the conditions of approval for the wireless facility minor modification permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this section shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

8. In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, Title 47, United States Code, section 1455, or the Federal Communications Commission's Declaratory Ruling and Report and Order (FCC18-133) adopting 47 C.F.R. section 1.6001 et seq., such that such statute would not mandate approval for the collocation or deployment granted or deemed granted under a wireless facility minor modification permit, such permit shall automatically expire twelve (12) months from the date of that opinion.
9. The grant, deemed-grant or acceptance of a small wireless facility permit shall not waive and shall not be construed or deemed to waive the city's standing in a court of competent jurisdiction to challenge Title 47, United States Code, section 1455 or the Federal Communications Commission's Declaratory Ruling and Report and Order (FCC18-133) adopting 47 C.F.R. section 1.6001 et seq. or any small wireless facility permit issued pursuant to Title 47, United States Code, section 1455, the Federal Communications Commission's Declaratory Ruling and Report and Order (FCC 18-133) adopting 47 C. F. R. section 16001 et seq., or the City's Municipal Code.

E. Small Wireless Facility Permit Denial Without Prejudice.

1. Grounds for denial without prejudice. The director may deny without prejudice an application for a small wireless facility permit in any of the following circumstances:
 - a. The director cannot make all findings required for approval of a small wireless facility permit;
 - b. The proposed collocation or deployment would cause the violation of an objective, generally applicable law protecting public health or safety;
 - c. The proposed collocation or deployment involves the removal and replacement of an existing building's entire supporting structure; or
 - d. The proposed collocation or deployment does not qualify for mandatory approval under Title 47, United States Code, section 1455, and 47 C.F.R. section 1.6001 et. Seq., as may be amended or superseded, and as may be interpreted by any order of the Federal Communications Commission or any court of competent jurisdiction.
1. Procedures for denial without prejudice. All small wireless facility permit application denials shall be in writing and shall include (i) the decision date; (ii) a statement that the city denies the permit without prejudice; (iii) a short and

- plain statement of the basis for the denial; and (iv) that the applicant may submit the same or substantially the same permit application in the future.
2. Submittal after denial without prejudice. After the director denies a small wireless facility permit application, and subject to the generally applicable permit application submittal provisions in this chapter, an applicant shall be allowed to:
 - a. submit a new small wireless facility permit application for the same or substantially the same proposed collocation or deployment;
 - b. submit a new wireless facility permit application for the same or substantially the same proposed collocation or deployment; or
 - c. submit an appeal of the director's decision.
 3. Costs to review a denied permit. The city shall be entitled to recover the reasonable costs for its review of any small wireless facility permit application. In the event that the director denies a small wireless facility permit application, the city shall return any unused deposit fees within sixty (60) days after a written request from the applicant. An applicant shall not be allowed to submit a small wireless facility permit application for the same or substantially the same proposed modification unless all costs for the previously denied permit application are paid in full.

SECTION 5. Section 17.93.100 – “Duration, revocation, and discontinuance” of Chapter 17.93 of Title 17 of the Sierra Madre Municipal Code is hereby renumbered to be Section 17.93.110.

SECTION 6. California Environmental Quality Act. The City Council has considered all of the evidence in the record, including the staff reports, the testimony received during the public hearing on the matter held by the City Council, and hereby determines that that the text amendments will not have a significant effect on the environment. The amendments to Chapter 17.93 of this Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 1506 (b)(3) of the California Code of Regulations.

SECTION 7. Severability; Continuation of Provisions. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance or the rules adopted hereby. The City Council of the City of Sierra Madre hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable. To the extent the provisions of the Sierra Madre Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as

CITY OF SIERRA MADRE)

I, _____, City Clerk of the City of Sierra Madre, hereby certify that the foregoing Urgency Ordinance No. 1410-U was approved and adopted by said Council at its regular meeting held on the 26th day of March, 2019 by the following vote, to-wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Sue Spears, City Clerk