



AGENDA
CITY OF SEASIDE
PLANNING COMMISSION

VIRTUAL ONLY
SPECIAL MEETING
Wednesday, October 28, 2020
7:00 PM

This meeting is compliant with Governor Newsom's Executive Order N-29-20 which allows local legislative bodies to hold public meetings electronically only, without a physical location for public participation, accessible only telephonically or otherwise electronically (video conferencing) to all members of the public seeking to observe and address the local legislative body, in order to avoid public gatherings, and until further notice.

REMOTE PUBLIC COMMENTS To make a public comment, the following options are available:

- Before the Meeting via Email: Written comments can be emailed to CityClerk@ci.seaside.ca.us Include the following subject line: "Public Comment Item # (insert the agenda item number relevant to your comment). Written comments must be received by 5:00 p.m. on the day of the meeting. All submitted comments will be provided to the City Council or the Board for consideration, compiled as part of the record, and may be read into the record.
- During the Meeting via Oral Comments: When the Chair calls for public comment, attendees can queue to speak with the "Raise Hand" feature. On the Zoom application, click the "Raise Hand" button. On the phone, press *9. The Secretary to the Board will call speaker names and unmute speaker microphones. You will have up to 2 minutes to provide your comments, with time set by the discretion of the Mayor. Please note, if you chose to make comments orally, your written comments will not be read but will be included in the final record.

In an effort to ensure the virtual process closely follows our normal process, public comment will be accepted in writing during the meeting, but may not be read into the record during the meeting, but will be included as part of the final administrative record. Please do not plan to use the chat or Q&A features to put a comment on record. These resources are for tech support only

1. CALL TO ORDER

A. VIRTUAL MEETING INFORMATION

This meeting can be watched via the City of Seaside You Tube Channel <https://bit.ly/SeasideYouTube>

Or by joining the webinar: <https://us02web.zoom.us/j/83424069963>

Call in Phone Number: (669) 900-9128
Webinar ID: 825 9694 8197

2. ROLL CALL - ESTABLISHMENT OF QUORUM

3. PLANNING COMMISSION

John Owens	Chair
Michael Spalletta	Vice Chair
Keith Dodson	Commissioner
Arlington La Mica	r
Dave Evans	Commissioner
William Silva	r
Danny Huynh	Commissioner
	r
	Commissioner
	r
	Commissioner
	r

4. REVIEW OF AGENDA

If there are any items that arose after the 72-hour posting deadline, this is the point in the meeting where a vote may be taken to add the item to the agenda. (A 2/3-majority vote is required).

5. PUBLIC COMMENT

Members of the public wishing to address the Board on matters within the jurisdiction of the City of Seaside, but not on this agenda, may do so during the Public Comment period for up to two (2) minutes. Public Comments on specific agenda items are heard under that item. For the public record, please state your name.

6. APPROVAL OF MINUTES

A. September 23, 2020

7. BUSINESS ITEMS

A. SEASIDE MUNICIPAL CODE AMENDMENT SMA-20-06: INTRODUCTION OF AN *AMENDED* ORDINANCE FOR REVIEW AND RECOMMENDATION TO CITY COUNCIL AMENDING SEASIDE MUNICIPAL CODE CHAPTER 17.55: REGULATIONS FOR SMALL CELL WIRELESS AND ASSOCIATED UPDATES TO THE CITY'S FEE SCHEDULE

RECOMMENDATION: Review and approve the attached Resolution (Attachment 1) recommending approval of the Draft Small Cell Ordinance (Attachment 2) adopting *amended* Chapter 17.55 (Attachment 3 – Exhibit A) to establish reasonable, uniform, and comprehensive standards and procedures for small cell wireless facilities with the City and address cost recovery associated with small cell wireless facility permit application, including recouping fees for City-hired independent experts and outside consulting fees (Attachment 4 – Exhibit B).

B. STUDY SESSION: COMMISSION STUDY SESSION REGARDING DRAFT CODE AMENDMENTS TO SEASIDE MUNICIPAL CODE SECTION 17.30.020: FENCES, WALLS, HEDGES AND SCREENING

RECOMMENDATION: The purpose of this study session is for the Commission to provide guidance and feedback to staff regarding the draft code amendments for fences, walls, hedges and screening regulations.

It is recommended the Commission provide direction on various elements of the draft amendments.

8. REPORTS FROM COMMISSIONERS

9. REPORTS FROM STAFF

10. ADJOURNMENT

Next Regularly Scheduled Meeting:

TBD

Seaside City Hall

TBD

The City of Seaside is committed to providing accessible facilities and accommodating people with disabilities in all of its services programs and activities. If special considerations are needed by any person to fully participate in this meeting, contact the City Clerk at 899-6707 no fewer than two business days prior to the meeting to allow reasonable arrangements. Agendas are posted at:
<http://www.ci.seaside.ca.us/129/City-Council-Committee-Agendas>

Agenda-related writings or documents provided during public meetings are available for public inspection during the meeting or from the office of the City Clerk. This agenda is posted in compliance with California Government Code Section 54954.2(a) or Section 54956.



DRAFT MINUTES

CITY OF SEASIDE
PLANNING COMMISSION

REGULAR MEETING
COUNCIL CHAMBER

Wednesday, September 23, 2020
7:00 PM

1. CALL TO ORDER

A. VIRTUAL MEETING INFORMATION

2. ROLL CALL - ESTABLISHMENT OF QUORUM

3. PLANNING COMMISSION

PRESENT: Evans, Huynh, La Mica, Owesn, Silva, Spalletta
ABSENT: Dodson

4. REVIEW OF AGENDA

No changes.

5. PUBLIC COMMENT

None.

6. APPROVAL OF MINUTES

None.

7. BUSINESS ITEMS

A. BOARD OF ARCHITECTURAL REVIEW APPLICATION NO. BAR-20-10 AND USE PERMIT UP-20-08. CARY JONES, APPLICANT AND PROPERTY OWNER, IS REQUESTING APPROVAL FOR A RESIDENTIAL REMODEL AND ADDITION TO AN EXISTING SINGLE-STORY SINGLE FAMILY RESIDENCE LOCATED AT 1289 VALLEJO STREET IN THE SINGLE-FAMILY RESIDENTIAL (RS-12) ZONING DISTRICT. TWO PERMIT APPROVALS ARE REQUIRED FOR THE PROJECT: ARCHITECTURAL REVIEW APPROVAL (BAR-20-10) FOR A 489 SQUARE FOOT FIRST FLOOR

ADDITION, WHICH INCLUDES A 282 SQUARE FOOT GARAGE ADDITION TO ACCOMMODATE A REQUIRED SECOND PARKING SPACE, A 125 SQUARE FOOT DECK, AND A 680 SQUARE FOOT SECOND STORY ADDITION WITH A 152 SQUARE FOOT DECK; AND USE PERMIT APPROVAL (UP-20-08) FOR THE PROPOSED SECOND STORY DECK WHICH PROJECTS 5'6" INTO THE REQUIRED REAR YARD SETBACK.

THE PROJECT IS CATEGORICALLY EXEMPT CLASS 1, SECTION 15301(E), FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Associate Planner Morrison presented the item indicating that a use permit was required due to the requirement for a second story addition to a single family residence. She spoke to the design details of the proposed addition including elevations, frontage, height, layout and impacts to adjoining property owners, and materials proposed. Staff further explained that this application is consistent with all required ministerial approved elements, with the exception of the three-foot deck projection into the rear yard setback, added as a design element. She noted that due to the grade differential, the second story will not impact the view shed of the adjacent properties, does not distract from the residential character and internal access to the deck. Ms. Morrison answered questions from the Commission.

On question, the applicant Architect answers questions of the Commissioner about the intent of the deck, privacy issues and choice of materials.

The Commissioners commended the design of the site, maximizing space and views while keeping balance with a second story element. The Commission liked the modern design, and believe the renovation will positively impact the neighborhood.

PUBLIC COMMENTS:

On motion by Commissioner Silva, seconded by Commissioner La Mica and passed by the following vote, the Planning Commission approved BAR application 20-10 for the second story addition and expansion of the second floor. 6-0-1, Dodson absent.

On motion by Commissioner Silva, seconded by Commissioner La Mica and passed by the following vote, the Planning Commission approved Use Permit Application 20-08 for the extension of the deck. 6-0-1 Dodson absent

8. REPORTS FROM COMMISSIONERS

None.

9. REPORTS FROM STAFF

None.

10. ADJOURNMENT

On motion the meeting was adjourned at 7:59 pm.

Respectfully submitted,

Lesley Milton, City Clerk

John Owens, Chair



CITY OF SEASIDE STAFF REPORT

Item No.: 7.A.

TO: Planning Commission

BY: Dana Morrison

DATE: October 28, 2020

**SUBJECT: SEASIDE MUNICIPAL CODE AMENDMENT SMA-20-06:
INTRODUCTION OF AN *AMENDED* ORDINANCE FOR REVIEW
AND RECOMMENDATION TO CITY COUNCIL AMENDING
SEASIDE MUNICIPAL CODE CHAPTER 17.55: REGULATIONS
FOR SMALL CELL WIRELESS AND ASSOCIATED UPDATES TO
THE CITY'S FEE SCHEDULE**

PURPOSE & RECOMMENDATION

Review and approve the attached Resolution (Attachment 1) recommending approval of the Draft Small Cell Ordinance (Attachment 2) adopting *amended* Chapter 17.55 (Attachment 3 – Exhibit A) to establish reasonable, uniform, and comprehensive standards and procedures for small cell wireless facilities with the City and address cost recovery associated with small cell wireless facility permit application, including recouping fees for City-hired independent experts and outside consulting fees (Attachment 4 – Exhibit B).

BACKGROUND

The City's Urgency Small Cell Ordinance is due to expire at the end of November 2020. Minor amendments have been made to Chapter 17.55 which is meant to serve as the permanent Small Cell Wireless ordinance. While minor in nature, the City's counsel recommended returning the amended Small Cell Chapter 17.55 for full analysis and public review.

Consistent with the City Council's prior direction, staff is bringing forward a permanent Ordinance for review and adoption. The Small Cell Wireless Ordinance (Chapter 17.55), and associate fee schedule updates were review by the Planning Commission on August 26, 2020. On September 17, 2020, the City Council reviewed and introduced the Small Cell Wireless Ordinance (Chapter 17.55), waiving its first reading at the duly noticed public meeting. The Ordinance was schedule to return to Council for second

reading and adoption on October 1, 2020, however, comments from a wireless carrier provider were submitted to the City the afternoon of the scheduled hearing. To allow staff to properly review and address the comments, the item was pulled from agenda.

Staff worked with outside counsel to address the comments raised and minor amendments were made to Chapter 17.55, detailed in the section below.

AMENDED SMALL CELL WIRELESS ORDINANCE (CHAPTER 17.55)

The Small Cell Wireless Ordinance Chapter is intended to promote the community interest of protecting the City's visual character from potential adverse impacts from facilities while providing access to high quality advanced wireless technology for the City's residents, businesses, and visitors.

The amended Small Cell Wireless Ordinance is substantially similar to the document reviewed by the Planning Commission and City Council in August and September of 2020. Changes which have been are detailed below:

Page 4 – 17.55.030(b):

- Retained deposit fees for outside consultants and legal counsel.
- Removed reference to fee assessed as minor use permit, replaced with 'see Planning Fee Schedule'. Fee will now be assessed as 'Small Cell Permit' à \$500.

Page 5 – 17.55.040(b):

- Added language requiring any trust/deposit reimbursement agreement to include an obligation by the City to return any unused funds to the applicant.

Page 6 – 17.55.050(a)(2):

- Changed length of required reimbursement period from 10 days to 30 days.

Page 6 – 17.55.050(a)(3)(ii):

- Changed the radius in which applicant needs to identify all structures from 500 feet to 750 feet, to be consistent with Section 17.55.090(a) of Chapter 17.55.

Page 10 – 17.55.060(b):

- Added language whereby the Community Development Director may grant an extension for applications deemed withdrawn.

Page 10 – 17.55.060(c):

- Deleted #4 under batched applications. No longer negates ALL small cells in batched application, only those deemed to be inconsistent with the Chapter 17.55.

Page 11/12 – 17.55.070(c):

- Added language regarding subjective factors to evaluate aesthetic issues. Findings are taking from SMC17.62.070, findings for a Use Permit.

Page 17 – 17.55.080(a)(15):

- Added language regarding required maintenance of landscaping.
- Added language to permit payment of an in-lieu fee.

Page 19 – 17.55.080(b)(3):

- Changed length of required reimbursement period from 10 days to 30 days.

Page 21 – 17.55.090(f):

- Removed City owned traffic signals from prohibited support structure list.

Page 22 – 17.55.100(a)(3):

- Added language regarding required maintenance of landscaping.
- Added language to permit payment of an in-lieu fee.

Page 22 – 17.55.100(b)(1):

- Added language that small cell wireless facilities should be proposed at the lowest technically feasible height.
- Increased the allowed height above a support structure from 4 feet to 6 feet.

Page 23 – 17.55.100(b)(2):

- Added language to allow alternate concealment plans, as approved by the Community Development Director.
- Must present convincing evidence in the record as to why the preferred concealment requirements detailed in the section are infeasible.

Page 23 – 17.55.100(b)(3):

- Added language to allow ground mounting, as approved by the Community Development Director.
- Must present convincing evidence in the record as to why the preferred methods are infeasible.

Page 24 – 17.55.100(b)(3)(v):

- Added language to allow ground mounting, as approved by the Community Development Director.
- Must present convincing evidence in the record as to why the preferred methods are infeasible.

Page 25 – 17.55.100(b)(3)(vi):

- Changed permitted size for a small cell to from 9 cubic feet to 21 cubic feet in residential.
- Changed permitted size for a small cell to from 17 cubic feet to 28 cubic feet in non-residential.
- *Per FCC order any wireless facility over 28 cubic feet is not considered a small cell, but does not mean that the City has to approve Small Cells up to 28 cubic feet.*

Page 25 – 17.55.100(b)(4):

- Added language to allow alternate concealment plans, as approved by the Community Development Director.
- Must present convincing evidence in the record as to why the preferred concealment requirements detailed in the section are infeasible.

Page 26 – 17.55.100(b)(6):

- Increased permitted pole size diameter from 12 inches to 18 inches.
- Increased permitted base enclosure size diameter from 16 inches to 26 inches.
- Added language that size of pole must not impede pedestrian access as required by law.
- Added language to allow alternate concealment plans, as approved by the Community Development Director.
- Must present convincing evidence in the record as to why the preferred concealment requirements detailed in the section are infeasible.

Page 27/28 – 17.55.100(b)(13):

- Added language to allow ground mounting of electric meters, as approved by the Community Development Director.
- Must present convincing evidence in the record as to why the preferred methods are infeasible.

Page 28 – 17.55.100(b)(14):

- Added language regarding required maintenance of landscaping.
- Added language to permit payment of an in-lieu fee.

Page 29 – 17.55.100(3):

- Added language that in the event of an emergency proclamation, the City shall maintain the right to use an emergency supplement to reduce generator restrictions.

Page 29 – 17.55.100(c)(5):

- Added language to allow alternate concealment plans, as approved by the Community Development Director.
- Must present convincing evidence in the record as to why the preferred concealment requirements detailed in the section are infeasible.
- Removed repeated language regarding pole size.

ENVIRONMENTAL ASSESSMENT

The proposed code amendment is exempt from further environmental review in accordance with CEQA Guidelines section 15061(b)(3) because the it involves the adoption of regulations for small cell wireless facilities and does not directly or indirectly authorize or approve any actual physical changes in the environment.

SUMMARY/CONCLUSION

The City is seeking to complete full public review and analysis associated with the amended permanent Small Cell Wireless Ordinance in order to comply with the FCC regulations. Staff has worked with outside counsel to develop a flexible approach that preserves as much of the City's authority as possible while still achieving compliance. Staff recommends that the Planning Commission review and recommended approval of the proposed ordinance and fee schedule changes to the City Council by approval of the attached Resolution.

ATTACHMENTS

1. Attachment 1_PC Draft Resolution_Small Cell_10.28.2020
 2. Attachment 2_CC Draft Ordinance_Small Cell_10.28.2020
 3. Attachment 3 (Exhibit A)_Amended Small Cell Ord (Chapter 17.55)_10.28.2020
 4. Attachment 4 (Exhibit B)_Changes to Planning Fee Schedule_Small Cell_10.28.2020
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**PLANNING COMMISSION
DRAFT RESOLUTION NO.
20-XX**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SEASIDE,
CALIFORNIA RECOMMENDING ADOPTION OF A PERMANENT SMALL CELL
WIRELESS ORDINANCE (CHAPTER 17.55) REGULATING SMALL CELL
WIRELESS FACILITIES AND OTHER INFRASTRUCTURE DEPLOYMENTS IN
THE PUBLIC RIGHT-OF-WAY AND ADOPTING AN AMENDMENT TO THE 2020-
2021 FEE SCHEDULE TO ADDRESS COST RECOVERY ASSOCIATED WITH
SMALL CELL WIRELESS FACILITY PERMIT APPLICATIONS**

WHEREAS, on December 5, 2019, the City Council adopted a Small Cell Policy, which established reasonable, uniform and comprehensive standards and procedures for small cell wireless facilities and other infrastructure deployment on the public right-of-way, for the construction, installation, collocation, modification, operation, relocation and removal of such facilities within the City of Seaside's jurisdictional boundaries, consistent with and to the extent permitted under federal and California state law;

WHEREAS, in response to staff's evaluation and consideration of the proposed provision, the City Council desires to adopt a permanent Small Cell Wireless Facility Ordinance (Chapter 17.55) described in Attachment 3/Exhibit A with amended text italicized and underlined; and

WHEREAS, on October 28, 2020, the Planning Commission held a public hearing to review this Resolution and the associated permanent Small Cell Wireless Ordinance (Chapter 17.55) as well as the associated fee schedule amendments, at which the Commission received, reviewed, and considered the staff report, written and oral testimony from the public, and whereby the Commission recommended approval to the City Council;

NOW, THEREFORE, BE IT RESOLVED, THE CITY OF SEASIDE PLANNING COMMISSION HEREBY FINDS, DETERMINES, AND RESOLVES AS FOLLOWS:

1. **Findings.** The Planning Commission finds that: a) the facts set forth in the recitals in this Resolution are true and correct and incorporated by reference; b) the recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the action taken in this Resolution; c) the provisions in this Resolution and the proposed permanent Ordinance (Chapter 17.55) are consistent with the General Plan, Seaside Municipal Code and applicable federal and state law; and d) neither this Resolution nor the Ordinance and associated fee schedule amendments will be detrimental to the public interest, health, safety, convenience or welfare.

2. **Environmental Review.** The Planning Commission finds that, pursuant to CEQA Guidelines Section 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This Resolution recommend approval of a permanent Small Cell Wireless Facility Ordinance (Chapter 17.55) which regulates small cell wireless facilities and other infrastructure deployments. This Resolution does not directly or indirectly authorize any actual changes in the physical environment. If adopted by the City Council the Ordinance requires that applications for any new small wireless facility or other infrastructure deployment be subject to additional environmental review on a case-by-case basis. Accordingly, the Planning Commission finds that this Resolution is not subject to CEQA or, in the alternative, is exempt from CEQA under the general rule.

PASSED, APPROVED, AND ADOPTED on the 28th day of October, 2020, by the Planning Commission of the City of Seaside, State of California.

AYES:
NOES:
ABSENT:
ABSTAIN:

John Owens, Chairperson

ATTEST:

Lesley Milton, Assistant City Manager/City Clerk

DRAFT ORDINANCE NO. XXXX**AN ORDINANCE OF THE CITY OF SEASIDE****ADDING CHAPTER 17.55 OF THE SEASIDE MUNICIPAL CODE ESTABLISHING REGULATIONS FOR SMALL WIRELESS FACILITIES PURSUANT TO APPLICABLE FEDERAL LAWS AND ASSOCIATED UPDATES TO THE CITY'S FEE SCHEDULE****THE CITY COUNCIL OF THE CITY OF SEASIDE HEREBY ORDAINS AS FOLLOWS:**

SECTION 1. Findings. On November 5, 2020, the City Council introduced an ordinance and waived its first reading of this Ordinance at a duly noticed public meeting. On November 19, 2020 the City Council returned for a second reading and considered the adoption of this Ordinance at a duly noticed public meeting and on the basis of the record thereof finds the following facts to be true.

- a. Pursuant to Article XI, section 7 of the California Constitution and sections 36931 and following of the California Government Code, the City Council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and
- b. Significant changes in federal and State law that affect local authority over wireless communications facilities ("WCFs") have occurred, including but not limited to the following:
 1. On August 2, 2018, the Federal Communications Commission ("FCC") adopted a declaratory ruling that prohibits state and local governments from adopting temporary moratoria on telecommunications infrastructure deployment; and
 2. On September 26, 2018, the FCC adopted new rules that limit local authority to regulate "small wireless facilities" as that term is defined in 47 Code of Federal Regulations § 1.6002(l); and
 3. The FCC rules included a declaratory ruling and report and order, that, among other things, creates a new regulatory classification for small wireless facilities, requires State and local governments to process applications for small wireless facilities within 60 days or 90 days, establishes a national standard for an effective prohibition and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition; and
 4. The FCC rules became partially effective on January 14, 2019, and fully effective on April 15, 2019, would require the City of Seaside ("City") to review small cell applications consistent with the FCC's national standard for permissible local regulations; and
 5. On August 12, 2020, the United States Court of Appeals for the Ninth Circuit partially invalidated the FCC's rules, restoring local aesthetic discretion but upholding limitations on government fees and timelines for

permit application review; and

6. On September 28, 2020, municipalities from across the United States filed a petition for the Ninth Circuit to reconsider its decision to uphold the FCC's restrictions on government fees, but the Ninth Circuit has yet to accept or reject the petition.

- c. Given the rapid, significant and continuing changes in federal and State law, the actual and effective prohibition on moratoria to amend local policies in response to such changes and the significant adverse consequences for noncompliance with federal and state law, the City Council desires to add Seaside Municipal Code section 17.55, to allow greater flexibility and responsiveness to new federal and state laws in order to preserve the City's traditional authority to the maximum extent practicable (collectively, the "Amendments"); and
- d. The City is adopting a permanent Ordinance to establish reasonable, uniform and comprehensive standards and procedures for small cell wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's jurisdictional boundaries consistent with and to the extent permitted under federal and California State law.
- e. The City of Seaside intends to establish reasonable, uniform and comprehensive standards and procedures for small cell wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's jurisdictional boundaries, consistent with and to the extent permitted under federal and California state law. Such standards and procedures are intended to, and should be applied to, protect and promote public health, safety and welfare, and 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. It is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the City's visual character from potential adverse impacts and/or visual blight created or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the City's environmental resources; (4) protecting and preserving the City's public rights-of-way and municipal infrastructure located within the City's public rights-of-way; and (5) promoting access to high-quality, advanced wireless services for the County's residents, businesses and visitors.
- f. The Policies are 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 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 personal wireless 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 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 County to preempt any applicable federal or California law.

SECTION 2. Adding Seaside Municipal Code Chapter 17.55 and Associated Fee Schedule Changes. A new section Chapter 17.55 is added to the Seaside Municipal Code as shown in Exhibit A. Small Cell Permit Fees are added to the Planning Department section of the Seaside 2020-21 Fee Schedule as shown in Exhibit B.

SECTION 3. Term. This Ordinance will become effective thirty (30) days after its final passage in accordance with California Government Code section 36937. This Ordinance will remain effective until any repealing or superseding ordinance becomes effective.

SECTION 4. CEQA Finding. The City Council finds there is no possibility the adoption of this Ordinance will have a significant effect on the environment. This Ordinance merely amends the Seaside Municipal Code to authorize the adoption of regulations related to WCFs. This Ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new WCF or change to an existing WCF would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council finds that this Ordinance would be exempt from CEQA Guidelines at Title 14, Section 15061(b)(3) of the California Code of Regulations.

SECTION 5. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid or unenforceable.

SECTION 6. Conflicts with Prior Ordinances. If the provisions in this Ordinance conflict in whole or in part with any other City regulation or ordinance adopted prior to the effective date of this section, the provisions in this Ordinance will control.

SECTION 7. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

INTRODUCED, PASSED AND ADOPTED at a regular City Council meeting duly held on the 19th day of November, 2020 by the following vote:

AYES: COUNCIL MEMBERS
NOES: COUNCIL MEMBERS
ABSENT: COUNCIL MEMBERS
ABSTAIN: COUNCIL MEMBERS

APPROVED:

Ian N. Oglesby, Mayor

ATTEST:

Lesley Milton, Assistant City Manager/City Clerk

CHAPTER 17.55

SMALL CELL WIRELESS FACILITIES

SECTIONS:

17.55.010	PURPOSE AND INTENT
17.55.020	DEFINITIONS
17.55.030	APPLICABILITY; REQUIRED PERMITS AND APPROVALS
17.55.040	COSTS AND FEES
17.55.050	APPLICATION REQUIREMENTS
17.55.060	APPLICATION SUBMITTAL AND COMPLETENESS REVIEW
17.55.070	APPROVAL AND DENIALS; NOTICES
17.55.080	STANDARD CONDITIONS OF APPROVAL
17.55.090	LOCATION REQUIREMENTS
17.55.100	DESIGN STANDARDS

17.55.010. PURPOSE AND INTENT

- a) The City of Seaside intends this Chapter to establish reasonable, uniform and comprehensive standards and procedures for small cell wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's jurisdictional and 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, protect and promote public health, safety and welfare, and 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 the following:
- 1) ensuring that the balance between public and private interests is maintained;
 - 2) protecting the City's visual character from potential adverse impacts and/or visual blight created or exacerbated by small cell wireless facilities and related communications infrastructure;
 - 3) protecting and preserving the City's environmental resources;
 - 4) protecting and preserving the City's public rights-of-way and municipal infrastructure located within the City's public rights-of-way; and
 - 5) promoting access to high-quality, advanced wireless services for the City's Residents and 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 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 personal wireless 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 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.

17.55.020. GENERAL DEFINITIONS

a) **Undefined Terms.** Undefined phrases, terms or words in this section will have the meanings assigned to them in 1 U.S.C. § 1, as may be amended or superseded, and, if not defined therein, will have their ordinary meanings. If 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.

b) **Defined Terms.**

1. "antenna" means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded.
2. "arterial street" means a street designed to feed through-traffic to freeways, provide access to adjacent land uses - mostly at intersections - and feature traffic control measures. The term "arterial street" as used in this Chapter is defined in the City of Seaside General Plan, Circulation Element.
3. "collector street" means a street designed to provide access to adjacent land uses and feed local traffic to arterials. The term "collector street" as used in this Chapter includes collectors and residential collectors as defined in the City of Seaside General Plan, Circulation Element.
4. "collocation" means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded.
5. "Community Development Director" means the Community Development Director or his/her designee and shall be the City official responsible for reviewing applications for small cell permits and after Zoning Administrator permit approval, vested with the authority to make modifications to permit conditions as provided in this Chapter.
6. "concealed" or "concealment" means concealing techniques that integrate the transmission equipment into the surrounding natural and/or built environment

such that the average, untrained observer cannot directly view the equipment but would likely recognize the existence of the wireless facility or concealment technique. Camouflaging concealment techniques include but are not limited to:

- i. antennas mounted within a radome above a streetlight;
 - ii. equipment cabinets in the public rights-of-way painted or wrapped to match the background; and
 - iii. cables and wiring concealed within a shroud and/or routed internally through the support structure.
7. "decorative pole" means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.
8. "FCC" means the Federal Communications Commission or its duly appointed successor agency.
9. "FCC Shot Clock" means the presumptively reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended and superseded.
10. "ministerial permit" means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City's jurisdiction. Ministerial permits may include, without limitation, any building permit, construction permit, electrical permit, encroachment permit, excavation permit, traffic control permit and/or any similar over-the-counter approval issued by the City's departments.
11. "personal wireless services" means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.
12. "personal wireless services facilities" means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.
13. "RF" means radio frequency or electromagnetic waves
14. "Section 6409" means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act 012012, Pub.- L No. 112-96, 126 Stat 156, codified as 47 U.S.C. '§ 1.455(a), as may be amended or superseded.
15. "small cell wireless facility" or "small cell wireless facilities" means the same as defined by the FCC in 47 C.F.R. § 1.6002 as may be amended or superseded.
16. "tower" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(9), as may be amended or superseded.

17. "Zoning Administrator" means the Community Development Director or his/her designee and shall be the City official responsible for conducting the public hearing and other duties as provided in this Chapter

17.55.030. APPLICABILITY; REQUIRED PERMITS AND APPROVALS

- a) **Applicable Facilities.** Except as expressly provided otherwise in this Chapter, the provisions in this Chapter shall be applicable to all existing small cell wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy small cell wireless facilities within the public rights-of-way or on private property within the City's jurisdictional and territorial boundaries.
- b) **Small Cell Permit.** A "small cell permit," (*see Planning Department Fee Schedule*) subject to the Community Development Director's prior review and approval, is required for any small cell wireless facility proposed on an existing, new or replacement structure.
- c) **Request for Approval Pursuant to Section 6409.** Notwithstanding anything in the Chapter to the contrary, 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 subject to the current FCC rules and regulations "eligible facilities requests" as defined by FCC and as may be amended or superseded.
- d) **Other Permits and Approvals.** In addition to a small cell permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or other approvals issued by other City departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility must contain a valid small cell permit issued by the City for the proposed facility. Any application for any ministerial permit(s) submitted without such small cell permit may be denied without prejudice. Furthermore, any small cell permit granted under this Chapter shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals.

17.55.040. FEES AND COSTS

- a) **Fees and Deposits Submitted with Application(s).** For all Small Cell Wireless Facility applications, application fee(s) shall be required to be submitted with any application, as established by City Council resolution and in accordance with California Government Code Section 50030 and all other applicable laws and regulations. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a Small Cell Wireless Facility unless paid as a refundable deposit.
- b) **Costs.** Objectively reasonable costs of city staff, consultant and attorney time (including

that of the city attorney) pertaining to the review, processing, noticing and hearing procedures directly attributable to a Small Cell Wireless Facility shall be reimbursable to the City. To this end, the Community Development Director, as applicable, may require applicants to enter a trust/deposit reimbursement agreement, in a form approved by the city attorney, or other established trust/deposit accounting mechanism for purposes of obtaining an applicant deposit from which the direct costs of City processing of an application may be drawn-down; provided, however, that any such agreement shall include an obligation by the City to return any unused funds to the applicant upon the final decision by the City or withdrawal of the application by the applicant.

c) **Independent Expert.** The City Council authorizes the Community Development Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Community Development Director in connection with 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 application for wireless facilities which include without limitation:

- permit application completeness and/or accuracy , including performing a drive test or other form of reception testing to determine whether the proposed facility is necessary to achieve the applicant's objectives as may be required in order to determine the necessity of an exception;
- pre-construction planned compliance with applicable regulation human exposure to RF emissions;
- post-construction actual compliance with applicable regulations for human exposure to RF emissions;
- whether and to what extent a proposed project will comply with applicable laws;
- the applicability, reliability, and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusion about any issue with the City's discretion to review; and
- any other issue identified by the Directory that requires expert or specialized knowledge, including without limitation any issues related to an exception requested by the applicant

Until such a time as the City hires staff possessing specialized expertise described in this paragraph, the City generally may be required to hire an independent consultant in connection with any application. The Community Development Director may request that the independent consultant prepare written report, testify at public meetings, hearings and/or appeals and attend meetings with City staff and/or the applicant.

Subject to applicable law, 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 provide 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.

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 Community Development Director or his/her designee. If 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 encroachment permit to any applicant with any unpaid deposit requests or invoices.

17.55.050. APPLICATION REQUIREMENTS

- a) **Small Cell Permit Application Contents.** All applications for a small cell permit must include all the information and materials required in this Section 17.55.050(a).
- 1) **Application Form.** The applicant shall submit a complete, duly executed small cell permit application on the then-current form prepared by the Community Development Director.
 - 2) **Application Fee.** The applicant shall submit the applicable small cell permit application fee established in Section 17.55.040(a). Batched applications must include the applicable small cell permit application fee for each small cell wireless facility in the batch. If no small cell permit application fee has been established, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to reimburse the City for its reasonable costs incurred in connection with the application within 30 days after the City issues a written demand for reimbursement.
 - 3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholds, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must:
 - i. contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions;
 - ii. identify all structures within 750 feet from the proposed project site and call out such structures' overall height above ground level;
 - iii. the weight of all structures, antennae and other equipment placed upon the poles;

- iv. depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, hand-holes, junctions, transformers, meters, disconnect switches, and points of connection; and
 - v. demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.
- 4) **Site Survey.** For any small cell wireless facility; the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 50.0 feet from the proposed project site, which includes without limitation all:
- i. traffic lanes;
 - ii. all private properties and property lines;
 - iii. above and below-grade utilities and related structures and encroachments;
 - iv. fire hydrants, roadside call boxes and other public safety infrastructure;
 - v. streetlights, decorative poles, traffic signals and permanent signage;
 - vi. sidewalks, driveways, parkways, curbs, gutters and storm drains;
 - vii. benches, trash cans, mailboxes, kiosks and other street furniture; and
 - viii. existing trees, planters and other landscaping features.
- 5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small cell wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. At least one simulation must depict the small cell wireless facility from a vantage point approximately 50 feet from the proposed support structure or location.
- 6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a "small cell wireless facility" as defined by the FCC in 47 C.F.R. § 1.6002(/). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met-bare conclusions not factually supported do not constitute complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a "structure" as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a small cell permit as provided in Section 17.55.070(c).
- 7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance

report that certifies that the proposed small cell wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts effective radiated power) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

- 8) **Public Notices.** The applicant shall reimburse the City for the cost of preparing and mailing and posting public notices.
- 9) **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the small cell wireless facility proposed in the application.
- 10) **Pole License Agreement.** For any small cell wireless facility proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant shall submit an executed Pole License Agreement on a form prepared by the City that states the terms and conditions for such non-exclusive use by the applicant. At a minimum, the Pole License Agreement shall address equipment loading maximums and other public and emergency safety requirements. No changes shall be permitted to the City's Pole License Agreement except as may be indicated on the form itself. Any unpermitted changes to the City's Agreement shall be deemed a basis to deem the application incomplete. Refusal to accept the terms and conditions in the City's Agreement shall be an independently sufficient basis to deny the application.
- 11) **Title Report and Property Owner's Authorization.** For any small cell wireless facility proposed to be installed on any private property not owned or controlled by the City, the applicant must submit:
 - i. a title report issued within 30 days from the date the applicant filed the application; and
 - ii. if the applicant is not the property owner, a written authorization signed by the property owner identified in the title report that authorizes the applicant to submit and accept a small cell permit in connection with the subject property. For any small cell wireless facility proposed to be installed on a support structure in the public right-of-way, the applicant must submit a written authorization from the support structure owner(s).
- 12) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and

certified by an engineer licensed by the State of California for the proposed small cell wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer(s) that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable noise limits.

- b) **Additional Requirements.** 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 such requirements and materials must be in written form and publicly available to all interested parties.

17.55.060. APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

- a) **Requirements for a Duly Filed Application.** Any application for a small cell permit will not be considered duly filed unless submitted in accordance with the requirements in Section 17.55.060(a).
- 1) **Submittal Appointment.** All applications must be submitted to the City at a pre-scheduled appointment with the Community Development Director. Potential applicants may generally submit one application per appointment, or up to five individual applications per appointment for batched applications as provided in Section 17.55.060(d). Potential applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants for any other development project. The Community Development Director shall use reasonable efforts to offer an appointment within five working days after the Community Development Director receives a written request from a potential applicant. Any purported application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed, whether the City retains, returns or destroys the materials received.
 - 2) **Pre-Submittal Conferences.** The City strongly encourages, but does not require, potential applicants to schedule and attend a pre-submittal conference with the Community Development Director for all proposed projects that involve small cell wireless facilities. A voluntary pre-submittal conference is intended to streamline the review process through informal discussion between the potential applicant and staff that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if

applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, potential 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 draft applications or other materials may be incomplete or unacceptable. The Community Development Director shall use reasonable efforts to provide the potential 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.

- b) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, and to mitigate unreasonable delays or barriers to entry caused by chronically incomplete applications, any application governed under this Chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the Community Development Director within 60 calendar days after the Community Development Director deems the application incomplete in a written notice to the applicant. As used in this Section 17.55.060(c) a "substantive response" must include the materials identified as incomplete in the Community Development Director's notice. Notwithstanding anything in this Section to the contrary, upon a written request received prior to the 60th day, the Community Development Director may grant an extension to a date certain for good cause shown by the applicant, which includes without limitation delays caused by third parties or events outside the applicant's control.
- c) **Batched Applications.** Applicants may submit up to five individual applications for a small cell permit in a "batch" to be reviewed together at the same time; provided, however, that:
 - 1) all small cell wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type;
 - 2) each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each application in the batch;
 - 3) if any individual application within a batch is deemed incomplete, the remaining applications in a batch shall still proceed in accordance with the applicable shot clock.
- d) **Additional Procedures.** The City Council authorizes the Community Development Director to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments with applicants, as the 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 all interested parties with prior notice.

17.55.070. APPROVALS AND DENIALS; NOTICES

- a) **Public Notice.** Within approximately 10 days after an application is received and prior to any approval, conditional approval or denial, the City shall mail public notice to all properties and record owners of properties within 300 feet from the project site. The notice shall also be posted in a publicly accessible area in or within close proximity to the proposed physical location of any facility. The notice must contain:
- 1) a general project description;
 - 2) the applicant's identification and contact information as provided on the application submitted to the City;
 - 3) contact information for the Community Development Director for interested parties to submit comments;
 - 4) a statement that the Zoning Administrator will act on the application at a public hearing but that any interested person or entity may appeal the Zoning Administrator's decision directly to the City Council; and
 - 5) a general statement that the FCC requires the City to take final action on small cell applications within 60 days or 90 days, depending on the nature of the proposed facility.
- b) **Administrative Review.** Not less than 10 calendar days after the public notice required in Section 17.55.070(a) sent, and not more than 29 calendar days after the application has been deemed complete, the Zoning Administrator shall approve, conditionally approve or deny a complete and duly filed small cell permit application at a public hearing.
- c) **Required Findings.** The Zoning Administrator may approve or conditionally approve a complete and duly filed application for a small cell permit when the Zoning Administrator finds:
- 1) the proposed project meets the definition for a "small cell wireless facility" as defined by the FCC;
 - 2) the proposed project would be in the most preferred location within 750 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(s) within 750 feet would be technically infeasible;
 - 3) the proposed project would not be located on a prohibited support structure identified in this Chapter;
 - 4) the proposed project would be on the most preferred support structure within 750 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 support structure(s) within 750 feet would be technically infeasible;
 - 5) the proposed project complies with all applicable design standards in this Chapter;
 - 6) the proposed use is consistent with the General Plan and any applicable specific plan;

- 7) the design, location, size, and operating characteristics of the proposed activity are compatible with the existing and planned future land uses in the vicinity;
- 8) granting the permit would not be detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zone district in which the property is located;
- 9) the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and
- 10) all public notices required for the application have been given.

- d) **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or California laws, nothing in this Chapter is intended to limit the Zoning Administrator's ability to conditionally approve or deny without prejudice any small cell permit application as may be necessary or appropriate to ensure compliance with this Chapter.
- e) **Decision Notices.** Within five calendar days after the Zoning Administrator acts on a small cell permit application, the Zoning Administrator shall notify the applicant and all parties entitled to receive notice of the application by written notice. If the Zoning Administrator denies the application (with or without prejudice), the written notice must contain the reasons for the decision.
- f) **Appeals.** Any interested person or entity may appeal the decision by the Zoning Administrator to the City Council. Appeals must be filed within seven days after the date of the Zoning Administrator's decision; 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. The notice of appeal must contain a short and plain statement of the basis for the appeal, which may be supplemented after the notice period has expired but before the hearing. The City Council shall hear appeals de novo and issue the applicant a written decision within five (5) calendar days after the date of the public hearing.

17.55.080. STANDARD CONDITIONS OF APPROVAL

- a) **General Conditions.** In addition to all other conditions adopted by the Zoning Administrator for a small cell permit, all small cell permits issued under this Chapter shall be automatically subject to the conditions in this Section 17.55.080(a).
 - 1) **Permit Term.** This permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the City to establish a shorter term for public safety reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.

- 2) **Permit Renewal.** Within one (1) year before the expiration date of this permit, the permittee may submit an application for permit renewal. To be eligible for administrative review and renewal, the permittee must demonstrate that (a) the subject wireless facility is in compliance; with all the conditions of approval associated with this permit and all applicable provisions in the Seaside Municipal Code and this Chapter that exist at the time the decision to renew the permit would be rendered. The Community Development Director shall have discretion to modify or amend the conditions of approval for permit renewal 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 Seaside Municipal Code and/or this Chapter. Upon renewal, this permit will automatically expire 10 years and one day from its issuance, except when California Government Code §65964 and (b), as may be amended or superseded in the future, authorizes the City to establish shorter term for public safety reasons.
- 3) **Post Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small cell wireless facility approved or deemed-approved, the permittee shall provide the Community Development Director with documentation reasonably acceptable to the Community Development Director that the small cell wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and Photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- 4) **Build-Out Period.** This small cell permit will automatically expire six (6) months from the approval date (the "build-out period") unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved small cell wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the small cell wireless facility or its use. If this build-out period expires, the City will not extend the build-out period but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.
- 5) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this small cell permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that

such graffiti or other vandalism occurred.

- 6) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("laws") applicable to the permittee, the subject property, the small cell wireless facility or any use or activities in connection with the use authorized in this small cell permit, which includes without limitation any laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Seaside Municipal Code, this Chapter any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all aspects with all applicable provisions in the Seaside Municipal Code, this Chapter, any permit, any permit condition or any applicable law or regulation.

- 7) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not, perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Seaside Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The Community Development Director and/or the Public Works Director may issue a stop work order for any activities that violates this condition in whole or in part.

- 8) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.

- 9) **Permittee's Contact Information.** Within 10 days from the final approval, the permittee shall furnish the City with accurate and up-to-date contact information for a person responsible for the small cell wireless facility, which includes without limitation such person's full name, title, direct telephone number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and promptly provide the City with updated contact information if either the responsible person or such person's contact information changes.
- 10) **Indemnification.** The permittee and, if applicable, the property owner upon which the small cell wireless facility is installed shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all
- i. damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this small cell permit, and
 - ii. other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this small cell permit or the small cell wireless facility.

In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this small cell permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this small cell permit.

- 11) **Performance Bond.** Before the Building Division issues any permits required to commence construction in connection with this permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Community Development Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor or with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount

required under this condition, and in accordance with California government Code §65964(a), the Community Development Director shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility in accordance with this condition.

- 12) **Permit Revocation.** Any permit granted under this Chapter may be revoked in accordance with the provisions and procedures in this condition. The Community Development Director may initiate revocation proceedings when the Community

Development Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before the Zoning Administrator may conduct a public hearing to revoke any permit granted under this Chapter, the Community Development Director must issue a written notice to the permittee that specifies the following:

- i. the facility;
- ii. the violation(s) to be corrected;
- iii. the timeframe in which the permittee must correct such violation(s); and
- iv. that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s).

The Zoning Administrator's decision may be appealed to the City Council after a duly noticed public hearing. The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Community Development Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

- 13) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the small cell permit application, small cell permit, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the small cell permit (collectively, "records"). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods

and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record- retention obligations under applicable law.

- 14) **Abandoned Wireless Facilities.** The small cell wireless facility authorized under this small cell permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a small cell wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small cell wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Seaside Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligation under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with, or without notice, and the permittee and property owner (where private property) shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.

- 15) **Landscaping.** At the discretion of the Community Development Director, the permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site, or pay a fee to the City's Urban Forestry Fund if replacement landscaping is not feasible or desired at the location. If any trees are damaged or displaced, the permittee shall replace landscaping as determined by the City's unless approved by the City's arborist. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree unless approved by the City's arborist. The permittee shall be responsible to maintain any replacement landscape features for (a) the permit term for landscape features on private property and (b) a period of three (3) years from the date of planting for landscape features in the public rights-of-way. The Community Development Director may accept an in-lieu fee for the City's cost to maintain a replacement tree or other landscaping in the public rights-of-way for the required three (3) year period.

- 16) **Cost Reimbursement.** The permittee acknowledges and agrees that:
 - i. the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses;
 - ii. the permittee shall be responsible to reimburse the City for all costs

incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility;

- iii. any application fees are intended to be a reasonable approximation of such costs but may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and
- iv. the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.

b) **Conditions for Small Cell Wireless Facilities in the Public Rights-of-Way.** In addition to all conditions in subsection (a), all small cell permits for small cell wireless facilities in the public rights-of-way issued under this Chapter shall be automatically subject to the conditions in this Section 17.55.080(b).

- 1) **Future Undergrounding Programs.** Notwithstanding any term remaining on any small cell permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small cell wireless facility is located, the permittee must also underground its equipment, to the extent feasible, except the antennas and any approved electric meter, at approximately the same time. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. Small cell wireless facilities installed on utility poles that will be removed pursuant to the undergrounding program may be reinstalled on other existing vertical infrastructure that complies with the then-current municipal code and the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
- 2) **Electric Meter Upgrades.** If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
- 3) **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may:

- i. change any street grade, width or location;
- ii. add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or
- iii. perform any other work deemed necessary, useful or desirable by the City (collectively, "City work").

The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this small cell permit. If the Public Works Director determines that any City work will require the permittee's small cell wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small cell wireless facility within a reasonable time after the Public Works Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's small cell wireless facility without prior notice to permittee when the Public Works Director determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 30 days after a written demand for reimbursement and reasonable documentation to support such costs.

17.55.90. LOCATION REQUIREMENTS

- a) **Preface to Location Requirements.** This subsection (a) provides guidance as to how to interpret and apply the location requirements in this Section 17.55.090. To better assist applicants and decision makers understand and respond to the community's aesthetic preferences and values, subsections (b) (c), (d) and (e) set out listed preferences for locations and support structures to be used in connection with small cell wireless facilities in ordered hierarchies. Applications that involve lesser- preferred locations or structures may be approved so long as the applicant demonstrates that either (1) no more preferred locations or structures exist within 750 feet from the proposed site; or (2) any more preferred locations or structures within 750 feet from the proposed site would be technically infeasible as supported by clear and convincing evidence in the written record. Subsection (f) identifies "prohibited" support structures on which the City shall not approve any small cell permit application for any competitor or potential competitor.
- b) **Locations in the Public Rights-of-Way.** The City prefers small cell wireless facilities in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:

- 1) locations within areas designated as any of the land use categories listed in the General Plan under the "Commercial," "Mixed Use," categories, on or along arterial streets as defined and mapped in the General Plan;
 - 2) locations within areas designated as any of the land use categories listed in the General Plan under the "Commercial," "Mixed Use," or "Open Space Recreation" categories (except where in or adjacent to public parks and Open Space Recreation areas), on or along collector streets as defined and mapped in the General Plan; locations within areas designated as any of the land use categories listed in the General Plan under the "Commercial," "Mixed Use," or "Open Space Recreation" categories (except where in or adjacent to public parks and Open Space Recreation areas), on or along local streets as defined and mapped in the General Plan;
 - 3) locations within or adjacent to public parks and Open Space Recreation areas, or areas designated "Institutional" in the General Plan, on or along arterial, collector or local streets as defined and mapped in the General Plan;
 - 4) locations within the West Broadway Urban Village Specific Plan Area;
 - 5) any location within any non-residential or mixed-use Specific Plan land use designation
 - 6) locations within areas the General Plan Under the "Residential" category, on or along arterial streets as defined and mapped in the General Plan;
 - 7) location within areas designated as any of the land use categories listed in the General Plan under the "Residential" category, on or along collector streets defined and mapped in the General Plan; and
 - 8) locations within areas designated as any of the land use categories listed in the General Plan under the "Residential" category, on or along local streets as defined and mapped in the General Plan.
- c) **Locations Outside the Public Rights-of-Way.** The City prefers small cell wireless facilities outside the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:
- 1) locations within areas designated as any of the land use categories listed in the General Plan under the "Commercial," "Mixed Use," or "Open Space Recreation" categories (except within any public park or Open Space Recreation areas);
 - 2) locations within areas designated "Institutional" in the General Plan; within the West Broadway Urban Village Specific Plan Area, any location within any non-residential or mixed-use Specific Plan land use designation;
 - 3) locations within areas designated as any of the land use categories listed in the General Plan under the "Residential" category;
 - 4) locations within any public park or Open Space Recreation area;
 - 5) locations within the West Broadway Urban Village Specific Plan Area; and
 - 6) locations within residential Specific Plan land use designations.

- d) **Support Structures in the Public Rights-of-Way.** The City prefers small cell wireless facilities to be installed on support structures in the public rights-of-way, ordered from most preferred to least preferred, as follows:
- 1) existing or replacement metal or composite streetlight or utility poles;
 - 2) new, non-replacement metal or composite streetlight poles;
 - 3) new, non-replacement poles for small cell wireless facilities;
 - 4) existing or replacement wood utility or streetlight poles.
- e) **Support Structures Outside the Public Rights-of-Way.** The City prefers small cell wireless facilities to be installed on support structures outside of the public rights-of-way, ordered from most preferred to least preferred as follows:
- 1) existing, non-historic buildings, or other non-tower structures previously approved for use as a support structure for personal wireless service facilities;
 - 2) other existing, non-historic buildings, or other non-tower structures;
 - 3) existing or replacement utility poles or towers;
 - 4) new, non-replacement towers for small cell wireless facilities; and
 - 5) existing historic buildings.
- f) **Prohibited Support Structures.** The City prohibits small cell wireless facilities to be installed on the following support structures, whether located in the public rights-of-way or not: decorative poles and decorative streetlights; non-city owned traffic signals, signs, poles, cabinets and related devices; new, non-replacement wood poles.

17.55.100.**DESIGN STANDARDS****a) General Standards**

- 1) **Noise.** Small cell wireless facilities and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations in Seaside Municipal Code Chapter 17.30.060, as either may be amended or superseded, and shall not exceed, either on an individual or cumulative basis.
- 2) **Lights.** Small cell wireless facilities shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this Chapter.
- 3) **Landscape Features.** At the discretion of the Community Development Director, the permittee shall replace any landscape features damaged or

displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site, or pay a fee to the City's Urban Forestry Fund if replacement landscaping is not feasible or desired at the location. If any trees are damaged or displaced, the permittee shall replace landscaping as determined by the City's arborist. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree unless approved by the City's arborist. The permittee shall be responsible to maintain any replacement landscape features for a period of three (3) years after the date of planting. The Community Development Director may accept an in-lieu fee for the City's cost to maintain the landscaping for the required three (3) year period.

- 4) **Site Security Measures.** Small cell wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The Community Development Director shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small cell wireless facilities shall be constructed from or coated with graffiti-resistant materials.
- 5) **Signage Advertisements.** All small cell wireless facilities must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll free number to the owner/operator's network operations center. Small cell wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, Occupational Safety and Health Administration or other United States governmental agencies for compliance with RF emissions regulations.
- 6) **Compliance with Health and Safety Regulations.** All small cell wireless facilities shall be designed, constructed, operated and maintained with all generally applicable health and safety regulations which includes without limitation all applicable regulations for human exposure to RF emissions and compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*).

b) Small Cell Wireless Facilities in the Public Right-of-Way.

- 1) **Overall Height.** Small cell wireless facilities should be proposed at the lowest technically feasible overall height. Small cell wireless facilities may not exceed either (A) the minimum separation from electrical lines required by applicable safety regulations, plus four feet or (B) six feet above the existing support structure.

2) **Antennas.**

- i. **Concealment.** To the extent feasible, antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed within an opaque antenna shroud or radome. To the extent feasible, the antenna shroud or radome must be painted a flat, non-reflective color to match the underlying support structure. *If the applicant demonstrates by clear and convincing evidence in the record that strict compliance with the requirements in this Section would be technically infeasible, the Community Development Director may approve an alternative concealment plan that is consistent with the intent of this Section and this Chapter.*
- ii. **Antenna Volume.** Each individual antenna may not exceed three cubic feet in volume.

3) **Accessory Equipment.**

- i. **Installation Preferences.** All non-antenna accessory equipment shall be installed in accordance with the following preferences, ordered from most preferred to least preferred:
 1. underground in any area in which the existing utilities are primarily located underground;
 2. on the pole or support structure; or
 3. integrated into the base of the pole or support structure.
 4. *ground-mounted, provided that the applicant demonstrates that the use of installations location preferences 1, 2, and 3 (listed above) would be technically infeasible as supported by clear and convincing evidence in the written record and the ground-mounted accessory equipment is placed in the least intrusive location as determined by the Community Development Director.*

Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically feasible as supported by clear and convincing evidence in the written record.

- ii. **Undergrounded Accessory Equipment.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Applicants shall not

be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced, unless approved by the Community Development Director.

- iii. **Pole-Mounted Accessory Equipment.** All pole-mounted accessory equipment must be installed in a single equipment shroud unless the applicant demonstrates that a single shroud would be technically infeasible as supported by clear and convincing evidence in the written record. All pole-mounted accessory equipment must be installed flush to the pole to minimize the overall visual profile. If any applicable health and safety regulations prohibit flush-mounted equipment, the maximum separation permitted between the accessory equipment and the pole shall be the minimum separation required by such regulations. All pole-mounted equipment and required or permitted signage must be placed and oriented away from public view. Pole-mounted equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. All cables, wires and other connectors must be routed through conduits within the pole, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying support structure.
- iv. **Base-Mounted Accessory Equipment.** All base-mounted accessory equipment must be installed within a shroud, enclosure or pedestal integrated into the base of the support structure. All cables, wires and other connectors routed between the antenna and base-mounted equipment must be concealed from public view.
- v. **Ground-Mounted Accessory Equipment.** The Community Development Director shall not approve any ground-mounted accessory equipment including, but not limited to, any utility or transmission equipment, pedestals, cabinets, panels or electric meters, unless the applicant clearly demonstrates that location design preferences listed in Section 17.55.100.b.3.i are technically infeasible as supported by clear and convincing evidence in the written record and the ground-mounted accessory equipment is placed in the least intrusive location as determined by the Community Development Director. In circumstances where ground-mounted accessory equipment may be permitted, the Community Development Director may impose additional conditions as may be necessary or appropriate to mitigate potential hazards in the public rights-of-way and/or aesthetic blight created by the placement of such accessory equipment.

- vi. **Accessory Equipment Volume.** All accessory equipment associated with a small cell wireless facility installed above ground level shall not cumulatively exceed:

1. Twenty-one (21) cubic feet in volume if installed in a residential district; or
2. Twenty-eight (28) cubic feet in volume if installed in a non-residential district.

The volume calculation shall include any shroud, cabinet or other concealment device used in connection with the non-antenna accessory equipment. The volume calculation shall not include any equipment or other improvements placed underground.

- 4) **Streetlights.** Applicants that propose to install small cell wireless facilities on an existing streetlight must remove and replace the existing streetlight with one substantially similar to and which meets the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment. To mitigate any material changes in the streetlighting patterns, the replacement pole must:

- i. be located as close to the removed pole's possible;
- ii. be aligned with the other existing streetlights and include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. All antennas must be installed above the pole within a single, canister style shroud or radome that tapers for the pole. *If the applicant demonstrates by clear and convincing evidence in the record that placing the antennas above the pole in a single, canister style shroud or radome would be technically infeasible, the Community Development Director may approve an alternative concealment plan that is consistent with the intent of this Section and this Chapter.*

- 5) **Wood Utility Poles.** Applicants that propose to install small cell wireless facilities on an existing wood utility pole must install all antennas above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the side-arm mount or extension arm. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety

regulations. Applicants that propose to install small cell wireless facilities on a replacement wood utility pole must remove and replace the existing wood utility pole with one that is substantially similar in height and diameter unless the applicant demonstrates that a substantially familiar replacement pole would be technically infeasible as supported by clear and convincing evidence in the written record.

- 6) **New, Non-Replacement Poles.** Applicants that propose to install small cell wireless facilities on a new, non-replacement pole must install a new streetlight in accordance with the City's standards, specifications and spacing requirements but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed eighteen (18) inches. Any base enclosure diameter shall not exceed twenty-six (26) inches or the maximum size that will allow for pedestrian access to the sidewalk as may be required by law (whichever is smaller). All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome. If the applicant demonstrates by clear and convincing evidence in the record that placing the antennas above the pole in a single, canister style shroud or radome would be technically infeasible, the Community Development Director may approve an alternative concealment plan that is consistent with the intent of this Section and this Chapter.
- 7) **Strand-Mounted Wireless Facilities.** No more than one strand-mounted wireless facility may be installed on any single span between two poles. The Community Development Director shall not approve any ground-mounted equipment in connection with any strand-mounted wireless facility. All equipment and other improvements associated with a strand-mounted wireless facility must comply with all applicable health and safety regulations. Strand-mounted wireless facilities shall not exceed three (3) cubic foot in total volume. All strand-mounted equipment shall be finished in a non-reflective grey color. Any accessory equipment mounted on the pole shall be painted and textured to match the underlying pole. "Snow shoes" and other spooled fiber or cables are prohibited.
- 8) **Encroachments over Private Property.** Small cell wireless facilities may not encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.
- 9) **Backup Power Sources.** Fossil-fuel based backup power sources shall not be permitted within the public rights-of-way; provided, however, that

connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.

- 10) **Obstructions; Public Safety.** Small cell wireless facilities and any associated equipment or improvements shall not physically interfere with or impede:
 - i. worker access to any above ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, or barricade reflectors;
 - ii. access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop;
 - iii. worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency;
 - iv. access to any fire hydrant or water valve;
 - v. access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or
 - vi. access to any fire escape.
- 11) **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future colocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through and concealed from view within:
 - i. internal risers or conduits if on a concrete, composite or similar pole; or
 - ii. a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. The Community Development Director shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
- 12) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
- 13) **Electric Meters.** Small cell wireless facilities shall: set flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. The Community Development Director shall not approve a separate ground-mounted electric meter pedestal unless the

applicant clearly demonstrates that more-preferred metering listed above would be technically infeasible as supported by clear and convincing evidence in the written record and the ground-mounted meter pedestal is placed in the least intrusive location as determined by the Community Development Director.

- 14) **Street Trees.** To preserve existing landscaping in the public rights-of-way, all work performed in connection with small cell wireless facilities shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees at the site for a period of three (3) years from the date of planting. The Community Development Director may accept an in-lieu fee for the City's cost to maintain the tree for the required three (3) year period.

c) **Small Cell Wireless Outside of the Public Right-of-Way**

- 1) **Overall Height.** Small cell wireless facilities on private property may not exceed the applicable height limit for primary structures in the applicable zoning district or overlay zone, except as follows:
 - i. Residential or Open Space Recreation land use districts as designated in the General Plan: 30 feet
 - ii. Non-Residential. General Plan land use designations (including designations listed under Commercial; Open Space Recreation; Mixed-Use and Institutional categories: 40 feet
 - iii. Where the facility would be mounted on an existing building or structure, the height of the wireless facility shall not exceed the maximum height of the building or structure, including any existing parapet or roof-mounted screen, by more than five feet.
 - iv. Exceptions to height limits that are otherwise allowed by SMC Section 17.54.060 (B) for antennas, transmission towers and similar appurtenances shall not apply to small cell wireless facilities in any zoning district or PUD.
- 2) **Setbacks.** Small cell wireless facilities on private property may not encroach into any applicable setback for Class I or Class II accessory structures in the subject zoning district.
- 3) **Backup Power Sources.**
 - i. The Community Development Director shall not approve any fossil fuel generators or other similarly noisy or fume-emitting generators in or within 250 feet from any residence; provided, however, the Community Development Director may approve sockets or other connections used for temporary backup generators used in an emergency declared by federal,

state or local officials.

1. In the event of an emergency proclamation, the City shall maintain the right to use an emergency supplement to reduce generator restrictions

- ii. As required by California Public Utilities Commission (CPUC) Order (D.20-07-011), the applicant shall be responsible to implement a plan to provide 72 hours of backup power supply at any new or existing wireless facilities located in Tier 2 and Tier 3 High Fire Threat Districts within the City's jurisdiction. Consistent with D.20-07-011, the City strongly prefers clean, emissions-free backup power sources, such as batteries over fossil fuel generators.

- 4) **Parking; Access.** Any equipment or improvements constructed or installed in connection with any small cell wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, small cell wireless facilities must use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements must meet City standards.

- 5) **Towers, Poles and Other Freestanding Small Cell Wireless Facilities.** All new towers, poles or other freestanding structures that support small cell wireless facilities must be made from a metal, or composite material capable of concealing all the accessory equipment, including cables, mounting brackets, radios, and utilities, either within the support structure or within an integrated enclosure located at the base of the support structure. All antennas must be installed above the pole in a single, canister-style shroud or radome. *If the applicant demonstrates by clear and convincing evidence in the record that placing the antennas in a single, canister style shroud or radome would be technically infeasible, the Community Development Director may approve an alternative concealment plan that is consistent with the intent of this Section and this Chapter.* The support structure and all transmission equipment must be painted with flat/neutral colors that match the support structure.

6) **Building-Mounted Small Cell Wireless Facilities**

- i. **Preferred Concealment Techniques.** All applicants must propose new non-tower small cell wireless facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, if the applicant demonstrates with clear and convincing evidence that integration with existing features is technically infeasible, the applicant may propose completely concealed

new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, steeples and chimneys).

- ii. **Facade-Mounted Equipment.** When small cell wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the Community Development Director may approve facade-mounted antenna equipment in accordance with this Section 17.55.100(c)(6)(ii). All facade mounted equipment must be concealed behind screen walls and mounted flush to the facade. The Community Development Director may not approve "pop-out" screen boxes. The Community Development Director may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the façade.

Proposed Changes to Seaside Planning Department Fee Schedule

CITY OF SEASIDE MASTER FEE SCHEDULE SCHEDULE OF PLANNING DEPARTMENT FEES

		19/20 Adopted (3.7%)	20/21 Proposed (2.3%)
PLANNING DEPARTMENT FEES			
SMALL CELL PERMIT			
Small Cell Permit (for up to 5 small cell sites)		\$ —	\$ 500
City Attorney's Review of Projects and Permits (if necessary, an additional deposit amount will be required for City Attorney review of Projects)		\$ —	\$ Deposit - estimated # of attorney hours
Consultant Fee: Including, but not limited to, Radio Frequency Expert, Engineering, Arborist Services		\$ —	\$ Consultant Fee
OTHER FEES			
Affordable Housing Agreement		\$ 1,730	\$ 1,770
Mobilhome Park Conversions, Closures, and Cessation of Use Fee		\$ 1,730	\$ 1,770
Deferred Completion Agreement		\$ 865	\$ 885
Floodplain Development Permit		\$ 865	\$ 885
Tentative Parcel Map Waiver		\$ 1,730	\$ 1,770
99		\$ 1,730	\$ 1,770
Real Property Disclosure Report		\$ 150	\$ 153
LAND USE APPEALS			
Non-Applicant		\$ 3,243	\$ 3,318
Applicant		\$ 3,458	\$ 3,538
Administrative Review for Radio, Satellite and Dish Antennas		\$ 865	\$ 885
Grand Opening and Promotional Banner / Temporary Sign		\$ 108	\$ 110
Sign Permit (Over-the-counter)		\$ 217	\$ 222
ZONING COMPLIANCE PLAN CHECK:			
Over the Counter (Replacement In Kind)		\$ 108	\$ 110
Over the Counter (Minor)		\$ 108	\$ 110
Zoning Confirmation Letter		\$ 865	\$ 885
Advanced Planning Surcharge:			
(Charged on all new construction for building plans (e.g. additions, new buildings), pw/eng, fire permits, and development applications)		0.3% of building valuation	0.3% of building valuation
HOURLY RATES			
Planning Services		\$ 217	\$ 222
For services requested of City staff which have no fee listed in this fee schedule, the City Manager of the City Manager's designee shall determine the appropriate fee based on the established hourly rates for this department/division. Additionally, the City will pass-through to the applicant any discrete costs incurred from the use of external service providers (e.g. Consultants) if required to process the specific application.			



CITY OF SEASIDE STAFF REPORT

Item No.: 7.B.

TO: Planning Commission

BY: Beth Rocha, Associate Planner

DATE: October 28, 2020

**SUBJECT: STUDY SESSION: COMMISSION STUDY SESSION REGARDING
DRAFT CODE AMENDMENTS TO SEASIDE MUNICIPAL CODE
SECTION 17.30.020: FENCES, WALLS, HEDGES AND
SCREENING**

PURPOSE & RECOMMENDATION

The purpose of this study session is for the Commission to provide guidance and feedback to staff regarding the draft code amendments for fences, walls, hedges and screening regulations.

It is recommended the Commission provide direction on various elements of the draft amendments.

BACKGROUND

Amending Seaside Municipal Code section 17.30.020 is a task in the Planning Commission's annual work plan.

Summary of Proposed Amendments

1. Removed hedge/landscaping height limit (except in traffic visibility areas) (A.2).
2. Encouraging landscaping in area between structure and sidewalk, if fence/wall is setback from front property line (A.3).
3. Encouraging unique and appropriate fence design options (A.4).
4. Expanded permitted and prohibited materials (A.6).
5. Added maintenance and public nuisance (A.7).
6. Increased the height limits of residential fencing, Table 3-1 (B).
7. Revised height measurement methods for residential (B.2.a).
8. Added specific design regulations regarding spacing/transparency of fences placed atop walls in residential (B.2.b).
9. Added requirement for Board of Architectural Review of fences, walls,

landscaping, and screening elements located within 10 feet of the front property line, all corner lots, and double-fronted lots shall be subject for non-residential, Table 3-2 (C).

10. Revised height measurement methods for non-residential (C.2.a).
11. Added specific design regulations regarding spacing/transparency of fences placed atop walls for non-residential (C.2.b).
12. Added a new process for all retaining walls, which requires the building official and a city planner meet on site to determine the maximum height of the retaining wall, based on site characteristics/unique topo situations, while also taking into consideration many of the findings required for a fence exception. Allows a fence exception to be applied for should the applicant desire a greater height (D.1).
13. Added design requirements for retaining walls (D.2).
14. Added information, regulations and requirements pertaining to guardrails (D.3).
15. Added a section that allows the building official to make emergency repair determinations on failed retaining walls (D.4).
16. Fence Exceptions approved by Zoning Administrator, with a public hearing held only if requested by a member of the public (E).

There are not any proposed amendments to the Screening requirements.

ATTACHMENTS

1. Draft Fence Ordinance
 2. Draft Fence Design Handout
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SUMMARY OF PROPOSED AMENDMENTS

1. Removed hedge/landscaping height limit (except in traffic visibility areas) (A.2).
2. Encouraging landscaping in area between structure and sidewalk, if fence/wall is setback from front property line (A.3).
3. Encouraging unique and appropriate fence design options (A.4).
4. Expanded permitted and prohibited materials (A.6).
5. Added maintenance and public nuisance (A.7).
6. Increased the height limits of residential fencing, Table 3-1 (B).
7. Revised height measurement methods for residential (B.2.a).
8. Added specific design regulations regarding spacing/transparency of fences placed atop walls in residential (B.2.b).
9. Added requirement for Board of Architectural Review of fences, walls, landscaping, and screening elements located within 10 feet of the front property line, all corner lots, and double-fronted lots shall be subject for non-residential, Table 3-2 (C).
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16. Fence Exceptions approved by Zoning Administrator, with a public hearing held only if requested by a member of the public (E).

17.30.020

Fences, Walls, Hedges and Screening

A. **General Standards and Requirements:**

1. **Applicability.** The requirements of this section apply to all fences, walls, retaining walls, screening and any combination thereof unless otherwise stated.
 - a. A Building permit is required for all new, relocated or reconstructed fences, walls, retaining walls, or any combinations thereof, unless determined by the Building Official to be an emergency repair.
2. **Hedges, Trees and Plantings.** Unless specifically prohibited under the terms of any other applicable ordinance, nothing herein shall be construed to prohibit the use of hedges, trees or other plantings anywhere on a lot unless within a Traffic Safety Visibility Area (visibility triangle).
 - a. Height of plantings and hedges within a required visibility triangle shall be maintained at the required height detailed in Figure 3.1 (residential) and Figure 3.2 (non-residential).
 - b. Hedges and plantings along property lines shall be non-toxic in nature.
 - c. Plantings shall interfere with the provision of adequate air and light on abutting parcels.
3. **Location:**
 - a. Fences, walls, retaining walls, or any combination thereof may be permitted entirely within the boundaries of the subject property and shall be consistent with the applicable height regulations detailed in this Section.
 - (1) It is the permit applicant's responsibility to employ a California licensed Land Surveyor to determine the location of property lines in relation to fences, walls, retaining walls, or any combination thereof.
 - (2) It is the permit holder's responsibility to call 811 before digging to prevent damage to underground utilities.
 - b. Fences, walls, retaining walls, or any combination thereof which are setback from the property line are encouraged to include landscaping, as outlined below, between said structure and any public right of way (sidewalk, street, public path, etc.):
 - (1) Landscaping shall consist of non-toxic, non-hazardous, low-water plantings.
 - (2) Landscaping shall be maintained and shall not encroach into the public right of way.
 - c. Fences, walls, retaining walls, or any combination thereof shall not encroach into the public right of way or within a required easement.
 - (1) Exception: A fence, wall, retaining wall or any combination thereof may be located within an easement provided said structure is not prohibited by the express terms of the easement and provided the fence will not obstruct the purpose of the easement.
 - d. No fence, wall, retaining wall, or combination thereof shall conflict with the requirements of the Traffic Safety Visibility Area required for streets and driveways, see figures 3.1 and 3.2, below:

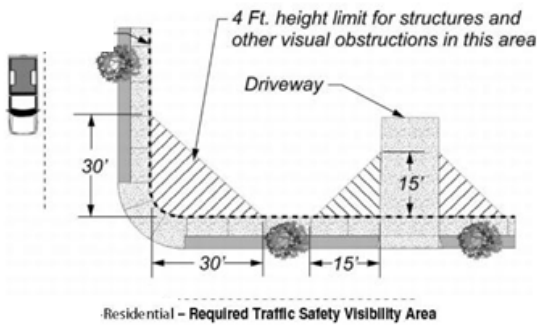


Figure 3.1

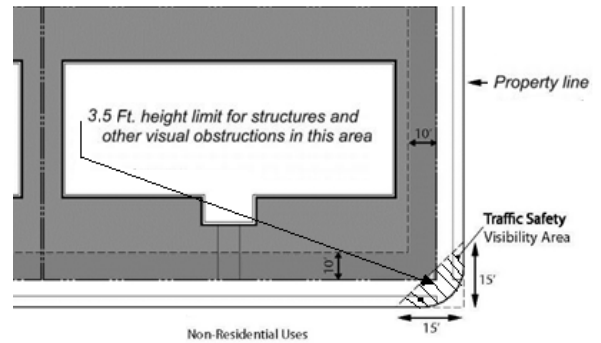


Figure 3.2

- e. Fencing between different land uses. Fencing between different land uses should be provided in compliance with Subsection F of this section (Screening requirements).
- f. Outdoor equipment, storage, and work areas. Screening of nonresidential outdoor uses and equipment adjacent to a residential use shall be provided in compliance with Subsection F of this section (Screening requirements).

4. Design:

- a. Unique designs for fences, walls, retaining walls, or any combination thereof are permitted, provided they meet with the requirements and standards listed in this Section.
 - (1) See Fence Design Handout for examples of common and prohibited fence types found throughout the City, as well as examples unique fence designs.
- b. On sloped lots:
 - (1) At no point shall any fence, wall, retaining wall, or combination thereof exceed the height limits required by this Section. Any fence, wall, retaining wall, or combination thereof shall be constructed so that it is stepped or runs parallel to the grade of the subject property. See Figure 3.3 below:

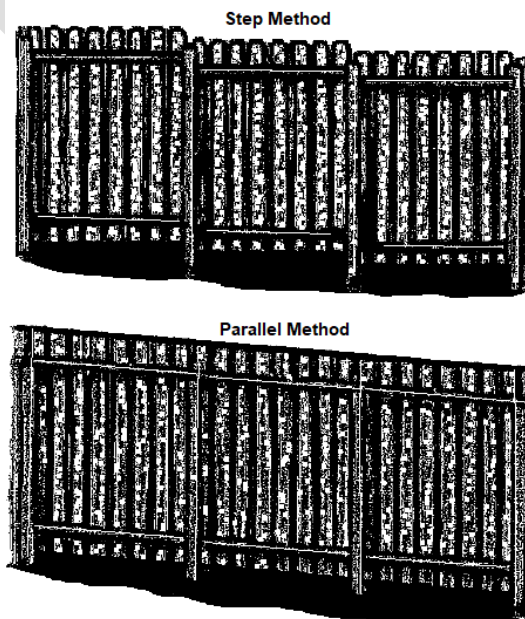


Figure 3.3

5. Construction

- a. The side of any fence considered to be its "face" (i.e., the finished side having no structural supports) shall face abutting property or street right of way.
- b. All fences that completely enclose a lot or portion thereof shall have at least one gate access.

6. Materials:

- a. Permitted Materials –fences, walls, retaining walls or combination thereof shall be constructed of the following materials:
 - (1) decorative wrought iron
 - (2) masonry or stucco
 - (3) brick or stone
 - (4) wood
 - (5) wood-framed hogwire
 - (6) other materials as approved by the Director and/or their designee.
- b. Prohibited Materials – the use of the following materials shall be prohibited for fences, walls, retaining walls or combination thereof, unless approved by the Zoning Administrator:
 - (1) sheet metal and/or salvage or similar materials
 - (2) plywood
 - (3) cloth, canvas or other like materials
 - (4) chain link,
 - (5) barb wire
 - (6) razor wire
 - (7) glass shards, or any other material designed to inflict injury

7. Maintenance:

- a. All fences, walls, retaining walls or combination thereof shall be maintained in such a manner so as to keep them whole and complete, keep them from sagging or falling, effectively preserve and maintain their materials, and keep them painted or stained (where applicable) so as to not allow chipping or peeling of paint or other materials.
- b. All fences, hedges and landscaping, walls, retaining walls or combination thereof which is, or has become dangerous to the public safety, health or welfare, shall be considered a public nuisance, and the Building Department shall commence proper proceedings for the abatement thereof.

8. Advertising. No fence, wall, retaining wall or combination thereof shall be used for advertising purposes, except as permitted in SMC 17.40.040.

9. Swimming pools, spas, and similar features. Swimming pools, spas, and similar water features shall be fenced in compliance with California Building Code (CBC) requirements, regardless of the requirements of this section.

10. Temporary fencing. Temporary fencing may be necessary to protect archaeological or historic resources, trees, or other similar sensitive features during site preparation and construction. Temporary fencing shall be approved by the Director, may include prohibited fence materials listed in Subsection A.6.b of this section (Prohibited materials), and may exceed the maximum fence heights of Table 3-1 (Residential) and Table 3-2 (Non-Residential and Mixed-Use) of this Section.

11. **Nonconforming:** Nonconforming fences, walls, retaining walls, or any combination thereof existing as of the date of the enactment of this ordinance shall be allowed to remain, except where prohibited by the Building Code and/or determined by the Building Official to pose a hazard to public safety. Replacement of nonconforming fences, walls, retaining walls, or any combination thereof shall be made in compliance with the provisions and requirements in existence as of the time of the replacement.

B. **Residential Standards and Requirements.** Each fence, wall, and any combinations thereof located within a residential zone shall comply with the following standards and requirements. This section shall not apply to Retaining Walls (see Section D) or Mixed-Use Projects (see Section [17.30.020.C](#)).

1. **Height.** Each fence, wall, and any combinations thereof, on the site of a residential use shall comply with the height limits shown in Table 3-1, below; provided that said structure is constructed so that it does not interfere with the provision of adequate air and light on an abutting parcel.
- a. Posts, trellises, lattice, and any other material placed on top of a fence or wall is considered to be part of the structure when measuring the overall height.
 - b. Height shall be measured from the top of the fence or wall to the lowest grade at the base of said structure.

TABLE 3-1 HEIGHT LIMITS: RESIDENTIAL USE

Location	Maximum Height
Front setback	4' ^a
Street side setback (corner lot)	6' ^b
Interior side or rear setback	6' (8')
Outside of required setbacks	8' (10')
Within the traffic safety visibility area (see 17.30.030.E)	4'

- a. An optional decorative entry feature, such as an entry gate, arbor or trellis, that is no more than 7'-6" tall by 6' wide and 5' deep shall be permitted within the required front yard setback.
- b. On a corner lot, with a legally constructed Accessory Dwelling Unit, a decorative entry feature, such as an entry gate, arbor or trellis, that is no more than 7'-6" tall by 6' wide and 5' deep shall be permitted within the required street side setback.

2. ***Specific Requirements for Residential Combination Walls (freestanding wall and fence):***

- a. **Height.**
 - (1) If necessary, measurement of the height or location of the grade on which a fence or wall is proposed may be determined by the Building Official and/or by topographical survey and shall not be artificially raised or lowered to affect an allowed structure height.
- b. **Design.**
 - (1) A fence located directly on top of a wall may require a structural lateral analysis to justify lateral loads applied to the wall. Structural documents shall be prepared by a licensed architect, or registered engineer, and submitted to the Building Official for review and approval prior to the issuance of a permit.

- (2) The fence portion of any combination wall (fence atop freestanding wall) shall have spacing between panels to create visual depth and shall not be an extension of the solid retaining wall; such as shadow box or board-on-board.

C. **Non-residential Standards and Requirements.** Each fence, wall, and any combinations thereof located within a non-residential zone shall comply with the following standards and requirements.

1. **Height.** Each fence, wall, and any combinations thereof, on the site of a non-residentially zoned property shall comply with the height limits shown in Table 3-2, below; provided that said structure is constructed so that it does not interfere with the provision of adequate air and light on an abutting parcel.
 - a. Posts, trellises, lattice, and any other material placed on top of a fence, wall or retaining wall is considered to be part of the structure when measuring the overall height.
 - b. Height shall be measured from the top of the fence, wall, or retaining wall to the lowest grade at the base of said structure.

TABLE 3-2 –HEIGHT LIMITS: NONRESIDENTIAL AND MIXED-USES

Location	Maximum Height	Architectural Review Approval
Within 10 feet of the front property line	6'	Proposed fences, walls, landscaping, and screening elements located within 10 feet of the front property line, all corner lots, and double-fronted lots shall be subject to Architectural Review approval.
Along the rear and interior side property lines not within 10 feet of the front property line	8'	
Within 10 feet of the street side property lines	6'	
Within the traffic safety visibility area (see 17.30.030.E)	4'	

- c. Exception: A fence, wall, and any combination thereof not more than eight feet in height may be allowed to fully enclose a public utility or private recreation facility, when approved by the Zoning Administrator.
 - (1) The public hearing shall be conducted as outlined in Subsection E.2 of this Section.

2. ***Specific Requirements for Non-Residential Combination Walls (freestanding wall and fence):***

- a. **Height.**
 - (1) The height of a combination wall shall be consistent with the height requirements listed in Table 3-2.
 - (2) If necessary, measurement of the height or location of the grade on which a fence, wall, or combination wall is proposed may be determined by the Building Official and/or by topographical survey and shall not be artificially raised or lowered to affect an allowed structure height.
- b. **Design.**
 - (1) Fences located directly on top of a wall may require a structural lateral analysis to justify lateral loads applied to the wall. Structural documents shall

- be prepared by a licensed architect, or registered engineer, and submitted to the Building Official for review and approval prior to the issuance of a permit.
- (2) The fence portion of any combination fence/freestanding wall shall have spacing between panels to create visual depth and shall not be an extension of the solid freestanding wall; such as shadow box or board-on-board.

D. Retaining Walls:

1. **Height.** Any retaining wall proposed at a height of 36 inches or greater (as measured from the bottom of the footing) shall require an initial site assessment by the Building Official and a City Planner to determine the maximum wall height necessary to retain the embankment. City staff will also determine the height of fencing/ "guardrail" atop the retaining wall. The applicant can request a Fence Exception to the height determination, as outlined in 17.30.020.E.
 - a. The following findings will be made in determining the maximum permitted height:
 - (1) A physical hardship exists because of unique or unusual topographic conditions; and
 - (2) A general safety hazard to City residents and/or the general public would not be created; and
 - (3) A traffic-related safety hazard would not be created; and
 - (4) The fence or wall will not impair visibility at an intersection or traffic safety visibility area; and
 - (5) The fence or wall will not interfere with the provision of adequate air and light on an abutting parcel.
2. **Design.** Retaining walls over 2 feet in height shall be of masonry or concrete construction and shall be an approved engineered design.
3. **Guard.** Typically referred to as a "guardrail", a guardrail is a building component or a system of building components located at or near the open sides of elevated walking surfaces that minimizes the possibility of a fall from the walking surface to a lower level.
 - a. Where the construction of a retaining wall results in a downward vertical drop of more than 30 inches within 4 horizontal feet of a sidewalk, walkway, or other public circulation area, a guard of at least 42" high shall be placed along the top edge of the retaining wall to prevent pedestrians from falling over the edge.
 - (1) Guards shall be designed to resist a concentrated load of 200 pounds.
4. **Failed retaining walls.** The Building Official is responsible for determining and classifying the emergency repair or replacement of failed retaining walls.

E. Fence Exceptions granted by Zoning Administrator:

1. Where a physical hardship exists because of unique or unusual topographic conditions or structure location, a fence, wall, retaining wall, or any combination thereof that exceeds the maximum height standards of this Zoning Code may be allowed subject to a Fence Exception approved by the Zoning Administrator, as outlined in Subsection E of this section.
2. **Public notice.** The notice shall state that the Zoning Administrator will decide whether to approve or deny the Fence Exception application on the date specified in the notice, and that a public hearing will be held only if requested in writing by any interested person prior to the specified date for the decision

- a. **Hearing.** When a hearing is requested, notice of the hearing shall be provided in compliance with Chapter 17.78 (Public Hearings), and the Zoning Administrator shall conduct the public hearing prior to a decision on the application in compliance with Chapter 17.78.
 3. The approval of a height exception for a fence, wall, retaining wall or any combination thereof shall require that the Zoning Administrator make the findings below, as based on information provided by the applicant and analyzed by the Zoning Administrator:
 - a. A physical hardship exists because of unique or unusual topographic conditions, or there are structure location limitations that exceeds the maximum standards of this Zoning Code; and
 - b. A general safety hazard to City residents and/or the general public would not be created; and
 - c. A traffic-related safety hazard would not be created; and
 - d. The fence or wall will not impair visibility at an intersection or traffic safety visibility area; and
 - e. The fence or wall is compatible with the height of fences or walls in the surrounding neighborhood; and
 - f. The fence of wall doesn't interfere with the provision of adequate air and light on an abutting parcel; and
 4. The Zoning Administrator may choose to refer any Fence Exception application to the Planning Commission for a hearing and decision in compliance with Chapter 17.78 (Public Hearings).
 5. The Zoning Administrator may approve, modify, or deny an application for an exception and apply reasonable conditions as necessary to ensure the public health, safety, and welfare.
- F. **Screening requirements.** This subsection provides standards for the screening and buffering of adjoining land uses, equipment and outdoor storage areas, and surface parking areas with respect to multi-family and nonresidential land uses.
1. Screening between different land uses.
 - a. For purposes of this subsection, screening means the provision of a minimum six-foot-wide living or nonliving landscaped buffer designed to diffuse glare, noise, and/or negative visual impacts (see Figure 3-6).
 - b. An opaque screen consisting of plant material and a masonry wall six feet in height shall be installed and maintained along parcel boundaries whenever a nonresidential use immediately adjoins a residential zone and is not separated by an alley. Pedestrian access gates may be provided between the nonresidential properties and abutting common open area within residential developments. The masonry wall shall be architecturally treated on both sides, subject to the approval of the Board of Architectural Review. Architectural treatment may include exterior colors and finishes, massing and facial articulation, or intentionally vegetated.

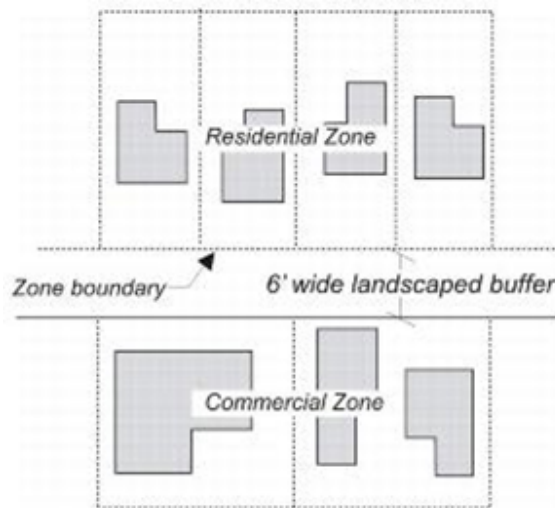


Figure 3-6: Landscaped Buffer

- c. Whenever required screening is located adjacent to parking areas or driveways, the screening shall be installed in compliance with Subsection 17.34.110.E (Landscaping of Parking Lots).
- 2. Mechanical equipment.
 - a. Roof- or ground-mounted mechanical equipment (e.g., air conditioning, heating, ventilation ducts and exhaust, water heaters, etc.), loading docks, service yards, waste and storage areas, and utility services shall be screened from public view from abutting public streets and rights-of-way, and abutting areas zoned for residential or open space uses, including views from above the subject project.
 - b. The method of screening shall be architecturally compatible with other site development in terms of colors, materials, and architectural style subject to approval by the Board of Architectural Review.
 - c. The screening design/construction shall be subject to the approval of the Board of Architectural Review, and shall blend with the design of the structure(s) and include appropriately installed and maintained landscaping when on the ground. Mitigation of noise to surrounding land uses shall be a primary consideration by the board in the approval of ground- or roof-mounted mechanical equipment screening.
 - d. Outdoor building and garden supply areas. Land uses that include outdoor building and garden supply areas shall be screened with walls, fencing, landscaping, or similar material to minimize visibility of the storage area from public viewpoints with a minimum height of six feet.
 - e. Outdoor storage and work yards. Land uses that include outdoor storage of materials, or operations, shall comply with the following screening requirements:
 - (1) Outside storage and work yards shall have an opaque wall not less than six feet, or greater than eight feet, in height, of a type and design approved in advance of construction by the Board of Architectural Review. The wall shall include sight-obscuring gates. The wall shall include sight-obscuring gates.

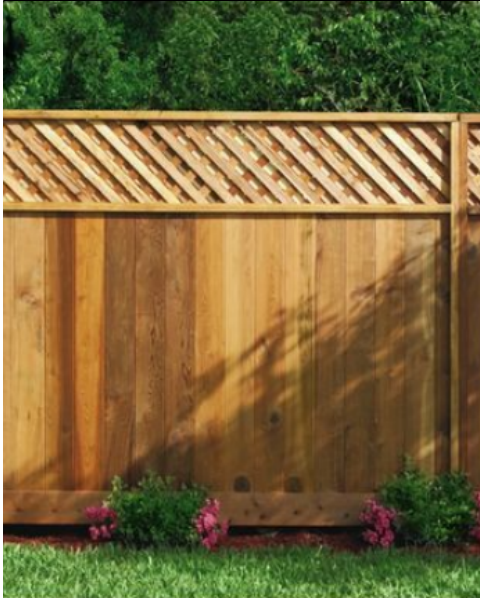
The wall and gate(s) shall be maintained to continuously conform to the requirements of the Board of Architectural Review.

- (2) Site operations in conjunction with the outdoor uses, including the loading and unloading of materials and equipment, shall be conducted entirely within a walled/screened area and/or loading berth.
- (3) Section 8.12.010 (Screening specifications – Applicability) of the Seaside Municipal Code. (Ord. 1025 § 8, 2015)

DRAFT

City of Seaside
Fence Design Handout

Permitted Fence Types (Commonly Found in Seaside):



Privacy Fence with Lattice



Traditional Picket



Dog eared picket



French Gothic Picket



Flat topped wooden fence



Ranch Rail

Illegal Fences:



Chain Link

*While commonly seen within the City limits
Chain Link is NOT a permitted fence material.*



Fence topped with glass or similar material



Barbed Wire



Razor Wire

Inspirational Fence Designs

Interested in doing something more unique? Here is some inspiration photos:

