

ORDINANCE NO. 2155

AN ORDINANCE OF THE CITY OF DAVIS AMENDING ARTICLE 40.29 OF THE CITY OF DAVIS MUNICIPAL CODE PROVIDING UNIFORM DEVELOPMENT STANDARDS FOR TELECOMMUNICATION FACILITIES

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

SECTION 1. Article 40.29 Chapter 40 (Zoning) of the Davis Municipal Code is amended to read as follows:

Article 40.29.0

TELECOMMUNICATION FACILITIES

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40.29.010 Purpose.

(a) The purpose of this Article is to provide uniform standards for the community desired design, placement, permitting, and monitoring of telecommunication facilities consistent with applicable federal requirements. The standards are intended to address adverse visual impacts and operational effects of these facilities through appropriate design, siting, screening techniques and locational standards while providing for the communication needs of residents, local businesses, and government agencies.

This Article is not intended to, and does not, address or regulate health impacts associated with telecommunication projects.

(b) The City, in conjunction with service providers, shall compile and maintain a list of telecommunication sites and facilities based on information provided by wireless service providers. The list shall include existing site and facility locations, structure height(s), number of service providers using the site/facility, and availability of space for additional users based on prior approvals and include site/facilities in the wireless network that directly connect to those facilities located in the City.

(c) The following is a summary of uses and locations and if they are permitted under this Article. Refer to Sections 40.29.040 through 40.29.090 for specific permitting requirements.

Telecommunication Type/Zone	Exempt/ Prohibited/ Permitted
Residential & commercial TV antennae and satellite antennae	Exempt from provisions in the Article
Public safety facilities	Exempt from provisions in the Article
Telecommunication facilities accessory to public equipment for data acquisition such as irrigation controls, well monitoring and traffic signal controls	Exempt from provisions in the Article
Telecommunication facilities erected for emergency situations and/or public information coverage with a duration of less than 7 days.	Exempt from provisions in the Article
Satellite Earth Station facilities not exceeding two meters in diameter or in diagonal measurement.	Exempt from provisions in the Article
Television & AM/FM radio antennae for commercial purposes	Exempt from provisions in the Article
Telecommunication equipment replacement or alterations at an existing facility which includes alterations such as, replacing the existing antenna with a smaller antenna, installing quieter equipment, or decreasing or not increasing capacity.	Exempt from provisions in the Article
Telecommunication emissions which exceed state and/or federal standards	Prohibited

Telecommunication Type/Zone	Exempt/ Prohibited/ Permitted
Residential zones	Prohibited, with 500 foot setback, including public right-of-ways and mixed use zones.
School zones	Prohibited, with 500 foot setback
Public Parks and greenbelts	Prohibited
Sensitive Habitat Areas	Prohibited
Historic buildings	Prohibited
All other types of telecommunication types and zones	Permitted, if they meet the standards as set forth in this Article

40.29.020 Authority.

Telecommunication facilities are regulated at the federal, state, and local level. In February 1996, the Federal Government enacted the 1996 Telecommunications Act. This Act contains provisions concerning the placement of antenna structures and other facilities for use in providing personal wireless services. Specifically, Section 704 preserves the right of local agencies to regulate these facilities based on aesthetics, visual impacts, and land use impacts.

40.29.030 Definitions.

For the purposes of this Article, the following terms shall have the meanings set forth below:

(a) Antenna. Any system of wires, poles, rods, discs, reflecting discs, panels, flat panels, dishes, whip antennae, or other similar devices used for the transmission or reception of radio frequency electromagnetic waves when such system is external or attached to the structure. Antennae includes devices having active elements extending in any direction, and directional beam-type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be a part of the antenna. The height of the antenna shall include all array structures.

(1) Antenna-Amateur Radio. A ground, building, or tower mounted antenna, or similar antenna structure, operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, and as designated by the Federal Communications Commission (FCC).

(2) Antenna Array. A group of antenna elements located on the same structure.

(3) Antenna-Building Mounted. Any antenna, other than an antenna with its supports resting on the ground, directly attached, facade mounted or affixed to a building, tank, tower, or structure other than a telecommunications tower.

(4) Antenna-Roof Mounted. Any antenna which is mounted to the roof of a building, tank, or similar structure.

(5) Antenna-Flush Mounted. An antenna mounted to a structure which does not project above the facade to which it is mounted

(6) Antenna-Direct Broadcast Satellite Service (DBS). An antenna, usually a small home receiving dish.

(7) Antenna-Directional (also known as panel antenna). A device used to transmit and/or receive radio frequency signals in a directional pattern of less than 360 degrees.

(8) Antenna-Ground Mounted. Any antenna with its base, single or multiple posts, placed directly on the ground.

(9) **Antenna-Multipoint Distribution Services (MDS).** An antenna designed to receive video programming services via multipoint distribution services including multipoint multichannel distribution services, instructional television fixed services, and local multipoint distribution services.

(10) **Antenna-Portable.** Any device used to transmit and/or receive electromagnetic or radio frequency communications/signals in a specific directional pattern located on a portable or moveable base designed to be placed either for temporary or long-term use at a given site.

(11) **Antenna-Satellite Earth Station (SES).** An antenna designed to receive and/or transmit radio frequency signals directly to and/or from a satellite

(12) **Antenna-Television Broadcast Service (TVBS).** An antenna designed to receive only television broadcast signals.

(13) **Antenna-Radio Antennas.** An antenna designed to receive AM/FM radio broadcast signals, or similar signals used for commercial purposes.

(14) **Antenna-All Other Antennas.** All other antenna(s) not previously covered in this Section.

(b) **Co-location.** A site or facility where more than one wireless service provider shares a single wireless communication site or facility, such as a telecommunications tower or an antenna, on an existing structure. A co-located site or facility is comprised of a single tower or mast/pole that supports two or more antennae, dishes, or similar wireless communication devices that are separately owned or used by more than one public or private entity. Placing new wireless communication facilities/antennae upon existing or new PG&E or other utility towers or poles is also considered co-location. Co-location can consist of additions or extensions made to an existing tower so as to provide adequate space for more than one user, or it can consist of the construction of a new replacement tower with more antenna space that supplants an older tower with less capacity.

(c) **Equipment building, shelter or cabinet.** A cabinet or building used by telecommunications providers to house equipment at a site or facility.

(d) **Federal Communications Commission (FCC).** The Federal Communications Commission is the governmental agency responsible for regulating telecommunications in the United States.

(e) **Lattice Tower.** A self supporting structure, erected on the ground, which consists of metal crossed strips or bars to support antennas and related equipment.

(f) **Monitoring Protocol.** An industry accepted radio-frequency (RF) radiation measurement protocol used to determine compliance with FCC RF radiation exposure standards in accordance with the National Council on Radiation Protection and Measurements Reports 86 and 119 and consistent with the RF radiation modeling specifications of OET Bulletin 65 (or any superceding reports/standards) which is to be used to measure the emissions and determine radio frequency radiation exposure levels from existing and new telecommunications facilities.

(g) Monopole. A wireless communication facility or site which consists of a single pole structure (non-lattice), designed and erected on the ground or on top of a structure, to support telecommunications antennas and connecting appurtenances.

(h) Non-Ionizing Electromagnetic Radiation (NIER). Radiation from the portion of the electromagnetic spectrum with frequencies of insufficient energy to break chemical bonds, including all frequencies below the ultraviolet range such as visible light and radio frequency radiation.

(i) Stealth Technology/Techniques. Camouflaging methods applied to wireless communication towers, antenna and/or other sites/facilities which render them more visually appealing or blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it "minimally visible" to the casual observer. Stealthing may utilize, but does not require, concealment of all components of the wireless facility.

(j) Telecommunication Facility. A stand-alone facility located on a legal parcel, vacant or otherwise, or an easement, that transmits and/or receives electromagnetic or electro-optic signals and which may include accessory equipment and equipment shelters. A telecommunication facility does not include any other use or type of facility that may be provided for in the Code that is not used for communication, or radio frequency machines which have an effective radiated power of 100 watts or less.

(k) Telecommunication Project. A telecommunication project includes telecommunication facilities and telecommunication sites, as defined in this Section.

(l) Telecommunication Site. An ancillary facility that transmits and/or receives electromagnetic or electro optic signals, which is placed on an existing structure, or is co-located on an existing telecommunications structure. This may also include accessory equipment and equipment shelters. A telecommunication site does not include any other use or type of facility that may be provided for in the Code that is not used for communication, or radio frequency machines which have an effective radiated power of 100 watts or less. The height of the telecommunications site includes all antenna array structures.

(m) Telecommunications Tower. A mast, pole, monopole, guyed tower, lattice tower, free-standing tower, or other structure designed and primarily used to support antennas. A ground or building mounted mast greater than ten feet tall and six inches in diameter, at any point, supporting one or more antenna, dishes, arrays, etc. shall be considered a telecommunications tower.

40.29.040 Overview.

(a) This section specifies the parameters for various types of wireless telecommunications based on their level of impact. Prohibited facilities are specifically identified.

(b) Facilities considered to have minimal impacts or which are exempt from local review by state or federal statutes have been classified as exempt under this Article and are not subject

to discretionary review so long as they are in compliance with the development standards set forth herein. Unless listed below in Sections 40.29.050 and 40.29.060 as exempt or prohibited, no wireless telecommunication facility shall be constructed without first undergoing the specific review process and obtaining the prescribed permit.

40.29.050 Prohibited Projects.

(a) The following telecommunication projects shall be prohibited:

- (1) Telecommunication projects where the combined EMF/RF exceeds the state or federal standard.
- (2) Telecommunication projects within areas zoned or designated on the General Plan Land Use map for residential uses; or within 500 feet of said areas so designated or zoned. Public-right-of-ways in these zones, including residential zones, are subject to this prohibition. Mixed Use zones are subject to this prohibition.
- (3) Telecommunication projects on sites containing existing or planned public or private school facilities; or within 500 feet of said areas so designated or zoned.
- (4) Telecommunication projects on existing or planned public parks and/or greenbelts.
- (5) Telecommunication projects located within designated sensitive habitat areas such as habitat restoration areas, as designated by the City. The Community Development Department shall maintain a map identifying such areas.
- (6) No site or project shall be located on a property that has been designated a historical resource in accordance with Article 40.23.

(b) Exemptions to the 500 foot setback requirement stipulated above:

- (1) Areas zoned Central Commercial, Auto Center, Commercial Service or Planned Developments allowing service commercial uses, subject to Conditional Use Permit review procedures.
- (2) Areas zoned Commercial Neighborhood or Planned Development allowing neighborhood commercial uses subject to Conditional Use Permit review requirements and a determination that all aspects of the proposed telecommunication project, including support facilities, are fully stealthed (i.e. not visible) from view of any surrounding residential area. An example of a fully stealthed project would be one that contains the antenna within the roof structure of an existing commercial building and the support facilities are located within the walls of the building or underground. Support facilities within a traditional trash enclosure type of screening structure would not be permitted within these zones.

40.29.060 Exempt Facilities.

The following telecommunication facilities are exempt from discretionary review under this Article, provided they meet the location and design requirements set forth below:

(a) Interior and exterior facilities accessory to a permitted use of a site, limited to, television antennae, satellite dishes, and amateur radio facilities meeting all the requirements set forth below:

- (1) Direct Broadcast Satellite (DBS) antennae and Television Broadcast Service (TBS) antennae or other similarly scaled telecommunication device not exceeding one (1) meter in diameter DBS and TBS, other satellite dishes and similar devices may not extend above the roof peak or parapet.
- (2) Ground mounted antennas and support structures shall be located entirely on-site and meet all required setbacks. Antennae, including the support structure, shall not be located within front or side yard setbacks and shall be screened from public view to the extent practical. No portion of the antenna or support structure may over hang or extend beyond any property line.
- (3) Antenna height shall not exceed the maximum allowable building height for the zoning district in which it is located by more than ten feet. The antenna support structure shall not exceed a width or diameter of twenty four (24) inches.

(b) Public safety facilities, used only for public safety functions, including transmitters, repeaters, and remote cameras so long as the,

- (1) facilities are designed to match the supporting structure.

(c) Wireless telecommunication facilities accessory to other publicly owned or operated equipment for data acquisition such as irrigation controls, well monitoring, and traffic signal controls.

(d) Wireless telecommunication facilities erected and operated for emergency situations, as designated by the Police Chief, Fire Chief, or City Manager so long as, .

- (1) facility removed at the conclusion of the emergency.

(e) Multipoint Distribution Service (MDS) antennae and other temporary mobile wireless service including mobile wireless communication facilities and services providing public information coverage of news events (less than two-weeks duration).

(f) Mobile facilities when placed on a site for less than 7 consecutive days, provided any necessary building permit is obtained.

(g) Satellite Earth Station (SES). A SES proposed to be located in commercial or industrial zones, which meet the following standards shall require a building permit and conform to the following standards:

(1) SES antennae shall not exceed two meters in diameter or in diagonal measurement.

(2) SES antennae shall be located as far away as possible from the edges of rooftops to eliminate visibility, or shall be adequately screened, from adjacent properties. The method of screening shall be approved by the Community Development Director. Building permits shall be for such antennas.

(h) Television (TVBS) and AM/FM radio antennas for commercial use. The antenna shall not extend more than twelve feet beyond the maximum allowed building height for the zone.

(i) Telecommunication equipment replacement or alterations at an existing facility which includes alterations such as, replacing the existing antenna with a smaller antenna, installing quieter equipment, or decreasing or not increasing capacity.

(j) Any wireless communication facility, if and only to the extent that a permit issued by the California Public Utilities Commission (CPUC) or the rules and regulations of the Federal Communications Commission (FCC) specifically provide that the antenna is exempt from local regulation.

40.29.070 Facilities Allowed if Authorized Pursuant to Conditional Use Permit Procedures.

The following telecommunication facilities shall be reviewed in accordance with Article 40.30 (Conditional Use Permit), provided the application procedures set forth in Section 40.29.070 are satisfied and provided the facilities meet the location and design standards set forth in this Article.

(a) **Non-Compliant Exempted.** Any exempted facility that does not meet the location and design standards of Section 40.29.060.

(b) **Mobile Antenna.** Any mobile antenna when placed on a site for more than 7 consecutive days, but less than 30 days meeting the requirements set forth below:

- (1) Antenna vehicle/trailer shall be located only on an improved surface.
- (2) Parking and access for support personnel shall be on an improved surface.
- (3) Day and night safety marking shall be provided.
- (4) The antenna vehicle/trailer and support parking shall not be located within a public right-of-way.

(c) **Additional Antennas and/or Changes or Modifications to an Existing Tower.** The following is a list of requirements for this application type:

- (1) The tower was constructed and is operating in accordance with the requirements of the Conditional Use Permit.

- (2) The type and size of proposed antenna(s) is consistent with the provisions of this Article.
- (3) The new antenna array does not exceed the height of the existing tower.
- (4) The antenna array is the second or third grouping on the tower.
- (5) The proposed array fits within the three dimensional envelope of the existing tower and arrays.
- (6) The proposed array does not include a microwave dish greater than one (1) meter in diameter.
- (7) The combined EMR for all arrays does not exceed state or federal standards.
- (8) The new array does not require substantial modifications to the existing tower.

(d) **Building Mounted Antennas.** The following is a list of standard requirements for this application type:

- (1) The lowest part of the antenna shall be a minimum of 15 feet above grade.
- (2) The antenna and mountings shall not project more than 18 inches from the building surface to which it is mounted.
- (3) Antennas, connections, and supports shall be treated to match the color scheme of the building, or as approved by the Planning Commission.
- (4) Antennas and connections shall not project above the building facade.
- (5) Ground mounted support equipment shall be under grounded or screened from public view.
- (6) Exterior electrical lines serving the equipment cabinet or building shall be under grounded.
- (7) If panel type antennas are proposed, the total square footage of all panels shall not exceed 25 square feet on any facade.

(e) **Roof Mounted Facilities.** The following is a list of standard requirements for this application type:

- (1) The facility and related equipment shall be fully screened from view or architecturally integrated into the building design.
- (2) Antennas shall match the color scheme of the building facade to which they are attached.
- (3) Ground mounted equipment shall be placed below grade or screened from public view. If the Planning Commission determines that screening is not adequate, he/she shall require that equipment be placed underground or within building enclosure.
- (4) 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 roof parapet by more than six feet, whichever is less.

(f) **Telecommunication Antennas on Publicly Owned or Publicly Utilized Lands.** The following is a list of standard requirements for this application type:

- (1) Antennas may be ground mounted or mounted on an existing buildings or structures.

- (2) The antennas shall be integrated into the site and/or structure design.
- (3) Ground mounted equipment shall be under grounded or screened from public view. If the Planning Commission determines that screening is not adequate, he/she may require that equipment be placed underground.
- (4) Parking and access shall be on an improved surface.

(g) **Public Right-of-Way.** Placement of private carrier facilities and/or accessory facilities on utility, signal, or lighting structures within a public right-of-way or easement shall meet the requirements set forth below.

- (1) Antennas shall be treated to match the supporting structure.
- (2) Ground mounted equipment shall be under ground or screened from public view. If the Planning Commission determines that screening is not adequate, he/she may require that equipment be placed underground.
- (3) The City retains the right to deny an application for this type of telecommunication facility based on aesthetic or land use impacts.

(h) **Legal Non-Conforming Uses.** Any change out of equipment or accessories to telecommunication facilities for legal non-conforming and conforming, with the exception of reducing the height, reducing the number of panels and/or antennas, and/or reducing the RF and/or noise emissions, pursuant to Section 40.29.200.

(i) **Emergency 911 Uses/Upgrades.** Any alteration, upgrade or addition of telecommunication equipment or accessories to allow for Emergency 911 uses. Documentation from the FCC shall be submitted with the application requiring this use.

(j) **Antenna Arrays.** Mounted on existing signs, water towers, sport field light towers, and other similarly scaled structures meeting the requirements set forth below.

- (1) Antennas shall be treated to match the supporting structure.
- (2) Ground mounted equipment shall be under ground or screened from public view. If the Planning Commission determines that screening is not adequate, he/she may require that equipment be placed underground.
- (3) The City retains the right to deny an application for this type of telecommunication facility based on aesthetic impacts alone.

(k) **Monopole or Lattice Tower Facilities**

- (1) Monopoles and lattice towers shall be located and designed to minimize visual impacts. Towers located in high visibility locations shall incorporate “stealth” design techniques to camouflage the tower to the maximum extent feasible as art/sculpture, clock tower, flag pole, tree or any other appropriate and compatible visual form.

- (2) Monopoles and lattice towers shall be located on the rear half of the parcel, unless aesthetic benefit is achieved through an alternative location, as determined by the Planning Commission.
- (3) New private monopoles and lattice towers shall not be located in any land developed or zoned for any residential and/or school zone/use, pursuant to Section 40.29.050.
- (4) Monopoles and lattice towers shall generally not be permitted within 1,000 feet of an existing tower. This standard may be modified upon finding by the Planning Commission that cumulative visual impacts are not significant and that the tower is necessary to provide services not possible with co-location on an existing tower or structure in the service area. Independent review of the request, at the applicant's cost, may be required by the Planning Commission.
- (5) Monopoles and lattice towers shall be designed at the minimum functional height. Tower height shall generally not exceed the maximum height for buildings in the zoning district in which it is located by more than twelve (12) feet. This standard may be modified upon a finding by the Planning Commission that cumulative visual impacts are not significant and that the height is necessary to provide services not possible with a tower meeting the height standard. Independent review of the request, at the applicant's cost, may be required by the Community Development Director. If no maximum building height is established in the Zoning Ordinance, the height of the tower shall be reviewed for the visual impact on the surrounding land uses and the community.
- (6) As a condition of approval for all monopoles and lattice towers, the applicant shall provide the City with a written commitment that it will allow other service providers to co-locate antennas on towers where technically and economically feasible.
- (7) Ground mounted equipment shall be under ground or screened from public view. If the Planning Commission determines that screening is not adequate, he/she may require that equipment be placed underground.
- (8) Parking and access shall be on an improved surface, subject to review and approval by the Planning Commission.
- (l) Additions and/or expansions of legal non-conforming uses, including co-locations, which do not meet the criteria for exempt facilities under Section 40.29.060.
- (m) Other telecommunication facilities not listed as exempt, permitted, or prohibited.

40.29.080 Submittal Requirements

- (a) Except for the facilities specifically identified as exempt under Section 40.29.060, all applications for telecommunication projects that require a Conditional Use Permit, as specified in Section 40.29.090, shall be submitted to the Community Development Department under the

Conditional Use Permit procedures set forth in Article 40.30. The number, size and content of plans shall be determined by the Community Development Director. The Community Development Director may require additional information, besides the information specified in this Section, in order to properly assess a particular application.

(b) Submittals shall include all application materials generally required for a Conditional Use Permit, as provided for in Article 40.30.

(c) Vicinity Map, including

(1) topographic areas, 1000 foot radius from proposed site/facility, residential and school zones and major roads/highways. The distance of the proposed telecommunication project from existing residentially designated/zoned areas, existing residences, schools, major roads and highways, and all other telecommunication sites and facilities (including other providers locations) within a 1,000 foot radius shall be delineated on the vicinity map.

(d) Site Plan including and identifying:

(1) All facility related support and protection equipment.

(2) A description general project information, including the type of facility, number of antennas, height to top of antenna(s), radio frequency range, wattage output of equipment, and a statement of compliance with current FCC requirements.

(e) Elevations of all proposed telecommunication structures and appurtenances, and composite elevations from the street(s) showing the proposed project and all buildings on the site.

(f) Photo simulations, photo-montage, story poles, elevations and/or other visual or graphic illustrations necessary to determine potential visual impact of the proposed project. Visual impact demonstrations shall include accurate scale and coloration of the proposed facility. The visual simulation shall show the proposed structure as it would be seen from surrounding properties from perspective points to be determined in consultation with the Community Development Department prior to preparation. The City may also require the simulation analyzing stealth designs, and/or on-site demonstration mock-ups before the public hearing.

(g) Landscape plan that shows existing vegetation, vegetation to be removed, and proposed plantings by type, size, and location. If deemed necessary, the Community Development Department Director may require a report by a licensed landscape architect to verify project impacts on existing vegetation. This report may recommend protective measures to be implemented during and after construction. Where deemed appropriate by the Community Development Department, a landscape plan may be required for the entire parcel and leased area.

(h) A written statement and supporting information regarding alternative site selection and co-location opportunities in the service area. The application shall describe the preferred location sites within the geographic service area, a statement why each alternative site was rejected, and a contact list used in the site selection process. Provide a statement and evidence of refusal regarding lack of co-location opportunities.

(i) Noise and acoustical information for the base transceiver station(s), equipment buildings, and associated equipment such as air conditioning units and back-up generators. Such information shall be provided by a qualified firm or individual, approved by the City, and paid for by the project applicant.

(j) A radio frequency analysis conducted and certified by a State licensed/registered RF Engineer to determine probable outputs of the proposed site/facility and comparison of those outputs with the maximum allowable radio frequency outputs allowed by the FCC. A report with evidence of compliance with FCC's NIER standards shall be submitted by the Engineer. Such information shall be provided by a qualified firm or individual, approved by the City, and paid for by the project applicant.

(k) A cumulative impact analysis for the proposed facility and other wireless telecommunication facilities on the project site. The analysis shall include height of all existing and proposed (application submitted to the Community Development Department) wireless telecommunication facilities on or near the site, dimensions of all antennas and support equipment on or near the site, power rating for all existing and proposed back-up equipment, and a report estimating the ambient radio frequency fields and cumulative electro magnetic radiation at the proposed site.

(l) Statement by the applicant of willingness to allow other carriers to co-locate on their facilities wherever technically and economically feasible and aesthetically desirable.

(m) A signed copy of the proposed property lease agreement, exclusive of the financial terms of the lease, including provisions for removal of the site/facility and appurtenant equipment within six months of its abandonment and provisions for City access to the site/facility for removal where the provider fails to remove the site/facility and appurtenant equipment within six months of its abandonment. The final agreement shall be submitted at the building permit stage.

(n) An Evidence of Needs Report detailing operational and capacity needs of the providers system within the City of Davis and the immediate area adjacent to the City. The report shall detail how the proposed site/facility is technically necessary to address current demand and technical limitations of the current system. Such report shall be evaluated by a qualified firm or individual, chosen by the City, and paid for by the project applicant. The RF Engineer may request additional information from the Applicant to sufficiently evaluate the proposed project.

(o) A Security Plan which includes emergency contact information, main breaker switch, emergency procedures to follow, and any other information as required by Section 40.29.180 and/or the Community Development Director.

(p) A description of the anticipated maintenance program and back-up generator power testing schedule.

40.29.090 Pre-application.

Two pre-application meetings are recommended for wireless telecommunication proposals. The first meeting should take place at the earliest stage of site location research and should include a service area map and description of the type of antenna facility required. The second meeting is recommended after the site is selected and should include a preliminary site plan and visual impact drawings. These meetings are voluntary, and no fees shall be for the City's review of material submitted at this stage.

40.29.100 General Standards.

These standards are not applicable to exempt facilities as defined in this Article.

(a) If technological improvements or developments occur that allow the use of materially smaller or less visually obtrusive equipment, the service provider may be required to replace or upgrade an approved telecommunication facility upon application for a new permit in order to minimize the facility's adverse impacts on land use compatibility and aesthetics. This provision would only apply to the specific site where the application for modification is requested.

(b) Each service provider with a telecommunication facility in the City shall obtain a city business license prior to initiation of service.

(c) If deemed necessary, the City may hire a third party independent RF engineer to evaluate any technical aspect or siting issues proposed in the application. The applicant will be responsible to pay for all charges of this analysis.

(d) New Mixed-Use Planned Developments over 50 acres in size – Identification of a preferred site or sites for wireless telecommunication facility(ies) are highly encouraged under the terms of the Planned Development. Such sites may be developed with telecommunication facilities, even if subsequent land use development occurs.

(e) The City may impose a condition limiting the duration of any permit for a telecommunication facility located on any property. As part of such condition, the City shall specify the threshold which could trigger termination of the permit following a duly noticed public hearing.

40.29.110 Height

(a) All telecommunication uses shall be designed to the minimum functional height required.

(b) Unless this Article imposes a more restrictive height limitation on a specific type of facility, telecommunication facility height shall not extend more than twelve feet beyond the maximum allowable building height for the zone. If a maximum building height has not been established in Chapter 40, the City's Zoning Ordinance, the height of the facility shall be reviewed for the visual impact on the surrounding land uses and the community.

(c) If the telecommunication facility is not attached to a building, the height of the facility shall be reviewed for the visual impact on the surrounding land uses and the community.

(d) The height of a telecommunication tower shall be measured from the natural, undisturbed ground surface below the center of the base of said tower to the top of the tower itself or, if higher, the tip of the highest antenna or piece of equipment attached thereto.

40.29.120 Setbacks.

(a) All telecommunication uses and accessory equipment structures shall comply with the required building setbacks for the zoning district in which the site is located. However, in no instance, shall the facility (including antennae and equipment) be located closer than five (5) feet of any property line. Additional setback requirements shall be established in conjunction with a Conditional Use Permit for those antennae exceeding the height limit for the zoning district.

(b) Telecommunication facilities shall not be located within the required front-yard area of any parcel, unless specifically approved by the Planning Commission.

(c) The Planning Commission may reduce setbacks through the Conditional Use Permit process upon determination that aesthetic impacts would be reduced and/or open space improved.

40.29.130 Landscaping.

(a) Landscaping, wherever appropriate, shall be used as screening to reduce visual impacts of telecommunication facilities. Any proposed landscaping shall be visually compatible with existing vegetation in the vicinity.

(b) Existing landscaping in the vicinity of a proposed telecommunication facility shall be protected from damage during and after construction. Submission of a tree protection plan may be required to ensure compliance with this requirement.

(c) Off-site landscaping may be required to mitigate off-site impacts, subject to willing property owners. Additional landscaping may also be required in public right-of-ways to obscure visibility of telecommunication facilities from passing motorists, bicyclists, and pedestrians.

(d) An automatic irrigation system shall be provided and reviewed at the building permit stage.

40.29.140 Design Standards.

All telecommunication uses and accessory equipment structures shall:

(1) Utilize state of the art stealth technology as appropriate to the site and type of facility. Where no stealth technology is proposed for the site, a detailed analysis as to why stealth technology is physically and technically infeasible for the project shall be submitted with the application.

(2) Antennae and support structures, where utilized, must be monopole type. Monopole support structures shall not exceed four (4) feet in diameter unless technical evidence is provided showing that a larger diameter is necessary to attain the proposed tower height and that the proposed tower height is necessary.

(3) In the case of existing structures, the telecommunication site/facility shall be located in a manner so as to minimize visual impacts from surrounding properties and right-of-ways.

(4) All flush mounted antennae(s) and support structures shall be painted to be architecturally compatible with the building on which it is located or painted to minimize the visual impacts where the structures extend above the roof line and minimize visual impacts from surrounding properties. The specific color is subject to City review based on a visual analysis of the particular site.

(5) Accessory equipment must be designed and screened from public view. The specific design is subject to City review based on a visual analysis of the particular site.

(6) Support structures and site area for telecommunication antennae shall be designed and of adequate size to allow at least one additional service provider to co-locate on the structure.

(7) All proposed fencing shall be decorative and compatible with the adjacent buildings and properties within the surrounding area and shall be designed to limit and/or allow for removal of graffiti.

40.29.150 Signage.

A permanent, weather-proof identification sign, approximately 16 inches by 32 inches in size, must be placed on the gate of the fence surrounding the facility or, if there is no fence, on the facility itself. The sign must identify the facility operator(s), type of use, provide the operators address, and specify a 24-hour telephone number at which the operator can be reached so as to facilitate emergency services.

40.29.160 Public Hearing and Noticing Radius.

Public hearing notices of proposed telecommunications sites and/or facilities shall be conducted in accordance with Section 40.30.070 and Section 40.39.030 of the City of Davis Municipal Code. The noticing radius for proposed telecommunication sites and/or facilities shall be 500 feet. The noticing radius shall be measured from the outer boundary of the subject parcel.

40.29.170 Findings for Approval of Telecommunication Projects.

In addition to the required findings for a Conditional Use Permit, and other standards set forth in this Article, the following Findings shall be met prior to approval of any telecommunication site/facility:

(a) The proposed telecommunications site/facility has been designed to minimize its visual and environmental impacts, including the utilization of stealth technology, when applicable.

(b) The proposed site has the appropriate zoning, dimensions, slope, design, and configuration for the development of a telecommunication site/facility.

(c) That general landscaping considerations as outlined in Section 40.29.130, when applicable, have been complied with to complement the structures and antennae, provide an attractive environment and preserve natural features and elements.

(d) Based on information submitted, the proposed telecommunications site/facility is in compliance with all FCC and California Public Utilities Commission (PUC) requirements.

(e) The applicant has demonstrated and confirmed, by independent evaluation of the City, that the site/facility is necessary to address current demand capacity or other technical limitations of the system in order to maintain service levels.

40.29.180 Public Health and Safety.

(a) No telecommunication facility or combination of facilities shall generate, at any time, electromagnetic frequency radiation (EMF) or radio frequency radiation (RF) in excess of the FCC adopted standards for human exposure, as amended over time.

(b) All telecommunication facilities shall comply with all rules, regulations and standards, including compliance with non-ionizing electromagnetic radiation (NIER) standards, set by the FCC and/or any other agency of the federal government with the authority to regulate such facilities. If such rules, standards and/or regulations are changed, the property owner or responsible party, shall bring such facilities into compliance with such revised rules, standards and/or regulations within six (6) months of the effective date of such rule, standard and/or regulation, unless a more stringent compliance schedule is mandated by the controlling agency. Any violation of this section is hereby deemed a public nuisance and shall constitute grounds for revocation of any permits and/or approvals granted under this Article. Such violations shall also constitute grounds for abatement and removal of the telecommunication facility by the City at the property owner's expense.

(c) If it is found that telecommunication facilities are or will be detrimental to the health, safety, or welfare of persons working or residing near such facilities, then the service provider(s) shall be solely responsible for the removal, adjustment, or replacement of the facilities. In no case shall the facility remain in operation if it is found to create a hazard to health, safety, and welfare. A facility shall not be found to create a hazard to health, safety, or welfare as a result of EMF or RF emissions from the facility so long as it meets all then current standards established by the FCC or other federal agency having jurisdiction.

(d) For the protection of emergency response personnel, each telecommunication site/facility shall have a main breaker switch to disconnect electrical power at the site. For co-location sites, a single main switch shall be installed to disconnect electrical power for all carriers at the site in the event of an emergency.

(e) Compliance with the Security Plan is required. If it does not comply, the Conditional Use Permit, may be revoked.

(f) Wireless telecommunication facilities shall not be operated in any manner that would cause interference with the City's existing and/or future emergency telecommunication system. If such interference occurs, it is the service providers responsibility, to remedy the issue to the satisfaction of the City.

(g) Fencing, barriers, or other appropriate measures to restrict access to wireless telecommunication facilities shall be maintained.

(h) Lighting shall not be permitted on telecommunication facilities unless required as a public safety measure. If lighting is required, the City may review the available lighting alternatives and approve the design that would cause the least disturbance to surrounding uses. Security lighting installed at wireless telecommunication facility sites shall only be operational when personnel are present. The specific lighting is subject to review and approval by the Community Development Department and the Police Department.

40.29.190 Noise.

(a) Telecommunication sites, facilities, power sources, ventilation, and cooling facilities (including air conditioner units), and all other accessory uses shall not exceed the acceptable decibel limit as established by the City of Davis Municipal Code.

(b) Back-up generators shall only be operated during power outages and/or for testing and maintenance purposes on weekdays between the hours of 9 a.m. and 4 p.m.

40.29.200 Legal Non-Conforming Uses

All existing telecommunication sites and/or facilities, approved and in operation, prior to adoption of this amended Article, shall be exempt from the provisions of this Article, with the following exceptions:

(a) If any expansion or alteration, not including height changes, to the existing equipment, structure, site and/or facility, including the addition of co-locations, is deemed necessary by the service provider, the changes/upgrades shall comply with the standards as set in this Article.

If the existing facility is in a location that is prohibited, no increase in height shall be permitted. The site may remain at the location, and the expansion and/or alteration approved, if all other requirements are met.

(b) All existing telecommunication sites and/or facilities are subject to Section 40.29.180 Management, which includes public safety, periodic review and monitoring requirements.

(c) All maintenance work on existing equipment, sites and/or facilities shall comply with Chapter 24, the City's Noise Ordinance.

40.29.210 Periodic Review.

(a) The City may conduct a periodic review of communication facilities to consider whether or not the facility is conforming with the conditions of its discretionary approval or appropriate permits.

(b) The City shall consider whether or not the facility conflicts with emerging land uses approved under the applicable general or specific plan. If the City concludes that adverse impacts to emerging land uses can be reduced through the use of new technology, or through the retirement of the current facility, the City shall work with the Developer and/or wireless carrier to develop a plan for achieving these mitigating goals.

(c) The City may implement a spot-check monitoring program which shall be implemented at a frequency determined by the City. This program may test various sites in the City, sites located in proximity to the City, and various sites in the City, not necessarily located close to a site/facility.

40.29.220 Compliance with FCC RF Radiation Exposure Standards

The telecommunication service provider shall submit a certification of compliance to the Community Development Department from a licensed RF Engineer expert, approved by the City, in the field of EMF/RF emission. These provisions shall be required for all existing, modified, and new telecommunication facilities, as applicable, through submission of a report documenting NIER measurements at the site or facility. All reports shall consider cumulative effects of co-located facilities and be written in plain English.

(a) Post-construction testing of modified and/or new telecommunications sites and facility NIER/radio frequency (RF) radiation exposure is required for all new and modified sites and facilities to ensure that all new wireless communications sites and facilities operate in compliance with the FCC RF radiation exposure standards. NIER monitoring is to be conducted utilizing the Monitoring Protocol outlined in this Section, ten days after full power operation begins. If the site or facility is not in compliance with the FCC standards and requirements contained in this Article, a final building permit shall not be issued. The non-compliant site shall cease all operation causing the emission in excess of the FCC standards. The service provider shall have 60 days to bring the site/facility into compliance. If compliance is not achieved by the 61st day, the City shall not issue a final building approval. Further, permanent power and other services to the site and/or facility shall be rescinded, and demolition procedures will begin.

(b) The City has the right to request monitoring information and data from the applicant or the site or facility operator. If the information is not provided upon reasonable request by City within ten days, the Conditional Use Permit, may be revoked. If at any time the facility proves to not be non-compliant with FCC standards and regulations, the non-compliant site shall cease all operation causing the emission in excess of the FCC standards. The service provider will have 60 days to bring the site/facility into compliance. If this is not completed by the 61st day, the City will revoke all permits, turn off power and other services to the site and/or facility and begin procedures to demolish the site.

(c) If the site is not in compliance with the FCC standards and requirements contained in this Article at the time of initial testing; a final building clearance will not be issued. The non-compliant site shall cease all operation causing the emission in excess of the FCC standards. The service provider will have 60 days to bring the site/facility into compliance. If this is not completed in the 60 day period, the City will revoke all permits, turn off power and other services to the site/facility and begin procedures to demolish the site.

40.29.230 Implementation and Monitoring Costs.

The telecommunication service provider or its successor(s) shall be responsible for the payment of all reasonable costs associated with monitoring the conditions of approval contained in any discretionary approval issued pursuant to this Article of the Zoning Ordinance, including

costs incurred by the City or any other appropriate agency. The Community Development Department shall collect such costs on behalf of the City.

40.29.240 Transfer of Operation.

(a) Any carrier/service provider authorized by the City to operate a telecommunication facility may assign the operation of the facility to another service provider licensed by the FCC provided that advance notice of the transfer is given to the Community Development Director and all conditions of approval for the subject facility are carried out by the new service provider. Notwithstanding the above, a service provider may transfer, without advanced notice, operation of a facility to its general partner or any party controlling or controlled by the existing service provider.

40.29.250 Abandonment.

(a) If the service provider plans on abandoning the site/facility, the service provider shall notify the Community Development Department Director at least thirty days prior to such planned abandonment.

(b) If any communication facility or attached communication facility is not operated for a continuous period of six (6) months, or falls into disrepair it shall be considered abandoned. A telecommunication facility considered abandoned, shall be removed by the facility owner within the next three months and the site shall be restored back to its original setting. If the abandoned site/facility is not removed within six months, the City may remove the site at the property owner's expense. For co-location sites/facilities, the site/facility shall not be deemed abandoned until all users cease operation of the site/facility. Failure to comply with any provision of this Article and/or Conditions of Approval shall be grounds for revocation of all permits.

40.29.260 Revocation of Permit.

Telecommunication service providers shall fully comply with all conditions related to any permit or approval granted under this Article. Failure to comply with any condition shall constitute grounds for revocation. If a condition violation is not remedied within a reasonable period, the Community Development Director may schedule a public hearing before the Planning Commission to consider revocation of the permit or approval granted under this Article. The Planning Commission revocation action may be appealed to the City Council pursuant to Article 40.35.

40.29.270 Severability.

If any action, subsection, sentence, clause or phrase of this Article is, for any reason, held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of remaining portions of this Article.

40.29.280 Use of Outside Consultants.

From time to time the City may contract for the services of a qualified outside consultant to supplement staff in the review of proposed wireless telecommunication facilities. The use of outside consultants shall be at the applicant's expense. The cost of these services shall be in addition to all other applicable fees associated with the project. The contracted or city staff

services shall be paid by the project applicant, and shall be contracted for and administered by the City.

40.29.290 Appeals.

Any person dissatisfied with the decision to either approve or deny a conditional use permit for the construction or modification of a telecommunication facility, excluding exempt facilities, may file an appeal in accordance with Article 40.35 (Appeals).

SECTION 2. Section 40.27.030(d) is hereby amended to read :

“Windmills, chimneys, smoke-stacks, flag poles, except, that when such structures are to exceed forty feet above grade in any zone, they shall be specifically approved by the Community Development Director or his/her designee.”

SECTION 3. Section 40.01.010 is hereby amended to include the following definitions:

Antenna, Antenna-Amateur Radio, Antenna Array, Antenna-Building Mounted, Antenna-Roof Mounted, Antenna-Flush Mounted, Antenna-Direct Broadcast Satellite Service (DBS), Antenna-Directional (also known as panel antenna), Antenna-Ground Mounted, Antenna-Multipoint Distribution Services (MDS), Antenna-Portable, Antenna-Satellite Earth Station (SES), Antenna-Television Broadcast Service (TVBS), Antenna-Radio Antennas, Antenna-All Other Antennas. As defined in Article 40.29.030

Co-location. As defined in Article 40.29.030

Equipment building. As defined in Article 40.29.030

Federal Communications Commission (FCC) . As defined in Article 40.29.030

Lattice Tower. As defined in Article 40.29.030

Monitoring Protocol. As defined in Article 40.29.030

Monopole. As defined in Article 40.29.030

Non-Ionizing Electromagnetic Radiation (NIER). As defined in Article 40.29.030

Shelter or Cabinet. As defined in Article 40.29.030

Stealth Technology/Techniques. As defined in Article 40.29.030

Telecommunication Facility. As defined in Article 40.29.030

Telecommunication Project. As defined in Article 40.29.030

Telecommunication Site. As defined in Article 40.29.030

Telecommunications Tower. As defined in Article 40.29.030

SECTION 4. Section 40.31.040(a) of this Chapter is hereby amended to read:
“Siting of all structures as designated upon a site plan, except for wireless telecommunications facilities, which shall be reviewed in accordance with Article 40.29 of this Chapter.”

SECTION 5. Section 40.30.070 (Public hearing and notice, conditional use permits) is hereby amended as follows:

A public hearing before the planning commission shall be held on an application for a conditional use permit. A conditional use permit being processed concurrently with an application requiring city council action shall be scheduled for public hearing before the planning commission for its recommendation and then the city council for final action. Notice of such hearing shall be given to owners of all property within five hundred feet of the subject site and as required by state law and city ordinance. Failure of owners to receive notice of such hearing shall in no way affect the validity of any action taken.

SECTION 6. ENVIRONMENTAL DETERMINATION
Negative Declaration #16-03 has been prepared, which concludes that the proposed project will have less than significant impacts on the environment.

SECTION 7 FINDINGS

A. The City Council of the City of Davis hereby finds that:

1. The proposed Telecommunication Facilities Article is in conformity with the General Plan; and
2. The public necessity, convenience, and general welfare require the adoption of the proposed ordinance.

B. The City Council further finds that it has reviewed and considered Negative Declaration #16-03 and determined that the document adequately addresses the environmental assessment of the subject ordinance.

SECTION 8. EFFECTIVE DATE.

This ordinance shall become effective on and after the thirtieth (30th) day following its adoption.

INTRODUCED ON March 9, 2004 and PASSED AND ADOPTED ON March 16, 2004 by the following vote:

AYES: ASMUNDSON, GREENWALD, HARRINGTON, BOYD.

NOES: PUNTILLO.

Susie Boyd, Mayor

BETTE RACKI, City Clerk