



AGENDA
CITY OF SEASIDE
CITY COUNCIL

REGULAR MEETING
Council Chamber
440 Harcourt Avenue
Thursday, January 16, 2020
7:00 PM

1. CALL TO ORDER

2. ROLL CALL – ESTABLISHMENT OF QUORUM

Ian N. Oglesby	Mayor
David R. Pacheco	Mayor Pro Tem
Jason Campbell	Council Member
Jon Wizard	Council Member
Alissa Kispersky	Council Member

3. INVOCATION AND PLEDGE OF ALLEGIANCE

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 City Council 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 three minutes. Public Comments on specific agenda items are heard under that item. For the public record, please state your name.

6. PUBLIC AGENCY COMMUNICATIONS

This is a time specifically set aside for representatives of public agencies to make brief comments of general interest to the City Council and the community.

7. PRESENTATIONS

A. RECOGNITION OF RETIRING POLICE OFFICER FRED CARLIN

B. RECOGNITION OF RECENTLY RESIGNED BOARD AND COMMISSION MEMBERS

8. CONSENT AGENDA

A. APPROVE MINUTES FROM DECEMBER 19, 2019

RECOMMENDATION: That the minutes be reviewed and approved.

B. APPROVE AND FILE CITY CHECKS

RECOMMENDATION: Approve and file the accounts payable and wired payments made during the period of December 7, 2019 through January 3, 2020 including the payroll and benefits checks, direct deposits and wired payments related to the pay period ending December 19, 2019 and January 2, 2020. Total Accounts Payable and Payroll for the above referenced period is \$4,484,385.97.

C. APPROVE A MAYOR'S YOUTH FUND CONTRIBUTION REQUEST FROM SEASIDE HIGH SCHOOL LACROSSE CLUB

RECOMMENDATION: Approve a request from Seaside High School Lacrosse Club for a donation of Three Thousand Dollars (\$3,000.00) from the Mayor's Youth Fund to help cover the costs for equipment, coaches, field trips to college games and transportation.

D. APPROVE MAYOR'S YOUTH FUND CONTRIBUTION REQUEST FROM THE SEASIDE HIGH SCHOOL KEY CLUB

RECOMMENDATION: Approve a request from Seaside High School Key Club for a donation of One Thousand Five Hundred Dollar (\$1,500.00) from the Mayor's Youth Fund to help cover the costs for transportation and registration.

E. APPROVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

RECOMMENDATION: To make appointments to the Planning Commission, the Parks and Recreation Commission the Community Development Advisory Committee, the Environmental Commission and the Homeless Commission to fill vacancies created by resignations of current members.

9. PUBLIC HEARING

A. ADOPTION OF AN ORDINANCE AMENDING SEASIDE MUNICIPAL CODE TITLE 13, CHAPTER 10.080 MUNICIPAL WATER SYSTEM – PERMITS TO CONNECT, PARAGRAPH G, AND TITLE 13, SECTION 12 CROSS CONNECTION CONTROL PROGRAM (SECOND READING - ROLL CALL VOTE)

RECOMMENDATION: Adopt the second reading of the draft ordinance amending Municipal Code Chapters 13.10.080 and 13.12 on the Cross Connection Control Program.

B. EXTENSION OF CITY-INITIATED URGENCY ORDINANCE No. 1072 ADDING CHAPTER 17.55 TO THE TO THE SEASIDE MUNICIPAL CODE (SMC) AS NEW CHAPTER TO INCLUDE SPECIAL PROVISIONS FOR SMALL WIRELESS FACILITIES, AND MAKING THEM SUBJECT TO A PERMIT AS SPECIFIED IN A NEW CITY COUNCIL POLICY (ROLL CALL VOTE 4/5 VOTE REQUIRED).

RECOMMENDATION: Adopt the ordinance, extending Urgency Ordinance No. 1072 which has added Chapter 17.55 to the Seaside Municipal Code to include special provisions for small wireless facilities, and making them subject to a permit as specified therein for the duration of the Urgency Ordinance.

C. INTRODUCTION OF AN ORDINANCE ADDING SECTIONS TO THE MUNICIPAL CODE ESTABLISHING PROVISIONS FOR TOBACCO RETAILER LICENCING

RECOMMENDATION: Introduce and pass to print the draft ordinance as presented.

10. BUSINESS ITEMS

A. REPORT ON CURRENT SEASIDE MUNICIPAL CODE 6.04.170 (VICIOUS DOGS) AND CONTEMPLATED FUTURE REVISIONS

RECOMMENDATION: Receive a presentation and invite public input on possible changes to the ordinance.

**11. MAYOR, CITY COUNCIL, CITY MANAGER AND CITY ATTORNEY
COMMENTS AND REPORTS ON COMMITTEE ASSIGNMENTS**

This is a time specifically set aside for members of the City Council, the City Manager and City Attorney to make brief comments of general interest to the community, make requests that items be added to future City Council meeting agendas as necessary and report on committee assignments.

**A. REPORT ON BASE REDEVELOPMENT AND CONSERVATION COMMUNITY
BEST PRACTICES TOUR**

12. ADJOURNMENT

Next Regularly Scheduled Meeting:
February 6, 2019
7:00 PM

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. The City Council chamber is equipped with a portable microphone and assisted listening devices are available at all meetings. City Council Meetings that are held in the City Council Chambers are broadcast live to all Seaside residents on Comcast Channel 25 and U-verse Channel 99. Live streamed meeting videos as well as videos of past meetings are available on the City's website 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
CITY COUNCIL

REGULAR MEETING
Council Chamber
Thursday, December 19, 2019
7:00 PM

1. CALL TO ORDER

The meeting was called to order at 7:01 p.m.

2. ROLL CALL – ESTABLISHMENT OF QUORUM

PRESENT: OGLESBY, PACHECO, CAMPBELL, WIZARD, KISPERSKY
ABSENT: NONE

3. INVOCATION AND PLEDGE OF ALLEGIANCE

Invocation led by Rev. Harold Lusk / Pledge of Allegiance led by City Attorney Don Freeman

4. REVIEW OF AGENDA

The meeting would be adjourned in memory of Kelvin Garnett and Lloyd Love.

5. PUBLIC COMMENT

PUBLIC COMMENT SPEAKERS: Ray Rearden, Constance Constable, Analisa Mitchell, Allen Caplan, Ruthie Watts, Wanda Parrot, Alvin Edwards, Hector Aspuelta, Peter Kaiser, Rev. Harold Lusk

6. PUBLIC AGENCY COMMUNICATIONS

Chief Abdul Pridgen - Seaside Police Department: announced the SNAACK van provides healthy snacks and sports equipment to Seaside youth residents and a [schedule](#) will be provided soon. Chief Pridgen also reported on the "Cookie with a Cop" event that was held on December 16, 2019 at Angelina's Bakery on Fremont Blvd which is an opportunity for members of the community to meet and interact with officers; announcements of public outreach events are on Facebook.

Alvin Edwards - Monterey Peninsula Water Management District (Division 1): December 16, 2019 - the board met on entering into new agreements with consultants to help position the board to vote on a Resolution of Public Necessity sometime next summer for the buying of Cal AM water and work will be done in 5 additional areas of study; on December 12 Pure Water Monterey had a public

hearing on the expansion SEIR and there will be an extension of the public comment period until January 31 2020, also the City Manager is expected to receive an updated water demand forecast for his review and comments and the Board is hoping to make a decision on the item within the first month of 2020; board elections were held and the new chair of the Board is Director Edwards (Division 1 - Seaside), the new Vice Chair is Director Byrant Burns (Division 4 - Pacific Grove); Mr. Edwards wished everyone a Merry Christmas and a Happy New Year!

Mayor Oglesby congratulated Mr. Edwards on his election to Chair of the Board.

Mayor Oglesby, City Attorney Freeman and City Manager Malin responded to the comments from the public.

7. PRESENTATIONS

A. PROCLAMATION HONORING CITY ATTORNEY FREEMAN

Mayor Oglesby and Assistant City Attorney Sheri Damon presented City Attorney Don Freeman with a proclamation and thanked him for his service and work with the City of Seaside. Each Councilmember thanked, congratulated and spoke of their experience in working with Mr. Freeman. Mr. Freeman responded by thanking all for their kind words and dedication to the work of the city and the Community for their engagement throughout the years.

8. CONSENT AGENDA

On motion by Councilmember Campbell and second by Councilmember Pacheco and carried by the following vote, the City Council moved to approve the Consent Agenda with the exception of item 8J.

Item 8J pulled by Councilmember Wizard.

RESULTS: 5-0-0-0

AYES: OGLESBY, PACHECO, CAMPBELL, WIZARD, KISPERSKY

NOES: NONE

ABSTAIN: NONE

ABSENT: NONE

A. APPROVE MINUTES FROM NOVEMBER 21, 2019 AND DECEMBER 5, 2019

Action: Approved

B. APPROVE AND FILE CITY CHECKS

Action: Approved

- C. APPROVE A FEE WAIVER FROM HINDU TEMPLE OF MONTEREY PENINSULA FOR THE USE OF THE LAGUNA GRANDE HALL AND KITCHEN FOR THEIR DIWALI CELEBRATION NIGHT EVENT ON NOVEMBER 07, 2020**
Action: Approved
- D. APPROVE A FEE WAIVER FROM MONTEREY COUNTY SOCCER CLUB FOR THE USE OF LLOYD GARNETT FIELD AT CUTINO PARK**
Action: Approved
- E. APPROVE A FEE WAIVER FROM WAYNE GARNETT FOR THE USE OF THE LAGUNA GRANDE HALL AND KITCHEN FOR THEIR CELEBRATION OF LIFE FOR KELVIN GARNETT ON DECEMBER 21, 2019**
Action: Approved
- F. APPROVE A MAYOR'S YOUTH FUND CONTRIBUTION REQUEST FROM ORCHESTRA IN THE SCHOOLS**
Action: Approved
- G. APPROVE A MAYOR'S YOUTH FUND CONTRIBUTION REQUEST FROM INTERNATIONAL SCHOOL OF MONTEREY**
Action: Approved
- H. APPROVE REALLOCATING 0.285 AF WATER FROM SMALL COMMERCIAL FUND TO RESERVE FUND, AND APPROVING WAC-19-26: MONTEREY COUNTY, PROPERTY OWNER, AND COMMUNITY HUMAN SERVICES, APPLICANT, 0.285 AF OF WATER FROM RESERVE FOR THE SHELTER AT 1292 OLYMPIA AVENUE LOCATED IN THE COMMERCIAL MIXED-USE (CMX) ZONING DISTRICT. THE PROJECT IS EXEMPT CLASS 1, SECTION 15301.A FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) GUIDELINES.**
Action: Approved
- I. APPROVE THE TRAFFIC ADVISORY COMMITTEE (TAC) RECOMMENDATIONS FOR PARKING DESIGNATION ON THERESA STREET**
Action: Approved
- J. APPROVE A RESOLUTION APPROVING MAYORAL RECOMMENDATIONS FOR MAYOR PRO TEMPORE AND ANNUAL APPOINTMENTS TO OUTSIDE COMMITTEE ASSIGNMENTS FOR JANUARY 1, 2020 TO DECEMBER 31, 2020.**

Councilmember Wizard indicated that he and Councilmember Kispersky were interested in swapping certain assignments with one another.

On motion by Councilmember Wizard and second by Councilmember Kispersky and carried by the following vote, the City Council moved to switch the appointments for Councilmember Wizard to be appointed to the Association of Monterey Bay Area Governments (AMBAG) and Councilmember Kispersky to be appointed to the Seaside County Sanitation District (SCSD).

RESULT: 5-0-0-0

AYES: OGLESBY, PACHECO, CAMPBELL, WIZARD, KISPERSKY

NOES: NONE

ABSTAIN: NONE

ABSENT: NONE

Action: Approved

K. ADOPT A RESOLUTION UPDATING THE LISTING OF BENEFITS FOR DEPARTMENT DIRECTORS

Action: Approved

M. ADOPT RESOLUTION CANCELLING JANUARY 2, 2020 MEETING.

Action: Approved

L. ADOPT A RESOLUTION AUTHORIZING EXECUTION OF A CONTRACT WITH PRECISION CONCRETE CUTTING FOR A COST NOT TO EXCEED \$66,000 FOR SIDEWALK MAINTENANCE AND REPAIR SERVICES

Action: Approved

9. PUBLIC HEARING

A. INTRODUCTION OF AN ORDINANCE AMENDING SEASIDE MUNICIPAL CODE TITLE 13, CHAPTER 10.080 MUNICIPAL WATER SYSTEM – PERMITS TO CONNECT, PARAGRAPH G, AND TITLE 13, SECTION 12 CROSS CONNECTION CONTROL PROGRAM (FIRST READING - ROLL CALL VOTE)

Interim City Engineer Scott Ottmar introduced the item and explained that the cross connection are applicable to the Seaside Municipal Water System in an effort to prevent oversight of a non-City owned water system. There were no questions or comments from the Council or public.

On motion by Councilmember Campbell and second by Councilmember Pacheco and carried by the following roll call vote, the City Council moved to approve the proposed edits that reflects updates to the California Code of Regulations as it pertains to the types of back flow protection devices necessary to maintain the

minimum level of protection for the municipal water supply; the clarification of responsibilities of the City; and certain assigned responsibilities and authority to the City Engineer as appropriate.

RESULT: 5-0-0-0

AYES: OGLESBY, PACHECO, CAMPBELL, WIZARD, KISPERSKY

NOES: NONE

ABSTAIN: NONE

ABSENT: NONE

Action: Approved

B. ADOPTION OF RESOLUTIONS AMENDING THE 2004 SEASIDE GENERAL PLAN TO INCORPORATE THE 5TH CYCLE (2015-2023) DRAFT HOUSING ELEMENT TO THE GENERAL PLAN AND APPROVING CORRESPONDING NEGATIVE DECLARATION.

Economic Development Manager Gloria Stearns introduced the item and Veronica Tam of Veronica Tam and Associates, Inc. Ms. Tam provided a presentation on the Draft Housing Element to the General Plan and what was required in order to achieve compliance.

On motion by Councilmember Kispersky and second by Councilmember Pacheco and carried by the following vote, the City Council moved to approve the adoption of resolutions amending the 2004 Seaside General Plan to incorporate the 5th Cycle draft housing element to the general plan and approving corresponding negative declaration.

RESULT: 5-0-0-0

AYES: OGLESBY, PACHECO, CAMPBELL, WIZARD, KISPERSKY

NOES: NONE

ABSTAIN: NONE

ABSENT: NONE

Action: Approved

C. ADOPTION OF AN EXTENSION OF URGENCY ORDINANCE 1069 ADOPTING JUST CAUSE EVICTION PROTECTIONS AND RENTAL RATE LIMITS EFFECTIVE IMMEDIATELY UNTIL DECEMBER 31, 2019

On motion by Councilmember Campbell and second by Councilmember Pacheco and carried by the following roll call vote, the City Council moved to adopt an extension of urgency ordinance 1069 adopting just cause eviction protections and rental rate limits effective immediately until December 31, 2019.

RESULT: 5-0-0-0

AYES: OGLESBY, PACHECO, CAMPBELL, WIZARD, KISPERSKY

NOES: NONE

ABSTAIN: NONE

ABSENT: NONE

Action: Approved

D. APPEAL OF USE PERMIT NO. UP-15-04: THE CITY COUNCIL WILL CONSIDER AN APPEAL RELATED TO A USE PERMIT APPLICATION SUBMITTED BY SAC WIRELESS ON BEHALF OF VERIZON WIRELESS FOR A WIRELESS FACILITY AT 1460 HILBY AVENUE, THE RS-8 ZONING DISTRICT

Economic Development Manager Gloria Stearns introduced the item and advised that the item was not an effort for reconsideration but a new proposal from the applicant. Staff recommended consideration of the appeal from the Planning Commission's denial of Use Permit Application No. UP-15-04 and adopt a resolution approving Use Permit Application No. UP-15-04.

PUBLIC COMMENT SPEAKERS: Wanda Parrot, Nina Beatty, Lisa Torry, Stephanie Booth, Collette Nelson, Mara Silas Tucker, four (4) Seaside residents, Pam Baker

On motion by Councilmember Pacheco and second by Councilmember Kispersky and carried by the following vote, the City Council moved to adopt a resolution approving Use Permit Application No. UP-15-04.

RESULT: 5-0-0-0

AYES: OGLESBY, PACHECO, CAMPBELL, WIZARD, KISPERSKY

NOES: NONE

ABSTAIN: NONE

ABSENT: NONE

Action: Approved

E. APPEAL OF MASTER USE PERMIT NO. UP-16-07: RESOLUTION GRANTING APPEAL AND DENYING MASTER USE PERMIT NO. UP-16-07 RELATED TO A MASTER USE PERMIT APPLICATION SUBMITTED BY SAC WIRELESS ON BEHALF OF VERIZON WIRELESS FOR THE INSTALLATION OF FOUR SMALL CELL WIRELESS FACILITIES ON UTILITY POLES NEAR THE FOLLOWING LOCATIONS: (1) 1101 BUENA STREET; (2) 1108 SAN LUCAS STREET; (3) 1431 WARING STREET; and (4) 1268 YOSEMITE STREET.

Based on the prior action of the City Council for UP-15-04, a letter of withdrawal for this item was provided by Verizon Wireless Outside Counsel. No action taken.

10. BUSINESS ITEMS

A. CONSIDER A FEE WAIVER AND CO-SPONSORSHIP REQUEST FROM THE LULAC COUNCIL #2895 FOR COSTS ASSOCIATED WITH THEIR SEASIDE 10K RUN

Mayor Oglesby and Mayor Pro Tem Pacheco recused themselves from the hearing and voting of this item. Councilmember Campbell was left as the Chair for the item. City Manager Malin introduced Recreation Services Director Dan Meewis whom provided the presentation of the item and responded to questions and comments from the remaining Council members. League of United Latin American Citizens (LULAC) President of local chapter 2895 Francisco Lopez responded to questions and comments from the Council and provided further details about the organization, mission and goals of the event.

On motion by Councilmember Wizard and second by Councilmember Kispersky and carried by the following vote, the City Council moved to deny the fee waiver and co-sponsorship request and asked that the applicant return with a more modest proposal.

RESULT: 3-0-2-0

AYES: CAMPBELL, WIZARD, KISPERSKY

NOES: NONE

ABSTAIN: OGLESBY, PACHECO

ABSENT: NONE

Action: Denied

11. COUNCIL MEMBER REQUESTS

Oglesby - working with Communities Organized for Relational Power in Action (COPA) to draft ordinance for council priorities of residential renters and landlord protection. It has been requested for the City Manager and City Attorney to meet and bring it to the Council for consideration.

12. MAYOR, CITY COUNCIL, CITY MANAGER AND CITY ATTORNEY COMMENTS AND REPORTS ON COMMITTEE ASSIGNMENTS

City Manager Malin - wished all a Merry Christmas and Happy New Year!

City Attorney Freeman - reported that a request has been received from Del Monte Manor regarding the refinancing and remodeling terms of agreement; the closing has been scheduled for December 27 and the Council will need to schedule a special meeting on December 23 to consider the change terms. Mr. Freeman also wished all a Merry Christmas and Happy New Year and; thanked everyone for their well wishes.

Kispersky - None

Wizard - reported on the City's Winter Wonderland experience; attended a meeting at Fort Ord Reuse Authority (FORA) in an effort to fix Eucalyptus Road prior to FORA's sunset in June 2020; preparation for Habitat planning meetings coming in

the next few months; attended the City's staff Holiday luncheon.

Campbell - attended the Monterey-Salinas Transit (MST) meeting as an alternative for Mayor Pro Tem Pacheco which considered contracts and agreements with mobility vans and leasing property on former Fort Ord for van storage; attended Monterey One Water meeting at which there was a request for extension of the comment period of the draft supplemental Environmental Impact Report (EIR); attended Waste Management District meeting which considered new equipment to help with plastic recycling. Wished all a Merry Christmas and reiterated the pleasure working alongside City Attorney Don Freeman.

Pacheco - attended Cookie with a Cop, Senior Luncheon at Oldemeyer Center with the Mayor; attended Durant Park clean up event with the Environmental Committee that helped supply the trees; attended Transportation Agency for Monterey County meeting and thanked the Mayor for allowing the meeting to be adjourned in honor of Lloyd Love (a retired City of Seaside Mechanic) and Kelvin Garnett (former Seaside High Basketball Coach for 22 years).

Oglesby - attended Mayor's meeting and collaborated with local Mayors on capturing storm water at Laguna Grande; attended a Local Agency Formation Commission (LAFCO) meeting in which the FORA transition and how LAFCO's interests are protected, attended FORA meeting with Councilmember Wizard on issues concerning Eucalyptus Road; reported on experience of the City's Winter Wonderland event - 1000 cups of hot cocoa were handed out to attendees -- thanked City employees for their hard work and for the Fire Department bringing Santa! The Mayor also reported on his attendance at the Building Trades Christmas Party, a meeting held with City Boards, Commission and Committee (BCC) Chairperson working dinner/meeting and reviewed the revised BCC handbook discussing topics including but not limited to responsibilities, importance of attendance, etc. The Mayor expressed his regrets in not being able to attend the Public Works Holiday BBQ but thanks employees for their hard work. Mr. Oglesby also attended the Senior Luncheon held at the Oldemeyer and thanked the ceremony hostess Analisa Mitchell; reported on attending Cookies with a Cop and thanked the Police Department for their outreach efforts, announced new Broadway business - HEM nutrition and commended the young business owner; attended the funeral for Dr. Marie Sweet and added Leverage Hall as another to add to the memory list at adjournment. Wished everyone a Merry Christmas and Happy New Year!

13. ADJOURNMENT

The meeting was adjourned in honor of Kelvin Garnett, Lloyd Love and Leverage Hall at 10:36 p.m.

Respectfully submitted,

Lesley Milton-Rerig, City Clerk

Ian N. Oglesby, Mayor



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 8.B.

TO: City Council

FROM: Craig Malin, City Manager

BY: Jessica Riley, Accounting Assistant
Kimberly Drabner, Finance Director

DATE: January 16, 2020

SUBJECT: APPROVE AND FILE CITY CHECKS

PURPOSE & RECOMMENDATION

Approve and file the accounts payable and wired payments made during the period of December 7, 2019 through January 3, 2020 including the payroll and benefits checks, direct deposits and wired payments related to the pay period ending December 19, 2019 and January 2, 2020. Total Accounts Payable and Payroll for the above referenced period is \$4,484,385.97.

BACKGROUND

In accordance with Government Code Section 37208, at each City Council meeting the Council is provided a listing of the payroll and general checks issued since the last report so that it can inspect and confirm these checks. Each purchase has been reviewed and approved by the department making the purchase at the time of procurement. The invoice has been reviewed by the Finance Department prior to payment to ensure that it conforms to the approved budget.

Therefore, in accordance with Government Code Section 37208, the above referenced, and linked list of checks conforms to the approved budget and has been paid. These checks are submitted to the City Council for inspection and confirmation.

A description of the checks and wires exceeding \$10,000 are as follows:

- \$1,633,811.88 for Payroll and benefits
- \$11,163.96 to Access Monterey Peninsula, Inc. (AMP) for July - September, 2019 PEG fees (Public, Educational and Government access programming) for AT&T and Comcast.
- \$20,235.58 to California-American Water for water consumption for multiple City of Seaside service addresses. Billing period of 10/19/19-11/25/19.
- \$32,670.00 to John C. Gemma for (110) Microsoft Office Std 2019 Open Govt software packages @ \$297.00 each, electronically delivered.
- \$679,011.81 to Granite Construction Company for Pavement Rehabilitation project, phase II; \$51,238.37 for work thru September 2019; \$627,773.44 for work thru October 2019.
- \$168,095.10 to Granite Rock Company for David Cutino Park - Phase I work related to application 10. Services include mobilization, SWPPP, demo/clear & grub, hardscape paving, electrical and skate park.
- \$21,446.37 to Monterey County Convention & Visitor's Bureau for TID (Tourism Improvement District) remittance for the reporting period of October 2019 for the 13 Seaside motels/hotels.
- \$44,009.81 to Disaster Kleenup for \$8,136.36 for on-call homeless encampment cleanup services in August, September, October, & November 2019. \$35,873.55 for 60% progress pay and final board-up of buildings located in Surplus II of Fort Ord.
- \$43,680.42 to U.S. Bank - Cal Card for City of Seaside purchase card transactions for the billing period of 9/22/19 - 10/22/19.
- \$12,221.14 to Hardee Investigations for Background investigations and reports for Oct/November 2019.
- \$334,637.50 to Monterey Peninsula Engineering for SCSD - Lift station upgrade services; \$119,250.00 for work thru 10/31/2019, \$215,387.50 for work thru 11/30/2019.
- \$13,059.50 to E2 Consulting Engineers, Inc. for SCSD - Lift station upgrade services from 9/30/19-10/27/19.
- \$146,094.00 to PNC Equipment Finance for 3-month lease for Library & City Hall energy project, Fire Admin energy project, & IT equipment; Annual lease for 2017 Fire Truck.
- \$22,758.61 to Downtown Ford Sales for 2019 Ford F150 pickup truck for the police department.
- \$25,645.00 to Clifton, Larson, Allen LLP for audit services through 11/27/2019.
- \$13,982.75 to Kimley-Horn and Associates for November 2019 - Intersection Control Evaluation.
- \$62,364.25 to Torti Gallas and Partners for Campus Town specific plan services - November 2019.
- \$20,645.44 to Don Potter Law Corporation for Personnel investigation, 52 hours @ \$375/HOUR.
- \$115,248.08 to The Sohagi Law Group for 1) General Plan legal services for Apr, Aug, & Nov 2019 2) Campus Town Center legal services for Apr, Jul, Nov 2019.
- \$130,916.10 to Seaside Senior Living for JF Construction invoice #1650 & 1651

for Coe Ave and Monterey Rd project.

- \$19,980.24 to Systems & Space, Inc. for police evidence storage lockers.
- \$64,446.60 to O'Melveny & Myers, LLP for professional services rendered during Aug, Sep, Oct 2019 related to Seaside Water Rights.
- \$41,500.00 for returned asset forfeiture.

The remaining checks, totaling \$806,761.83 include payments to vendors for operating expenditures.

The Checks report is available on the City's website here:

<http://www.ci.seaside.ca.us/194/Check-Draft-Register>

FISCAL IMPACT

There are no additional fiscal impacts.

ATTACHMENTS

None



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 8.C.

TO: City Council

FROM: Craig Malin, City Manager

BY: Dan Meewis, Recreation Director

DATE: January 16, 2020

**SUBJECT: APPROVE A MAYOR'S YOUTH FUND CONTRIBUTION
REQUEST FROM SEASIDE HIGH SCHOOL LACROSSE CLUB**

PURPOSE & RECOMMENDATION

Approve a request from Seaside High School Lacrosse Club for a donation of Three Thousand Dollars (\$3,000.00) from the Mayor's Youth Fund to help cover the costs for equipment, coaches, field trips to college games and transportation.

BACKGROUND

Seaside High School Lacrosse Club is requesting a Three Thousand Dollars (\$3,000.00) from the Mayor's Youth Fund to help cover the costs for equipment, coaches, field trips to college games and transportation.

Lacrosse Club is a first year club where their goal is to have both a male and female team. The club is giving those students a chance to express themselves on the field with a new sport. Bringing a new sport to the campus could possibly change the outlook students and others see at the school. To ensure a healthy environment the club has recycled and reused any leftover materials that was used in thier events.

Based on the information provided in the application, the request meets the criteria for the Mayor's Youth Fund Policy. This is the first time that the Seaside High School Lacrosse Club is requesting a donation.

FISCAL IMPACT

This request would be funded by a donation from the Waste Management's District to the Mayor's Youth Fund.

ATTACHMENTS

1. MYF Seaside High School Lacrosse Club -2020
 2. Seaside High School Lacrosse Club - W-9
-

Reviewed for Submission to the
City Council by:



Craig Malin, City Manager

- Contributions are only paid to organizations, such as non-profit groups and schools.
- Contributions are intended to fund actual costs related to an event or activity. (Please see "Payment Process" information provided below.)
- Contributions from the Mayor's Youth Fund are not intended to be the sole source of funds for an organization or program and will only be made to supplement other fundraising activities.
- How this request will provide a municipal benefit (ie., benefit the community).

Contribution Limits: In order to equitably distribute funds available in the Mayor's Youth Fund, the following contribution guidelines have been developed, although all contributions are subject to the discretion of the City Council.

<u>Individuals*</u>	25% of total cost of activity (not to exceed \$1,000.00)
Groups up to 20	up to \$1,500.00
Groups 21+	up to \$3,000.00

In addition, funding will be limited to one contribution per year (every 12 months).

Payment Process: If a contribution is approved by the City Council, payment will be made to the authorized organization or directly to the vendor selected by the authorized organization after submittal of a receipt or the presentation of actual invoices. No funding can go directly to an individual. This process is required in order to provide documentation required to meet municipal auditing standards.

###

Mayor's Youth Fund Contribution Request

Prior to completing this request please, review the attached contribution policy. All requests will be considered before the City Council and you will be notified of the specific date your item is placed on the agenda. Please return this completed form with necessary attachments to Recreation Services, City of Seaside, 440 Harcourt Avenue, Seaside, CA 93955.

Name of Organization: Seaside High Lacrosse Club
 Address: 2200 Noche Buena St Seaside, CA 93955
 Email: gdelrosario831@gmail.com
 Phone Number: Home _____ Work (831) 899-7028 Cell (831) 915-3509
 Name of Individual: Gianna Del Rosario - president
Calyx Clifford - Advisor

% Residents or Students of Seaside: 100 %

of Participants: 25

Ages: 14-18

CRITERIA – Applicants must meet at least one of the following criteria to be eligible for funding. Please select one or more from the following list:

Scholastic _____
Athletic X
Music _____
Environmental _____
Art _____

Is funding a reward for one of these activities?

No, funding is not a reward for our club rather an opportunity to interact and spread word about our club sport.

Description of event, activity or program funding pertains to: (Attach Additional Information as Necessary)

Lacrosse club is a first year club where our goal is to have both a male and female team. We are as a club are giving those a chance to express themselves on a field with a new sport to SHS

Description of how the funds will be specifically used for youth groups activities/events and/or has a nexus to the goals of recycling, cleanup and/or "green" sustainability to insure a healthy environment.

We as a club have been funding in order to get both a male and female team (equipment, coaches, field trips to college games, and transportation

What other fundraising activities are you participating in to fund your event, program or activity and what other funding sources will supplement your request?

Some fundraising activities we will participate in are bake sales, contributions from restaurants. ~~and~~ But, as a whole we feel it's important to spread word & educate others about our club.

*Total Amount Requested: (See Contribution limits) \$3,000

Lacrosse Request Contribution

My name is Gianna Del Rosario, and I am the president of the Lacrosse Club, I am a Sophomore at Seaside High School. During my freshman year at Seaside, I noticed the lack of sports we have, compared to other schools, from us being known for our sportsmanship it was filled with the known sports you see anywhere rather than unique sports such as Lacrosse. Many students here at Seaside struggled with finding their place whether it was academically or sport-related, I felt with bringing a new sport within the campus could possibly change the outlook students and others see our school. Prior to that I talked to many students and staff and shared my thoughts on how I believe we can make a change. So, I went around and spread the word within social media to find that many others felt the same way and wanted to be apart of it, a week later the list of both males and females who signed up to be in the club grew more and more. And throughout my freshman year, I made a goal to keep going and to make Lacrosse a club sport.

Many people have approached me asking why I choose Lacrosse, out of all other sports. Well, being brought into a partially athletic family, Lacrosse was one of the sports that are intertwined into one. Lacrosse shares a trait of Soccer, basketball, and field hockey and/ hockey. Which interested many students and me. As we know many schools have different varieties of sports, sports that we do not have at Seaside High. By spreading the word we can make that change among the help with our community.

During the past couple of months as a club, we have been discussing the materials we need in order to build a team for both a male and a female team, we will need both equipment and transportation. (being passed out is a representation of both female and male equipment needed as well as all expenses.) As for the different types of fundraisers we have planned in the upcoming year. We will have many bake sales, food fairs, and upcoming contributions from local restaurants. Our goal as a club is \$20,000. But, anything is appreciated.

As a club, we have spoken to both small and large organizations, we have as well-spoken to a couple of lacrosse clubs in our county and some high schools who have lacrosse. By spreading the word it will benefit our community by giving other generations the opportunity to play a unique sport with other elite schools, not only will it give us a chance to bring unique sports to Seaside High but, to change the outlook of how others may look at our school. To ensure a healthy environment the club has recycled and reused any leftover materials that was used in our events, and we have made sure we buy what is only necessary. Therefore, the reason I choose to speak to the mayor of Seaside is to let the council understand how important it is to bring a new/ unique sport into our community.

STX CELL IV

LAX.COM / SPORTSTOP.COM / LACROSSEUNLIMITED.COM

- Shoulder Pads - \$129.99
X9 - \$1169.91
 - Shoulder Pad Liners - \$109.99
X9 - \$989.91
 - Gloves - \$129.99
X9 - \$1169.91
 - Arm Guards - \$99.99
X9 - \$899.91
 - Elbow Pads - \$59.99
X9 - \$539.91w
 - Total Costs - \$2699.73 - \$3239.73
-

Cascade S Helmets (Boys)

LACROSSEUNLIMITED.COM

- Cascade S Helmets - \$301.97
X10 - \$3019.70
 - Total Costs - \$3019.70
-

Goalie Materials (Boys)

- Cascade Throat Protector - \$39.99

- STX Shield 500 Chest Protector - \$159.99
 - STX Shield 500 Goalie Gloves - \$159.99
 - STX Contour Shin Guards - \$24.99
 - STX Eclipse 2 Lacrosse Goalie Head Prestrung - \$104.98
 - STX Cell IV Arm Guard/ Elbow Pads - \$59.99 - \$99.99
 - Total Costs - \$549.93 - \$589.93
-

Offensive Shafts (Boys)

- Nike Men's Vandal Attack Lacrosse Shaft - \$69.99
- X5 - \$349.95

Defensive Shafts

- STX Hammer 700 Composite - \$199.99
- X4 - \$799.96

Offensive Heads

- Under Armour Command 2.0 - \$131.98
- X4 - \$527.92
- Stringking Mark 2F - \$129.99

Defensive Head

- Maverik Havok
-

Offensive Sticks (Girls)

STX.COM

- Crux 600 Complete Stick - \$245

X5 - \$1225

Defensive Sticks (Girls)

- Under Armour Glory - \$214.99

X6 - \$1289.94

Goggles

- STX 4SIGHT - \$39.99

X11 - \$439.89

Goalie Material (Girls)

- Sultra Chest Protector - \$100
- Cascade S Helmet - \$301.97
- Cascade Throat Protector - \$39.99
- STX Contour Shin Guards - \$24.99

● Total Costs- \$3,421.78

Form W-9
(Rev. October 2007)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the
requester. Do not
send to the IRS.

See Specific Instructions on page 3

Name (as shown on your income tax return)
Monterey Peninsula Unified School District

Business name, if different from above

Check appropriate box: ☐ Individual sole proprietor ☐ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ☐ Exempt payee
☐ Other (see instructions) ▶

Address (number, street, and apt. or suite no.)
700 PACIFIC ST

City, state, and ZIP code
MONTEREY CA 93940

List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, you do not have a number, see *How to get a TIN* on page 3. For other entities, it is your employer identification number (EIN).

Note: If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

or

Employer identification number
77-0320712

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification Instructions. You must check out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payment other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here Signature of U.S. person ▶ Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note: If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 8.D.

TO: City Council

FROM: Craig Malin, City Manager

BY: Dan Meewis, Recreation Director

DATE: January 16, 2020

**SUBJECT: APPROVE MAYOR'S YOUTH FUND CONTRIBUTION REQUEST
FROM THE SEASIDE HIGH SCHOOL KEY CLUB**

PURPOSE & RECOMMENDATION

Approve a request from Seaside High School Key Club for a donation of One Thousand Five Hundred Dollar (\$1,500.00) from the Mayor's Youth Fund to help cover the costs for transportation and registration.

BACKGROUND

The Seaside High School Key Club is requesting a One Thousand Five Hundred dollars (\$1,500.00) from the Mayor's Youth Fund to help cover the cost for transportation and registration to the CNH District Convention.

The CNH District Convention is for high school students from the states of California, Nevada and Hawaii to learn about the election for the next potential president and voting. This opportunity will allow students to gain powerful networking and leadership skills that they will be able to use to positively influence their club, school and community. This event doesn't specifically address cleanup, however, will give various resources and ideas that relate to the community to help bring a healthy environment to the school, community and Seaside.

Based on the information provided in the application, the request meets the criteria for the Mayor's Youth Fund Policy. The Seaside High Key Club received their last donation at the April 06, 2017 City Council meeting. Their 2017 Mayor's Youth Fund request was submitted and approved before the new updated Mayor's Youth Fund Policy which

started in March 2018. At that time, the Mayor's Youth Fund Closing Report was not required.

FISCAL IMPACT

This request would be funded by a donation from the Green Waste Recovery's donation to the Mayor's Youth Fund.

ATTACHMENTS

1. MYF Seaside High Key Club 2020
 2. W-9 - Seaside High Key Club 2020
-

Reviewed for Submission to the
City Council by:



Craig Malin, City Manager

MAYOR'S YOUTH FUND POLICY

Purpose: The Mayor's Youth Fund was created to provide supplemental financial assistance to students and non-profit groups that provide services to improve the lives of young people living in the City of Seaside. A policy has been developed to standardize the evaluation of contribution requests and ensure that the funds are used appropriately to serve the City's youth.

Eligible Applicants: Contributions will only be made to, or on behalf of, students or organized groups, such as schools and non-profit organizations based in Seaside and/or serving a majority of Seaside residents (50%) that are 18 years old or younger or enrolled in high school. Faith based organizations may apply for contributions from the Mayor's Youth Fund if the funding is not used to support religious activities such as worship, Sunday School, or religious instruction. In addition, activities funded by the Mayor's Youth Fund must be open to all persons without regard to their religious affiliation. ✓

Submittal of Contribution Requests: In order to request a contribution, the following information must be provided in writing:

- Name of the organization, person(s) benefiting, proposed use of the funds, total amount needed or fundraising goal.
- Description of other methods being used to raise funds and/or other contributors.
- An explanation of how the group, activity, or event will benefit Seaside youth.
- Written description of how the use of the funds will be specifically used for youth group activities/events and/or has a nexus to the goals related to recycle, cleanup, and "green" sustainability to ensure a healthy environment.
- How this request will provide a municipal benefit (ie., benefit the community).
- Proof of non-profit organizations status (not a taxpayer's I.D> number) and a current W-9 form.

Evaluation Process and Criteria: Contributions can only be made if approved by the City Council. Funding requests will be evaluated based on their consistency with this policy, including the following criteria.

- Scholastic, athletic, music, environmental and art activities will be considered for funding based on the quality of the proposed activity.
- Evidence of activities/events related to "reduce, reuse and recycle" to ensure a healthy environment.
- Contributions requests will be accepted from individuals and can be made to an organization on behalf of an individual member or student.
- Contributions are only paid to organizations, such as non-profit groups and schools.
- Contributions are intended to fund actual costs related to an event or activity. (Please see "Payment Process" information provided below.)

- Contributions from the Mayor's Youth Fund are not intended to be the sole source of funds for an organization or program and will only be made to supplement other fundraising activities.
- How this request will provide a municipal benefit (ie., benefit the community).

Contribution Limits: In order to equitably distribute funds available in the Mayor's Youth Fund, the following contribution guidelines have been developed, although all contributions are subject to the discretion of the City Council.

<u>Individuals*</u>	25% of total cost of activity (not to exceed \$1,000.00)
Groups up to 20	up to \$1,500.00
Groups 21+	up to \$3,000.00

In addition, funding will be limited to one contribution per year (every 12 months).

Payment Process: If a contribution is approved by the City Council, payment will be made to the authorized organization or directly to the vendor selected by the authorized organization after submittal of a receipt or the presentation of actual invoices. No funding can go directly to an individual. This process is required in order to provide documentation required to meet municipal auditing standards.

###

Mayor's Youth Fund Contribution Request

Prior to completing this request please review the attached contribution policy. All requests will be considered before the City Council and you will be notified of the specific date your item is placed on the agenda. Please return this completed form with necessary attachments to N. Towne, Recreation Services, City of Seaside, 440 Harcourt Avenue, Seaside, CA 93955.

Name of Organization: Seaside High Key Club

Address: 2200 Noche Buena St, Seaside, CA 93955

Email: tyler.nguyen.1e@gmail.com

Phone Number: Home 831-582-1140 Work _____ Cell _____

Name of Individual: Tyler Nguyen

% Residents or Students of Seaside: 90 % (^{100%} Seaside High Students)

of Participants; 10

Ages: 14-18 years old

CRITERIA – Applicants must meet at least one of the following criteria to be eligible for funding. Please select one or more from the following list:

Scholastic ✓
Athletic _____
Music _____
Environmental _____
Art _____

Is funding a reward for one of these activities?

No, this event is an educational, leadership conference.

Description of event, activity or program funding pertains to: (Attach Additional Information as Necessary)

District convention for high school students from the states of California, Nevada, and Hawaii to learn about voting, election for next potential president attend workshops, get training in leadership. We will have to confirm our attendance by early February. Participants will have to confirm.

Description of how the funds will be specifically used for youth groups activities/events and/or has a nexus to the goals of recycling, cleanup and/or “green” sustainability to insure a healthy environment.

Funds will be used for transportation and registration. The event doesn't specifically address cleanup, but will give various resources or ideas that may relate to our community to help bring a healthy environment to our school, community, and city.

What other fundraising activities are you participating in to fund your event, program or activity and what other funding sources will supplement your request?

Seaside High Key Club will host various fundraisers such as: bake sales, ethnic food fundraisers, and gift wrapping at Macy's. Other fundraising sources are Seaside Kiwanis making a small donation and an opportunity drawing.

*Total Amount Requested: (See Contribution limits) \$ 1,500

Funding Requirements

- Funding is limited to one contribution per year (every 12 months).
- The Mayor's Youth Fund Closing Report Form must be submitted to staff at least 60 days upon completion of the event, activity or program. Applicants that do not furnish the form may not apply for funds for the following year.
- A representative from the organization is required to be at the Council meeting for their application to be heard. If no representative is present then the agenda item will be postponed to another City Council meeting upon notification by the applicant.

- Incomplete applications will not be forwarded for Council consideration; applications not answering the question related to reduce, reuse or recycle are considered incomplete.

Individual Requests: Please attach an itemized list of all expenses. Amount of donation may not exceed 25% of the total cost of the activity and not exceed \$1,000.00. Applications that are incomplete will be returned.

MYF Policy Revised March 2018

MAYOR'S YOUTH FUND CLOSING REPORT *

Date Mayor's Youth Fund was approved by council: _____

Name of Organization: _____

Contact: _____

Address: _____

Email/Phone: _____

Amount of Donation Received: _____

What Items were purchased with Mayor's Youth Fund Donation:

Please describe the activities and the date the group/individual participated in related to reduce, reuse and recycle? Please provide written description, brief City Council presentation, and/or photos.

Signature: _____

Date: _____

***This form is due 60 days upon receipt of funding by the applicant. Organizations that do not comply within the 60 day time period may not apply for funding for the following year.**

Form W-9
(Rev. October 2007)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the
requester. Do not
send to the IRS.

School Name (as shown on your income tax return)
Monterey Peninsula Unified School District

Business name, if different from above

Check appropriate box: ☐ Individual sole proprietor ☐ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ☐ Exempt payee
☐ Other (see instructions) ▶

Address (number, street, and apt. or suite no.)
700 PACIFIC ST

City, state, and ZIP code
MONTEREY CA 93940

List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note: If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

Or

Employer identification number
770320712

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payment other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign
Here

Signature of
U.S. person ▶

Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note: If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,



CITY OF SEASIDE STAFF REPORT

Item No.: 8.E.

TO: City Council

FROM: Craig Malin, City Manager

BY: Lesley Milton, Assistant City Manager

DATE: January 16, 2020

SUBJECT: APPROVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

PURPOSE & RECOMMENDATION

To make appointments to the Planning Commission, the Parks and Recreation Commission the Community Development Advisory Committee, the Environmental Commission and the Homeless Commission to fill vacancies created by resignations of current members.

BACKGROUND

The Commissions, Committees and Boards are City Council appointed advisory bodies that are intended to enhance communication and coordination between the City Council and the community. This alliance provides the community direct involvement in policy-making and conveying of vital information.

According to Seaside Municipal Code 2.14.040, the Mayor with advice and consent of the City Council, shall make appointments to Commissions, Committees and Boards. As directed by Council, the Mayor and a rotating Council Member meet with all applicants prior to appointment. The City Manager designates Department Heads or other staff members to act as staff liaison to committee including to regularly attend meetings of advisory bodies to provide technical support.

City staff has submitted multiple advertisements inviting applications for positions on all City of Seaside Boards and Commissions, has listed the openings on the city website,

posted vacancies on all of the public notice boards as well as on City social media accounts.

The Mayor and Council Member Kispersky invited all new applicants to meet and discuss their applications on two separate dates in December 2019. All applications on file for the last two years have also been considered. As a result the following appointments are recommended:

Mariam Alao - Community Development Advisory Committee
Stacey Fiess - Homeless Commission
Clayton Schuster - Art and History
Danny Huynh - Planning Commission
Chelsea Tu - Environmental Commission

They have further recommended that the following volunteers be transferred to the following positions:

Hamish Tyler, from the Community Development Advisory Committee to the Art and History Commission
Franco Pacheco, from the CJOBS to the Parks and Recreation Commission

FISCAL IMPACT

None associated with this action.

ATTACHMENTS

None

Reviewed for Submission to the
City Council by:



Craig Malin, City Manager



CITY OF SEASIDE STAFF REPORT

Item No.: 9.A.

TO: City Council

FROM: Craig Malin, City Manager

BY: Scott Ottmar, Senior Engineer
Misty Bradshaw, Associate Engineer

DATE: January 16, 2020

**SUBJECT: ADOPTION OF AN ORDINANCE AMENDING SEASIDE
MUNICIPAL CODE TITLE 13, CHAPTER 10.080 MUNICIPAL
WATER SYSTEM – PERMITS TO CONNECT, PARAGRAPH G, AND
TITLE 13, SECTION 12 CROSS CONNECTION CONTROL
PROGRAM (SECOND READING - ROLL CALL VOTE)**

PURPOSE & RECOMMENDATION

Adopt the second reading of the draft ordinance amending Municipal Code Chapters 13.10.080 and 13.12 on the Cross Connection Control Program.

BACKGROUND

Chapter 13.12 - Cross-Connection Control Program

The existing Cross Connection Control Program, Chapter 13.12 was adopted in 1988. The proposed edits reflect updates to the California Code of Regulations ("CCR") as they pertain to the types of backflow protection devices necessary to maintain the minimum level of protection for the municipal water supply. The chapter has been revised to clarify the responsibilities of the City are limited to the Seaside Municipal Water System. Lastly, the City Engineer is assigned certain responsibilities and authority as appropriate.

Chapter 13.10 - Municipal Water System

Chapter 13.10 specifies requirements of the City's Municipal Water System. Section 13.10.080.G states "No water pipe on any consumer's premise shall cross-connect the

municipal water system with any other source of water supply". Staff recommends amending Paragraph G to reference the Cross-connection Control Program in Chapter 13.12. This revision will ensure that by reference, the requirements outlined within the Cross-Connection Control Program are applicable to the Seaside Municipal Water System.

The proposed ordinances attached hereto will address the issues noted above by amending the existing Municipal Code Chapter 13.10, Section 10.080.G, and Chapter 13.12 with the proposed language in the attached draft ordinance.

The City Council held a public hearing on December 19th and passed to print the draft ordinance.

ENVIRONMENTAL COMPLIANCE

The proposed changes to the Ordinance will not result in direct or indirect changes to the environment and do not meet the definition of project under CEQA. (14 CCR 15378(b)) Additionally, any cross-connection activities are categorically exempt from CEQA. (14 CCR 15301(b))

FISCAL IMPACT

There is no fiscal impact associated with the adoption of an amendment to the Municipal Code for the Cross Connection Control Program.

ATTACHMENTS

1. Draft Ordinance Cross Connection Control Program
2. Draft Ordinance_Muni Code 13.10.080- SMWS Connections - Permits to Connect
3. Draft Ordinance_Muni Code 13.12- Cross Connection

Reviewed for Submission to the
City Council by:



Craig Malin, City Manager

ORDINANCE NO. XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEASIDE

AMENDING SEASIDE MUNICIPAL CODE TITLE 13, CHAPTER 10.080 MUNICIPAL WATER SYSTEM – PERMITS TO CONNECT, PARAGRAPH G, AND TITLE 13, SECTION 12 CROSS CONNECTION CONTROL PROGRAM (SECOND READING - ROLL CALL VOTE)

THE CITY COUNCIL OF THE CITY OF SEASIDE DOES ORDAIN AS FOLLOWS:

SECTION 1. GENERAL PURPOSE AND FINDINGS.

The purpose of this Ordinance is to consider the following text amendments to the Seaside Municipal Code:

Proposed text amendments to Seaside Municipal Code Title 13, Chapter 10.080 Municipal Water System – Permits To Connect, Paragraph G, And Title 13, Section 12 Cross Connection Control Program

FINDINGS

WHEREAS the existing Cross Connection Control Program, Chapter 13.12 was adopted in 1988; and

WHEREAS, the California Code of Regulations ("CCR") as they pertain to the types of backflow protection devices necessary to maintain the minimum level of protection for the municipal water supply has been updated and is now out of compliance with the current code; and

WHEREAS, the chapter needs to be revised to clarify the responsibilities of the City are limited to the Seaside Municipal Water System; and

WHEREAS, the City Engineer is assigned certain responsibilities and authority as appropriate and those need to be formally designated.

WHEREAS, Chapter 13.10 specifies requirements of the City's Municipal Water System and Section 13.10.080.G states "No water pipe on any consumer's premise shall cross-connect the municipal water system with any other source of water supply"; and

WHEREAS, amending Paragraph G to reference the Cross-connection Control Program in Chapter 13.1 will ensure that by reference, the requirements outlined within the Cross-Connection Control Program are applicable to the Seaside Municipal Water System.

SECTION 2. ENVIRONMENTAL COMPLIANCE

The proposed changes to the Ordinance will not result in direct or indirect changes to the environment and do not meet the definition of project under CEQA. (14 CCR 15378(b)) Additionally, any cross-connection activities are categorically exempt from CEQA. (14 CCR 15301(b))

SECTION 3. PROPOSED TEXT AMENDMENTS

This ordinance incorporates the attached red lined text amendments into Seaside Municipal Code Section 13.10 and 13.12

SECTION 4. EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days after its final passage and adoption at a duly noticed public hearing for the second reading of the proposed text amendments.

INTRODUCED AND PASSED TO PRINT at a regular meeting of the City Council of the City of Seaside, State of California, on the 19th day of December, 2019.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Seaside, State of California, on the 16th day of January, 2020, by the following vote:

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

Ian N. Oglesby, Mayor

ATTEST:

Lesley Milton, City Clerk

Chapter 13.10 MUNICIPAL WATER SYSTEM

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13.10.080 Connections – Permits to connect. SHARE

A. No person whose premises is not connected with the municipal water system upon the beginning of operation of the system shall connect any premises or cause any premises to be connected with the municipal water system without first obtaining a permit to do so from the city engineer.

B. The city engineer may require any person who applied for any such permit or any consumer to file a statement or affidavit for the guidance of the city engineer, the water collector, and the city council in ascertaining the amount of the monthly water charge payable by such person or consumer under this chapter. Each such statement or affidavit shall contain such information as may be required by the city engineer. Failure by any person or consumer to file such statement or affidavit containing such required information constitutes a violation of this chapter. No statement or affidavit shall be conclusive as to the matters therein set forth nor shall the filing of any statement or affidavit preclude the city from collecting from the consumer responsible for payment (as provided in this chapter) by appropriate action such sum as is actually due and payable for water charges under the provisions of this chapter. Each such statement or affidavit, and each of the several items therein contained, shall be subject to verification by the city engineer.

C. Any consumer making any material change in the size, character, or extent of the utilizing equipment or operations for which water is furnished shall immediately give the city engineer written notice of the extent and nature of the change.

D. The city shall require a written contract with any consumer as a condition precedent to service in any case where unusual quantities of water or construction of special facilities is or will be required. No such contract shall exceed a term of three years.

E. The city will furnish and install a service connection of suitable capacity from its water main to the curblin of the property line of any premises for which a connection to the municipal water system is requested; provided, the premises abuts upon a public street or existing water main right-of-way. For service to any nonabutting premises, the person requesting connection must pay the cost of furnishing and installing that portion of the service connection from the curblin of nearest street or from the nearest existing water main right-of-way. Only duly authorized employees or agents of the city shall install a service connection from any water main to any consumer's premises.

The city shall collect connection service charges for the connection of new water services, as established in the annual schedule of fees and charges, prior to installation.

F. All meters shall be installed by the city. No rent or other charge shall be paid by the city for any meter or other facilities located on a consumer's premises. All meters shall be sealed by or under the supervision of the city engineer at the time of installation, and no seal shall be altered or broken except by an authorized employee or agent of the city.

G. No water pipe on any consumer's premises shall cross-connect the municipal water system unprotected with any other source of water supply. All connections to the municipal water system shall be in conformance with the SMC Title 13, Section 12 – Cross Connection Control Program.

H. All service connections, meters, and other facilities furnished by the city at its own expense and located wholly or partially upon any premises shall be and

remain the property of the city, which shall have the right to repair, replace, and remove the same upon discontinuance of service.

I. The city shall not be responsible for the installation or maintenance of any water pipelines beyond the end of the city's service connection or beyond its meter.

J. The city engineer or any other duly authorized agent of the city shall have at all reasonable times the right of ingress to and egress from any consumer's premises for any purpose properly relating to the furnishing of water to the consumer.

K. The city shall not be responsible for any loss or damage caused by any negligence or unlawful act of any consumer or any other person in installing, maintaining, operating, or using any or all appliances, facilities or equipment for which water or water service is furnished by the city. Each consumer shall be held responsible for damage to the city's meters and other property comprising any part of the municipal water system resulting from the use or operation of any appliances or facilities on such consumer's premises including, without limiting the generality of the foregoing, damage caused by steam, hot water, or chemicals.

L. Change in Size. A change in the size of meter, service pipe or both of any existing service connection is at the expense of the customer. The expense shall be computed on the basis of the actual cost of the new installation less the value of any material salvaged.

M. Change in Location. When a customer requests relocation of an existing meter or service connection for the customer's convenience, the relocation is at the customer's expense on the basis of the actual cost of relocation. When relocation of an existing meter or service connection is done to protect the property of the water system or the city's interest, the city shall pay the cost of it.

N. Charges Payable in Advance. The estimated charge for new service connection or for change in size or location for customer's benefit shall be paid before work is started or material ordered. Upon completion of the work, the actual cost shall be computed and any difference between the actual and the

estimated cost shall be billed or refunded for the customer's account, whichever the case may be.

O. Title to Water Service Connections. Title to the meter, service pipes and appurtenances used in providing a water service connection is in the water system. The charges prescribed in this chapter are for connection, and do not convey any right of title to the facilities. (Ord. [979](#) (Exh. A), 2009; Ord. [646](#), 1983)

13.10.090 Duties of city engineer and water collector.

It shall be the duty of the city engineer to supervise all connections to the municipal water system and to establish and administer such reasonable rules and regulations applicable to connections to and the use and operation of the municipal water system as may be deemed advisable or necessary, including, without limiting the generality of the foregoing, rules and regulations relative to:

A. The furnishing of temporary water service;

B. The establishment and reestablishment of credit and requirements for deposits by applicants for permits to connect with the municipal water system whose service has been previously discontinued and applicants for such permits who are not the owners of the premises for which water service is requested; and

C. Water main extensions, including general or ordinary extensions, to subdivisions or tracts;

provided, that each set of rules and regulations so established shall before becoming effective be approved by a resolution adopted by the city council; and provided further, that no such rules and regulations so established and approved shall be in conflict with any provision of this chapter, and shall at all times be subject to appeal to the city council whose decision shall be final. It shall be the duty of the water collector to collect all water charges. The water collector shall keep an accurate accounting and records showing the source, amount, and disposition of all funds received from water charges. (Ord. [646](#), 1983)

13.10.100 Shortage of supply and service interruptions.

A. The city shall exercise reasonable diligence to provide continuous and adequate water service to consumers and to avoid any shortage or interruption of delivery of water; provided, that the city shall have the right to suspend water service temporarily to make necessary repairs or improvements to the municipal water system. In each case of temporary suspension of service, the city shall notify the consumers affected as soon as circumstances permit and will prosecute the work of repair or improvements with due diligence and with the least possible inconvenience to consumers.

B. During any period of threatened or actual water shortage, the city shall have the right to apportion its available water supply among consumers in such manner as appears most equitable under the circumstances then prevailing and with due regard to public health and safety. (Ord. [646](#), 1983)

13.10.110 Appeals. SHARE

A. Any person who has a right to appeal as provided in any section of this chapter or who is dissatisfied with any determination hereafter made under the terms of this chapter by the city engineer or the water collector may, at any time within thirty days after such determination, appeal to the city council by giving written notice to the city engineer or the water collector and to the city clerk, setting forth the determination with which the person is dissatisfied. The city council may at any time upon its own motion appeal from any determination made by the city engineer or the water collector under this chapter. In the event of any such appeal, the city engineer or water collector shall transmit to the city council a report upon the matter appealed. The city council shall cause notice to be given, at least ten days prior to the time fixed for such hearing, to all persons affected by the appeal, of the time and place fixed by the city council for hearing the appeal. The city council shall direct the city clerk to make a written notice, postage prepaid, to all such persons whose addresses are known to the city council.

B. Pending decision upon any appeal relative to the amount of any charges under this chapter, the person making the appeal shall pay such charge. After the appeal is heard, the city council shall order refunded to the person making the appeal an amount, if any, as the city council shall determine. (Ord. [646](#), 1983)

Chapter 13.12 CROSS-CONNECTION CONTROL PROGRAM

Sections:

- [13.12.010 Title.](#)
- [13.12.020 Purpose.](#)
- [13.12.030 Adoption.](#)
- [13.12.040 Connections with noncity systems prohibited.](#)
- [13.12.050 Definitions.](#)
- [13.12.060 Cross-connection protection requirements designated.](#)
- [13.12.070 Cross-connection protection – General provisions.](#)
- [13.12.080 Where protection is required.](#)
- [13.12.090 Type of protection required.](#)
- [13.12.100 Approved backflow prevention devices.](#)
- [13.12.110 Backflow prevention device installation.](#)
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- [13.12.130 Backflow prevention device removal.](#)
- [13.12.140 User supervisor.](#)
- [13.12.150 Administrative procedures – Water system survey.](#)
- [13.12.160 Customer notification.](#)
- [13.12.170 Water service termination.](#)

13.12.010 Title. SHARE

The ordinance codified in this chapter shall be known and cited as the “cross-connection control program to protect the ~~public water system~~Seaside Municipal Water System.” (Ord. [752](#) § 1 (Exh. A), 1988)

13.12.020 Purpose. SHARE

The purpose of this chapter is (A) to protect the public water supply against actual or potential contamination through cross-connections by isolating sources of contamination that may occur within a water user’s premises because of some undiscovered or unauthorized cross-connection on the premises; (B) to eliminate existing connections between drinking water systems and other sources of water that are not approved as safe and potable for human consumption; (C) to eliminate cross-connections between drinking water systems and sources of

contamination; (D) to prevent the making of cross-connections in the future. (Ord. [752](#) § 1 (Exh. A), 1988)

13.12.030 Adoption. SHARE

These regulations are adopted pursuant to the State of California Code of Regulations, Title 17, Public Health, entitled "Regulations Relating to Cross-Connections." (Ord. [752](#) § 1 (Exh. A), 1988)

13.12.040 Connections with non-city systems prohibited. SHARE

It is unlawful for any person, firm or corporation at any time to make or maintain or cause to be made or maintained, temporarily or permanently, for any period of time whatsoever, any cross-connection between plumbing pipes or water fixtures being served with water by the ~~city water department~~City of Seaside's Municipal Water System and any other source of water supply or to maintain any sanitary fixture or other appurtenances or fixtures which, by reason of their construction, may cause or allow backflow of water or other substances into the public water supply system of the city and/or the service of water pipes or fixtures of any consumer of the city. (Ord. [752](#) § 1 (Exh. A), 1988)

13.12.050 Definitions. SHARE

"Air-gap separation" means a physical break between a supply pipe and a receiving vessel. The air gap shall be at least double the diameter of the supply pipe measured vertically above the top rim of the vessel, in no case less than one inch.

"Approved backflow prevention device" means devices which have passed laboratory and field evaluation tests performed by a recognized testing organization which has demonstrated their competency to perform such tests to the California Department of Health Services.

"Approved water supply" means any water supply whose potability is regulated by state or local health agency.

"Auxiliary supply" means any water supply on or available to the premises other than the approved water supply.

"AWWA Standard" means an official standard developed and approved by the American Water Works Association (AWWA).

“Backflow” means a flow condition, caused by a differential in pressure, that causes the flow of water or other liquids, gases, mixtures or substances into the distributing pipes of a potable supply of water from any source or sources other than an approved water supply source. Backsiphonage is one cause of backflow. Back pressure is the other cause.

“Contamination” means a degradation of the quality of the potable water by any foreign substance which creates a hazard to the public health, or which may impair the usefulness or quality of the water.

“Cross-connection,” as used in this chapter, means any unprotected actual or potential connection between a potable water system used to supply water for drinking purposes and any source or system containing unapproved water or a substance that is not or cannot be approved as safe, wholesome and potable. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices, or other devices through which backflow could occur, shall be considered to be cross-connections.

“Double check valve assembly” means an assembly of at least two independently acting check valves including tightly closing shutoff valves on each side of the check valve assembly and test cocks available for testing the watertightness of each check valve.

“Health agency” means the California Department of Health Services, or the local health agency with respect to a small water system.

“Local health agency” means the county or city health authority.

“Person” means an individual, corporation, company, association, partnership, municipality, public utility or other public body or institution.

“Premises” means any and all areas on a water user’s property which are served or have the potential to be served by the public water system.

“Public water system” means a system for the provision of piped water to the public for human consumption that has five or more service connections or regularly serves an average of twenty-five individuals daily at least sixty days out of the year.

“Reclaimed water” means a wastewater which, as a result of treatment, is suitable for uses other than potable use.

“Reduced pressure principle backflow prevention device” means a device incorporating two or more check valves and an automatically operating differential relief valve located between the two checks, a tightly closing shutoff valve on each side of the check valve assembly, and equipped with necessary test cocks for testing.

“Service connection” refers to the point of connection of a user’s piping to the water supplier’s facilities.

“Water supplier” means the person who owns or operates the approved water supply system.

“Water user” means any person obtaining water from an approved water supply system. (Ord. [752](#) § 1 (Exh. A), 1988)

13.12.060 Cross-connection protection requirements designated.

 [SHARE](#)

The cross-connection protection requirements are as designated in SMC [13.12.070](#) through [13.12.090](#). (Ord. [1044](#) § 2 (Att. C), 2017; Ord. [752](#) § 1 (Exh. A), 1988)

13.12.070 Cross-connection protection – General provisions.

 [SHARE](#)

A. Unprotected cross-connections with the public water supply are prohibited.

B. Whenever backflow protection has been found necessary, the city will require the water user to install an approved backflow prevention device by and at [his the water user's](#) expense for continued services or before a new service will be granted.

C. Wherever backflow protection has been found necessary on a water supply line entering a water user’s premises, then any and all water supply lines from the ~~city's~~ [City of Seaside's Municipal Water System's](#) mains entering such premises, buildings or structures shall be protected by an approved backflow prevention device. The type of device to be installed will be in accordance with the requirements of this chapter. (Ord. [752](#) § 1 (Exh. A), 1988)

13.12.080 Where protection is required.

A. Each service connection from the ~~city~~ Seaside Municipal Water system for supplying water to premises having an auxiliary water supply shall be protected against backflow of water from the premises into the public water system unless the auxiliary water supply is accepted as an additional source by the ~~city~~ City Engineer and is approved by the public health agency having jurisdiction.

B. Each service connection from the ~~city water system~~ Seaside Municipal Water System for supplying water to any premises on which any substance is handled in such fashion as may allow its entry into the public water system shall be protected against backflow of the water from the premises into the public system. This shall include the handling of process waters and waters originating from the ~~city water system~~ Seaside Municipal Water System which have been subjected to deterioration in sanitary quality.

C. Backflow prevention devices shall be installed on the service connection to any premises having: (1) internal cross-connections that cannot be permanently corrected and controlled to the satisfaction of the state or local health department and the city, or (2) intricate plumbing and piping arrangements or where entry to all portions of the premises is not readily accessible for inspection purposes, making it impracticable or impossible to ascertain whether or not cross-connections exist. (Ord. [752](#) § 1 (Exh. A), 1988)

13.12.090 Type of protection required.

A. The type of protection that shall be provided to prevent backflow into the approved water supply shall be commensurate with the degree of hazard that exists on the consumer's premises. The type of protective device that may be required (listing in an increasing level of the type of protection) includes: double check valve assembly (DC), reduced pressure principle backflow prevention device (RP) and air-gap separation (AG). The water user may choose a higher level of protection than required by the city. The minimum types of backflow protection required to protect the approved water supply at the user's water connection to premises with varying degrees of hazard are given in Table 1 of Title 17 California Code of Regulations, Section 7604, as that section may be revised from time to time. Situations which are not covered in Table 1 shall be evaluated on a case-by-case basis and the appropriate backflow protection shall be determined by the ~~city~~ City Engineer or health agency.

Table 1 – Type of Backflow Protection Required

- Degree of Hazard	Minimum Type of Backflow Prevention
A. Sewage and Hazardous Substances	-
- 1. Premises where the public water system is used to supplement the reclaimed water supply.	AG
- 2. Premises where there are wastewater pumping and/or treatment plants and there is no interconnection with the potable water system. This does not include a single-family residence that has a sewage lift pump. A RP may be provided in lieu of an AG if approved by the health agency and the city.	AG
- 3. Premises where reclaimed water is used and there is no interconnection with the potable water system. A RP may be provided in lieu of an AG if approved by the health agency and the city.	AG
- 4. Premises where hazardous substances are handled in any manner in which the substances may enter a potable water system. This does not include a single-family residence that has a sewage lift pump. A RP may be provided in lieu of an AG if approved by the health agency and the city.	AG
- 5. Premises where there are irrigation systems into which fertilizers, herbicides or pesticides are or can be injected.	RP
B. Auxiliary Water Supplies	-
- 1. Premises where there is an unapproved auxiliary water supply which is interconnected with the public water system. A RP or DC may be provided in lieu of an AG if approved by the health agency and the city.	AG
- 2. Premises where there is an unapproved auxiliary water supply and there are no interconnections with the public water system. A DC	RP

Table 1 – Type of Backflow Protection Required

- Degree of Hazard	Minimum Type of Backflow Prevention	
may be provided in lieu of a RP if approved by the health agency and city.		
C. Fire Protection Systems	-	-
- 1. Premises where the fire system is directly supplied from the public water system and there is an unapproved auxiliary water supply. A RP may be provided in lieu of an AG if approved by the health agency and city.	-	AG
- 2. Premises where the fire system is supplied from the public water system and interconnected with an unapproved auxiliary water supply. A RP may be provided in lieu of an AG if approved by the health agency and the city.	-	AG
- 3. Premises where the fire system is supplied from the public water system and where either elevated storage tanks or fire pumps which take suction from the private reservoirs or tanks are used.	-	DC
D. Dockside Watering Points and Marine Facilities	-	-
- 1. Pier hydrants for supplying water to vessels for any purpose.	-	RP
- 2. Premises where there are marine facilities.	-	RP
E. Premises where entry is restricted so that inspections for cross-connections cannot be made with sufficient frequency or at sufficiently short notice to assure that cross-connections do not exist.	-	RP
F. Premises where there is a repeated history of cross-connections being established or reestablished.	-	RP
B. Two or more services supplying water from different street mains to the same building, structure or premises through which an inter-street main flow may occur shall have at least a standard check valve on each water service to be located adjacent to and on the property side of the respective meters. Such		

check valve shall not be considered adequate if backflow protection is deemed necessary to protect the ~~city's Seaside Municipal Water System's~~ mains from pollution or contamination; in such cases the installation of approved backflow devices at such service connections shall be required. (Ord. [752](#) § 1 (Exh. A), 1988)

13.12.100 Approved backflow prevention devices.

A. Only backflow prevention devices which have been approved by the ~~city~~ City Engineer shall be acceptable for installation by a water user connected to the city's potable water system.

B. The city will provide, upon request, to any affected customer a list of approved backflow prevention devices. (Ord. [752](#) § 1 (Exh. A), 1988)

13.12.110 Backflow prevention device installation.

Backflow prevention devices shall be installed in a manner prescribed in Section 7603, Title [17](#), of the California Administrative Code. Location of the devices should be as close as practical to the user's connection. The City Engineer ~~city~~ shall have the final authority in determining the required location of a backflow prevention device.

A. Air-Gap Separation (AG). The air-gap separation shall be located on the user's side of and as close to the service connection as is practical. All piping from the service connection to the receiving tank shall be above grade and be entirely visible. No water use shall be provided from any point between the service connection and the air-gap separation. The water inlet piping shall terminate a distance of at least two pipe diameters of the supply inlet, but in no case less than one inch above the overflow rim of the receiving tank.

B. Reduced Pressure Principle Backflow Prevention Device (RP). The approved reduced pressure principle backflow prevention device shall be installed on the user's side of and as close to the service connection as is practical. The device shall be installed a minimum of twelve inches above grade and not more than thirty-six inches above grade measured from the bottom of the device and with a minimum of twelve inches side clearance. The device shall be installed so that it is readily accessible for maintenance and testing. Water supplied from any point

between the service connection and the RP device shall be protected in a manner approved by the city.

C. Double Check Valve Assembly (DC). The approved double check valve assembly shall be located as close as practical to the user's connection and shall be installed above grade, if possible, and in a manner where it is readily accessible for testing and maintenance. If a double check valve assembly is put below grade it must be installed in a vault such that there is a minimum of six inches between the bottom of the vault and the bottom of the device, so that the top of the device is no more than a maximum of eight inches below grade, so there is a minimum of six inches of clearance between the side of the device with the test cocks and the side of the vault, and so there is a minimum of three inches of clearance between the other side of the device and the side of the vault. Special consideration must be given to double check valve assemblies of the "Y" type. These devices must be installed on their "side" with the test cocks in a vertical position so that either check valve may be removed for service without removing the device. Vaults which do not have an integrated bottom must be placed on a three-inch layer of gravel. (Ord. [752](#) § 1 (Exh. A), 1988)

13.12.120 Backflow prevention device testing and maintenance.



A. The owners of any premises on which, or on account of which, backflow prevention devices are installed shall have the devices tested by a person who had demonstrated ~~his~~their competency in testing of these devices to the city. Backflow prevention devices must be tested at least annually and immediately after installation, relocation or repair. The ~~city~~City Engineer may require a more frequent testing schedule if it is determined to be necessary. No device shall be placed back in service unless it is functioning as required. A report in a form acceptable to the city shall be filed with the city each time a device is tested, relocated or repaired. These devices shall be serviced, overhauled or replaced whenever they are found to be defective and all costs of testing, repair and maintenance shall be borne by the water user.

B. The city will supply ~~affected water users with~~ a list of qualified persons ~~acceptable to the city~~ to test backflow prevention devices. The city will notify affected customers by mail when annual testing of a device is needed and also

supply users with the necessary forms which must be filled out each time a device is tested or repaired.

C. Upon request the city will test a water user's backflow prevention device to fulfill the requirements of this chapter. The water user will be charged for the test and any maintenance found necessary to keep the device in working order on the next regular water bill. (Ord. [752](#) § 1 (Exh. A), 1988)

13.12.130 Backflow prevention device removal. SHARE

Approval must be obtained from the city before a backflow prevention device is removed, relocated or replaced.

A. Removal. The use of a device may be discontinued and the device removed from service upon presentation of sufficient evidence to the city to verify that a hazard no longer exists or is not likely to be created in the future.

B. Relocation. A device may be relocated following confirmation by the city that the relocation will continue to provide the required protection and satisfy installation requirements. A retest will be required following the relocation of the device.

C. Repair. A device may be removed for repair; provided the water use is either discontinued until repair is completed and the device is returned to service, or the service connection is equipped with other backflow protection approved by the city. A retest will be required following the repair of the device.

D. Replacement. A device may be removed and replaced; provided the water use is discontinued until the replacement device is installed. All replacement devices must be approved by the ~~city~~ [City Engineer](#) and must be commensurate with the degree of hazard involved. (Ord. [752](#) § 1 (Exh. A), 1988)

13.12.140 User supervisor. SHARE

At each premises where it is necessary, in the opinion of the ~~Ccity~~ [Engineer](#), a user supervisor shall be designated by and at the expense of the water user. This user supervisor shall be responsible for the monitoring of the backflow prevention devices and for avoidance of cross-connections. In the event of contamination or pollution of the drinking water system due to a cross-connection on the premises, the city shall be promptly notified by the user

supervisor so that appropriate measures may be taken to overcome the contamination. The water user shall inform the city of the user supervisor's identity on, as a minimum, an annual basis and whenever a change occurs. (Ord. [752](#) § 1 (Exh. A), 1988)

13.12.150 Administrative procedures – Water system survey. SHARE

A. The city shall review all requests for new ~~services~~connections to ~~t~~The Seaside Municipal Water System to determine if backflow protection is needed. Plans and specifications must be submitted to the city upon request for review of possible cross-connection hazards as a condition of service for new service connections. If it is determined that a backflow prevention device is necessary to protect the public water system, the required device must be installed before service will be granted.

B. The city may require an on-premises inspection to evaluate cross-connection hazards. The city will transmit a written notice requesting an inspection appointment to each affected water user. Any water user who cannot or will not allow an on-premises inspection of his piping system shall be required to install the backflow prevention device the ~~city~~City Engineer considers necessary.

C. The city may, at its discretion, require a re-inspection for cross-connection hazards of any premises to which it serves water. The city will transmit a written notice requesting an inspection appointment to each affected water user. Any water user who cannot or will not allow an on-premises inspection of his piping shall be required to install the backflow prevention device the ~~city~~City Engineer considers necessary. (Ord. [752](#) § 1 (Exh. A), 1988)

13.12.160 Customer notification. SHARE

A. Device Installation.

1. The city will notify the water user of the survey findings, listing the corrective actions to be taken if any are required. A period of sixty days will be given to complete all corrective actions required, including installation of backflow prevention devices.

2. A second notice will be sent to each water user who does not take the required corrective actions prescribed in the first notice within the sixty-day period allowed. The second notice will give the water user a two-week

period to take the required corrective action. If no action is taken within the two-week period, the ~~city may terminate~~ water service to the affected water user may be terminated until the required corrective actions are taken.

B. Testing and Maintenance.

1. The city will notify each affected water user when it is time for the backflow prevention device installed on their service connection to be tested. This written notice shall give the water user thirty days to have the device tested and supply the water user with the necessary form to be completed and resubmitted to the city.

2. A second notice shall be sent to each water user which does not have his/her backflow prevention device tested as prescribed in the first notice within the thirty-day period allowed. The second notice will give the water user a two-week period to have his/her backflow prevention device tested. If no action is taken within the two-week period, the ~~city may terminate~~ water service to the affected water user may be terminated until the subject device is tested. (Ord. [752](#) § 1 (Exh. A), 1988)

13.12.170 Water service termination.



A. General. When the city encounters water uses that represent a clear and immediate hazard to the potable water supply that cannot be immediately abated, the city shall institute the procedure for discontinuing ~~the city~~ water service from the Seaside Municipal Water System.

B. Basis for Termination. Conditions or water uses that create a basis for water service termination shall include, but are not limited to, the following items:

1. Refusal to install a required backflow prevention device;
2. Refusal to test a backflow prevention device;
3. Refusal to repair a faulty backflow prevention device;
4. Refusal to replace a faulty backflow prevention device;
5. Direct or indirect connection between the public water system and a sewer line;

6. Unprotected direct or indirect connection between the public water system and a system or equipment containing contaminants;
7. Unprotected direct or indirect connection between the public water system and an auxiliary water system;
8. A situation which presents an immediate health hazard to the public water system.

C. Water Service Termination Procedures.

1. For conditions designated in subsection (B)(1), (2), (3) or (4) of this section, the city will terminate service to a customer's premises after two written notices have been sent specifying the corrective action needed and the time period in which it must be done. If no action is taken within the allowed time period, water service may be terminated.
2. For conditions designated in subsection (B)(5), (6), (7) or (8) of this section, the city will take the following steps:
 - a. Make reasonable effort to advise water user of intent to terminate water service;
 - b. Terminate water supply and lock service valve. The water service will remain inactive until correction of violations has been approved by the city Engineer. (Ord. [752](#) § 1 (Exh. A), 1988)



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 9.B.

TO: City Council

FROM: Craig Malin, City Manager

BY: Rick Medina, Senior Planner

DATE: January 16, 2020

SUBJECT: EXTENSION OF CITY-INITIATED URGENCY ORDINANCE No. 1072 ADDING CHAPTER 17.55 TO THE TO THE SEASIDE MUNICIPAL CODE (SMC) AS NEW CHAPTER TO INCLUDE SPECIAL PROVISIONS FOR SMALL WIRELESS FACILITIES, AND MAKING THEM SUBJECT TO A PERMIT AS SPECIFIED IN A NEW CITY COUNCIL POLICY (ROLL CALL VOTE 4/5 VOTE REQUIRED).

PURPOSE & RECOMMENDATION

Adopt the ordinance, extending Urgency Ordinance No. 1072 which has added Chapter 17.55 to the Seaside Municipal Code to include special provisions for small wireless facilities, and making them subject to a permit as specified therein for the duration of the Urgency Ordinance.

BACKGROUND

On December 5, 2019, the City Council adopted Urgency Ordinance No. 1072 serving to amend the Seaside Municipal Code by adding Chapter 17.55 to provide interim regulations for the processing and placement of small wireless facilities within the City for a 45 day period. City staff has determined that more time is needed than 45-days to study the effects of the recent changes to federal law, regulations, and decisions relating to small cell facilities prior to determining if any additional edits, modifications or deletions should be made to Chapter 17.55 prior to adopting a regular ordinance for small cell wireless facilities.

In accordance with Section 65858(a) of the Government Code, after notice is given pursuant to Section 65090 of the Government Code and a public hearing is held, the City Council may extend an urgency interim ordinance for 10 months and 15 days with a four-fifths vote. The action shall include findings that there is a current and immediate threat to the public health, safety, and welfare. It has been deemed by the City Council in its review of recent small cell application that the public health and welfare needs of the community is met by the adoption of the City Council Policy on Small Wireless Facilities since unregulated small wireless facilities are potentially aesthetically displeasing and out of harmony with the character of this community so as to constitute visual blight which reduces the quality of life within the community to the extent that overall public health and welfare is detrimentally affected. Given the short time the City has to process applications for small wireless facilities under newly enacted federal standards there is an immediate need for the interim policy to remain in effect until a regular Ordinance can be adopted; and thus is necessary for the immediate preservation of the public peace, health, safety and welfare.

Therefore, pursuant to Government Code Section 65858 the City Council will adopt an Ordinance provided as Attachment 1 extending the regulations added under Chapter 17.55 of the SMC and the City Council policy on small cell wireless facilities adopted by Ordinance 1072 for a period not to exceed 10 months and 15 days. During that time period, the Planning Commission and City Council will consider the adoption of new regulations and policies for small cell wireless facilities in accordance with the process required for the adoption of a regular ordinance no later than October 30, 2020.

FISCAL IMPACT

The ordinance and amendment of Chapter 17.55 have and will be completed by both the Community Development Department and the City Attorney's Office, with existing staffing resources allocated within adopted 19-20 budget.

ATTACHMENTS

1. Attachment 1. Extension of Urgency Ordinance
2. Attachment 1 - Exhibit A Small Cell Policy

Reviewed for Submission to the
City Council by:



Craig Malin, City Manager

ORDINANCE NO. XXXX

AND ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEASIDE

**EXTENDING URGENCY ORDINANCE 1072 ADDING CHAPTER 17.55 OF THE
SEASIDE MUNICIPAL CODE ESTABLISHING REGULATIONS FOR SMALL
WIRELESS FACILITIES PURSUANT TO APPLICABLE FEDERAL AND STATE LAWS.**

**THE CITY COUNCIL OF THE CITY OF SEASIDE HEREBY ORDAINS AS
FOLLOWS:**

SECTION 1. State Government Code Section 65858 authorizes the City Council by a four-fifths vote to adopt an urgency ordinance for the immediate preservation of public peace, health, or safety; and

SECTION 2. Federal law, regulations, and decisions of regulatory agencies regarding small wireless telecommunication facilities have significantly changed on December 4, 2019; and

SECTION 3. Without an ordinance regulating small wireless telecommunication facilities to the extent authorized and in accordance with federal and state law, the City may not be authorized to regulate the location and aesthetics of these facilities; and

SECTION 4. The unrestricted installation of redundant small cell wireless telecommunication facilities presents a current and immediate threat to the City's efforts to stabilize economic and social aspects of neighborhood environments, and to health, safety, and welfare of the City and its residents; and

SECTION 5. The City Council adopted Urgency Ordinance No. 1072 by a four-fifths vote, pursuant to Government Code 65858 on December 5, 2019 in response to federal law, regulations, and decisions regarding small cell wireless facilities; and

SECTION 6. The extension of Urgency Ordinance No. 1072 is necessary for immediate preservation of the public peace, health, and safety because more time is needed than forty-five (45) days to study the effects of recent changes to federal law, regulations, and decisions regarding small cell wireless facilities; and

SECTION 7. In accordance with Government Code sections 65858 and 65090, a notice of public hearing on the extension of the Urgency Ordinance No. 1072 for 10 months and 15 days was published in the Monterey Weekly on January 2, 2020; and

Be it ordained by the City Council of the City of Seaside:

Findings. On January 16, the City Council considered the adoption of this Ordinance as an extension to an Urgency Ordinance at a duly noticed public hearing 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. The FCC rules provide that a local small cell regulation causes an effective prohibition in violation of federal law unless the regulation is 1) reasonable; 2) no more burdensome than regulations imposed on similar infrastructure deployments; and 3) objective and published in advance; and
6. The FCC regulations mean that the City may not prohibit placement of small cells within the public right-of-way or on publicly-owned and operated utility poles but can prescribe reasonable standards for their placement and design; and

7. On December 10, 2018, the FCC clarified the effective dates for the rule, stating that the shot clock and fee regulations would go into effect on January 14, 2019, and the aesthetic regulations go into effect on April 15, 2019.
- c. Given the rapid and significant 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 adopted Urgency Ordinance 1066 which expired on December 2, 2019. Urgency Ordinance 1066 required substantive changes in order to provide for public hearing by the Zoning Administrator, to respond to weight load on the City's poles and the limited time to encapsulate all of these changes into a permanent ordinance; and
 - e. The City then adopted Urgency Ordinance 1072 on December 5, 2019 to address further substantive changes in federal law, to verify location priorities and pole types, in order to encapsulate these changes into a permanent ordinance; and
 - f. The City intends to continue to study, within a reasonable time, the adequacy of its existing ordinances and the potential need to adopt or amend its regulations regarding its policy on small wireless facilities and other infrastructure deployments within the public rights-of-way and other areas. The City Council and the people of Seaside require a sufficient and reasonably limited time to consider and study legally appropriate and reasonable policies regulating small wireless facilities and other infrastructure in order to prevent negative impacts on neighboring residents. The City Council has the authority to adopt an extension to an urgency interim ordinance pursuant to the Seaside Municipal Code and Government Code Section 65858 and 65090 in order to protect the public health, safety, or welfare for an additional 10 month and 15-day period.
 - g. The City Council finds that the public health and welfare needs of the community are met by the immediate adoption of the Policy on Small Wireless Facilities since unregulated wireless communications facilities are aesthetically displeasing and out of harmony with the character of this community so as to constitute visual blight which reduces the quality of life within the community to the extent that the overall public health and welfare is detrimentally affected. Given the short time the City has to

process applications for small wireless communication facilities there is an immediate need for such policy.

SECTION 8. Adding Seaside Municipal Code Chapter 17.55. A new section 17.55 is added to the Seaside Municipal Code which reads as follows:

Special Provisions for Small Wireless Facilities. Notwithstanding any other provision of this chapter or Chapter 17.54 related to wireless facilities, as provided herein, all small wireless facilities as defined by the FCC in 47 CFR §1.6002(l), as may be amended or superseded, which are located within the public rights-of-way, are subject to a permit as specified in City Council Policy, Small Wireless Facilities provided as Exhibit "A" to this Ordinance. All small wireless facilities within the public rights-of-way shall comply with the Policy on Small Wireless Facilities. In the event that the FCC Order adopting said regulations is invalidated by a court of competent jurisdiction or repealed and not replaced, the provision in this Chapter shall control over the Policy on Small Wireless Facilities.

SECTION 9. Term. This Ordinance is an urgency ordinance for the immediate preservation of the public peace, health, and safety within the meaning of Seaside Municipal Code Section 2.02.380.D and Government Code Section 36937(b) and therefore shall be passed immediately upon its introduction and shall become effective immediately upon its adoption. This Ordinance shall expire 10 months and 15-days after its adoption unless extended for an additional 12 months by the City Council at a regularly noticed public hearing pursuant to California Government Code Section 65858(a).

SECTION 10. 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 Wireless Communication Facilities. This Ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new wireless communication facilities or change(s) to any existing Wireless Communication Facilities 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 11. 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 12. 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 13. 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 16th day of January, 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, City Clerk

CITY OF SEASIDE	Policy No. <i>[reserved]</i>
CITY COUNCIL POLICY	Adopted: <i>[date]</i> Revised:
GENERAL SUBJECT: SMALL WIRELESS FACILITIES	

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SECTION 1. GENERAL PROVISIONS

SECTION 1.1. PURPOSE AND INTENT

- (a) On September 27, 2018, the Federal Communications Commission ("FCC") adopted a *Declaratory Ruling and Third Report and Order*, FCC 18-133 (the "*Small Cell Order*"), in connection with two informal rulemaking proceedings entitled *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, and *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84. The regulations adopted in the *Small Cell Order* significantly curtail the local authority over wireless and wireline communication facilities reserved to State and local governments under sections 253 and 704 in the federal Telecommunications Act.
- (b) The City of Seaside intends this Policy to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this Policy 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 Policy 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 City's Residents and businesses and visitors.
- (c) This Policy 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.

SECTION 1.2. 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 Policy 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 Policy 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(9), 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 Policy.
 - (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: (1) antennas mounted within a radome above a streetlight; (2) equipment cabinets in the public rights-of-way painted or wrapped to match the

background; and (3) 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 or 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 wireless facility" or "small 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 Policy.

SECTION 2. SMALL WIRELESS FACILITIES

SECTION 2.1. APPLICABILITY; REQUIRED PERMITS AND APPROVALS

- (a) **Applicable Facilities.** Except as expressly provided otherwise in this Policy, the provisions in this Policy shall be applicable to all existing small wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy small 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," subject to the Community Development Director's prior review and approval, is required for any small wireless facility proposed on an existing, new or replacement structure.
- (c) **Request for Approval Pursuant to Section 6409.** Notwithstanding anything in the Policy 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 Policy shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals.

SECTION 2.2. SMALL CELL PERMIT 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 2.2(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 by City Council resolution. Batched applications must include the applicable small cell permit application fee for each small

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 10 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, handholes, 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 500 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 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 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 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 wireless facility" as defined by the FCC in 47 C.F.R. § 1.6002(l). 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 a

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 2.4(c).

- (7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed small 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 wireless facility proposed in the application.
- (10) **Pole License Agreement.** For any small 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 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 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 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 Policy. All such requirements and materials must be in written form and publicly available to all interested parties.

SECTION 2.3. SMALL CELL PERMIT 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 this Section 2.3(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 2.3(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 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 Policy 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 2.3(c), a "substantive response" must include the materials identified as incomplete in the Community Development Director's notice.
- (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 (i) all small wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type; (ii) 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; (iii) if any individual application within a batch is deemed incomplete, the entire batch shall be automatically deemed incomplete; (iv) if any application is withdrawn or deemed withdrawn from a batch, all other applications in the entire batch shall be automatically deemed withdrawn; and (v) if any application in a batch fails to meet the required findings for approval, the entire batch shall be denied in the manner described in Section 2.4(e).

- (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.

SECTION 2.4. 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 2.4(a) is 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 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 Policy;

- (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 Policy;
 - (6) 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
 - (7) 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 Policy 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 Policy.
 - (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.

SECTION 2.5. 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 Policy shall be automatically subject to the conditions in this Section 2.5(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 Policy 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 Policy. Upon renewal, this permit will automatically expire 10 years and one day from its issuance, except when California Government Code § 65964(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 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 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 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 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 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 Policy 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 policy, 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 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 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 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 City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of 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

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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 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.

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- (12) **Permit Revocation.** Any permit granted under this Policy 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 Policy, the Community Development Director must issue a written notice to the permittee that specifies
- (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) **R** the permittee must maintain a complete and accurate copy of the
e written administrative record, which includes
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lication, 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.

Abandoned Wireless Facilities. The small 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 wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small 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.

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, at all times, be responsible to maintain any replacement landscape features.

- (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 required for the application 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 Wireless Facilities in the Public Rights-of-Way.** In addition to all conditions in subsection (a), all small cell permits for small wireless facilities in the public rights-of-way issued under this Policy shall be automatically subject to the conditions in this Section 2.5(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 wireless facility is located, the permittee must also underground its equipment, 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 wireless facilities installed on utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with 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 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 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 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 10 days after a written demand for reimbursement and reasonable documentation to support such costs.

SECTION 2.6. 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 2.6. 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 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 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;
 - (3) 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;
 - (4) 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;
 - (5) within the West Broadway Urban Village Specific Plan Area, 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) locations 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;
 - (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;
 - (9) within the West Broadway Urban Village Specific Plan Area, locations within residential Specific Plan land use designations;
 - (10) within the West Broadway Urban Village Specific Plan Area.

- (c) **Locations Outside the Public Rights-of-Way.** The City prefers small 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;

(3) within the West Broadway Urban Village Specific Plan Area, any location within any non-residential or mixed-use Specific Plan land use designation;

(4) locations within areas designated as any of the land use categories listed in the General Plan under the "Residential" category;

(5) locations within any public park or Open Space Recreation area;

(6) within the West Broadway Urban Village Specific Plan Area, locations within residential Specific Plan land use designations;

(7) within the West Broadway Urban Village Specific Plan Area.

- (d) **Support Structures in the Public Rights-of-Way.** The City prefers small 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 wireless facilities;

(4) existing or replacement wood utility or streetlight poles.

- (e) **Support Structures Outside the Public Rights-of-Way.** The City prefers small wireless facilities to be installed on support structures outside 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

(2) approved for use as a support structure for personal wireless service facilities; other existing non-historic buildings or non-tower structures;

(3) existing or replacement utility poles or towers;

(4) new, non-replacement towers for small wireless facilities;

(5) existing historic buildings.

- (f) **Prohibited Support Structures.** The City prohibits small wireless facilities to be installed on the following support structures, whether located in the public rights-of-way or not:
- (1) decorative poles and decorative streetlights;
 - (2) traffic signals, signs, poles, cabinets and related devices;
 - (3) new, non-replacement wood poles.

SECTION 2.7. DESIGN STANDARDS

(a) **General Standards.**

- (1) **Noise.** Small 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 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 Policy.
- (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, at all times, be responsible to maintain any replacement landscape features.

- (4) **Site Security Measures.** Small 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 wireless facilities shall be constructed from or coated with graffiti-resistant materials.
- (5) **Signage Advertisements.** All small 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 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 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 Wireless Facilities in the Public Right-of-Way

(1) **Overall Height.** Small wireless facilities may not exceed either (A) the minimum separation from electrical lines required by applicable safety regulations, plus four feet or (B) four feet above the existing support structure.

(2) Antennas.

(A) **Concealment:** All antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be painted a flat, non-reflective color to match the underlying support structure.

(B) **Antenna Volume.** Each individual antenna may not exceed three cubic feet in volume and all antennas may not exceed six cubic feet in volume.

(3) Accessory Equipment.

(A) **Installation Preferences.** All non-antenna accessory equipment shall be installed in accordance with the following preferences, ordered from most preferred to least preferred: (i) underground in any area in which the existing

utilities are primarily located underground; (ii) on the pole or support structure; or (iii) integrated into the base of the pole or support structure. 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.

- (B) **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.
- (C) **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.
- (D) **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.
- (E) **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.

- (F) **Accessory Equipment Volume.** All accessory equipment associated with a small wireless facility installed above ground level shall not cumulatively exceed: (i) nine (9) cubic feet in volume if installed in a residential district; or (ii) seventeen (17) 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 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: (A) be located as close to the removed pole' \$ possible; (B) be aligned with the other existing streetlights and (C) 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.
- (5) **Wood Utility Poles.** Applicants that propose to install small 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 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 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 twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches. 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.
- (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 one 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 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 wireless facilities and any associated equipment or improvements shall not physically interfere with or impede: (A) 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; (B) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (C) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (D) access to any fire hydrant or water valve; (E) 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 (F) 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 collocated 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: (A) internal risers or conduits if on a concrete, composite or similar pole; or (B) 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 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.
- (14) **Street Trees.** To preserve existing landscaping in the public rights-of-way, all work performed in connection with small 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 the duration of the permit term.

(c) **Small Wireless Facilities Outside the Public Right of Way.**

- (1) **Overall Height.** Small 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:

- (A) Residential or Open Space Recreation land use districts as designated in the General Plan: 30 feet .
- (B) Non-Residential. General Plan land use designations (including designations listed under Commercial; Open Space Recreation; Mixed-Use and Institutional categories: 40 feet
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.
- (C)
- (D) 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 wireless facilities in any zoning district or PUD.

- (2) **Setbacks.** Small 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.** 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.
- (4) **Parking; Access.** Any equipment or improvements constructed or installed in connection with any small wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, small 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 Wireless Facilities.** All new towers, poles or other freestanding structures that support small 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. The support structure and all transmission equipment must be painted with flat/neutral colors that match the support structure. The pole height shall not exceed thirty-five (35) feet or the applicable height limit listed in Section (c)(1) whichever is less. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches.
- (6) **Building-Mounted Small Wireless Facilities.**
- (A) **Preferred Concealment Techniques.** All applicants must propose new non-tower small 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).

- (B) **Facade-Mounted Equipment.** When small 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 2.7(c)(6)(B). 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 facade.



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 9.C.

TO: City Council

FROM: Craig Malin, City Manager

BY: Sheri Damon, Assistant City Attorney
Lesley Milton, Assistant City Manager

DATE: January 16, 2020

**SUBJECT: INTRODUCTION OF AN ORDINANCE ADDING SECTIONS TO
THE MUNICIPAL CODE ESTABLISHING PROVISIONS FOR
TOBACCO RETAILER LICENCING**

PURPOSE & RECOMMENDATION

Introduce and pass to print the draft ordinance as presented.

BACKGROUND

The purpose of the tobacco retail licensing (TRL) ordinance is to reduce illegal sales of tobacco products to minors. State law explicitly permits cities and counties to enact local tobacco retail permitting ordinances, and allows for the suspension or revocation of a local permit for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3). Compliance checks conducted by the California Department of Public Health, Food and Drug Branch, Stop Tobacco Access to Kids Enforcement (STAKE) Act Enforcement Unit show that from 2000 to 2011, retailers in Monterey County illegally sold tobacco products to underage youth 30% of the time.

These figures are similar to results from recent Youth Tobacco Purchase Surveys (YTPS) conducted in Monterey County by the Tobacco Control Program, Sunrise House, Safe Teen Empowerment Project, and Sun Street Centers, Inc. According to The Center for Tobacco Policy and Organizing, results from studies overwhelmingly demonstrate that local TRL ordinances with strong enforcement provisions are effective. Rates of illegal tobacco sales to minors have decreased, in almost every California community

that has passed a strong TRL ordinance.

The American Lung Association states that a strong local tobacco licensing law is defined as one that includes the following four components:

- A license that all retailers must obtain in order to sell tobacco products and that must be renewed annually.
- A fee that will sufficiently fund an effective program, including the administration of the program and enforcement efforts, and a plan outlining enforcement efforts, including compliance checks, should be clearly stated.
- Coordination of tobacco regulations so that a violation of any existing local, state or federal tobacco regulation constitutes a violation under the terms of the license.
- A financial deterrent through fines and penalties, including the suspension and revocation of the license; fines and penalties should be outlined in the ordinance.

The TRL ordinance incorporates the above components in an effort to ensure success in the reduction of illegal sales of tobacco products to minors. The ordinance will require retailers in the City of Seaside to pay an annual license fee of \$286 to obtain a license in order to sell tobacco products. The fee is calculated to recover the reasonable regulatory costs of issuing and administering licenses, retailer education, performing investigations, inspections, and the administrative enforcement and adjudication of the provisions of the TRL ordinance. The license is valid for one year and only at the location specified in the application. Denial of a license application is subject to administrative review.

As permitted by the draft attached ordinance, the City of Seaside and the County of Monterey will enter into an agreement that will allow the County to administer the TRL. Therefore, the County of Monterey's Health Department's Public Health and Environmental Health Bureaus will issue licenses, conduct annual audits to ensure license compliance, and report data requirements on activities. The Department, with collaboration from the Sheriff's Office, will conduct compliance checks related to illegal sales to youth.

Law enforcement may enforce penal provisions of the TRL ordinance, violations of which may be prosecuted as infractions or misdemeanors. The TRL ordinance specifies that selling tobacco products to minors or using false information in the application may lead to suspension or revocation of the license. While the license is suspended, all tobacco products must be removed from public view.

Administrative penalties for violating the TRL ordinance, including violation of any state, federal, or local tobacco retailing law, include suspension or revocation of the license. Such penalties are graduated, starting at 60 days for the first violation and increasing to 180 days for the third violation. Upon a finding of a fourth license violation in a 60-month period, the license shall be revoked and no license issued for that location for a period of five years. For the first two violations, the retailer may pay

a stipulated fine in lieu of a hearing and the suspension penalties that would otherwise apply. Fines will range from \$1,000 for the first violation to \$5,000 for the second violation.

Administrative penalties for tobacco retailing at a location without a license also are graduated, rendering a person ineligible to apply for or be issued a license for 60 days after the first violation and 180 days after the second violation within a 60-month period. For third and subsequent violations within a 60-month period, a license may not be issued until five years have passed from the date of the violation.

The ordinance is consistent with the Council's mission of creating a safe community of the residents of the City by discouraging the illegal purchase of tobacco products by minors and in protecting children from being lured into illegal activity through the misconduct of adults. Additionally, the City has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use.

FISCAL IMPACT

The establishment of a tobacco retail license program by the City will require tobacco retailers to apply for a permit to sell tobacco within the City of Seaside. There will be no administrative costs for the City of Seaside. Instead, as permitted by the ordinance, the County of Monterey and the City of Seaside will enter into an agreement that will permit the County to administer the tobacco retailer license program in the City. The entire program would be funded by the yearly permit fee paid for by the tobacco retailers.

ATTACHMENTS

1. Draft Ordinance

Reviewed for Submission to the
City Council by:



Craig Malin, City Manager

ORDINANCE NO. xxxx

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEASIDE

**ADDING CHAPTER 8.39.5 CREATING PROVISIONS RELATING TO THE
LICENSING OF TOBACCO RETAILERS AND MAKING AN ENVIRONMENTAL
DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT**

THE CITY COUNCIL OF THE CITY OF SEASIDE DOES ORDAIN AS FOLLOWS:

SECTION 1.

WHEREAS, State law prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Cal. Pen. Code §308); and

WHEREAS, State law explicitly permits cities and counties to enact local tobacco retail permitting ordinances, and allows for the suspension or revocation of a local permit for a violation of any state tobacco control law (Cal. Bus.& Prof. Code §22971.3); and

WHEREAS, according to the Center for Tobacco Policy and Organizing, results from studies overwhelmingly demonstrate that local tobacco retailer licensing ordinances with strong enforcement provisions are effective. Rates of illegal tobacco sales to minors have decreased in almost every California community that has passed a strong tobacco retailer licensing ordinance; and

WHEREAS, the City Council finds that a local permitting system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City, to protect the health, safety, and welfare of our residents; and

WHEREAS, a requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will however, allow the City to regulate the operation of lawful business to discourage violations of federal state, and local tobacco-related laws; and

WHEREAS, the City has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; and finally, in protecting children from being lured into illegal activity through the misconduct of adults.

SECTION 2. The City Council finds the above statements and facts of Section 1 are true and correct.

SECTION 3. CEQA. The City Council hereby finds the draft ordinance does not involve the approval of a project because the ordinance and its implementation do not result in a direct or indirect physical change in the environment or in a reasonably foreseeable indirect physical change in the environment. It is therefore exempt from the California Environmental Quality Act (CEQA) review. (Pub. Resources Code §21065; CEQA Guidelines §§15357, 15377, 15378).

SECTION 4. Title 8 (Health and Safety) of the Seaside Municipal Code is hereby amended to add the following Chapter 8.39.5:

Chapter 8.39.5

TOBACCO OR ELECTRONIC CIGARETTE RETAILERS LICENSE PROGRAM

8.39.021 Tobacco or Electronic Cigarette Retailer License.

(a) The provisions of Monterey County Code Chapter 7.80 entitled Tobacco Retailer License, pertaining to tobacco retailer permits, is hereby adopted by the City of Seaside and incorporated by reference into this Code and shall be enforced within the jurisdictional boundaries of the City.

(b) For purposes of the City of Seaside the following shall apply to the incorporation of the Monterey County ordinance into the Seaside Municipal Code:

All reference to the term "unincorporated areas of the County of Monterey" in the Monterey Code shall be amended to include the term "City jurisdictional boundaries" in the Seaside Municipal Code. All reference to the term "Code" in the Monterey County Code shall be to the term "Seaside Municipal Code. All reference to the term "County" or "County of Monterey" shall be to the term City of Seaside". All references to the term "Board of Supervisors of the County of Monterey shall be to the term "Seaside City Council". All reference to the term "District Attorney" in the Monterey County Code shall be to the term "City Attorney". All reference to the term "law enforcement officer" shall be to the term "Seaside Police Officer". All reference to the "Date of Implementation" shall be to the "the thirty-first day following its adoption". The chapter numbering and section references to 7.80 shall be updated to reflect 8.39.5.

(c) Monterey County Code Chapter 7.80 reads as follows:

Chapter 7.80 - Tobacco Retailer License

Sections:

7.80.010 - Purpose and application.

7.80.020 - Definitions.

7.80.030 - Mandatory License.

7.80.040 - Issuance of License.

7.80.050 - Applications for License.
7.80.060 - Issuance of License.
7.80.070 - License renewal and expiration.
7.80.080 - License nontransferable.
7.80.090 - Inspections, investigations and enforcement.
7.80.100 - Suspension or revocation of License.
7.80.110 - Penalties for Tobacco Retailing without a License.
7.80.120 – Health Officer decision.
7.80.130 - Appeal procedures.
7.80.140 - Other Penalties.
7.80.150 - Stipulated fine in lieu of hearing.
7.80.160 - Implementation.
7.80.170 - Severability.

7.80.010 - Purpose and application.

A. In promoting the health, safety, and general welfare of its residents, the County of Monterey has a substantial interest in encouraging compliance with Federal, State, and local laws regulating tobacco sales and use.

B. State law permits local governments to enact ordinances regarding the local licensing of retailers of tobacco and allows for the suspension or revocation of a local license for a violation of any State tobacco control law.

C. This Chapter is adopted to: (1) ensure compliance with business standards and practices of the County; (2) to encourage responsible retailing of tobacco; and (3) to discourage violations of tobacco-related laws, but not to expand or reduce the degree to which the acts regulated by Federal or State law are criminally proscribed or otherwise regulated.

7.80.020 - Definitions.

For the purpose of this Chapter, the following words and terms shall have the following meaning:

A. "Department" means the Monterey County Health Department.

B. "Drug Paraphernalia" shall have the definitions set forth in California Health and Safety Code Section 11014.5, as that Section may be amended from time to time.

C. "Health Officer" means the Health Officer of the County of Monterey or his or her designee.

D. "License" means a Tobacco Retailer License issued by the County pursuant to this Chapter.

E. "Licensee" means any Proprietor holding a License issued by the County pursuant to this Chapter.

F. "License Fee" means the charge established by resolution of the Board of Supervisors of the County of Monterey, calculated to recover the reasonable regulatory costs of issuing and administering Licenses, retailer education, performing investigations, inspections, and the administrative enforcement and adjudication thereof.

G. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

H. "Proprietor" means a Person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a Person has a ten (10) percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a Person can or does have or share ultimate control over the day-to-day operations of a business.

I. "Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed or used for the smoking or ingestion of Tobacco Products.

J. "Tobacco Product" means any substance containing tobacco leaf--including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco--and any product or formulation of matter containing biologically active amounts of nicotine that is product or matter will be introduced into the human body, but does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or Tobacco Product dependence.

K. "Tobacco Retailer" means any Person who engages in Tobacco Retailing.

L. "Tobacco Retailing" means selling, offering for sale, exchanging, or offering to exchange for any form of consideration, tobacco, Tobacco Products, or Tobacco Paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

7.80.030 - Mandatory License.

A. Any Person who is or intends to become a Tobacco Retailer shall obtain pursuant to this Chapter a License for each fixed location at which Tobacco Retailing is to occur.

B. Any Person who is a Tobacco Retailer as of the effective date of the ordinance enacting this Chapter shall obtain a License within ninety (90) days of the effective date of the ordinance that enacted this Chapter.

C. Any Person who intends to act as a Tobacco Retailer shall obtain a License prior to acting as a Tobacco Retailer.

D. Each License shall be prominently displayed in a publicly visible location at the licensed location.

E. Nothing in this Chapter shall be construed to grant any Licensee any status or right other than to act as a Tobacco Retailer at the location identified on the face of the License, subject to compliance with all other applicable laws, regulations, or ordinances.

F. Nothing in this Chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law.

7.80.040 - Issuance of License.

A. No License shall be issued to authorize Tobacco Retailing at other than a fixed business location. It is unlawful for any Person to engage in Tobacco Retailing at non-fixed locations. For example, Tobacco Retailing by Persons on foot and Tobacco Retailing from vehicles are prohibited.

B. No License shall be issued to authorize Tobacco Retailing at a temporary or recurring temporary event. For example, Tobacco Retailing at flea markets and farmers' markets is prohibited.

C. No License shall be issued to authorize Tobacco Retailing at any location for which a License suspension is in effect or during a period of ineligibility following a revocation pursuant to Section 7.80.100.

D. In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a License issued, it shall be a violation of this Chapter for a Licensee, or any of the Licensee's agents or employees, to violate any local, State, or Federal law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing.

E. No Person engaged in Tobacco Retailing shall sell or transfer a Tobacco Product or Tobacco Paraphernalia to another Person who appears to be under the age of twenty-seven (27) years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under State law to purchase and possess the Tobacco Product or Tobacco Paraphernalia.

F. No Person who is younger than the minimum age established by State law for the purchase or possession of Tobacco Products shall engage in Tobacco Retailing.

7.80.050 - Applications for License.

All applications for a License shall be submitted to the Department in the name of each Proprietor proposing to conduct Tobacco Retailing and signed by each prospective Proprietor or an authorized agent. Each License application must be accompanied by the required License Fee, which is set by resolution of the Board of Supervisors. A Proprietor proposing to conduct Tobacco Retailing at more than one location shall submit a separate application for each location. Every application shall contain the following information:

- A. The name, address, and telephone number of each prospective Proprietor;
- B. The business name, address, and telephone number of the fixed location for which the License is sought;
- C. Whether or not each prospective Proprietor has previously been issued a License pursuant to this Chapter that is, or was at any time, suspended or revoked and, if so, the date of the suspension or revocation;
- D. Proof that the location for which a License is sought has been issued a valid State Cigarette and Tobacco Products Retail License by the State of California Board of Equalization pursuant to the California Cigarette and Tobacco Products Licensing Act of 2003 (Cal. Bus. & Prof. Code, §§ 22970 et seq.);

- E. A statement signed by each prospective Proprietor that no Drug Paraphernalia is or will be sold at the location for which the License is sought;
- F. A statement signed by each prospective Proprietor that the Proprietor is informed of the laws affecting Licenses; and
- G. Such other information as the County deems necessary for the administration of this Chapter.

7.80.060 - Issuance of a License.

A. Upon the receipt of a complete application for a License and the License Fee required by this Chapter, the Health Officer shall issue a License unless one (1) or more of the following grounds exists:

1. The application is incomplete or inaccurate;
2. The application seeks authorization for Tobacco Retailing at a location for which a suspension is in effect pursuant to this Chapter, for which a License has been revoked pursuant to this Chapter, or for which this Chapter otherwise prohibits issuance of Licenses;
3. The application seeks authorization for Tobacco Retailing for a prospective Proprietor for whom a suspension is in effect pursuant to this Chapter for the subject location or another location, whose License has been revoked pursuant to this Chapter for the subject location or another location, or to whom this Chapter otherwise prohibits a License to be issued;
4. The Department has information that the prospective Proprietor or his or her agent or employee has violated any local, State or Federal tobacco control law, including this Chapter, within the preceding twelve (12) months; or
5. The application seeks authorization for Tobacco Retailing that is prohibited pursuant to this Chapter, that is otherwise unlawful pursuant to this Code, or that is unlawful pursuant to any other local, State, or Federal law.

B. Any denial of an application for a License shall be in writing, setting forth the reasons for the denial and notifying the applicant for a License that the decision to deny an application for a License shall become final unless the applicant seeks an appeal pursuant to Section 7.80.130 within fourteen (14) calendar days of the date of service of the Health Officer's decision. Service of the decision shall be provided in accordance with the service requirements set forth in Subsection A of Section 7.80.120.

C. All information required to be submitted pursuant to Section 7.80.050 in order to apply for a License shall be updated whenever the information changes. A Tobacco Retailer shall provide the Department with any updates within ten (10) business days of a change.

7.80.070 - License renewal and expiration.

A. A License is invalid unless the appropriate License Fee has been paid in full and the term of the License has not expired. The term of a License is one (1) year beginning each fiscal year on July 1st and ending on June 30th of the following year. Each Tobacco Retailer shall apply for

the renewal of his or her License and submit the License Fee no later than thirty (30) calendar days prior to expiration of the term.

B. A License that is not timely renewed shall expire at the end of its term. To reinstate a License that has expired, or to renew a License not timely renewed pursuant to Subsection A of this Section, the Proprietor must:

1. Submit the License Fee; and
2. Submit a signed affidavit affirming that the Proprietor:
 - a. Has not sold and will not sell any Tobacco Product or Tobacco Paraphernalia after the License expiration date and before the License is renewed; or
 - b. Has waited the appropriate ineligibility period established for Tobacco Retailing without a License, as set forth in Section 7.80.110, before seeking renewal of the License.

7.80.080 - License nontransferable.

A. A License may not be transferred from one Person to another or from one location to another. Whenever a Tobacco Retailing location has a change in Proprietors, a new License is required.

B. Notwithstanding any other provision of this Chapter, prior violations at a location shall continue to be counted against a location, and License ineligibility periods shall continue to apply to a location unless:

1. The location has been fully transferred to an entirely new Proprietor or fully transferred to entirely new Proprietors; and
2. The new Proprietor(s) provides the Department with clear and convincing evidence that the new Proprietor(s) has acquired or is acquiring the location in an arm's length transaction. As used in this Section, the term "arm's length transaction" shall mean a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this Chapter is not an arm's length transaction.

7.80.090 - Inspections, investigations and enforcement.

A. Compliance with this Chapter shall be monitored by the Department or any law enforcement officer. Employees of the Department or a law enforcement officer may conduct compliance checks, including but not limited to youth decoy operations. Any law enforcement officer may enforce the penal provisions of this Chapter. Compliance checks may be unannounced.

B. The County shall not enforce any tobacco-related minimum age law against a person who otherwise might be in violation of such law because of the person's age (hereinafter "youth decoy") if the potential violation occurs when:

1. The youth decoy is participating in a compliance check supervised by an employee of the Department or a law enforcement officer;

2. The youth decoy is acting as an agent of a person designated by the County to monitor compliance with this Chapter;

3. The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Department; or

4. The youth decoy has an immunity letter from the District Attorney's Office.

C. Whenever evidence of a violation of this Chapter is obtained in any part through the participation of a person under the age of eighteen (18) years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this Chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

7.80.100 - Suspension or revocation of License.

A. In addition to any other remedy authorized by law, after notice and opportunity to be heard pursuant to Section 7.80.120 of this Chapter, a License may be suspended or revoked as provided in this Section if the Health Officer finds by a preponderance of the evidence that the Licensee, or any of the Licensee's agents or employees, has:

1. Violated any of the requirements, conditions prohibitions of this Chapter; or

2. Pleaded guilty, "no contest" or its equivalent, or admitted to any of the following:

a. The original or renewal application contained incorrect, false, or misleading information;

b. One or more of the grounds for denial listed in Section 7.80.060 existed before the License was issued; or

c. A Licensee is convicted of a misdemeanor or felony violation of any Federal, State, or local tobacco retailing law or regulation, including any provision of this Chapter.

B. During any period of suspension or revocation, the Licensee shall remove all Tobacco Products and Tobacco Paraphernalia from public view. Failure to do so may be considered a subsequent violation.

C. When the Health Officer finds a violation as set forth in Subsection A of this Section, the License shall be suspended or revoked as follows:

1. Upon a finding by the Health Officer of a first License violation, the License shall be suspended for sixty (60) days;

2. Upon a finding by the Health Officer of a second License violation within any sixty (60) month period, the License shall be suspended for one hundred and twenty (120) days;

3. Upon a finding by the Health Officer of a third License violation in any sixty (60) month period, the License shall be suspended for one hundred and eighty (180) days; and

4. Upon a finding by the Health Officer of a fourth License violation within any sixty (60) month period, the License shall be revoked and no new License shall issue for the location until five (5) years has passed from the date of revocation.

D. Violation by a Licensee at one location shall not be construed as a violation at another location of the same Licensee, nor shall violations by a prior Licensee at the same location be accumulated against a subsequent Licensee at the same location.

E. A License shall be revoked if the Health Officer finds that one or more of the grounds for denial of an application for a License pursuant to Section 7.80.060 existed at the time the application was made or at any time before the License was issued.

7.80.110 - Penalties for Tobacco Retailing without a License.

A. In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the Health Officer finds after notice and opportunity to be heard pursuant to Section 7.80.120 of this Chapter, that any Person has engaged in Tobacco Retailing at a location without a valid License, either directly or through the Person's agents or employees, the Person shall be ineligible to apply for, or to be issued, a License as follows:

1. After a first violation of this Section at a location, no new License may issue for the Person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until sixty (60) days have passed from the date of the violation.

2. After a second violation of this Section at a location within any sixty (60) month period, no new License may issue for the Person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until one hundred and eighty (180) days have passed from the date of the violation.

3. After a third or subsequent violation of this Section at a location within any sixty (60) month period, no new License may issue for the Person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until five (5) years have passed from the date of the violation.

B. Any imposition of a penalty pursuant to this Section shall be in writing, setting forth the reasons for the imposition of a penalty and notifying the Person subject to the penalty that the decision to impose the penalty shall become final unless the Person seeks an appeal pursuant to Section 7.80.130 within fourteen (14) calendar days of the date of service of the Health Officer's decision. Service of the decision shall be provided in accordance with the service requirements set forth in Subsection A of Section 7.80.120.

7.80.120 – Health Officer decision.

A. Upon determining the existence of any of the grounds pursuant to this Chapter for the suspension or revocation of a License, or the imposition of a penalty for Tobacco Retailing without a License, the Health Officer shall issue a notice of intended decision to the applicant for a License, the Licensee, or the Person against whom the penalty for Tobacco Retailing without a License is directed. The notice shall be provided by personal service or by first class mail, postage prepaid, and shall include a copy of the affidavit or certificate of mailing.

B. The notice of intended decision shall state all the grounds upon which the revocation, suspension, or imposition of penalty is based.

C. The notice of intended decision shall specify the effective date of the action.

D. The notice of intended decision shall state that the Health Officer shall give the applicant for a License, the Licensee, or the Person against whom the penalty for Tobacco Retailing without a License is directed an opportunity to request a hearing thereon. The hearing shall be an informal hearing before the Health Officer. Following the hearing, or within a reasonable time if no hearing is requested, the Health Officer shall issue a decision and serve the decision in accordance with the service requirements set forth in Subsection A of this Section.

E. The decision of the Health Officer shall be in writing, setting forth the reasons for the decision, and shall advise the applicant for a License, the Licensee, or the Person against whom the penalty for Tobacco Retailing without a License is directed that the decision to suspend or revoke the License, or to impose the penalty for Tobacco Retailing without a License shall become final unless the applicant for a License, the Licensee, or the Person against whom the penalty for Tobacco Retailing without a License is directed seeks an appeal pursuant to.

Section 7.80.130.

7.80.130 - Appeal procedures.

With regard to any denial of an application for a License pursuant to Section 7.80.060 or any decision issued by the Health Officer pursuant to Section 7.80.120, the following rules apply:

A. A decision of the Health Officer to deny an application for a License, to suspend or revoke a License, or to impose a penalty for Tobacco Retailing without a License can be appealed to a hearing officer, subject to the following requirements and procedures. A Person served with a decision issued pursuant to Subsection B of Section 7.80.060 or Subsection D of Section 7.80.120 may seek an appeal by filing with the Health Officer a written request for hearing within fourteen (14) calendar days of service of the decision. Failure to timely file a written request for hearing shall be deemed a waiver of the right to challenge the decision of the Health Officer and a failure to exhaust administrative remedies. The hearing officers shall be individuals selected by the County who may hear the appeals, issue subpoenas, receive evidence to administer oaths, rule on questions of law and the admissibility of evidence, prepare a record of the proceedings, and issue orders with regard to an appeal.

B. The hearing officer shall schedule a hearing.

1. Written notice of the time, date and location of a hearing before the hearing officer shall be given by personal service or by first class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the appellant.

2. Hearing Procedures.

- a. Requirements for Taking Testimony. In any proceeding before a hearing officer, oral testimony offered as evidence shall be taken only on oath or affirmation, and the hearing officer, his/her clerk, or other designee shall have the power to administer oaths and affirmations and to certify to official acts. Oaths of witnesses may be given individually or en masse.

Witnesses shall be asked to raise their right hands and to swear or affirm that

the testimony they shall give will be the truth, the whole truth, and nothing but the truth.

b. Continuances. The hearing officer may continue the hearing as determined appropriate by the hearing officer.

c. Administrative Interpretations. In conducting the hearing, the hearing officer shall consider the previously established interpretation of an ordinance provision by the Department charged with its enforcement unless that interpretation is shown to be clearly erroneous or unauthorized.

d. Hearing Officer Decisions. Within thirty (30) calendar days after the close of the hearing, the hearing officer shall issue a written decision, including a statement of the basis for the decision. The hearing officer's written decision shall constitute the final administrative decision of the County.

e. In the event a civil action is initiated to obtain enforcement of the decision of the hearing officer, and judgment is entered to enforce the decision, the Person against whom the order of enforcement has been entered shall be liable to pay the County's total costs of enforcement, including reasonable attorney's fees.

C. The appellant's failure to appear at the hearing on appeal shall constitute an abandonment of the review request and a failure to exhaust administrative remedies.

7.80.140 - Other Penalties.

The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

A. Violations of this Chapter may, in the discretion of the District Attorney, be prosecuted as infractions or misdemeanors.

B. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall constitute a violation.

C. Violations of this Chapter are hereby declared to be public nuisances.

7.80.150 - Stipulated fine in lieu of hearing.

For a first or second alleged violation of this Chapter within any sixty (60) month period, the Health Officer may allow a Tobacco Retailer alleged to have violated this Chapter to stipulate in writing to the penalties provided in this Section in lieu of the penalties that would otherwise apply pursuant to this Chapter and to forego any right the Tobacco Retailer may have to a hearing pursuant to Section 7.80.130. Notice of any stipulation shall be provided to the Sheriff's Office, and no hearing shall be held. Stipulations shall not be confidential, shall be in writing, and shall contain the following terms plus any other noncriminal provisions established by the Health Officer in the interests of justice:

A. After a first alleged violation of the Chapter at a location:

1. An agreement by the Tobacco Retailer to stop acting as a Tobacco Retailer for one (1) day;

2. An administrative penalty of One Thousand and no/100ths (\$1,000.00) Dollars;
3. An admission by the Tobacco Retailer that the first alleged violation of the Chapter at the location occurred; and
4. An agreement that the first alleged violation of the Chapter at the location shall be considered in determining the penalty for any future violation.

B. After a second alleged violation of the Chapter at a location within any sixty (60) month period:

1. An agreement by the Tobacco Retailer to stop acting as a Tobacco Retailer for ten (10) days;
2. An administrative penalty of Five Thousand and no/100ths (\$5,000.00) Dollars;
3. An admission by the Tobacco Retailer that the second alleged violation of the Chapter at the location occurred; and
4. An agreement by the Tobacco Retailer that the second alleged violation of the Chapter at the location will be considered in determining the penalty for any future violations.

7.80.160 - Implementation.

The Department shall begin implementing the provisions of this Chapter effective July 1, 2012.

7.80.170 - Severability.

If any provision of this Chapter or the application thereof to any Person or circumstance is held invalid, the remainder of this Chapter or the application of such provision to other Persons or circumstances shall not be affected thereby.

Section 5. Severability. The provisions of this Ordinance shall be severable, and if any clause, sentence, paragraph, subdivision, section, or part of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 6. Legal Construction. The provisions of this Ordinance shall be construed as necessary to effectively carry out its purposes, which are hereby found and declared to be in furtherance of public health, safety, and welfare.

Section 7. Effective Date. This Ordinance shall become effective thirty (30) days after its final passage and adoption at a duly noticed public hearing for the second reading of the proposed text amendments.

Section 8. The City Clerk shall certify to the adoption of this Ordinance and shall, within fifteen (15) days after passage, publish a summary of this Ordinance in

accordance with Section 36933 of the Government Code of State of California with the names of City Council members voting for and against it.

INTRODUCED at a regular meeting of the City Council of the City of Seaside on the ____ day of February, 2020, and

PASSED AND ADOPTED by the City Council of the City of Seaside on the ____ day of February, 2020, by the following roll call vote:

INTRODUCED and passed to print at a regular meeting of the City Council on January 16, 2019.

PASSED AND ADOPTED at a regular meeting of the City Council on the ____ day of _____, 2020 by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

APPROVED:

Ian N. Oglesby, Mayor

ATTEST:

Lesley Milton, City Clerk



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 10.A.

TO: City Council

FROM: Craig Malin, City Manager

BY: Lesley Milton, Assistant City Manager

DATE: January 16, 2020

**SUBJECT: REPORT ON CURRENT SEASIDE MUNICIPAL CODE 6.04.170
(VICIOUS DOGS) AND CONTEMPLATED FUTURE REVISIONS**

PURPOSE & RECOMMENDATION

Receive a presentation and invite public input on possible changes to the ordinance.

BACKGROUND

There is no staff report for this item. A verbal presentation will be provided at the meeting and the public is invited to comment regarding the current regulations.

FISCAL IMPACT

None at this time.

ATTACHMENTS

None

Reviewed for Submission to the
City Council by:



Craig Malin, City Manager