

**CITY OF MODESTO
PLANNING COMMISSION AGENDA REPORT
MONDAY, APRIL 6, 2009 - 7:00 PM
BASEMENT CHAMBERS
1010 TENTH STREET - MODESTO, CA**

I. ROLL CALL

II. APPROVAL OF MINUTES

Minutes of the regular meeting of March 23, 2009.

III. CONFLICT OF INTEREST DECLARATION

Commissioners and staff may now declare conflicts of interest for the purpose of determining if a quorum will be present to act on each item in the order shown on the agenda.

IV. CONSENT AND JOINT PUBLIC HEARING ITEMS

None.

V. PUBLIC HEARINGS

Item A Neighborhood Compatibility & Multi-Family Design Guidelines

Contact Info: Brad Wall, Steve Mitchell, Phil Reed, 577-5267

Item B Wireless Communications Ordinance

Contact Info: Paul Liu, 577-5267

VI. OTHER BUSINESS

Item C Feedback – CH&CDC

Item D Feedback – CIP Taskforce

ORAL COMMUNICATIONS

These matters may be presented by interested persons in the audience, staff or Commissioners (see Notice at end of agenda cover). Under State law, Commissioners may respond to matters being presented under this item only as follows:

- (a) Briefly respond to statements made or questions raised;
- (b) Ask a question for clarification;
- (c) Provide a reference to staff or other resources for factual information;
- (d) Request staff to report back at a subsequent meeting;
- (e) Finally, a Commissioner, or the Commission itself, may take action to direct staff to place a matter of business on a future agenda.

VII. MATTERS TOO LATE FOR THE AGENDA

These may be presented by members of the Planning Commission and staff, upon determination by a majority vote that an emergency exists, as defined by State law, or by a 2/3 vote that: 1) there is a need to take immediate action, and 2) that the need for action came to the City's attention after the agenda was posted.

VIII. ADJOURNMENT

Copies of the agenda are on file at the Stanislaus Library Reference Room, 1500 I Street, Modesto, and in the office of the Planning Division, Third Floor, 1010 Tenth Street, Modesto, CA. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Commission Secretary at 209.577.5267. Assistive listening devices are available upon request to the Planning Commission Secretary. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Notice: Persons who wish to speak to the Planning Commission regarding any item on the printed agenda, including oral communications, are encouraged to sign in on a form provided at the meeting. The purpose of this list is to have your name and address should we need to contact you or provide additional information to you. Signing this form is optional to speakers.

Posted pursuant to Government Code Section 54954.2 on _____

by _____ on the bulletin board at Tenth Street Place.

**CITY OF MODESTO
PLANNING COMMISSION
STAFF REPORT**

TO: Chairperson Berglund and Members of the Planning Commission

PREPARED BY: Brad Wall, Principal Planner
Philip Reed, Associate Planner
Contact Info: 577-5267

REVIEWED BY: Steve Mitchell, Principal Planner

APPROVED BY: Patrick Kelly, Planning Division Manager

DATE: March 30, 2009

SUBJECT: Neighborhood Compatibility Guidelines
Multi-Family Residential Design Guidelines

RECOMMENDATION

That the Planning Commission adopt the attached two resolutions:

1. Recommending that the City Council adopt the "Neighborhood Compatibility Guidelines" and direct staff to prepare amendments to the Municipal Code as determined necessary for the effective implementation of said Guidelines.
2. Recommending that the City Council adopt the "Multi-Family Residential Design Guidelines" and direct staff to prepare amendments to the Municipal Code as determined necessary for the effective implementation of said Design Guidelines.

BACKGROUND

For many years, the City's Zoning Code has required second-story additions to existing homes and new two-story homes located in established neighborhoods to go through an administrative review in order to ensure that privacy and massing issues relating to immediately adjacent residences are addressed. In recent years, there have been increasing concerns expressed by neighbors about the scale and architectural compatibility of some of these homes and additions, and this has resulted in an increasing number of appeals of staff approvals to the Board of Zoning Adjustment (BZA) and City Council. These concerns came to a head in 2007, when a group of residents requested that the City prepare guidelines to address these concerns.

This request was discussed by the Planning Commission on June 4, 2007, and further on August 6, 2007, when the Commission recommended to the Council that they direct staff to prepare guidelines to address the concerns. On November 11, 2007, the Council acted on this request and directed staff to pursue the following three programs:

1. Neighborhood Compatibility Guidelines to address compatibility issues created by new homes and additions in existing neighborhoods.
2. Multi-Family Residential Design Guidelines to ensure that new multi-family projects are compatible with the surrounding neighborhoods and are of quality design.
3. A Heritage Tree Ordinance to preserve heritage trees on private property.

On October 23, 2008, and February 19, 2009, the Planning Commission and Board of Zoning Adjustment held joint workshops to review drafts of these "Neighborhood Compatibility" documents. All three documents have undergone revisions based on the discussion and input received at these workshops, and while work continues on a Heritage Tree Ordinance, the other two documents are now ready to be considered for adoption.

PROJECT DESCRIPTION

Neighborhood Compatibility Guidelines

The purpose of the Neighborhood Compatibility Guidelines is, as the name implies, to ensure the compatibility of new houses and additions with the surrounding homes in established neighborhoods. This effort has focused primarily upon providing more effective guidance for second-story review and therefore the organization of the document reflects those topics already identified in the Zoning Code for consideration under the current second-story review provisions. These include Privacy, Scale and Massing, and Solar Access, with the addition of some general consideration of Architectural Consistency. Secondly, the document provides some guidance on lot pattern and neighborhood layout issues.

Intentionally excluded from these Guidelines was any consideration of such topics as color, ornamentation, and other types of architectural detailing that seemed to represent an increase in regulation beyond the City's goals for Neighborhood Compatibility. In this regard, therefore, the Neighborhood Compatibility Guidelines are not intended to be "design guidelines" in the traditional sense and do not contain guidance for achieving any particular architectural style.

Finally, recognizing that some of the issues considered in the proposed guidelines may require amendments to the Zoning Code or Subdivision Code to be effectively implemented, options are presented for these under "Issues" below. In some cases (lot size, for example), a code amendment is necessary to provide authority that will be recognized by state law (that is, the Subdivision Map Act). In other cases (setbacks, for example), adoption of certain code amendments could eliminate the need for some of the guidelines on those topics.

Multi-Family Residential Design Guidelines

The purpose of the Multi-Family Residential Design Guidelines is to encourage high quality multi-family development that emphasizes safety, livability and long-term viability. The Guidelines include an Introduction and six sections: Site Planning, Circulation and Parking, Building Design, Landscaping, Miscellaneous Site Elements and Safety.

The Introduction lays out the goals and objectives, intent, and applicability of the Guidelines. This section states what the Guidelines are intended to achieve and how they may be used by applicants, city staff and decision makers in the design and evaluation of a multi-family project. The guidelines are written so they would apply to all discretionary multi-family residential projects on property zoned R-2, R-3 or P-D.

Section I, Site Planning, encourages the orderly and efficient arrangement of the essential components of most multi-family developments: building masses, common open space, private open space and community amenities.

Section II, Circulation and Parking, promotes safe, efficient and attractive designs for pedestrian circulation, vehicular circulation and parking.

Section III, Building Design, focuses on design considerations such as building scale, height and massing as well as entry features, stairs, roofs and color. The goal of this section is not to

mandate a particular architectural style but rather encourage a high quality development that is consistent with the surrounding community.

Section IV, Landscaping, promotes well-chosen and strategically placed plant materials that should be used to compliment building architecture, provide shade, define outdoor spaces, discourage graffiti and enhance the surrounding neighborhood.

Section V, Miscellaneous Site Elements, addresses design elements such as fencing, site furniture, utilities, storage areas, mailboxes.

Section VI, Safety, focuses on design strategies for site planning, landscaping, lighting which should be employed to create a safe environment and prevent crime, vandalism, and graffiti.

As described under "Neighborhood Compatibility," above, certain code amendments may be needed to effectively implement the Multi-Family Residential Design Guidelines. However, it is expected that the code changes necessary for implementation of the Multi-Family Residential Design Guidelines would be minimal compared to those needed for the Neighborhood Compatibility Guidelines.

ISSUES

Multi-Family Residential Design Guidelines

Few concerns were expressed at the public workshops regarding either the content or purpose of the proposed Multi-Family Residential Design Guidelines. Therefore, only minor adjustments and refinements have been necessary to respond to the input received and prepare these Design Guidelines for formal consideration by the Planning Commission. Code amendments to implement the Multi-Family Residential Design Guidelines would be limited to those necessary to authorize staff to apply them in the course of existing processes for discretionary review of multi-family residential development proposals.

Neighborhood Compatibility Guidelines

- **WORKSHOP CONCERNS**

There were two general concerns expressed at the workshops. One of these concerns was to what extent the Neighborhood Compatibility Guidelines should be applied to different projects. Some participants in the workshops favored applying the Guidelines to all new single-family construction, with some desire to apply them also to exterior remodels even when there is no new floor area being added to an existing house. While staff favors some adjustment to the existing exemptions from second-story review, staff recommends that the City not expand regulation beyond second-story review at this time. The reason for this recommendation is staff believes that scale and massing are the primary cause for incompatibility of new houses and additions, and scale and massing issues are primarily associated with new second-stories.

A second concern revolved around the strength and level of regulatory authority written into the guidelines themselves. Some participants in the workshops favored writing the guidelines with the force of regulation (using "shall" rather than "should") so as to leave no question regarding expectations; some concern was expressed that there could be too much subjectivity possible in the interpretation of general guidelines and potential argument with applicants over applicability of guidelines that do not have the force of regulation. Staff has made every effort to clarify and strengthen the guidelines, and to eliminate all ambiguity; however, staff recommends that for the most part, the guidelines should remain as guidelines and not become strict regulations, thereby maintaining some flexibility to accommodate differing circumstances case by case.

- RELATED CODE AMENDMENTS

As indicated previously, staff anticipates a need to amend certain code provisions to effectively implement the Neighborhood Compatibility Guidelines once they are adopted. Some of these amendments would be limited to the clarification and update of existing second-story review provisions, and the procedures for plot plan review (Article 27) upon which they rely, in order to reflect the new role of these Guidelines in this review process. These amendments would not represent any real change in regulation.

In addition, however, there are code amendment options that could involve some change in regulation, depending upon the direction received. These options are explained below.

1. Applicability of the Guidelines

Application of the Guidelines is dependent upon the authority granted in Municipal Code. Currently, this authority is limited to the review of second-story additions and new two-story houses, with certain exceptions as provided in the Code.

Without amending the Code to expand discretionary authority over additional types of projects, the following would be among those not subject to the Guidelines:

- All new single-story houses and single-story additions
- Exterior remodels that do not involve two-story additions
- Accessory structures that do not have two stories

There is also currently an exception from second-story review for new two-story houses and second-story additions located in subdivisions recorded within the previous ten years.

In addition, guidelines pertaining to lot size and configuration cannot be applied on their own without having specific policy language in the Municipal Code and/or General Plan authorizing the compatibility of lot size as a criterion with which to evaluate a proposed tentative subdivision or parcel map. Otherwise, the City's authority is limited to requiring the applicant to meet the minimum lot size specified in the Zoning Code (which is currently 5,000 square feet for new lots in the R-1 Zone). This is because, with respect to lot size, the Subdivision Map Act (California state law) limits the basis for denial of a tentative map to consistency with the General Plan and Zoning.

Staff recommends amendment of the Municipal Code and/or General Plan to provide authority over the compatibility of lot size. In addition, it is recommended that second-story review provisions be revised to clarify a distinction between the initial development of homes within a new subdivision (which would not be subject to the Guidelines), and subsequent additions to existing houses or replacement of houses on lots that have become vacant through demolition of the original house, regardless of how recently the subdivision was recorded.

2. Public Noticing

In addition to the types of projects the Guidelines will apply to, there is the matter of review process. Current practice for second-story review is to notify immediately adjacent property owners of the pending decision, but this practice is not currently written into the Code. Because this staff level action does not involve a public hearing, there is no legal requirement to publish or distribute a notification. Even if these cases are appealed, the notification requirement is limited to the appellant and "any other persons requesting notice" of the appeal, though again, the practice for second-story review has been to notify all those adjacent property owners who received the original notice. Staff recommends that

this current practice be formally codified, but does not recommend expansion of the notification beyond the current practice, since second-story review, with its privacy and scale and massing issues, primarily impacts only the immediate neighbors.

3. Height & Setbacks

Staff proposes that height compatibility, as it relates to scale and massing, be addressed through modifications to setback requirements, rather than through any change to height regulations. For setbacks, the Zoning Code currently requires a 15-foot setback in front, and five-foot setbacks on the sides and in the rear. For height, the Zoning Code currently specifies maximums of two stories and 30 feet.

Staff proposes that an additional setback apply to a second story in order to compensate for the increased massing of additional height imposed on neighboring single-story houses. This could be accomplished through one of two possible ways: the first would be to simply require an additional five-foot setback for a second story; alternatively, a graduated system, requiring an additional foot of setback for each additional two feet of height above a basic single-story wall height (for example), accommodates situations in which a house may be technically only one story, but proposes a height greater than necessary to accommodate minimum ceiling height. This latter approach has the benefit of providing some control over increased massing of large "single-story" houses within single-story neighborhoods, but may involve some additional complications; and with either of these approaches, it would be necessary to recognize that, where a property is already adjacent to full height two-story houses, an exception to the additional setback would be appropriate.

Staff also recommends increasing the rear setback requirement from five feet to 15 feet as a partial solution to the problem of adjacent construction creating a "walled in" effect upon a neighbor's yard. This increase in rear setback would not conflict with current limitations in lot coverage. Related to the rear yard setback is the location of accessory structures: whether or not to allow them in the rear yard setback area (particularly if this setback is increased), and also whether or not to continue allowing a detached accessory structure without property-line setbacks, if it is "to the rear" of the dwelling.

4. Lot Size and Configuration

Beyond the basic issue of providing authority to regulate lot size for compatibility (as stated earlier under Applicability), there is the question of whether or not to codify the specific parameters used to regulate lot size and configuration (primarily flag lots). Staff recommends that all such parameters be included in the Guidelines (as provided), rather than in Code, so as to retain some flexibility in applying them to different situations on a case by case basis. In every case, the applicability and appropriateness of these guidelines to a particular proposal will be subject to the review and approval of the Planning Commission when the tentative subdivision or parcel map is considered at public hearing.

Guidelines Implementation

Given the need or appropriateness of certain code amendments to properly implement the two sets of guidelines presented, staff anticipates the need for further work to prepare these code amendments following adoption of the guidelines. Therefore, staff recommends that Planning Commission recommend to City Council that they direct staff to prepare the code amendments as outlined above, and return with them for consideration by the Commission at a later date.

ENVIRONMENTAL ASSESSMENT

The "Neighborhood Compatibility Guidelines" and "Multi-Family Residential Design Guidelines" are policy documents and their adoption, therefore, does not qualify as a project, pursuant to Section 15378(b)(2) of the CEQA Guidelines.

ATTACHMENTS (included with Commissioners' packets only)

1. Draft Planning Commission Resolution (NCG) - April 6, 2009
2. Draft Planning Commission Resolution (MFRDG) - April 6, 2009
3. Draft Neighborhood Compatibility Guidelines
4. Draft Multi-Family Residential Design Guidelines

PLANNING COMMISSION
RESOLUTION NO. 2009-XX

A RESOLUTION RECOMMENDING TO THE CITY COUNCIL ADOPTION OF THE NEIGHBORHOOD COMPATIBILITY GUIDELINES AND DIRECTION TO STAFF TO PREPARE AMENDMENTS TO THE MUNICIPAL CODE AS DETERMINED NECESSARY FOR THE EFFECTIVE IMPLEMENTATION OF SAID GUIDELINES

WHEREAS, in 2007 a group of residents approached the City with concerns regarding the compatibility of new construction in existing neighborhoods and a request that the City formulate new regulations to deal with neighborhood compatibility issues; and

WHEREAS, the Planning Commission considered this request on June 4, 2007 and August 6, 2007, and recommended to the City Council that staff be directed to prepare guidelines to address neighborhood compatibility, multi-family design guidelines, and heritage trees; and

WHEREAS, the City Council, on November 11, 2007, directed staff to prepare the following three efforts:

1. Neighborhood Compatibility Guidelines to address compatibility issues created by new homes and additions in existing neighborhoods;
2. Multi-Family Design Guidelines to ensure that new multi-family projects are compatible with the surrounding neighborhoods and are of quality design;
3. A Heritage Tree Ordinance to preserve heritage trees on private property; and

WHEREAS, staff has prepared draft "Neighborhood Compatibility Guidelines" for residential development in order to:

1. Ensure that new two-story residential development is consistent and compatible with the design and character of existing neighborhoods by providing guidelines for privacy, scale and massing, architectural consistency, and lot pattern, size and configuration;
2. Provide flexibility to allow for individual circumstances on specific projects;
3. Provide a comprehensive set of guidelines early in the development process regarding City expectations for builders, investors and residents; and

WHEREAS, public workshops were held by the Planning Commission and Board of Zoning Adjustment on October 23, 2008, and February 19, 2009, in Room B300, 1010 Tenth Street, Modesto, California, at which public comments were received and considered; and

WHEREAS, a public hearing was held by the Planning Commission on April 6, 2009, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing comments were received and evidence both oral and documentary was received and considered; and

WHEREAS, the "Neighborhood Compatibility Guidelines" is a policy document and therefore is not a project pursuant to Section 15378(b)(2) of the CEQA Guidelines.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Modesto that it hereby finds and determines that the proposed "Neighborhood Compatibility Guidelines" conforms to the City of Modesto Urban Area General Plan and are necessary for the general health, safety, and welfare of the community for the following reason:

1. The "Neighborhood Compatibility Guidelines" document is consistent with the Overall Mission Statement of the Urban Area General Plan, which states, in part, ". . . The Urban Area General Plan presents a blueprint for the preservation of Modesto's 'quality of life' while providing direction for the growth of business and industry to meet the needs of the future generations . . ." page 1-2 of the Urban Area General Plan.
2. The "Neighborhood Compatibility Guidelines" is a general policy document and is not a project pursuant to Section 15378(b)(2) of the CEQA Guidelines.

BE IT FURTHER RESOLVED by the Planning Commission of the City of Modesto that it hereby recommends to the City Council that the Council (1) adopt the proposed "Neighborhood Compatibility Guidelines" document as set forth in Exhibit A, attached hereto and incorporated herein by this reference; and (2) direct staff to prepare amendments to the City of Modesto Municipal Code for the effective implementation of the "Neighborhood Compatibility Guidelines" as determined necessary.

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on April 6, 2009, by _____, who moved its adoption, which motion was seconded by _____, and carried by the following vote:

Ayes:
Noes:
Absent:
Recused:

BY ORDER OF THE PLANNING COMMISSION OF THE CITY OF MODESTO.

Patrick Kelly, Secretary

Attachment: Exhibit "A"

**EXHIBIT A
NEIGHBORHOOD COMPATIBILITY DESIGN GUIDELINES**

**Draft on File with the Community & Economic Development
Department/Planning Division**

**Final Neighborhood Compatibility Design Guidelines will be on file with the
Community & Economic Development Department/Planning Division**

PLANNING COMMISSION
RESOLUTION NO. 2009-XX

A RESOLUTION RECOMMENDING TO THE CITY COUNCIL ADOPTION OF THE MULTI-FAMILY RESIDENTIAL DESIGN GUIDELINES AND DIRECTION TO STAFF TO PREPARE AMENDMENTS TO THE MUNICIPAL CODE AS DETERMINED NECESSARY FOR THE EFFECTIVE IMPLEMENTATION OF SAID DESIGN GUIDELINES

WHEREAS, in 2007 a group of residents approached the City with concerns regarding the compatibility of new construction in existing neighborhoods and a request that the City formulate new regulations to deal with neighborhood compatibility issues; and

WHEREAS, the Planning Commission considered this request on June 4, 2007 and August 6, 2007, and recommended to the City Council that staff be directed to prepare guidelines to address neighborhood compatibility, multi-family residential design guidelines, and heritage trees; and

WHEREAS, the City Council, on November 11, 2007, directed staff to prepare the following three efforts:

1. Neighborhood Compatibility Guidelines to address compatibility issues created by new homes and additions in existing neighborhoods,
2. Multi-Family Design Guidelines to ensure that new multi-family projects are compatible with the surrounding neighborhoods and are of quality design,
3. A Heritage Tree Ordinance to preserve heritage trees on private property, and

WHEREAS, staff has prepared draft "Multi-Family Residential Design Guidelines" for multi-family residential development in order to:

1. Assure a high level of design in new multi-family development by providing guidelines for site planning, parking, building design, landscaping, safety and other site elements such as walls and signage;
2. Provide flexibility to allow for individual circumstances on specific projects;
3. Provide a comprehensive set of guidelines early in the development process regarding City development expectations for builders, investors; and

WHEREAS, the proposed "Multi-Family Residential Design Guidelines" document is intended to be implemented in all multi-family residential zones; and

WHEREAS, public workshops were held by the Planning Commission on October 23, 2008 and February 19, 2009, in Room B300, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which public comments were received and considered; and

WHEREAS, a public hearing was held by the Planning Commission on April 6, 2009, in Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which hearing comments were received and evidence both oral and documentary was received and considered; and

WHEREAS, "Multi-Family Residential Design Guidelines" is a general policy document and therefore is not a project pursuant to Section 15378(b)(2) of the CEQA Guidelines.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Modesto that it hereby finds and determines that the proposed "Multi-Family Residential Design Guidelines" conforms to the City of Modesto Urban Area General Plan and are necessary for the general health, safety, and welfare of the community for the following reasons:

1. The "Multi-Family Residential Design Guidelines" document is consistent with the Overall Mission Statement of the Urban Area General Plan, which states, in part, ". . . The Urban Area General Plan presents a blueprint for the preservation of Modesto's 'quality of life' while providing direction for the growth of business and industry to meet the needs of the future generations . . ." page 1-2 of the Urban Area General Plan.
2. The "Multi-Family Residential Design Guidelines" is a general policy document and is not a project pursuant to Section 15378(b)(2) of the CEQA Guidelines.

BE IT FURTHER RESOLVED by the Planning Commission of the City of Modesto that it hereby recommends to the City Council that the Council (1) adopt the proposed "Multi-Family Residential Design Guidelines" as set forth in Exhibit A, attached hereto and incorporated herein by this reference; and (2) direct staff to prepare amendments to the City of Modesto Municipal Code for the effective implementation of the "Multi-Family Residential Design Guidelines" as determined necessary.

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on April 6, 2009, by _____, who moved its adoption, which motion was seconded by _____, and carried by the following vote:

Ayes:
Noes:
Absent:
Recused:

BY ORDER OF THE PLANNING COMMISSION OF THE CITY OF MODESTO.

Patrick Kelly, Secretary

Attachment: Exhibit "A"

**EXHIBIT A
MULTI-FAMILY RESIDENTIAL DESIGN GUIDELINES**

**Draft on File with the Community & Economic Development
Department/Planning Division**

**Final Multi-Family Residential Design Guidelines will be on file with the
Community & Economic Development Department/Planning Division**

**CITY OF MODESTO
PLANNING COMMISSION
STAFF REPORT**

TO: Chairperson Berglund and Members of the Planning Commission

PREPARED BY: Paul Liu, Senior Planner
Contact Info: 577-5267 pliu@modestogov.com

REVIEWED BY: Steve Mitchell, Principal Planner

APPROVED BY: Patrick Kelly, Planning Division Manager

DATE: April 6, 2009

SUBJECT: CODE-2009-01 – Draft Wireless Telecommunication Facilities Ordinance

RECOMMENDATION

That the Planning Commission adopt the attached resolution recommending to the City Council an amendment to Chapter 2 of Title 10 of the Modesto Municipal Code (Zoning Regulations) to regulate wireless telecommunication facilities within the City of Modesto. (Wireless Telecommunication Facilities Ordinance, CODE-09-001).

BACKGROUND

Over the past few years, the City of Modesto has reviewed multiple permit requests for wireless telecommunication (telecom) facilities, mostly proposed on freestanding poles and commonly referred to as cell towers. The City of Modesto does not have specific standards addressing telecom facilities and the City review has been based on height requirements in the Zoning Ordinance for the district where a cell tower is proposed. There are no height limits in the industrial and business park zones. Cell towers are allowed up to 90 feet in height in the Community Commercial (C-2) and Community Industrial (C-M) Zones. All other zoning districts require a Conditional Use Permit application if the proposed cell tower exceeds the zone height limit, which ranges from 30 to 42 feet. Thus far, the review of telecom facilities by the City has been without the benefit of any adopted standards. The Board of Zoning Adjustment, Planning Commission, and City Council have expressed concerns about the lack of specific standards.

PROJECT DESCRIPTION

The attached draft Telecom Ordinance has been prepared to address telecom facilities within the City of Modesto. The proposed ordinance is the addition of new Article 31 to Chapter 2 of Title 10 of the Modesto Municipal Code. There is also a minor change to Article 25 Variances and Conditional Use Permits, regarding new variance provisions for telecom facilities, and amendment to Article 23 General Provisions, regarding telecom facilities within the right-of-way of utility and railroad companies.

Article 31 Wireless Telecommunication Facilities

A summary of the new ordinance is described by the nine sections below.

1. 10-2.3101 Purpose and Intent

This section outlines the purpose and intent of the telecom ordinance. This ordinance is intended to be consistent with state and federal law while ensuring public safety, to reduce visual impacts, to mitigate other impacts of such facilities, and ensure adequate service to the community. It is the objective of the city to ensure that telecom facilities are developed in harmony with the surrounding environment through regulation of location and design. This ordinance is not intended to prohibit or have the effect of prohibiting telecom services. The purpose of this section is to establish the primary goals of this ordinance.

2. 10-2.3102 Definitions

This section provides the definitions to certain terms used in the review of telecom facilities. For example, a monopole means a freestanding pole used to support an exposed antenna or antenna array. A uni-pole is a monopole with the antenna elements within the pole or concealed within a radome above the monopole exceeding the monopole diameter by no greater than six inches. As another example, camouflaged means a telecom facility in which the antenna, pole, tower, and sometimes support equipment, are hidden from view or effectively disguised that either mimics or serves as a natural or architectural feature. The definitions explain the important physical and functional components of telecom facilities that will help implement and clarify this ordinance.

3. 10-2.3103 Applicability

This section explains that the regulations are applicable to telecom facilities providing voice and/or data transmission. There is also a provision that exempts certain facilities from this new section including amateur radio antennas, satellite dish antennas of one meter in diameter or smaller, and City owned and operated communication facilities. The exempted facilities do not provide voice or data transmission for broad commercial purpose. Amateur radio antennas are governed by a separate set of federal and state regulations. The exempted satellite dish antennas are governed by federal regulations, and are small in scale resulting in minimal visual impact to the community. City owned and operated facilities are exempted because they are used by the government for public safety purposes.

4. 10-2.3104 Facility Type Priorities

This section outlines the planning and approval priorities for the type of telecom facilities in the City. The reason for providing the priority type is to minimize the visual impacts of telecom facilities within the community. For example, it is a higher priority for telecom facilities to be fully camouflaged (e.g. to appear as a tree or a flagpole) so that it blends in with the environment as opposed to a lower priority of having a large lattice tower that is easily visible from the surrounding area.

5. 10-2.3105 Review Process

This section defines the review process for every zoning district based on the type of facility. Depending on the zoning designation and type of facility, a telecom facility may be permitted with the issuance of a building permit, subject to a Development Plan Review by the Community and Economic Development Director, subject to a Conditional Use Permit by the Board of Zoning Adjustment, or Not Permitted.

The proposed review process allows some form of telecom facility in every zoning district, but is more permissive in the industrial areas of the City where land uses are more intense, and least permissive in the residential area where the land uses are the most sensitive. The review process is established to be consistent with Facility Type Priorities discussed in the previous section. The review process is more streamlined, requiring either a building permit or an administrative approval of a Development Plan Review when the proposal meets the higher priority facility type. When the proposal is for a lower priority facility type, the facility would require a Conditional Use Permit, or may not be allowed at all such as a new monopole in the residential neighborhood or a lattice tower in residential or commercial zones.

6. 10-2.3106 Development Standards

Development standards specific to telecom facilities are provided in this section. The purpose of the development standards is to minimize the visual impacts to the community and address safety issues, while still allowing for adequate telecommunication service. The required Fall Zone Setback is 110 percent of the maximum height of any freestanding pole or tower telecom facility from any adjacent parcel. This provides a reasonable separation from adjacent areas and also provides a safety zone if the pole or tower should fall at its base.

There is a Separation Requirement of at least 1,000 feet from all non-camouflaged pole or tower telecom facility from all other non-camouflaged poles or tower telecom facilities. This requirement is intended to reduce the visual impact by avoiding a proliferation (also described as 'tower clustering') of the non-camouflaged freestanding poles or towers. The separation requirement does not apply to camouflaged facilities.

The maximum height limit for any pole or tower is 50 feet for the residential zoning districts (R-1, R-2, R-3), Professional Office Zone (P-O), and Neighborhood Commercial Zone (C-1). The height limit is 55 feet for any pole or tower in the remaining commercial zoning districts (C-2, C-3, C-M) and industrial and business park zoning districts (M-1, M-2, B-P). The height limit for a telecom facility on a building or structure is no more than 10 feet above that building or structure. Telecom facilities can be located on buildings and structures such as church steeples, clock towers, and signs. Staff arrived at these height requirements after reviewing telecom height limits in other communities and in consultation with the independent telecom expert hired by the City to assist with this effort. Staff and the City's telecom expert believe that the height of 50 feet is sufficient to provide adequate radio frequency coverage and will reduce the visual intrusiveness to the community, however in those few cases where the height limitation places too great a burden on a carrier, the proposed addition to Article 25 Variances and Conditional Use Permit for telecom facilities provides a 'safety valve' that is consistent with the Telecom Act requirements and case law.

The ordinance also contains provisions for co-location. Proposed new telecom facilities will be required to be designed to accommodate the co-location of two or more service providers per facility. Additionally, all new telecom facilities may be required to co-locate with another existing or new facility unless it can be shown to be technically or economically infeasible. The purpose for this standard is to limit the adverse effect of a proliferation of separate telecom sites in close proximity with each other within the City.

Screening requirements are included to ensure that telecom facilities are visually compatible with, as applicable, the building the facilities are mounted on, or surrounding buildings, or vegetations. For example, a pole or tower will need to be concealed, screened, or camouflaged by existing or proposed new vegetation, buildings, or structures to blend into the surrounding environment. In a second example, support equipment will need to be screened from public

view by decorative fence, wall, parapet, landscaping, berming, or any combination thereof, or shall be located within a building, enclosure, or underground vault.

7. 10-2.3107 Findings

A set of findings are provided for the review of telecom applications. There are findings for Development Plan Review and Conditional Use Permit applications. There are also findings for consideration to exceed the maximum height limit, to reduce the 1,000 feet separation requirement, and to allow more than three non-camouflage telecom facilities. One finding that will have to be made for most situations is that the telecom facilities will result in the least intrusive impact while closing a significant gap in coverage. Any proposal to exceed the maximum allowed zone height must also comply with new variance findings for telecom facilities provided in Article 25 Variances and Conditional Use Permits (see below). These findings serve to provide reasonable 'safety valve' justification for approval or denial as well consistency in the review of telecom facilities. Some of the findings serve to comply with state and federal law requirements.

8. 10-2.3108 Submittal Requirements

This section describes the typical minimum documentation that will need to accompany an application for telecom facilities, and is designed to permit the City to comply with federal law and case law requiring that our written decisions be based on substantial evidence in the administrative record. Some of the important documents that will need to be provided include coverage and location maps of current and future facilities, visual simulations, emission standards, and radio frequency compliance and emissions safety report. The required information required to determine the need to close a gap in coverage, the level of visual impacts to the surrounding area, and to certify that the facility will comply with FCC radio frequency emissions safety standards. There is language indicating that the City may hire an outside technical consultant to assist in the review of the application.

9. 10-2.3109 Removal of Telecom Facilities

This section addresses inactive telecom facilities. Any permittee who intends to abandon or discontinue use of a telecom facility must notify the City within 30 days. The permittee or property owner must reactivate the telecom facility, transfer the rights of the telecom facility to another telecom operator, or remove the telecom facility, within 90 days of abandonment or discontinuance. Any telecom facility that is inactive for a period of 180 days will be deemed abandoned. Upon finding of abandonment, the City will provide notice to the permittee or property owner to reactivate, transfer the rights, or remove the telecom facility. The removal provisions are intended to avoid inactive telecom facilities from becoming a visual or safety problem due to inadequate maintenance that may occur with abandoned facilities.

Article 25 Variances and Conditional Use Permits

New City Municipal Code Section 10-2.2503 provides specific findings for a variance to adopted standard for a telecom facility. This variance process is designed to comply with federal law permitting an applicant a 'safety valve' to show that the ordinance, as applied in a particular siting case would otherwise result in the outright prohibition of a telecommunication service. This result would be contrary to federal law. The findings necessary to support a variance indicate that the applicant must demonstrate special radio frequency conditions that apply only to the proposed project and would otherwise cause it significant gap in coverage. A variance must also be consistent with the purpose and intent of the Telecommunication Act of 1996. The

reason for these special findings is to provide variance findings that are useful and applicable to telecom projects and to comply with case law.

Article 23 General Provisions

City Municipal Code Section 10-2.2304 would be amended to clarify that regulation for telecom facilities apply in utility and railroad right-of-way. The current language was adopted before widespread use of wireless communication and excluded non-wireless facilities within utility and railroad right-of-way from the provisions in the zoning ordinance. The revision would not change the exclusion of non-wireless facilities from the zoning ordinance but would clarify that wireless technology is not excluded.

ISSUES

As discussed above, the City currently relies on the height standards as the basis to review telecom facilities. In recent years, the City's objective has been to minimize the visual impact of telecom facilities to the community while allowing telecom operators to provide adequate service even though there were not any standards adopted. The proposed ordinance provides specific standards and procedures that are consistent with past practice of minimizing visual impacts while providing sufficient opportunities for telecom operators to provide adequate services.

GENERAL PLAN CONSISTENCY

The General Plan is unaffected by the proposed Zoning Code amendment. The proposed Code amendment is consistent with Policy V-N.2 of the General Plan regarding telecommunication policies.

ZONING CONFORMANCE

This proposal adds new Article 31, Sections 10-2.3101-3109, to Chapter 2 to Title 10 of the Modesto Municipal Code (Zoning Regulations). There is also a minor change to Chapter 2, Article 25 Variances and Conditional Use Permits, with the addition to new Section 10-2.2503 regarding variance provisions for telecom facilities, and amendment to Article 23 General Provisions, Section 10-2.2304, regarding telecom facilities within the right-of-way of utility and railroad companies.

ENVIRONMENTAL ASSESSMENT

No new environmental impacts are raised by the proposed Zoning Code amendments. Staff has prepared an Initial Study, Environmental Checklist No. EA/C&ED 2009-11, (Attachment No. 3), which concludes that the proposed Telecom Ordinance is within the scope of the General Plan Master EIR (SCH No. 2006072023), and that pursuant to Section 21157.1(b) of CEQA, no new environmental review is required.

ATTACHMENTS (included with Commissioners' packets only)

1. Draft Telecom Ordinance
2. Draft Planning Commission Resolution – April 6, 2009
3. Environmental Checklist No. EA/C&ED 2009-11

Article 31 WIRELESS TELECOMMUNICATION FACILITIES

10-2.3101 Purpose and Intent.

10-2.3102 Definitions.

10-2.3103 Applicability.

10-2.3104 Facility Type Priorities.

10-2.3105 Review Process.

10-2.3106 Development Standards.

10-2.3107 Findings.

10-2.3108 Application Submittal Requirements and Initial Review.

10-2.3109 Removal of Telecom Facilities.

10-2.3101 Purpose and Intent.

(a) The purpose of this chapter is to provide for wireless telecommunication (“telecom”) facilities on public and private property consistent with federal and state law while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes and neighborhoods, protecting scenic views, and otherwise mitigating the impacts of such facilities while insuring adequate service to the community.

(b) It is the objective of the City that all telecom facilities be as unobtrusive as possible and that the number of freestanding telecom facilities be minimized. The standards and policies established by this Article are intended to ensure that telecom facilities within the City are developed in harmony with the surrounding environment through regulation of location and design.

(c) The provisions of this chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.

10-2.3102 Definitions.

For the purposes of this Article, certain terms shall have meanings as follows:

(a) “**Antenna**” means a device used to transmit and/or receive radio or electromagnetic waves between Earth and/or satellite-based systems, including without limitation reflecting discs, panels, microwave dishes, whip antennas, direction and non-direction antennas consisting of one or more wires or elements, multiple antenna configurations, or other similar electromagnetic wave transmission and/or reception devices.

(b) “**Antenna array**” shall mean two (2) or more antennas having active elements extending in one or more directions, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.

(c) “**Camouflage**” or “**camouflaged facility**” means a telecom facility in which the antenna, monopole, uni-pole, and/or tower, and sometimes the support equipment, are hidden from view, or effectively disguised as may reasonably be determined by the Director or Board of Zoning

Adjustment as applicable, in a false tree, monument, cupola, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing telecom facilities which do not mimic or appear as a natural or architectural feature to the average observer are not within the meaning of this definition.

(d) “Co-location” means an arrangement whereby multiple telecom facilities owned or operated by different telecom operators share the same structure or site.

(e) “FCC” means the Federal Communications Commission.

(f) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal, costs and technological factors.

(g) “Lattice tower” or “tower” means an open framework freestanding structure used to support one or more antennas, typically with three (3) or four (4) support legs or main vertical load-bearing members.

(h) “Monopole” means a single freestanding pole used to act as or support an exposed antenna or antenna arrays.

(i) “Non-Residential Use” includes uses such as churches, schools, residential care facilities that are not a residential use but may be allowed in a residential zone typically with a Conditional Use Permit.

(j) “Operator” or “telecom operator” means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a telecom facility or facilities within the City.

(k) “Radio Frequency” means electromagnetic waves in the frequency range of 300 kHz (300,000 cycles per second) to 300 GHz (300 billion cycles per second).

(l) “Radome” means a visually opaque, radio frequency transparent material which may be flat or cylindrical in design, and is used to visually hide antennas.

(m) “Support equipment” means the physical, electrical and/or electronic equipment included within a telecom facility used to house, power, and/or process signals from or to the facility’s antenna or antennas.

(n) “Structure” means any structure consistent with the definition provided in Section 10-2.248 but focusing on a structure that can be used for a telecom facility such as a monopole, uni-pole, or tower, buildings, steeples, clock towers, park playfield lighting standards, water tanks, and signs.

(o) “Telecommunication(s) facility, telecom facility, wireless telecommunications facility,” or simply **“facility”** means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including, but not limited to, directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.

(p) “Uni-pole” is a monopole that does not have antenna elements other than the pole itself or the antenna elements are concealed inside a radome of the same diameter as the pole, or exceeding the pole diameter by no greater than six inches.

(q) “Utility tower” shall mean an open framework structure or steel pole used to support electric transmission facilities (see Lattice Tower).

10-2.3103 Applicability.

These regulations are applicable to telecom facilities providing voice and/or data transmission such as, but not limited to, mobile telephone services, fixed microwave services, and mobile data services.

(a) Exempt facilities. Amateur radio antennas, antennas used solely for the purpose of receiving local broadcast stations, and satellite dish antennas of one (1) meter in diameter or smaller and City owned/operated communication facilities are exempt from the provisions of this chapter.

10-2.3104. Facility Type Priorities

(a) Facility Type Priorities. When reviewing proposed facility types for telecom facilities the Community and Economic Development Director (Director) or Board of Zoning Adjustment (BZA), as applicable, shall utilize the following priority order provided in Table 31.1:

Priority Table 31.1 –Facility Type Priorities	
1.	New telecom facility fully camouflaged on existing or new building or structure
2.	New telecom facility co-located on existing monopole, uni-pole, or tower
3.	New camouflaged monopole, uni-pole, or tower
4.	New non-camouflaged uni-pole without attached antenna elements
5.	New non-camouflaged monopole with attached antenna elements
6.	New non-camouflaged lattice tower

10-2.3105 Review Process.

(a) By Zoning Districts. Telecom facilities shall be allowed in the residential, office, commercial, and industrial zoning districts subject to the review process as provided in Table 31.2. Telecom facilities on public buildings and public property are provided for in subsection (b) below:

Table 31.2 – Telecom Facility Requirement						
Telecom Facility		R-1, R-2, R-3	R-1, R-2, R-3	P-O, C-1	C-2, C-3, C-M	M-1, M-2, B-P
		Residential Use	Non-Residential Use			
On Building or other Structure						
Camouflaged		N	P	P	P	P
Non-Camouflaged		N	C	D	D	D
Monopole, Uni-pole, or Tower						
Camouflaged	Uni-pole	N	D	P	P	P
	Monopole	N	D	P	P	P
Non-Camouflaged	Uni-pole	N	C	D ₁	D ₁	D ₁
	Monopole	N	C	C	C	D ₁
	Lattice Tower	N	N	N	N	C
Co-location with existing facility						
Camouflaged		N	P	P	P	P
Non-Camouflaged		N	D	D	D	D

P=Permitted, Building Permit
D=Development Plan Review by Director pursuant to Chapter 2, Article 30. Development Plan Review
C=Conditional Use Permit by Board of Zoning Adjustment pursuant to Chapter 2, Article 25. Variance and Conditional Use Permits
N=Not permitted
₁ A Conditional Use Permit is required if the property of which the uni-pole or monopole is located is within 300 feet of a residential zone.

(b) On Public Buildings and Public Property. All telecom facilities that are camouflaged are permitted on public buildings and public property. Non-camouflaged telecom facilities that are co-located on an existing structure may be approved by the Director pursuant to Development Plan Review. A Conditional Use Permit as approved by the Board of Zoning Adjustment is required for a new non-camouflaged uni-pole or monopole.

10-2.3106 Development Standards.

(a) Fall Zone Setbacks. All new monopole, uni-pole, lattice tower, or any other freestanding or guyed tower telecom facilities shall maintain a setback from any residential property line that is at least 110 percent of the maximum height of the facility, including any Antenna or Antenna Array attached thereto. All new telecom facilities shall also meet the minimum setback requirements of the underlying zone. In approving such telecom facilities, the Director or BZA, as applicable, shall consider maximizing adjacent setbacks from streets and residential properties to minimize the visual obtrusiveness of telecom facilities.

(b) Separation Requirement. Except on public buildings and public property, all non-camouflaged monopole, uni-pole, or tower telecom facilities shall maintain a minimum 1,000 feet separation from all other non-camouflaged monopole, uni-pole, or tower telecom facilities. Consideration for a separation of less than 1,000 feet for non-camouflaged monopole, uni-pole, or tower would be pursuant to section 10-2.3107 (d).

(c) Height. In general, for a given location, the facility shall be at the lowest possible height consistent with the radio frequency coverage requirements of the applicant, which shall be disclosed to the City as prescribed by the Director.

(1) Maximum Height. The maximum height limits are as set forth in Tables 31.3. Requests for Facilities exceeding the height limits set forth in Tables 31.3 shall be made as a Variance, and subject to the findings for a Variance for Telecom Facilities provided in City Municipal Code Section 10-2.2503.

(2) Roof Mounted Facilities. For roof mounted facilities, antennas and support structures shall not exceed the allowable height limit for the zoning district in which it is located by more than ten (10) feet or exceed the primary roof parapet height by more than six feet, whichever is less.

Telecom Facility	R-1, R-2, R-3	R-1, R-2, R-3	P-O, C-1	C-2, C-3, C-M	M-1, M-2, B-P
	Residential Use	Non-Residential Use ²			
On Building or other Structure ¹	N	10	10	10	10
Monopole, Uni-pole, or Tower ³	N	50	50	55	55

¹ Additional feet above permitted or actual building or structure height
² See definition
³ The height of a monopole, uni-pole, or tower that existed prior to the adoption of this ordinance may be increased by 10 feet if shown necessary for collocation purposes for uni-pole or camouflage design subject to Development Plan Approval by the Director.
N=Not permitted

(d) Projection.

(1) Building Mounted Antennas. The antenna and mountings shall not project more than 18 inches from the building surface to which it is mounted to the farthest point on

the antenna or antenna mounting, whichever is farther, measured horizontally from the building surface.

(e) Co-location requirements.

(1) Co-location potential required. To limit the adverse visual effects of a proliferation of telecom sites in the City, the proposed construction of new telecom facilities shall be designed to accommodate co-location of two or more service providers. Any new telecom facility may be required to co-locate with another existing or new facility, unless it can be demonstrated to be technically or economically infeasible.

(2) Co-location limitations. Except on public buildings and public property, no more than three non-camouflaged telecom facilities on buildings or structures, or the number of antennas on a non-camouflaged monopole, uni-pole, or tower may co-locate at a single site unless findings can be made pursuant to section 10-2.3107 (e) can be made. More than three non-camouflaged telecom facilities on public buildings and public property require approval by the Director.

(3) Co-location on existing large towers. Co-location on existing large towers (100 feet or higher) may be approved by the Director if the new telecom facility is determined to result in minimal increase on the visual intrusiveness to the surrounding area.

(f) Screening criteria. Telecom facilities must be visually compatible with surrounding buildings and vegetation through the use of techniques such as color and materials. In addition to the other design standards of this section, the following criteria shall be applied by the Director or BZA, as applicable, in connection with the processing of any permit.

(1) On a Roof. Roof-mounted antennas shall be screened from view from adjacent properties and the public right-of-way. The screening may include parapets, walls, or similar architectural elements provided that they are designed, colored and textured to integrate with the existing architecture of the building.

(2) On a Building Façade. Building-mounted antennas shall be flush mounted and covered with an RF-transparent and visually opaque material of a color and texture to match the existing building, or be effectively disguised or screened as may be reasonably determined by the Director or BZA as applicable.

(3) On Other Structures. Antennas mounted on or within structures such as a clock tower, steeple, park playfield light or water tank shall be integrated with the structure or effectively screened from public view.

(4) Monopole, Uni-pole, or Tower. A monopole or tower facility shall be concealed, screened, or camouflaged by existing or proposed new vegetation, buildings, or other structures and blend into the surrounding environment to the greatest extent possible as may be reasonably determined by the Director or BZA as applicable.

(5) Support Equipment. Support equipment shall be screened from public view by decorative fence, wall, parapet, landscaping, berming or any combination thereof as approved by the Director or BZA, or shall be located within a building, enclosure, or underground vault, which is designed, colored, textured, and landscaped to match the adjacent architecture or blend in with the surrounding environment. For ground-mounted installations, support equipment may be required to be screened in a security enclosure consistent with the design provisions. Chain link fencing including barbed wire and razor wire may be allowed if it is not visible from the public.

(g) Within the Public Right-of-Way. Telecom facilities and or support equipment proposed to be located in the public right-of-way shall comply with the provisions of the Modesto Municipal Code. Telecommunications support equipment located in the public right-of-way shall be placed within flush-to-grade enclosures utilizing flush-to-grade venting systems except in those cases

where the Director or BZA, as applicable determines that it is not technically feasible to do so, in which case proper screening, as approved by the Director or BZA as applicable, shall be required. In addition, ground-mounted equipment in the public right-of-way shall comply with all requirements of the Americans with Disabilities Act (ADA), and shall not interfere with drivers' sight lines for roadways, sidewalks, and driveways.

(h) Building Code. Wireless telecommunications facilities, including, but not limited to, antennas, support structures, equipment structures, and related structures and equipment shall be designed, constructed, and maintained in accordance with the most current California Building Code and other applicable codes, laws, and regulations, as enforced by the Division of Building Safety, to assure that all such facilities will maintain their structural integrity despite the effects of the elements.

(i) Night lighting. Telecom facilities shall not be lighted except:

(1) For City-approved security lighting at the lowest intensity necessary for that purpose; and

(2) As necessary for the illumination of the flag of the United States or the flag of the State of California, when such flag(s) are attached to or associated with the telecom facility.

Such lighting shall be shielded so that direct illumination does not shine on nearby properties.

(3) Any lighting which may be required by State or Federal law.

(j) Signs and advertising. No advertising signage or identifying logos shall be displayed on any telecom facility except for small identification, address, warning, and similar information plates not exceeding one (1) square foot or the minimum requirement by State or Federal law.

(k) Available technology. All telecom facilities approved under this Chapter shall utilize the most efficient and available technology in order to minimize the number of facilities and also to minimize their visual impact.

10-2.3107 Findings.

(a) Development Plan Review. Telecom facilities may be approved by the Director pursuant to Development Plan Review subject to all of the following findings:

(1) The proposed new telecom facility results in the least intrusive visual impact to the area.

(2) The proposed site will close a significant gap in coverage.

(3) The proposed telecom facility conforms with the provisions of this Article.

(b) Conditional Use Permit. In considering any Conditional Use Permit pursuant to Table 31.1 above, the Board of Zoning Adjustment shall determine that the applicant has demonstrated all of the following:

(1) Other locations or type of telecom facilities not requiring such approval are either not available or not feasible.

(2) The proposed telecom facility will not adversely impact the use of the property, other buildings and structures on the property, or the surrounding area or neighborhood.

(3) The proposed new telecom facility results in the least intrusive visual impact to the area.

(4) The proposed site will close a significant gap in coverage.

(5) The proposed telecom facility conforms with the provisions of this Article.

(c) Maximum Height. Consideration to exceed the maximum height pursuant to Table 31.3 located in Section 10-2.3106 may occur upon approval of a Variance application based on making all of the following findings of City Municipal Code Section 10-2.2503.

(d) Separation Requirement. Consideration to reduce the 1,000 feet separation requirement located in Section 10-2.3106 for non-camouflaged monopole, uni-pole, or tower telecom facilities from another non-camouflaged monopole, uni-pole, or tower telecom facilities may occur upon approval of a Conditional Use Permit based on making all of the following findings:

- (1) The visual impacts of the less than 1,000 feet separation are not significant.
- (2) Requiring the 1,000 feet separation would result in a significant gap in coverage.
- (3) There is no available feasible alternate location for a proposed new facility.

(e) Co-location. Consideration for more than three non-camouflaged telecom facilities on buildings or structures, or the number of antennas on a non-camouflaged monopole, uni-pole, or tower may co-locate at a single site based on making the following findings.

- (1) The net visual effect of locating an additional facility at a co-location site will be less than establishing a new location.
- (2) There is no available feasible alternate location for a proposed new facility.

10-2.3108 Application Submittal Requirements and Initial Review.

(a) Submission requirements. Applications for telecom facilities shall be accompanied by the following minimum documentation, in such form and on such form as required by the Director of Community and Economic Development. These are in addition to the usual zoning application submittal requirements for site plan review. The Director of Community and Economic Development shall make changes to the form as necessary. The form shall be used to obtain required information to include in the City's administrative file for each project as required by federal law to base decisions on these projects on substantial evidenced contained in the administrative file.

(1) Justification. A brief narrative, accompanied by written documentation where appropriate, that explains the purpose of the facility and validates the applicant's efforts to comply with the design, location, and co-location standards of this chapter.

(2) Coverage and Location Maps of Current and Future Facilities. As required by the Director, a map or maps showing the geographic areas to be served by the facility by area and radio frequency information. Maps and other supporting documentation demonstrating the need for the facility to close a significant gap in coverage, if such a gap is claimed by the applicant. In order to facilitate planning and reduce the need for future stand-alone telecom facilities, the Director may also require the applicant to submit a comprehensive plan of the operator's existing and future facilities that are or may be placed within the City limits of Modesto.

(3) Visual simulations. Visual simulations showing "before" and "after" views of the proposed facility, unless the Director determines that such simulations are not necessary for the application in question. Consideration shall be given to views from both public areas and private residences. Such photos, simulations or other accurately scaled representations shall include all proposed antenna structures, antennas, and related accessory equipment including, without limitation, all related physical structures to be placed on any new or existing equipment or support device.

(4) Emission Standards. Documentation showing the specific frequency range that the facility will use upon and throughout activation, certification that the facility will continuously comply with FCC radio frequency emissions safety standards.

(5) Radio frequency compliance and RF emissions safety report and Project Technology and Design Review. At its discretion, the City may engage outside consultants to evaluate and/or verify compliance with FCC radio frequency (RF) emissions safety requirements in FCC Office of Engineering and Technology Bulletin 65 (or revisions or replacements thereto), as well as to conduct a project technology and design review. Estimated fees for the outside consultants shall be deposited with the City in advance.

(7) Supporting materials. Additional supporting materials deemed necessary by the reviewing Department Director in order to complete review of the proposal. Supporting materials may include, but are not limited to, color and material sample boards, proposed informational signage, landscaping plans, and other radio frequency related information.

(8) Supplemental telecom site application form. The City may require the use of a City-developed supplemental antenna site application form to solicit information in support of the development of a comprehensive administrative record.

(9) Fee. Applications shall be accompanied by a fee to defray all estimated reasonable costs and expenses incidental to review and processing of the application.

10-2.3109 Removal of Telecom Facilities.

(a) Discontinued use. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Community and Economic Development Director by certified mail no less than thirty (30) days prior to such action. The operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable time as may be approved by the Community and Economic Development Director, within which to complete one of the following actions:

- (1) Reactivate use of the telecom facility;
- (2) Transfer the rights to use the telecom facility to another entity and the entity immediately commences use;
- (3) Remove the telecom facility and restore the site at the permittee's sole expense.

(b) Abandonment. Any telecom facility that is not operated for a continuous period of 180 days or whose operator did not remove the telecom facility in accordance with subsection (a) shall be deemed abandoned. Upon a finding of abandonment, the City shall provide notice to the telecom carrier last known to use such facility and, if applicable, the owner of the affected real property, providing thirty (30) days from the date of the notice within which to complete one of the following actions:

- (1) Reactivate use of the telecom facility;
- (2) Transfer the rights to use the telecom facility to another owner;
- (3) Remove the telecom facility and restore the site at the permittee's sole expense.

(c) Removal. The City may remove any telecom facility on city owned property where service provider has not responded to the 30-day notice as provided in (a) and (b) above. The cost of the removal shall be paid by the service provider.

Article 25 VARIANCES AND CONDITIONAL USE PERMITS

The addition of new Section 10-2.2503 - Variance application for telecom facilities is provided as follows:

10-2.2503 Required Findings for Variance - Wireless Telecommunications Facilities

The applicant for a variance shall have the burden of proof of showing that:

- (a) There are special radio frequency technology circumstances or conditions applicable to the property or building in question which do not exist for other properties or buildings within a radius of 2,000 feet from the proposed facilities site;
- (b) The special radio frequency technology circumstances or conditions are such that strict application of the provisions of this chapter would deprive the applicant of its ability to close a demonstrated significant gap in its own network coverage using the least intrusive means to close that gap;
- (c) Granting the variance will be consistent with the intent and purpose of this chapter and the federal Telecommunications Act of 1996 (Public Law 104-104).

ARTICLE 23 GENERAL PROVISIONS

The amendment of Section 10-2.2304 – Utilities and Railroads is provided as follows:

10-2.2304 Utilities and Railroads.

- (a) The provisions of this chapter shall not apply to the poles, lines or ~~other~~ similar ~~transmission~~ facilities, whether above ground or underground, solely for the ~~whose sole~~ purpose is non-wireless transmission of transmitting electricity or communications. This exclusion does not apply to the antennas, monopoles, towers, or any similar or related facilities of wireless communication services.
- (b) Railroad rights-of-way may be used solely for the purpose of accommodating the tracks, signals and other operating devices for controlling the movement of rolling stock, and the poles, wires, pipelines, communication circuits and ~~other~~ similar facilities of other utilities, including only those wireless communication facilities associated with and required for the operation of the railroad.

PLANNING COMMISSION
RESOLUTION NO. 2009-XX

A RESOLUTION RECOMMENDING TO THE CITY COUNCIL AN AMENDMENT TO CHAPTER 2 OF TITLE 10 OF THE MODESTO MUNICIPAL CODE (ZONING REGULATIONS) TO ADD SECTIONS 10-2.3101-3109, 10-2.2503, AND AMEND SECTION 10-2.2304 (WIRELESS TELECOMMUNICATION FACILITIES ORDINANCE CODE-09-001)

WHEREAS, the City of Modesto has reviewed multiple proposals for wireless telecommunication facilities in recent year without the guidance of specific regulations; and

WHEREAS, the proposed Zoning Code amendments will establish regulations for wireless telecommunication facilities; and

WHEREAS, a public hearing was held by the Planning Commission on April 6, 2009, in Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the Commission has received and reviewed Initial Study Environmental Assessment No. EA/C&ED No. 2009-11 documenting that this proposed amendment to the Zoning Code is in conformance with the General Plan as analyzed by the General Plan Master EIR; and

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission that it hereby finds and determines as follows:

1. The proposed amendments conform to the City's adopted 2003 Urban Area General Plan for the following reasons:
 - a. The proposed amendments will provide regulations consistent with the Urban Area General Plan policy V-N.2 regarding Telecommunication Policies.
2. In addition, the proposed amendments will benefit public health, safety & welfare for the following reasons:
 - a. The proposed amendments provide regulations to guide and clarify the review of wireless telecommunication facilities.
 - b. The proposed amendments are intended to be consistent with state and federal law while ensuring public safety, reducing visual impacts, mitigating other impacts of such facilities, and ensuring adequate wireless telecommunication service to the community.
3. The project is within the scope of the Master EIR and no new environmental document or Public Resources Code Section 21081 findings are required. The following items are found to be true:
 - a. The type of project is described in Chapter II of the Master EIR.

- b. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the project or otherwise made conditions of approval of the project.
- c. An Initial Study was prepared by the City of Modesto that analyzed whether the proposed subsequent project may cause any significant effect on the environment that was not examined in the MEIR and it has been determined that the project was described in the MEIR as being within the scope of the MEIR.
- d. Based on the Initial Study, the City of Modesto finds and determines:
 - 1. The proposed subsequent project will have no additional significant effect as defined in CEQA Section 21158 that was not identified in the MEIR.
 - 2. No new or additional mitigation measures or alternatives are required.
- e. The Initial Study, Environmental Assessment No. EA/C&ED 2009-11, provides the substantial evidence to support the findings a-d, noted above.

BE IT FURTHER RESOLVED that the Planning Commission hereby recommends to the Council an amendment to Chapter 2 of Title 10 of the Modesto Municipal Code (Zoning Regulations) to add Sections 10-2.3101-3109 and 10-2.2503, and amend Section 10-2.2304.

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on April 6, 2009, by _____ who moved its adoption, which motion was seconded by _____ and carried by the following vote:

Ayes:
Noes:
Absent:
Recused:

BY ORDER OF THE PLANNING COMMISSION OF THE CITY OF MODESTO.

Patrick Kelly, Secretary