

ORDINANCE NO. 882

AN URGENCY ORDINANCE OF THE CITY OF RIPON
AMENDING THE RIPON MUNICIPAL CODE TO ADD
CHAPTER 16.91 "PERSONAL WIRELESS SERVICE
FACILITIES" TO THE RIPON MUNICIPAL CODE AND
FINDING THIS ACTION TO BE EXEMPT FROM
ENVIRONMENTAL REVIEW UNDER CEQA GUIDELINES
SECTIONS 15061(B)(3), 15301, 15303, AND 15305

WHEREAS, This Ordinance is adopted as an urgency ordinance pursuant to Government Code Section 36937(b). The facts constituting the urgency are as follows:

1. The purpose of this Ordinance is to amend the City's Municipal Code to provide uniform and comprehensive standards, regulations and permit requirements for the installation of wireless telecommunications facilities in the City's public right-of-way, in light of the Declaratory Ruling and Third Report and Order in "In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment" adopted September 26, 2018 by the Federal Communications Commission ("Order") setting new limitations on local standards for, and accelerating the processing of, the siting of, personal (or "small cell") wireless communications facilities' by local jurisdictions over such applications.
2. Providers within the wireless telecommunications industry have expressed interest in submitting applications for the installation of "small cell" wireless telecommunications facilities in the City's public rights-of-way of the City. Other California cities have also received applications for small cells to be located within the public right-of-way.
3. The recent FCC Order provides that all local jurisdictions must comply with various restrictions on the exercise of local aesthetic, zoning, public works, and fee restrictions when dealing with wireless installation siting application. The FCC Order provides that all agencies should be capable of fully implementing its provisions within 180 days of its adoption which was on September 26, 2018.
4. Applications for siting of small cell facilities generally are submitted in batches for multiple locations at the same or substantially the same time and thus must all be reviewed and evaluated at the same time.
5. The Order provides that the trend toward small cell technology to deploy 5G and other next-generation wireless services requires greater densification and pace of build out to enable widespread deployment as is sought by the wireless industry. The Order states that as much as 80% of all new deployments will entail small cell technology going forward.
6. The Order provides that wireless providers variably estimate that the preference towards small cell facilities will likely result in ten to one hundred times the number of wireless facilities

existing in the nation, and estimates of the number of small cells nationwide would grow from 150,000 this year to nearly 800,000 by year 2026. Based on estimates of small cell facilities transmitting only a few hundred feet by some providers as stated by the Order, the number of small cells could grow to as many as 120 within the City of Ripon alone.

7. The Order is intended to facilitate the spread, growth, and accumulation of small cell facilities over a short period of time in order to enable deployment of technology that the Order claims will enable increased competition in healthcare, Internet of Things applications, lifesaving car technologies and create jobs, possibly increasing the U.S. economy by as much as \$100 billion by speeding up the deployment of small cells by only one year. The Order reduces the “shot clock” period allowable to cities to review, comment upon, consider, and make a final determination on small cells applications for as many as 90 days for new facilities and as many as 30 days for collocated and modified facilities.

8. Small cell wireless facilities are primarily installed within public rights-of-way and as such create significant and far-reaching local concerns in traffic and pedestrian safety, aesthetics, protection and preservation of public property, and the health, safety and welfare of the general public.

9. Installation of small cell and other wireless telecommunications facilities within the public right-of-way can pose a threat to the public health, safety and welfare, including disturbance to the right-of-way through the installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines; land use conflicts and incompatibilities including excessive height or poles and towers; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise or lack of camouflaging of wireless facilities including the associated pedestals, meters, equipment and power generators; and the creation of unnecessary visual and aesthetic blight by failing to utilize alternative technologies or capitalizing on collocation opportunities which may negatively impact the unique quality and character of the City.

10. The City currently regulates wireless telecommunications facilities in the public right-of-way through its telecommunications ordinance which does not focus specifically on wireless telecommunications facilities within the public right-of-way and the encroachment permit process. The existing standards have not been updated to reflect the development of current wireless telecommunications technologies, such as small cell wireless facilities and DAS systems (Distributed Antenna Systems) which are now the preferred method of providing wireless telecommunications services or necessary legal requirements for such preferred methods and wireless telecommunications facilities covered under Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, among other federal and state law requirements now applicable to local agencies. Further the primary focus of the existing telecommunications facilities regulations in the Ripon Municipal Code is 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 wireless telecommunications facilities deployed in the public right-of-way.

11. The lack of regulations that are specific to the siting of wireless telecommunications facilities in the public right-of-way combined with the Order's regulations to hasten the spread and development of small cell facilities would, if continued, jeopardize the health and safety of the public by allowing applications for small cell facilities to be submitted and subject to limited local siting regulations resulting from the implementation of the Order. There would not be sufficient time for the City to develop regulations specific to the siting of wireless telecommunications facilities in the public right-of-way before such applications would be made. Yet, under the new "shot clock" rules such applications would need to be approved within either 60 or 90 days of the application being submitted. Any requirements that were placed into effect by the regulations being developed by the City could not be applied to the application before such application would be approved under the new "shot clock" rules. Such a state of affairs would result in facilities being approved that are inconsistent with appropriate regulations being developed by the City in order to exercise the degree of local authority within the parameters allowable under the Order. Thus, projects would be applied for and approved by law without local authority being properly, appropriately, and within the confines of federal and state laws exercised by the City which would in turn result in potentially numerous wireless telecommunications facilities being constructed and existing without local controls for as long as the life of the facility.

12. The public right-of-way in the City is a uniquely valuable public resource, closely linked with the City's historical, unique small-town character, as well as, its attractiveness for tourists, members of the business community, and residents alike. The reasonably regulated and orderly deployment of wireless telecommunications facilities in the public right-of-way is desirable, and unregulated or disorderly deployment represents an ever-increasing and true threat to the health, welfare and safety of the community.

13. The regulations of wireless installations in the public right-of-way are 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. The City Council further finds and declares that the immediate implementation of the Ordinance is necessary to preserve and protect public health, safety and welfare.

14. The City recognizes its responsibilities under the Federal Telecommunications Act of 1996 and state law, and believes that it is acting consistent with the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare. The City does not intend that this Ordinance prohibit or have the effect of prohibiting the provision of telecommunications service; rather, but includes appropriate regulations to ensure that the installation, augmentation and relocation of wireless telecommunications facilities in the public rights-of-way are conducted in such a manner as to lawfully balance the legal rights of applicants under the Federal Telecommunications Act and the

California Public Utilities Code while, at the same time, protect to the full extent feasible against the safety and land use concerns described herein.

Based on the foregoing, the City Council finds and determines that the immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 36937(b), and take effect immediately upon adoption. Therefore, this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared.

WHEREAS, adoption of this Ordinance is consistent with the City's General Plan. The City's General Plan provides goals, policies and implementation measures to preserve the high-quality design, scale, unique historical small-town character, aesthetics, scenic vistas, natural setting and resources, and environmental characteristics while also maintaining a strong and vibrant healthy economy for its local business and assuring the health and safety of the predominantly residential character of the community. Adoption of this Ordinance will provide uniform and comprehensive regulations and standards for wireless telecommunications facilities in furtherance of these goals and objectives while reducing the potentially negative impacts.

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

SECTION 1. The above recitals are hereby declared to be true and correct and represent the findings of the City Council of the City of Ripon, made in the exercise of its independent Judgment. Said findings are incorporated by this reference.

SECTION 2. ADDING A NEW CHAPTER 16.91 TO THE RIPON MUNICIPAL CODE.

A new Chapter 16.91 is hereby added to the Ripon Municipal Code to read as follows:

**Chapter 16.91
PERSONAL WIRELESS SERVICE FACILITIES ORDINANCE**

Sections:

- 16.91.010 Title**
- 16.91.020 Purpose and Intent**
- 16.91.030 Definitions**
- 16.91.040 Applicability and Exemptions**
- 16.91.050 General Permit Requirement**
- 16.91.060 Applications**
- 16.91.070 Development Standards**
- 16.91.080 Notices**
- 16.91.090 Decisions and Appeals**
- 16.91.100 Standard Conditions**
- 16.91.110 Temporary Wireless Facilities**
- 16.91.120 Fees**
- 16.91.130 Special Provisions for Section 6409 Approvals**

16.91.010 Title

This chapter shall be titled the “Personal Wireless Service Facilities Ordinance.”

16.91.020 Purpose and Intent

- A. The City of Ripon intends this chapter to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City’s territorial boundaries, 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, consistent with and to the extent permitted under federal and California state law, 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) ensuring that the balance between public and private interest is maintained on a case-by-case basis; (2) protecting the City’s visual character from potential adverse impacts or visual blight created or exacerbated by wireless communications infrastructure; (3) protecting and preserving the City’s environmental resources; and (4) promoting access to high-quality, advanced wireless services for the City’s residents, businesses and visitors.
- B. This chapter is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider’s ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity’s ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC’s regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unfair, unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California law.
- C. This chapter is intended to apply to small wireless facilities as defined and consistent with 47 C.F.R. Section 1.1312(e)(2) as contemplated within the Federal Communications Commission (“FCC”) Declaratory Ruling and Third Report and Order (“FCC Order”), including those defined in Section 16,91.030 as Small Wireless Facilities, Temporary Wireless Facilities and facilities subject to Section 6409, within the City’s jurisdictional and territorial boundaries, on private property and within the public rights-of-way. Other wireless communications towers and antennas which are regulated pursuant to Chapter 16.90 shall, unless specifically addressed and covered under the FCC Order, continue to be subject to regulation and permitting under Chapter 16.90 of the Ripon Municipal Code.

16.91.030 **Definitions**

- A. *Approval authority* means the City Council, Community Development Director, Planning Commission or official responsible for review of applications and vested with the authority to approve or deny such applications.
- B. *Base station* means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended.
- C. *CPCN* 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 or superseded.
- D. *CPUC* means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
- E. *FCC* means the Federal Communications Commission or its duly appointed successor agency.
- F. *OTARD* means any “over-the-air reception device” subject to 47 C.F.R. §§ 1.4000 et seq., as may be amended or superseded, which includes satellite television dishes not greater than one meter in diameter.
- G. *Personal wireless service facilities* mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended or superseded, which defines the term as facilities that provide personal wireless services. For purposes of this ordinance and its applicability, “personal wireless service facilities” means the facilities meeting the following conditions: a) mounted on structures no higher than 50 feet (including antennae); b) mounted on structures no more than 10% taller than other adjacent structures; or c) not extend existing structures to a height of more than 50 feet or 10%, whichever is greater; 2) antenna is no greater than 3 cubic feet in volume; 3) all other wireless equipment associated with structure is no more than 28 cubic feet in volume; 4) do not result in human exposure to RF radiation in excess of the FCC guidelines; 5) not located on Tribal lands; and 5) not require antenna registration.
- H. *Personal wireless services facilities* mean 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.
- I. “*RF*” means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.
- J. *Section 6409* means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. 1. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.
- K. *Shot clock* means the presumptively reasonable time defined by the FCC in which a State or local government must act on an application or request for authorization to place, construct, or modify personal wireless service facilities.
- L. *Temporary wireless facilities* means portable wireless facilities intended or used to provide personal 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 site on which is located.

- M. *Tower* means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(9), as may be amended or superseded.
- N. *Transmission equipment* means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(8), as may be amended or superseded.

16.91.040 **Applicability and Exemptions**

- A. *Applicable Wireless Facilities*, Except as expressly provided otherwise in this chapter; the provisions in this chapter shall be applicable to all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate or otherwise deploy those specific wireless facilities defined in Section 16,91.030 as Personal Wireless Facilities, Temporary Wireless Facilities and facilities subject to Section 6409, within the City’s jurisdictional and territorial boundaries, on private property and within the public rights-of-way.
- B. *Exemptions*. Notwithstanding section 16.91.040.A, the provisions in this chapter will not be applicable to: (1) wireless facilities owned and operated by the City for public purposes; (2) wireless facilities 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; (3) amateur radio facilities; (4) OTARD antennas; and (5) 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. *Special Provisions for Section 6409 Approvals*. Notwithstanding section 16.91.040.A, all requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409 will be reviewed under the application procedures in section 16.91.060 and the standards in section 16.91.130. A PWF Use Permit under section 16.91.050 is not required for any request that qualifies for approval pursuant to Section 6409 under the standards in section 16.91.130. To the extent that 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 PWF Use Permit under the general provisions in this chapter.

16.91.050 **General Permit Requirements**

- A. *PWF Use Permit - Administrative Review*. A PWF Use Permit, subject to the Community Development Director’s prior review and approval in accordance with the procedures and design regulations in this chapter, is required for:
 - 1. any wireless facility proposed on private property in a preferred location (as specified in section 16.91.070.A) and that would be compliant with all applicable development standards in section 16.91.070; and
 - 2. any wireless facility proposed to be located in the public rights-of-way in a preferred location (as specified in section 16.91.070.A) and that would be compliant with all applicable development standards in section 16.91.070.

- B. PWF Use Permit - Public Hearing Review.* A PWF Use Permit, subject to the Planning Commission's prior review and approval in accordance with the procedures and design regulations in this chapter, is required for:
1. any wireless facility proposed on private property located in or within 500 feet from a residential district;
 2. any wireless facility proposed in the public rights-of-way not in a preferred location (as specified in section 16.91.070.A);
 3. any wireless facility that requires a limited exception pursuant to section 16.91.090.C;
 4. any wireless facility subject to an administrative review process but that has been referred to the Planning Commission by the Community Development Director; and
 5. any wireless facility not identified as subject to an administrative review process in section 16.91.050.A.
- C. Temporary Personal Wireless Permit.* A Temporary Personal Wireless Permit, subject to the Community Development Director's prior review and approval in accordance with the procedures and standards in section 16.91.110, is required for any temporary personal wireless facility, unless deployed in connection with an emergency pursuant to section 16.91.110.B.
- D. Other Permits and Regulatory Approvals.* In addition to any permit or approval required under this chapter, the applicant must obtain all other permits and regulatory approvals (such as compliance with the California Environmental Quality Act) as may be required by any other federal, state or local government agencies, which includes without limitation other any 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.

16.91.060 **Applications**

- A. Application Required.* The approval authority shall not approve any request to place, construct or modify any Personal Wireless Facility except upon a complete and duly filed application consistent with this section 16.91.060 and any other written rules the City or the Community Development Director may establish from time to time in any publicly stated format.
- B. Application Content.* All applications for a PWF Use Permit or section 6409 approval (as that term is defined in section 16.91.130) must include all the information and materials required by the Community Development Director for the application. The City Council authorizes the Community Development Director to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Community Development Director finds necessary, appropriate or useful for processing any application governed under this chapter. All applications shall, at a minimum, 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. All applications for wireless facilities in the public rights-of-way shall also contain sufficient evidence (such as a valid CPCN) of the applicant's regulatory status as a

telephone corporation under the California Public Utilities Code. The City Council further authorizes the Community Development Director to establish other reasonable rules and regulations, which may include without limitation regular hours for appointments with applicants, as the Community Development Director deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide applicants with prior notice.

C. *Procedures for a Duly Filed Application.* Any application for a PWF Use Permit or section 6409 approval will not be considered duly filed unless submitted in accordance with the procedures in this section 16.91.060.C.

1. *Pre-Submittal Conference.* Before either planning or building application submittal, and unless waived by the Community Development Director, the applicant must schedule and attend a pre-submittal conference with the Community Development Director for all proposed projects that: (1) require Planning Commission approval; (2) involve more than five wireless facilities in the public right-of-way; (3) involve any wireless facilities proposed to be located in the public rights-of-way in or within 250 feet from a residential district; or (4) involve a Section 6409 collocation, modification or other change to an existing camouflaged or concealed facility. Pre-submittal conferences for all other proposed projects are strongly encouraged but not required. The 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 tower or base station, 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 Planning Division 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.

2. *Submittal Appointment.* Unless waived by the Community Development Director, all applications must be submitted to the City at a pre-scheduled appointment with the Community Development 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 Community Development Director shall use reasonable efforts to provide the applicant with an appointment within five working days after the Community Development Director receives a written request and, if applicable, confirms that the applicant complied with the pre-submittal conference requirement. 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 Community Development Director at a pre-submittal conference.

D. *Applications Deemed Withdrawn.* To promote efficient review and timely decisions, any

application governed under this chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the Planning Division within 90 calendar days after the Community Development Director deems the application incomplete in a written notice to the applicant. The Community Development Director may, in the Community Development Director's discretion, 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.* The City Council authorizes the Community Development Director to, in the Community Development Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Community Development Director in connection any permit application. The Community Development 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:
1. permit application completeness and/or accuracy
 2. pre-construction planned compliance with applicable regulations for human exposure to RF emissions
 3. post-construction actual compliance with applicable regulations for human exposure to RF emissions
 4. whether and to what extent a proposed project will address a gap in the applicant's wireless services
 5. whether and to what extent any technically feasible and/ or potentially available alternative sites or concealment techniques may exist
 6. 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
 7. any other issue identified by the Community Development Director that requires expert or specialized knowledge.

The Community Development Director may request that the independent consultant prepare written reports, testify at public meetings, hearings and/ or appeals and attend meetings with City staff and/ or the applicant. In the event that the Community Development 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 Community Development Director. The Community Development 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 Community Development Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection

by the Building Official or his or her designee. In the event that the reasonable costs for the independent consultant's services exceed the deposit, the Community Development Director shall invoice the applicant for the balance. The City shall not issue any construction or grading permit to any applicant with any unpaid deposit requests or invoices.

16.91.070 **Development Standards**

- A. Preferred Locations.* When evaluating an application for a PWF Use Permit for compliance with this chapter, the approval authority will take into account whether any or more preferred locations are technically feasible and potentially available. Any locations within any residential zoning district, locations within 500 feet from a public or private school or residential dwelling, attached to a decorative light standard or otherwise not listed below in this section 16.91.070 shall be considered "discouraged." All applicants for a PWF Use Permit must propose new wireless facilities in locations according to the following preferences, ordered from most preferred to least preferred:
1. private property and existing or replacement structures in the public rights-of-way outside any residential zoning district and not within 500 feet from any public or private school or residential dwelling;
 2. private property and existing or replacement structures in the public rights-of-way within general open space districts and not within 500 feet from any public or private school or residential dwelling;
 3. private property and existing or replacement structures in the public rights-of-way within public and semi-public districts and not within 500 feet from any public or private school or residential dwelling;
 4. new, non-replacement structures in the public rights-of-way outside any residential zoning district and not within 500 feet from any public or private school or residential dwelling;
 5. new, non-replacement structures in the public rights-of-way within general open space districts and not within 500 feet from any public or private school or residential dwelling; and
 6. new, non-replacement structures in the public rights-of-way within public and semi-public districts and not within 500 feet from any public or private school or residential dwelling.
 7. existing or replacement structures in the public rights-of-way and major arterial streets not within 125 feet of a residential dwelling;
 8. new, non-replacement structures in the public rights-of-way on major arterial streets not within 125 feet of a residential dwelling.
- B. General Development Standards.* All new wireless facilities and collocations, modifications or other changes to existing wireless facilities that require a PWF Use Permit under this chapter must conform to the generally applicable development standards in this section 16.91.7.b.
1. *Concealment.* All wireless facilities must be concealed to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses. In addition, wireless

facilities in the public rights-of-way may not unreasonably subject the public use, for any purpose including expressive or aesthetic purposes, to inconvenience, discomfort, trouble, annoyance, hindrance, impediment or obstruction.

2. *Overall Height.* All wireless facilities must be compliant with the maximum height limits applicable in the subject land use district; provided, however, that (1) completely stealth wireless facilities on private property in a preferred location may exceed the maximum height limit by not more than 10 feet; (2) concealed wireless facilities in the public rights-of-way on poles with electrical lines may exceed the maximum height limit by not more than the minimum separation from electrical lines required by CPUC General Order 95, plus four feet; and (3) concealed wireless facilities in the public rights-of-way on poles without electrical lines may exceed the maximum height limit by not more than four feet.
3. *Setbacks.* Wireless facilities on private property must be compliant with all setback requirements applicable in the subject land use district.
4. *Noise.* Wireless facilities and all transmission equipment must comply with all noise regulations and shall not exceed, either individually or cumulatively, such regulations. The approval authority may require the applicant to incorporate appropriate noise-baffling materials and/or strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations.
5. *Landscaping.* All wireless facilities must include landscape features and a landscape maintenance plan when proposed to be placed in a landscaped area. The approval authority may require additional landscape features to screen the wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the concealment required under this section. All plants proposed or required must be native and/or drought-resistant.
6. *Site Security Measures.* Wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. All wireless facilities shall be constructed from graffiti-resistant materials. The approval authority may require additional concealment elements as the approval authority finds necessary to blend the security measures and other improvements into the natural and/ or built environment. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures.
7. *Backup Power Sources.* The approval authority may not approve permanent backup power sources within the public rights-of-way that emit noise or exhaust fumes.
8. *Lights.* Wireless facilities may not include exterior lights other than as may be required under FAA, FCC, other applicable governmental regulations or applicable pole owner policies related to public or worker safety. All exterior lights permitted or required to be installed must be installed in locations and within enclosures that mitigates illumination impacts on other properties to the maximum extent feasible. Any lights associated with the electronic equipment shall be appropriately shielded from public view. The provisions in this subsection shall not be interpreted to prohibit installations on street lights or the installation of luminaires on new poles when required by the approval authority.
9. *Signage; Advertisements.* All wireless facilities must include signage that accurately identifies the equipment owner/operator, the wireless facilities specific identification

number, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.

10. *Future Collocations and Expansions.* To the extent feasible and aesthetically desirable, all new wireless facilities should be designed and sited in a manner that accommodates potential future collocations and equipment installations that can be integrated into the proposed wireless facility or its associated structures with no or negligible visual changes to the outward appearance. The approval authority may waive the requirements in this section 16.91.070.B.10 when the approval authority determines future collocations at a proposed wireless facility would be aesthetically undesirable.
11. *Utilities.* All cables and connectors for telephone, primary electric and other similar utilities must be routed underground to the extent feasible in conduits large enough to accommodate future collocated wireless facilities. To the extent feasible, undergrounded cables and wires must transition directly into the pole base without any external doghouse. Meters, panels, disconnect switches and other associated improvements must be placed in inconspicuous locations to the extent possible. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost. Microwave or other wireless backhaul is discouraged when it would involve a separate and unconcealed antenna.
12. *Compliance with Laws.* All wireless facilities must be designed and sited in compliance with all applicable federal, state and local laws, regulations, rules, restrictions and conditions, which includes without limitation the California Building Standards Code, Americans with Disabilities Act, General Plan and any applicable specific plan, the Ripon Municipal Code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
13. *Public Utility Consent.* Any wireless facilities placed on poles or structures owned by any public utility, including but not limited to Pacific Gas & Electricity, Modesto Irrigation District or South San Joaquin Irrigation District, shall require the written consent of such public utility and compliance with any terms and conditions imposed by said public utility.
14. *Public Safety.* All wireless facilities shall not interfere with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure or any other public health or safety facility. No person shall install, use or maintain any facilities, which in whole or in part rest upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facilities unreasonably interfere with or unreasonably impede the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted

street furniture or other objects permitted at or near the location where the wireless facilities are located.

- C. *Design Guidelines.* The Community Development Department shall develop design guidelines 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. The design guidelines shall provide more detailed standards to implement the general principals articulated in this section 16.91.070, and may include specific standards for particular wireless facilities or site locations, but shall not unreasonably discriminate between functionally equivalent service providers. The design guidelines, and any subsequent amendments, shall not be effective unless approved by a resolution adopted by the City Council

16.91.080 Notices

- A. *General Notice Requirements.* Except as provided in section 16.91.080.B, public notice in accordance with the applicable provisions of the Ripon Municipal Code shall be given for all applications for a PWF Use Permit governed under this chapter.
- B. *Deemed-Approval Notice.* Not more than 30 days before the applicable shot clock expires, and in addition to any public notice required prior to a decision, an applicant for a PWF Use Permit must provide a posted notice at the project site [each pole where tower attached - may want to clarify] that contains (1) a statement the project will be automatically deemed approved pursuant to California Government Code § 65964.1 unless the City approves or denies the application or the applicant voluntarily agrees to toll the timeframe for review within the next 30 days; (2) a general description for the proposed project; (3) the applicant's name and contact information as provided on the application submitted to the City; and (4) contact information for the Community Development Department. The public notice required under this section 16.91.080.B will be deemed given when the applicant delivers written notice to the Community Development Department that shows the appropriate notice has been posted on each pole at the project site. Notwithstanding anything to the contrary in this chapter, the approval authority shall be permitted to act on an application for a PWF Use Permit at any time so long as any applicable prior public notice in this section 16.91.080 has occurred.
- C. *Decision Notice.* Within five calendar days after the approval authority acts on a PWF Use Permit application governed under this chapter or before the shot clock expires (whichever occurs first), the approval authority or its designee shall send a written notice to the applicant. In the event that the approval authority denies the application (with or without prejudice), the written notice to the applicant shall contain (1) the reasons for the decision and (2) instructions for how and when to file an appeal.

16.91.090 Decisions and Appeals

- A. *Required Findings.* The approval authority may approve or conditionally approve an application for a PWF Use Permit submitted under this chapter when the approval authority finds all of the following:
1. the approval authority can make all the findings required for a Use Permit in accordance with Ripon Municipal Code § 16.76.070; and

2. the proposed wireless facility complies with all applicable development standards in section 16.91.070 and any applicable provisions in the City's design guidelines; and
 3. the applicant has demonstrated that its proposed wireless facility will be in compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and
 4. 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 to identify and evaluate more-preferred alternative locations through a meaningful comparative analysis; and
 5. the applicant has provided the approval authority with a meaningful comparative analysis that shows all more-preferred alternative designs identified in the administrative record are either technically infeasible or unavailable.
- 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 PWF Use Permit 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 Ripon Municipal Code and/ or this chapter.
- C. Limited Exception.* In the event that an applicant claims that strict compliance with the development standards in section 16.91.070 would effectively prohibit the applicant's ability to provide personal wireless services, the Planning Commission may grant a limited exception from such requirements in accordance with this section 16.91.090.C.
1. *Required Findings for a Limited Exception.* The Planning Commission shall not grant any limited exception unless the applicant shows that:
 - a. the proposed wireless facility qualifies as a "personal wireless service facility" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended or superseded;
 - b. the applicant has provided the Planning Commission with a reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility;
 - c. the applicant has provided the Planning Commission with a written statement that contains a detailed and fact-specific explanation as to why the proposed wireless facility cannot be deployed in compliance with the applicable provisions in this chapter;
 - d. the applicant has provided the Planning Commission with a meaningful comparative analysis with the factual reasons why all alternative locations and/ or designs identified in the administrative record (whether suggested by the applicant, the City, public comments or any other source) are not technically feasible or potentially available to reasonably achieve the applicant's reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility; and
 - e. the applicant has demonstrated to the Planning Commission that the proposed location and design is the least noncompliant configuration that will reasonably achieve the applicant's reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility, which includes without limitation a meaningful comparative analysis into multiple smaller or less intrusive wireless facilities dispersed throughout the intended service area.

2. *Scope.* Any limited exception shall be narrowly tailored to ensure that any deviations from the development standards in section 16.91.070 are no greater than necessary to avoid an effective prohibition of the applicant's personal wireless services. Limited exceptions shall be based on the facts and circumstances of the applicant, its demonstrated technical service objectives at the time the exception is granted and the proposed wireless facility, and shall not be deemed to establish any precedent for similar deviations for the same or any other applicant, location or wireless facility.
- D. *Appeals.* Within ten (10) days after the approval authority approves or denies any application for a PWF Use Permit, any interested person may file an appeal for cause in accordance with the provisions in Ripon Municipal Code §16.08.060; provided, however, that appeals from an approval shall not be permitted when based solely on the environmental effects from radio frequency emissions that are compliant with applicable FCC regulations and guidelines.

16.91.100 **Standard Conditions**

- A. *Conditions Adopted by City Council Resolution.* The City Council may, either on its own motion or upon a recommendation from the Community Development 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 Ripon Municipal Code and/or this chapter.

16.91.110 **Temporary Wireless Facilities**

- A. *Non-Emergency Temporary Wireless Facilities.* Except as provided in section 16.91.110.B, the requirements, procedures and standards in this section shall be applicable to all applications for a Temporary Use Permit for a temporary wireless facility.
1. *Administrative Review.* A duly filed application shall be reviewed for completeness. After the Community Development Director deems the application complete, the Community Development Director shall review the application for conformance with the required findings 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.
 2. *Required Findings.* The Community Development Director may approve or conditionally approve a Temporary Use Permit for a temporary wireless facility only when the Community Development Director finds:
 - a. the proposed temporary wireless facility will not exceed the overall zone height

- limit of the zoning district in which it is located;
 - b. the proposed temporary wireless facility complies with all setback requirements applicable to the proposed location;
 - c. the proposed temporary wireless facility will not involve any excavation or ground disturbance;
 - d. the proposed temporary wireless facility will be compliant with all generally applicable public health and safety laws and regulations, which include without limitation maximum permissible exposure limits for human exposure to RF emissions established by the FCC;
 - e. the proposed temporary wireless facility will not create any nuisance or violate any noise limits applicable to the proposed location;
 - 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;
 - g. the proposed wireless temporary wireless facility will be removed within 30 days after the Community Development Director grants the temporary use permit, or such longer time as the Community Development Director finds reasonably related to the applicant's need or purpose for the temporary wireless facility (but in no case longer than one year); and
 - h. the applicant has not been denied an approval for any permanent wireless facility in substantially the same location within the previous 365 days.
3. *Appeals.* Any applicant may appeal the' Community Development Director's written decision to deny an application for a Temporary Use Permit for a temporary wireless facility. The written appeal together with any applicable appeal fee must be tendered to the City within 10 days from the Community Development Director's written decision, and must state in plain terms the grounds for reversal and the facts that support those grounds. The City Administrator shall be the appellate authority. The City Administrator shall issue a written decision that contains the reasons for the decision, and such decision shall be final and not subject to any further administrative appeals.
- B. *Emergency Temporary Wireless Facilities.* Temporary wireless facilities may be placed and operated within the City without a Temporary Use 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 must be removed within five days after the date the emergency is lifted. Any person or entity that places temporary wireless facilities pursuant to this section 16.91.110.B must send a written notice that identifies the site location and person responsible for its operation to the Community Development Director as soon as reasonably practicable under the circumstances.

16.91.120 Fees

The applicant shall be responsible for the payment of the following fees in connection with any approved project under this Chapter, which fees are presumed to be in compliance with 14

U.S.C. Sections 253 and 332(c)(7):

1. \$500 for non-recurring fees, including a single up-front application that includes up to five Personal Wireless Facilities, with an additional \$100 for each Personal Wireless Facility beyond five, or \$1,000 for non-recurring fees for a new pole (whether approved under Chapter 16.90 or 16.91) intended to support one or more Personal Wireless Facilities; and
2. \$270 per Personal Wireless Facility per year for all recurring fees.
3. The fee amounts set forth in this Section 16.91.120 may be adjusted to such amounts as may be subsequently adopted as “presumptively reasonable” (which could include, but not be limited to, cost of living adjustments) by the Federal Communications Commission, by adoption of a resolution by the City Council.

16.91.130 **Special Provisions for Section 6409 Approvals**

- A. *Applicability.* Notwithstanding anything to the contrary in this chapter, this section 16.91.13 applies to all requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409. However, the applicant may voluntarily elect to seek a PWF Use Permit under section 16.91.5.
- B. *Additional Section 6409 Definitions.* In addition to the definitions in section 16.91.030, the abbreviations, phrases, terms and words used in this section 16.91.130 will have the following meanings assigned to them unless context indicates otherwise. Undefined phrases, terms or words in this section will have the meanings assigned to them in 47 U.S.C § 153, as may be amended from time to time and, if not defined therein, will have their ordinary meanings. 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. Collocation means the same as defined by the FCC in 47 CF.R. § 1.40001(b)(2), as may be amended.
 2. Eligible facilities request means the same as defined by the FCC in 47 CP.R. § 1.40001(b)(3), as may be amended.
 3. Eligible support structure means the same as defined by the PCC in 47 CP.R. § 1.40001(b)(4), as may be amended.
 4. Existing means the same as defined by the PCC in 47 CF.R. § 1.40001(b)(4), as may be amended.
 5. Site means the same as defined by the FCC in 47 CP.R. § 1.40001(b)(6), as may be amended.
 6. Substantial change means the same as defined by the FCC in 47 CP.R. § 1.40001(b)(7), as may be amended.
- C. *Required Approval.* Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted with a written request for approval under Section 6409 shall require an approval in such form determined by the Community Development 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 amendment a “section 6409 approval”). Each section 6409 approval shall be subject to the Community Development Director’s approval, conditional approval or

denial without prejudice pursuant to the standards and procedures in this section 16.91.130. However, the applicant may voluntarily elect to seek a major or minor wireless permit subject to the general standards and procedures in this chapter.

D. Decisions; Appeals.

1. *Administrative Review.* The approval authority shall review a complete and duly filed application for a section 6409 approval, and may act on such application without prior notice or a public hearing.
2. *Decision Notices for Denials.* In the event that the approval authority denies the application, the written notice to the applicant must contain (1) the reasons for the decision; (2) a statement that denial will be without prejudice; and (3) instructions for how and when to file an appeal.
3. *Required Findings for Approval.* The approval authority may approve or conditionally approve an application any application for a section 6409 approval when the approval authority finds that the proposed project:
 - a. is an eligible facility for processing and approval pursuant to section 6409; and
 - b. involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
 - c. does not substantially change the physical dimensions of the existing wireless tower or base station.
4. *Criteria for Denial without Prejudice.* Notwithstanding any other provision in this chapter, and consistent with all applicable federal laws and regulations, the approval authority may deny without prejudice any application for a section 6409 approval when the approval authority finds that the proposed project:
 1. does not meet the findings required in section 16.91.130.D.3;
 2. involves the replacement of the entire support structure; or
 3. 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 16.91.130 is intended to limit the approval authority's authority to conditionally approve an application for a section 6409 approval to protect and promote the public health and safety.
6. *Appeals.* Any applicant may appeal the approval authority's written decision to deny without prejudice an application for section 6409 approval. The written appeal together with any applicable appeal fee must be tendered to the City Clerk within ten calendar days from the approval authority's written decision, and must state in plain terms the grounds for reversal and the facts that support those grounds. The City Administrator shall be the appellate authority for all appeals from the approval authority's written decision to deny without prejudice an application for section 6409 approval. The City Administrator shall review the application de novo without notice or a public hearing; provided, however, that the City Administrator's decision shall be limited to only whether the application should be approved or denied in accordance with the provisions in this section 16.91.130 and any other applicable laws. The City Administrator shall issue a written decision that contains the reasons for the decision, and such decision shall be final and not subject to any further administrative appeals.

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA). The City Council hereby finds that the adoption of this Ordinance does not constitute the approval of a “project” under the California Environmental Quality Act (CEQA) pursuant to section 15060(c)(2) and (3), 15061(b)(3), 15262, and 15378 of the State of California CEQA Guidelines. Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment because it does not authorize the construction of any new structures or other physical changes to the environment.

SECTION 4. PUBLICATION AND EFFECTIVE DATE. The City Clerk shall have a summary of this ordinance published twice in a newspaper of general circulation, once within five (5) days before its adoption and once within 15 (fifteen) days after adoption. This ordinance shall become effective 30 days after adoption.

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Ripon City Council hereby declares that they would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases was declared invalid.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Ripon this 12th day of March, 2019, by the following vote:

RESULT: FIRST READING ADOPTED [UNANIMOUS]

MOVER: Dean Uecker, Council Member

SECONDER: Jake Parks, Vice Mayor

AYES: Restuccia, Uecker, de Graaf, Parks, Zuber


**THE CITY OF RIPON,
A Municipal Corporation**

By


LEO ZUBER, Mayor

ATTEST:

By:


LISA ROOS, City Clerk