

**EFFECTIVE DATE  
OF ORDINANCE**

October 11, 2018

**ORDINANCE NO. 2662 N.C.S.**

1 Introduced by

Seconded by

2  
3  
4 Gabe Kearney

Kathy Miller

5  
6  
7  
8 **ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PETALUMA AMENDING**  
9 **CHAPTER 14.44 OF THE PETALUMA MUNICIPAL CODE AND CHAPTER 7,**  
10 **SECTION 7.090 OF THE IMPLEMENTING ZONING ORDINANCE TO ADD A**  
11 **DEFINITION FOR SMALL CELL FACILITIES, TO OUTLINE REGULATIONS FOR THE**  
12 **INSTALLATION AND LOCATION OF SMALL CELL FACILITIES IN PETALUMA**  
13 **AND ADDING A COLUMN FOR SMALL CELL FACILITIES TO THE ZONING TABLE**  
14

15  
16 **WHEREAS**, Section 332(c)(7) of Title 47 of the U.S. Code, part of the Telecommunications  
17 Act of 1996, provides that nothing in the chapter shall limit or affect the authority of a state or local  
18 government over decisions regarding the placement, construction and modification of personal  
19 wireless service facilities, so long as such decisions do not unreasonably discriminate among  
20 providers of equivalent services and do not prohibit or have the effect of prohibiting the provision  
21 of personal wireless services; and  
22

23 **WHEREAS**, California Public Utilities Code Section 7901.1 gives the City the right to control,  
24 in a reasonable manner, the time, place, and manner where telecommunications facilities can  
25 be located in City rights of way, so long as the controls are applied to all entities in an equivalent  
26 manner; and  
27

28 **WHEREAS**, the Petaluma Municipal Code (PMC), in Chapter 14.44 and the City's  
29 Implementing Zoning Ordinance (IZO), Ordinance 2300 N.C.S, in Chapter 7.090 both regulate  
30 telecommunications facilities within Petaluma; and  
31

32 **WHEREAS**, existing telecommunications companies have requested the addition of Small  
33 Cell Facilities within Petaluma to offload data from existing telecommunications infrastructure; and  
34

35 **WHEREAS**, the City, at this time, and within its absolute right as owner of City property,  
36 declines to add or permit the adding of small cell telecommunications facilities to existing City  
37 infrastructure; and  
38

39 **WHEREAS**, by precedent set in *GTE Mobilnet of Cal. Ltd. P'ship v. City & Cty. of San*  
40 *Francisco*, 440 F. Supp. 2d 1097 (N.D. Cal. 2006), Small Cell Facilities may be located on existing  
41 privately-owned infrastructure in the public right-of-way; and  
42

43 **WHEREAS**, under 47 U.S. Code Section 332(C)(7) and California Public Utilities Code Section  
44 7901, the City may not ban such Small Cell Facilities; and  
45

1           **WHEREAS**, in order to protect the general welfare of citizens of Petaluma, the City Council  
2 intends to update the PMC and IZO to limit the siting of small cell facilities within the scope of  
3 existing laws; and  
4

5           **WHEREAS**, Section 25.010 of the City's IZO provides in pertinent part that no amendment  
6 that regulates matters listed in Government Code Section 65850, which matters include the use of  
7 buildings and structures, shall be made to the IZO unless the Planning Commission and City Council  
8 find the amendment to be in conformity with the City's General Plan and consistent with the  
9 public necessity, convenience and general welfare in accordance with Section 25.050(B) of the  
10 IZO; and  
11

12           **WHEREAS**, on June 12, 2018, the Planning Commission held a duly noticed public hearing  
13 in accordance with Chapter 25 of the IZO to consider the proposed amendments to the PMC and  
14 IZO concerning small cell sites; and  
15

16           **WHEREAS**, after the conclusion of said public hearing, the Planning Commission adopted  
17 Resolution No. 2018-19, recommending that the City Council adopt the amendments; and  
18

19           **WHEREAS**, the City Council finds that the proposed edits to Chapter 14.44 of the PMC and  
20 to the IZO, Ordinance 2630 N.C.S. are exempt from the California Environmental Quality Act  
21 ("CEQA") pursuant to Sections 15061(b)(2), 15183 and 15301 because the project is exempt due  
22 to a categorical exemption and the application of that categorical exemption is not barred by  
23 one of the exceptions set forth in Section 15300.2, the proposed amendments will direct Small Cell  
24 Facilities to appropriate business and industrial zones; and because the proposed zoning  
25 amendments will allow Small Cell Facilities with a City of Petaluma Conditional Use Permit and  
26 Encroachment Permit that: 1) add Small Cell Facilities to existing public utilities designed to support  
27 such uses and 2) modify existing public utilities with a new ancillary structure, without interfering  
28 with the principle use and adding utility to the community, and there are no cumulative impacts,  
29 unusual circumstances or other factors that would make the exemption inapplicable; and  
30

31           **WHEREAS**, the amendments contained in this ordinance to modify Chapter 14, Section  
32 14.44 of the PMC and Chapter 7, Section 7.090 - Telecommunications Facilities of the IZO  
33 implement, and, consistent with applicable state and federal laws, address the precise  
34 requirements, including location, for Small Cell Facilities in the City; and  
35

36           **WHEREAS**, on July 5, 2018, a public notice of the July 16, 2018 public hearing before the  
37 City Council to consider the proposed PMC and IZO amendments was published in the Petaluma  
38 Argus-Courier; and,  
39

40           **WHEREAS**, on July 16, 2018, the City Council held a duly noticed public hearing to consider  
41 the amendments;  
42

43           **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PETALUMA AS FOLLOWS:**  
44

45           **Section 1.**       **FINDINGS.** The City Council of the City of Petaluma hereby finds:  
46

- 47 1. In accordance with Sections 25.010 and 25.050(B) of the City's IZO, Ordinance No. 2300  
48 N.C.S., the proposed amendments to the IZO in Chapter 7, Section 7.090 -  
49 Telecommunications Facilities contained in this ordinance are in general conformity with the  
50 Petaluma General Plan 2025 in that these changes do not change the general character  
51 and impacts of current zoning regulations.
  
- 52 2. In accordance with Section 25.050(B) of IZO, the proposed amendments are consistent with  
53 the public necessity, convenience and welfare in that they:

- a. Ensure Petaluma's land use and zoning regulations provide safe and appropriate locations where installation of Small Cell Facilities is appropriate;
  - b. Comply with 47 U.S.C. Section 332(C)(7) and California Public Utilities Code sections 7901 and 7901.1 which permit local regulation of telecommunication facilities; and
  - c. Provide for buffers to prevent Small Cell Facilities from having negative visual impacts on residential land uses.
3. This ordinance is exempt from CEQA pursuant to Sections 15061(b)(3), 15183 and 15301 of the CEQA Guidelines because the project is exempt due to a categorical exemption and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2, the proposed amendments will direct Small Cell Facilities to appropriate business and industrial zones; and because the proposed zoning amendments will allow Small Cell Facilities with a City of Petaluma Conditional Use Permit and Encroachment Permit that: 1) add Small Cell Facilities to existing public utilities designed to support such uses and 2) modify existing public utilities with a new ancillary structure, without interfering with the principle use and adding utility to the community, and there are no cumulative impacts, unusual circumstances or other factors that would make the exemption inapplicable.

**Section 2.** Sections 14.44.020 and 14.44.090 of Chapter 14.44 - Telecommunications Facility and Antenna Requirement of the PMC are hereby amended to read as follows:

**14.44.020 Definitions.**

- S. "Telecommunication facility" means a facility that transmits and/or receives electromagnetic signals. It includes antennas, microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, telecommunication towers or similar structures supporting said equipment, equipment buildings, parking area, and other accessory development.
1. "Telecommunications facility - exempt" includes but is not limited to, the following unless located within a recognized Historic District:
    - a. A single ground or building mounted receive-only radio or television antenna including any mast, for the sole use of the tenant occupying the residential parcel on which the radio or television antenna is located; with an antenna height not exceeding twenty-five feet;
    - b. A ground or building mounted citizens band radio antenna including any mast, if the height (post and antenna) does not exceed thirty-five feet;
    - c. A ground, building, or tower mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, if the height (post and antenna) does not exceed thirty-five feet;
    - d. A ground or building mounted receive-only radio or television satellite dish antenna, which does not exceed thirty-six inches in diameter, for the sole use of the resident occupying a residential parcel on which the satellite dish is located; provided the height of said dish does not exceed the height of the ridgeline of the primary structure on said parcel.
    - e. All citizens band radio antenna or antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service which existed at the time of the adoption of this chapter (September 1996).
    - f. Mobile services providing public information coverage of news events of a temporary nature.

1 g. Hand-held devices such as cell phones, business-band mobile radios, walkie-  
2 talkies, cordless telephones, garage door openers and similar devices as  
3 determined by the planning director.

4 h. City government owned and operated receive and/or transmit telemetry station  
5 antennas for supervisory control and data acquisition (SCADA) systems for water,  
6 flood alert, traffic control devices and signals, storm water, pump stations and/or  
7 irrigation systems, with heights not exceeding thirty-five feet.

8  
9 2. "Telecommunications facilities - major" are all telecommunication facilities not clearly  
10 set forth and included in the definition of exempt, minor or mini facilities.

11  
12 3. "Telecommunications facility - mini" is an attached wireless communication facility  
13 consisting, but not limited to, the following unless located on a structure recognized as  
14 a historic landmark:

15  
16 a. A single ground or building mounted receive-only radio or television antenna  
17 including any mast, for the sole use of the tenant occupying the parcel on which  
18 the radio or television antenna is located; with an antenna height not exceeding  
19 fifty feet;

20 b. A ground or building mounted citizens band radio antenna including any mast, if  
21 the height (tower, support structure, post and antenna) does not exceed seventy  
22 feet;

23 c. A ground, building, or tower mounted antenna operated by a federally licensed  
24 amateur radio operator as part of the Amateur Radio Service, if the height (post  
25 and antenna) does not exceed seventy feet.

26 d. A ground or building mounted receive-only radio or television satellite dish  
27 antenna, with diameter exceeding thirty-six inches but less than eight feet in  
28 diameter, for the sole use of the resident occupying a residential parcel on which  
29 the satellite dish is located; provided the height of said dish does not exceed the  
30 height of the ridgeline of the primary structure on said parcel.

31 e. Exempt telecommunication facility located within a recognized historic district.

32 f. City owned and operated antennae used for emergency response services, public  
33 utilities, operations and maintenance if the height does not exceed seventy feet.

34  
35 If a facility does not meet these criteria then it is considered either an "exempt", "minor"  
36 or "major" telecommunication facility.

37  
38 4. "Telecommunications facility - minor" means any of the following:

39  
40 a. Antenna which meet the definition of "mini" with the exception of the height limit.

41 b. Telecommunications facilities less than thirty-five feet in height and that adhere to  
42 Section 14.44.090 of Chapter 14.44 of the Petaluma Municipal Code.

43 c. A single ground or building mounted whip (omni) antenna without a reflector, less  
44 than four inches in diameter whose total height does not exceed thirty-five feet;  
45 including any mast to which it is attached, located on commercial and/or  
46 industrial zoned property.

47 d. A ground or building mounted panel antenna whose height is equal to or less than  
48 four feet and whose area is not more than four hundred eighty square inches in the  
49 aggregate (e.g., one-foot diameter parabola or two feet by one and one-half foot  
50 panel) as viewed from any one point, located on commercial or industrial zoned  
51 property. The equipment cabinets shall be designed, placed and screened to be  
52 unobtrusive and effectively unnoticeable.

- e. More than three antennas, satellite dishes (greater than three feet in diameter), panel antennas, or combination thereof, are proposed to be placed on the commercial or industrial parcel, including existing facilities.
- f. Building mounted antennas which, in the opinion of the planning director, are unobtrusive or undetectable by way of design and/or placement on the building, regardless of number, when located on commercial or industrial zoned property.
- g. Telecommunications facilities less than fifty feet in height, in compliance with the applicable sections of this chapter, located on a parcel owned by the city of Petaluma and utilized for public and/or quasi-public uses where it is found by the planning director to be compatible with the existing city uses of the property.
- h. Telecommunication facilities, including multiple antennas, in compliance with the applicable sections of this chapter, located on an industrial parcel and utilized for the sole use and purpose of a research and development tenant of said parcel, where it is found by the planning director to be aesthetically compatible with the existing and surrounding structures.
- i. Telecommunication facilities located on a structure recognized as a historic landmark.

If a facility does not meet these criteria then it is considered a "major" telecommunication facility.

- 5. "Telecommunication facility - co-located" means a telecommunication facility comprised of a single telecommunication tower or building supporting one or more antennas, dishes, or similar devices owned or used by more than one public or private entity.
- 6. "Telecommunication facility - commercial" means a telecommunication facility that is operated primarily for a business purpose or purposes.
- 7. "Telecommunication facility - multiple user" means a telecommunication facility comprised of multiple telecommunication towers or buildings supporting one or more antennas owned or used by more than one public or private entity, excluding research and development industries with antennas to serve internal uses only.
- 8. "Telecommunication facility - noncommercial" means a telecommunication facility that is operated solely for a non-business purpose.
- 9. "Telecommunications facility - small cell" means a telecommunications facility that is pole mounted to existing public utility infrastructure.

**14.44.095 Small Cell facilities - Basic Requirements.**

Small Cell facilities as defined in Section 14.44.020 of this chapter may be installed, erected, maintained and/or operated in any commercial or industrial zoning district where such antennas are permitted under this title, upon the issuance of a minor conditional use permit, so long as all the following conditions are met:

- A. The Small Cell antenna must connect to an already existing utility pole that can support its weight.
- B. All new wires needed to service the Small Cell must be installed within the width of the existing utility pole so as to not exceed the diameter and height of the existing utility pole.

- C. All ground-mounted equipment not installed inside the pole must be undergrounded, flush to the ground, within three (3) feet of the utility pole.
- D. Each Small Cell must be at least 1,500 feet away from the nearest Small Cell facility.
- E. Aside from the transmitter/antenna itself, no additional equipment may be visible.
- F. Each Small Cell must be at least 500 feet away from any existing or approved residence.
- G. An encroachment permit must be obtained for any work in the public right-of-way.

**Section 3.** Section 7.090 of the IZO, Ordinance 2300 N.C.S., is amended to read as follows:

**7.090 - Telecommunications Facilities.**

The following requirements apply to Telecommunications Facilities as defined in the City's Telecommunications Ordinance, Petaluma Municipal Code Chapter 14.44.

- A. Definitions. The types of facilities regulated by this section are defined in the City's Telecommunications Ordinance, Petaluma Municipal Code Chapter 14.44.
- B. Telecommunications facilities are allowed only as described in Table 7.090(B).

**Table 7.090B**

Zoning District	Type of Telecommunications Facility				
	Exempt	Mini	Minor	Major	Small
OSP	A	A	CUP	CUP	CUP
AG	A	A	-	-	-
RR	A	A	-	-	-
R1	A	A	-	-	-
R2	A	A	-	-	-
R3	A	A	-	-	-
R4	A	A	-	-	-
R5	A	A	-	-	-
C1	A	A	CUP	CUP	CUP
C2	A	A	CUP	CUP	CUP
MU1A	A	A	CUP	CUP	CUP
MU1B	A	A	CUP	CUP	CUP
MU1C	A	A	-	-	-
MU2	A	A	CUP	CUP	CUP
BP	A	A	CUP	CUP	CUP
I	A	A	CUP	CUP	CUP
CF	A	A	CUP	CUP	CUP

- C. Where a telecommunications facility is permitted by Table 7.090B, the approval(s) required prior to the commencement of the operation of a Telecommunications Facility are as prescribed in subsections 1-4 below.
  - 1. Exempt Facility. An Exempt facility is an Accessory Use and no special permit is required, except when an Exempt facility is located in a Historic District. An Exempt facility located in a Historic District or on the site of a designated landmark is considered a Mini Facility subject to administrative Historic and Cultural Preservation approval as prescribed in Section 15.050.

- 1 2. Mini Facility. A Mini Facility is an Accessory Use subject to administrative site plan and  
2 architectural review approval as prescribed by Section 24.010. When a Mini facility is  
3 located in a Historic District or on the site of a designated landmark, the following special  
4 permits are required:  
5 a. A Minor conditional use permit as prescribed in Section 24.030; and  
6 b. Administrative Historic and Cultural Review as prescribed in 15.030.  
7
- 8 3. Minor Facility. A Minor facility requires approval of a minor conditional use permit as  
9 prescribed in Section 24.030 and administrative site plan and architectural review  
10 approval as prescribed in Section 24.010. When a Minor facility is located in a Historic  
11 District or on the site of a designated landmark, approval of a major conditional use permit  
12 as prescribed in Section 24.030 and Historic and Cultural Preservation Committee approval  
13 as prescribed In Section 15.030 are required.  
14
- 15 4. Major Facility. A major facility requires approval of a major conditional use permit as  
16 prescribed in Section 24.030 and Planning Commission approval as prescribed in Section  
17 24.101.  
18
- 19 5. Small Facility. A Small Cell Facility requires approval of a minor conditional use permit as  
20 prescribed in Section 24.030 and administrative site plan and architectural review  
21 approval as prescribed in Section 24.010. An encroachment permit for public right-of-way  
22 work is also required. The right-of-way shall be subject to the designation of the zone  
23 adjacent to the right-of-way, for purposes of the Table 7.090(B) designation.  
24
- 25 D. A Telecommunication facility shall comply with the development standards (Tables 4.6 –  
26 4.13) for the zoning district in which the facility is located, the City's Telecommunications  
27 Ordinance, and all other applicable City requirements.  
28

29 **Section 4.** Except as amended herein, the PMC and the IZO, Ordinance No. 2300 N.C.S.,  
30 remain unchanged and in full force and effect.  
31

32 **Section 5. Severability.** If any section, subsection, sentence, clause, phrase or word of this  
33 ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of  
34 competent jurisdiction or preempted by state legislation, such decision or legislation shall not  
35 affect the validity of the remaining portions of this ordinance. The City Council of the City of  
36 Petaluma hereby declares that it would have passed and adopted this ordinance and each and  
37 all provisions thereof irrespective of the fact that any one or more of said provisions be declared  
38 unconstitutional, unlawful or otherwise invalid.  
39

40 **Section 6. Effective Date.** This ordinance shall become effective thirty (30) days after the date  
41 of its adoption by the Petaluma City Council.  
42

43 **Section 7. Posting/Publishing of Notice.** The City Clerk is hereby directed to publish or post this  
44 ordinance or a synopsis for the period and in the manner provided by the City Charter and  
45 other applicable law.  
46

47 **INTRODUCED**, and ordered posted/published, this 6<sup>th</sup> day of August 2018.  
48

49 **ADOPTED** this 10<sup>th</sup> day of September 2018, by the following vote:  
50

- 51 Ayes: Albertson, Barrett, Vice Mayor Healy, Kearney, King, Miller  
52 Noes: None  
53 Abstain: Mayor Glass

1 Absent: None

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ATTEST:

Claire Cooper  
Claire Cooper, City Clerk

Mike Healy  
Mike Healy, Vice Mayor

APPROVED AS TO FORM:

Eric Danly  
Eric Danly, City Attorney