

**ORDINANCE NO. 365**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SARATOGA  
AMENDING CITY CODE ARTICLE 15-44 RELATED TO WIRELESS  
COMMUNICATION FACILITIES REGULATIONS**

The City Council of the City of Saratoga finds that:

1. The next generation of wireless technology increasingly being deployed is typically referred to as “small cells”;
2. Generally, the term “small cell” refers to the smaller coverage area of the wireless signal rather than traditional macro-cell tower that can cover miles in each direction;
3. Small cell facilities are often proposed to be attached to existing utility poles in the public right-of-way;
4. The Federal Communications Commission (FCC) issued Declaratory Ruling and Third Report and Order; FCC 18-133, adopted September 25, 2018 which places limitations on the City of Saratoga to regulate small cells including shot clocks for acting on applications;
5. The City’s existing wireless regulations do not address the limitations in FCC-133;
6. The proposed revisions to Article 15-44 (Wireless Telecommunications Facilities) include a streamlined process to review and approve small cell facilities on existing utility poles in the public right-of-way which include the issuance of an Encroachment Permit from the Public Works Department and a Building Permit from the Building Division of the Community Development Department.
7. The Planning Commission of the City of Saratoga considered the attached ordinance at their meeting of September 11, 2019 and recommended that the City Council approve the proposed amendments to City Code Article 15-44 subject to certain amendments.
8. The City Council of the City of Saratoga held a duly noticed public hearing on September 18, 2019 and after considering all testimony and written materials provided in connection with that hearing introduced this ordinance and waived the reading thereof. The City Council adopted this ordinance after a second reading was waived at a duly noticed public meeting on October 2, 2019.

Therefore, the City Council of the City of Saratoga does ordain as follows:

**Section 1. Adoption.**

The Saratoga City Code is hereby amended as set forth in Attachment A.

**Section 2. California Environmental Quality Act.**

Pursuant to the California Environmental Quality Act (“CEQA”), this action to update the City Code regarding Wireless Telecommunications Facilities is exempt from CEQA. This ordinance is exempt under California Code of Regulations, Title 14, Section 15061(b)(3) which provides that CEQA applies only to projects which have the potential of causing a significant effect on the environment, and that where, as here, it can be seen with certainty that there is no reasonable possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

**Section 3. Severance Clause.**

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause, and phrase of this ordinance is severable and independent of every other section, sub-section, sentence, clause, and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause, or phrase is held invalid, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of the portion held invalid and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated.

**Section 4. Publication.**

A summary of this Ordinance shall be published in a newspaper of general circulation of the City of Saratoga within fifteen days after its adoption.

[Continued on Next Page]

Following a duly noticed public hearing, the foregoing ordinance was introduced at the regular meeting of the City Council of the City of Saratoga held on September 18, 2019 and was adopted by the following vote on October 2, 2019:

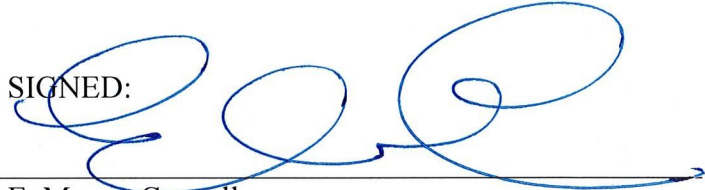
AYES: Mayor E. Manny Cappello, Vice Mayor Howard Miller, Council Members Mary-Lynne Bernald

NOES: Council Member Rishi Kumar and Yan Zhao

ABSENT:

ABSTAIN:

SIGNED:



E. Manny Cappello  
MAYOR, CITY OF SARATOGA, CALIFORNIA


ATTEST:



Debbie Bretschneider  
CITY CLERK

DATE: 10/3/2019

APPROVED AS TO FORM:



Richard Taylor  
CITY ATTORNEY

DATE: 10/2/19

**Exhibit A – An Ordinance Adopting Amendments to the City Code  
Related to Wireless Telecommunications Facilities**

*The sections of the Saratoga City Code as set forth below are amended as follows:*

*Text added to existing provisions is shown in bold double-underlined text (**example**) and text to be deleted is shown in strikethrough (~~example~~). Text in italics is explanatory and is not an amendment to the Code.*

**15-44.010 Purpose of Article.**

This Article establishes regulations pertaining to permitting requirements for wireless telecommunications facilities in all zones within the City. These regulations are designed to protect and promote public health, safety, community welfare and the aesthetic quality of the City as set forth within the goals, objectives and policies of the City's General Plan.

**15-44.015 Definitions.**

~~(a) **Wireless Telecommunications Facilities** includes any cables, wires, lines, wave guides, antennas, nodes, microwave dishes and any other equipment or facilities associated with the transmission or reception of communications as authorized by the FCC which an entity seeks to locate or has installed upon a tower or antenna support structure.~~

~~(a)~~ **(b) Antenna support structure** includes a building or other structure other than a tower which can be used for location of Wireless Telecommunications Facilities **“Antenna Support Structure” is any structure including a utility pole, mast, or tower, whether freestanding or mounted on another structure, that supports an antenna or an array of antennas used to transmit and/or receive electromagnetic communications signals. The height of an antenna support structure is measured to the highest point of any antenna mounted thereon, or to the antenna structure supporting the antenna, whichever is higher.**

**(be) Collocation.** **“Collocation”** is the use of a Wireless Telecommunications Facility, or tower or location, by more than one wireless telecommunications provider **which conforms to the following:**

**(a) Mounting or installing an antenna facility on an existing antenna support structure; and/or**

**(b) Modifying an antenna support structure for the purpose of mounting or installing an antenna facility on that antenna support structure.**

(c) Small Wireless Facilities. “Small wireless facilities” are facilities as defined in 47 C.F.R Section 1.6002(l) that meet all of the following conditions:

(1) The facilities:

(a) Are mounted on structures fifty feet or less in height including their antennas; or

(b) Are mounted on structures no more than ten percent taller than other adjacent structures; or

(c) Do not extend existing structures on which they are located to a height of more than fifty feet or by more than ten 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 on the structure, is no more than twenty-eight cubic feet in volume;

(4) The facilities do not require antenna structure registration under 47 C.F.R. Part 17;

(5) The facilities are not located on tribal lands; and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. section 1.1307(b),

(d) **Stealth.** “Stealth” means a wireless telecommunication facility that is architecturally integrated into a building or other concealing structure, such that no portion of any antenna, antenna equipment, or any other apparatus associated with the function of the facility is visible.

~~(e) **Tower** means a vertical framework of cross elements, which supports either an antenna, mast or both.~~

(e) Wireless Telecommunication Facility. “Wireless telecommunication facility” is any device or system for the transmitting and/or receiving of electromagnetic signals, including but not limited to radio waves and microwaves, for cellular technology, personal wireless services, mobile services, paging systems and related technologies. Facilities include antennas, microwave dishes, parabolic antennas and all other types of equipment used in the transmission and reception of such signals; structure for the support of such facilities, associated buildings and cabinets to house support equipment and other accessory improvements. Unless the context indicates otherwise, a wireless communication facility shall include small wireless facilities. A television or radio antenna, when accessory to a principal or conditional use, shall not be considered a wireless communication facility.

#### **15-44.020 Required Approvals**

**(a) Small wireless facilities on existing utility poles. A building permit or encroachment permit shall be issued ministerially for a small wireless facility to be located on an existing wooden utility pole within the public right-of-way if the small wireless facility conforms to all of the development standards prescribed in Section 15-44.025.**

#### **15-44.020—Requirement for design review; public hearing.**

**(a) Wireless Telecommunications Facility. Except as authorized by subsection 15-44.020(a), above, no** building permit shall be issued for the construction of a Wireless Telecommunications Facility, **with the exception of a small wireless facility subject to subsection (a) above,** or the modification of an existing Wireless Telecommunications Facility, within any zoning district until such structure has received design review approval by the Planning Commission pursuant to this Article **Section 15-44.030**. The Community Development Department may specify application requirements to provide sufficient information for decision makers to make the design review findings.

**(b)** A public hearing on the application for a Wireless Telecommunications Facility under this Article **subsection 15-44.020(b), above,** shall be required. Notice of the public hearing shall be given not less than ten days nor more than thirty days prior to the date of the hearing by mailing, postage paid, a notice of the time and place of the hearing to the applicant and to all persons whose names appear on the latest available assessment roll of the County as owning property within five hundred feet of the boundaries of the site.

#### **15-44.025 Development Standards for locating Small Wireless Facilities subject to 15-44.020(a).**

**(a) Located on an existing wooden utility pole within the public right-of-way.**

**(b) The height of the utility pole and the antenna may not exceed a height of fifty feet. Utility pole height is measured from existing grade to the top of the antenna or top of highest pole attachment, whichever is greater.**

**(c) Only one small wireless facility is permitted on each wooden utility pole.**

**(d) Equipment, antennas, poles, cables, and hardware shall have a non-reflective finish and be painted or otherwise treated to match the color of the utility pole to which it is mounted.**

**(e) The antenna shall be shrouded and centered at the top of the pole. The diameter of the shroud shall not exceed the diameter of the top of the pole. Antennas shall not be mounted on the side.**

**(f) Antennas shall extend no higher than 48” above the maximum separation from supply lines required by California Public Utilities Commission (CPUC) General Order 95, exclusive of the required mounting bracket.**

**(g) All equipment is to be flush mounted and located entirely on the pole in a vertical arrangement. Flush mounted shall mean a maximum of 4-inch offset between the pole and the equipment. Small cell facility related accessory equipment shall not collectively exceed 9 feet cubic feet in overall volume. The maximum width of the equipment is expected to be approximately the same width (diameter) as the support pole. No equipment shall be ground mounted.**

**(h) Conduit/cables shall be flush mounted to the pole and covered.**

**(i) Installations shall fully comply with the CPUC general orders (GOs), including, but not limited to, GO 95.**

**15-44.02530 Design review findings .**

The Planning Commission shall not grant design review approval unless it is able to make the following findings.

(a) That the Wireless Telecommunications Facility is or can be co-located with another Wireless Telecommunications Facility located on a structure or an existing utility pole/tower in the public right-of-way unless the applicant has demonstrated that such location is not technically or operationally feasible.

(b) That the Wireless Telecommunications Facility and related structures incorporate architectural treatments and screening to substantially include:

- (1) Appropriate and innovative stealth design solutions;
- (2) Techniques to blend with the surrounding environment and predominant background;
- (3) Colors and materials that are non-reflective;
- (4) Exterior textures to match the existing support structure or building; and
- (5) Reasonably compatible height with the existing surrounding environment.

(c) That landscaping and fencing provide visual screening of the Wireless Communication Facility's ground-mounted equipment, related structures, and that fencing material is compatible with the image and aesthetics of the surrounding area.

**15-44.030 Expiration of design review approval.**

Design review approval granted pursuant to this Article shall expire thirty-six months from the date on which the approval became effective, unless prior to such expiration date a building permit is issued, and construction commenced. If such building permit expires, and the Building Official does not renew the building permit within one hundred eighty days after expiration, the design review approval shall expire.

**15-44.035 Exemptions.**

The following telecommunications facilities are exempt from the design review requirements set forth in this Article:

- (a) Satellite dish antenna.
- (b) Licensed amateur radio station antenna.
- (c) Government-owned and operated telecommunications facilities.
- (d) Wireless communications facilities exempted from this Article by Federal or State law.

**(e) Small wireless facilities permitted pursuant to Section 15-44.020(a).**

**15-44.040 Appeals to City Council.**


A decision or determination made by the Planning Commission under this Article may be appealed to the City Council in accordance with the procedure set forth in Article 15-90 of this Chapter.

**End of Amendments**

1160696.1





  
Debbie Bretschneider, City Clerk