AGENDA AMENDED 6-6-19

SAN BRUNO CITY COUNCIL

SPECIAL MEETING

June 11, 2019

5:00 p.m.

Meeting Location: San Bruno Senior Center, 1555 Crystal Springs Road, San Bruno, CA

City Council meetings are conducted in accordance with Roberts Rules of Order Newly Revised and City Council Rules of Procedure. All regular Council meetings are recorded and televised on CATV Channel 1 and replayed the following Thursday, at 2:00 pm. Recordings of the City Council meetings are available for listening at the City Clerk’s Office and video of the City Council meetings may be viewed at www.sanbruno.ca.gov. Audio CDs with recordings of City Council meetings may be purchased at the City Clerk’s office, or may be listened to at the San Bruno Library. In compliance with the Americans with Disabilities Act, individuals requiring reasonable accommodations or appropriate alternative formats for notices, agendas and records for this meeting should notify us 48 hours prior to meeting. Please call the City Clerk’s Office 650-616-7061, or email your request to Melissa Thurman, City Clerk at mthurman@sanbruno.ca.gov.

1. CALL TO ORDER

2. ROLL CALL

3. PUBLIC COMMENT ON ITEMS NOT ON AGENDA
   Individuals allowed three minutes, groups in attendance, five minutes. It is the Council’s policy to refer matters raised in this forum to staff for investigation and/or action where appropriate. The Brown Act prohibits the Council from discussing or acting upon any matter not agendized pursuant to State Law.

4. SPECIAL MEETING
   a. Conduct Study Session to Review City Manager’s Proposed Fiscal Year 2019-2020 Operating and Capital Improvement Program (CIP) Budget.

5. CLOSED SESSION:
   a. Conference with Labor Negotiators Pursuant to Gov’t Code Section 54957.6
      Agency Designated Representatives: City Manager and Assistant City Manager Employee Organizations: San Bruno Management Employee Association.

7. ADJOURNMENT:

The next Regular City Council Meeting will be held on June 11, 2019 at 7:00 p.m. at the Senior Center, 1555 Crystal Springs Road, San Bruno.

Posted Pursuant to Law 06/06/19
AGENDA
SAN BRUNO CITY COUNCIL
June 11, 2019
7:00 p.m.

Meeting Location: San Bruno Senior Center, 1555 Crystal Springs Road, San Bruno, CA

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Thanks to the San Bruno Garden Club for providing the floral arrangement.

1. CALL TO ORDER

2. ROLL CALL/PLEDGE OF ALLEGIANCE

3. PUBLIC COMMENT ON ITEMS NOT ON AGENDA:
   Individuals allowed three minutes, groups in attendance, five minutes. It is the Council’s policy to refer matters raised in this forum to staff for investigation and/or action where appropriate. The Brown Act prohibits the Council from discussing or acting upon any matter not agendized pursuant to State Law.

4. ANNOUNCEMENTS/PRESENTATIONS:
   a. Thank you to the San Bruno community for participating in recent events including Operation Clean Sweep, Coffee & Conversation with Supervisor Pine and Mayor Medina, as well as Budget Study Session and Community Day. Visit the City’s website to learn about upcoming meetings and events, www.sanbruno.ca.gov/Calendar
   b. The San Bruno Flea Market will be held in San Bruno City Park on July 21, 2019 from 9:00 a.m. to 4:00 p.m.
   c. For future planning, the City has embarked on a fiscal sustainability effort to ensure we are continuing to address your priorities. Be part of the process and tell us what you think! A survey is available on the City’s website, www.sanbruno.ca.gov/EnhancingYourSanBruno
   d. The City Manager’s Proposed Operating and Capital Improvement Program Budget is available on the City’s website, www.sanbruno.ca.gov/Finance. The proposed Budget was reviewed in two public meetings held on May 29 and June 11. The Public Hearing for final Budget approval is scheduled for the regular City Council meeting on June 25 at the San Bruno Senior Center, 1555 Crystal Springs Road.
   f. San Mateo County will begin a pilot program for on-leash dog access at Junipero Serra Park beginning June 15, 2019. Visit the County’s website for more information about the program and their ‘Meet and Greet’ event scheduled for June 14, 2019, www.SMCoParks.org
5. **CONSENT CALENDAR:**
   All items are considered routine or implement an earlier Council action and may be enacted by one motion; there will be no separate discussion, unless requested.
   
a. **Accept** Accounts Payable of May 28 and June 3, 2019.
b. **Accept** Payroll of May 12, 2019.
d. **Adopt:** Resolution Accepting the Streetlight Pole Replacement Project as Complete, Authorizing the Filing of Notice of Completion with the San Mateo County Recorder's Office, and Authorizing Release of the Construction Contract Retention in the Amount of $9,205.
e. **Waive** Second Reading and Adopt an Ordinance Amending Chapter 12.96 of the San Bruno Municipal Code to Establish a Planned Development District, Update the Zoning Map, and Adopt a Development Plan for the Multi-Family Residential Development located at 500 Sylvan Avenue.

6. **CONDUCT OF BUSINESS:**
   
a. **Waive** First Reading and Introduce an Ordinance Adding Chapter 8.36 (Small Wireless Facilities In the Public Right-of-Way and utility easements in public and Private Properties) to Title 8 (Streets, Sidewalks, and Rights-of-Way) and Adopt a Resolution with Small Wireless Facilities Design and Siting Guidelines, Engineering Design Standards, and Standard Conditions of Approval.
c. **Review** Report and Provide Direction Regarding Amendments to San Bruno Municipal Code Title 3 (Revenue and Finance) as part of a comprehensive Municipal Code Update

7. **COMMENTS FROM COUNCIL MEMBERS**

8. **ADJOURNMENT**
   
   The next Regular City Council Meeting will be held on June 25, 2019 at 7:00 p.m. at the Senior Center, 1555 Crystal Springs Road, San Bruno.

   **Posted Pursuant to Law 06/06/2019**
DATE: May 28, 2019

TO: Honorable Mayor and Members of the City Council

FROM: Jovan D. Grogan, City Manager

PREPARED BY: Keith DeMartini, Finance Director  
Kathleen O’Malley, Accounting & Customer Service Representative

SUBJECT: Accounts Payable Warrant Register

This is to certify that the claims listed on pages 1 to 3 inclusive, and/or claims numbered from 181585 through 181694 inclusive, totaling $612,135.90 have been checked in detail and approved by the proper officials, and in my opinion, represent fair and just charges against the City in accordance with their respective amounts. The table below summarizes the total paid by Fund.

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Respectfully submitted,

Finance Director

Date: 5/30/19

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DATE: June 3, 2019

TO: Honorable Mayor and Members of the City Council

FROM: Jovan D. Grogan, City Manager

PREPARED BY: Keith DeMartini, Finance Director
Kathleen O’Malley, Accounting & Customer Service Representative

SUBJECT: Accounts Payable Warrant Register

This is to certify that the claims listed on pages 1 to 2 inclusive, and/or claims numbered from 181695 through 181767 inclusive, totaling $2,613,118.51 have been checked in detail and approved by the proper officials, and in my opinion, represent fair and just charges against the City in accordance with their respective amounts. The table below summarizes the total paid by Fund.

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Respectfully submitted,

[Signature]

Finance Director

Date: 6/3/19
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GrandTotal: 2,613,118.51
Total count: 73
DATE:       June 11, 2019

TO:         Honorable Mayor and Members of the City Council

FROM:       Jovan D. Grogan, City Manager

PREPARED BY:  Benjie Lin, Payroll Specialist

SUBJECT:     Payroll Acceptance

City Council acceptance of the City payroll distributed May 31, 2019 is recommended. The Labor Summary report reflecting the total payroll amount of $1,610,287.32 for bi-weekly pay period ending May 26, 2019 by fund is shown below:

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<td>Fund: 641 - CABLE TV FUND</td>
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<td>7,133.59</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td>$1,610,287.32</td>
</tr>
</tbody>
</table>

Respectfully Submitted,

Keith DeMartini, Finance Director

Date: 6/14/19
<table>
<thead>
<tr>
<th>Cash Fund Total</th>
<th>Investments</th>
<th>Cash</th>
<th>Investments</th>
<th>Fund Total</th>
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<tr>
<td>57,155.93</td>
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<td>0.00</td>
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</tr>
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<td>55,911.02</td>
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<td>1,238,320.61</td>
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<td>496,062.45</td>
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<tr>
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<td>0.00</td>
<td>0.00</td>
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<td>510,483.44</td>
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<td>94,301,877.62</td>
<td>* 34,005,122.01</td>
<td>128,306,999.63</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Reconciliation of Pooled Cash & Investments to Portfolio Book Value

Investment Portfolio Value 86,819,632.88
Cash on hand - Checking Account 7,412,728.34
Payroll and Accounts Payable Outstanding Checks (348,429.23)
Deposits in Transit 417,945.63

General Ledger Cash Balance as of April 30, 2019 94,301,877.62

Totals are through period: 10

Item 5.c.
# CITY OF SAN BRUNO
Portfolio Summary
April 30, 2019

## Investments

### Pooled Investments

<table>
<thead>
<tr>
<th>Investments</th>
<th>Coupon Rate</th>
<th>CUSIP</th>
<th>Book Value</th>
<th>Market Value</th>
<th>Interest Rate</th>
<th>Maturity Date</th>
<th>% of Portfolio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Agency Investment Fund</td>
<td>13%</td>
<td>3133EGS08</td>
<td>2,000,000.00</td>
<td>1,991,820.00</td>
<td>1.13%</td>
<td>August 23, 2019</td>
<td>2%</td>
</tr>
<tr>
<td>Glenview Fire Local Agency Investment Fund</td>
<td>1.13%</td>
<td>3133EGG66</td>
<td>1,000,000.00</td>
<td>993,460.00</td>
<td>1.14%</td>
<td>November 15, 2019</td>
<td>1%</td>
</tr>
<tr>
<td>Subtotal</td>
<td></td>
<td></td>
<td>20,114,574.22</td>
<td>19,991,820.00</td>
<td>2.45%</td>
<td></td>
<td>23%</td>
</tr>
<tr>
<td>San Mateo County Pool</td>
<td>1.70%</td>
<td>3133EG2M6</td>
<td>1,000,000.00</td>
<td>995,700.00</td>
<td>1.71%</td>
<td>December 27, 2019</td>
<td>1%</td>
</tr>
<tr>
<td>Government Agency Investments</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal Farm Credit Bank</td>
<td>2.55%</td>
<td>3133EJMW5</td>
<td>2,002,520.00</td>
<td>2,003,760.00</td>
<td>2.55%</td>
<td>May 15, 2020</td>
<td>2%</td>
</tr>
<tr>
<td>Federal Home Loan Banks</td>
<td>3.38%</td>
<td>31337E38</td>
<td>2,035,100.00</td>
<td>2,022,420.00</td>
<td>3.34%</td>
<td>June 12, 2020</td>
<td>2%</td>
</tr>
<tr>
<td>Federal Farm Credit Bank</td>
<td>1.68%</td>
<td>3133EHW92</td>
<td>2,000,000.00</td>
<td>1,982,540.00</td>
<td>1.69%</td>
<td>September 1, 2020</td>
<td>2%</td>
</tr>
<tr>
<td>Federal Home Loan Mortgage Corp</td>
<td>1.77%</td>
<td>3134HBS29</td>
<td>1,000,000.00</td>
<td>991,260.00</td>
<td>1.79%</td>
<td>October 30, 2020</td>
<td>1%</td>
</tr>
<tr>
<td>Federal Home Loan Mortgage Corp</td>
<td>1.50%</td>
<td>3134HBDW0</td>
<td>1,000,000.00</td>
<td>997,660.00</td>
<td>0.00%</td>
<td>January 20, 2021</td>
<td>1%</td>
</tr>
<tr>
<td>Federal Home Loan Banks</td>
<td>2.55%</td>
<td>3130AIBR6</td>
<td>2,000,000.00</td>
<td>1,999,660.00</td>
<td>2.55%</td>
<td>January 22, 2021</td>
<td>2%</td>
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<tr>
<td>Federal Home Loan Mortgage Corp</td>
<td>1.80%</td>
<td>3134B1YF3</td>
<td>1,000,000.00</td>
<td>989,830.00</td>
<td>0.00%</td>
<td>January 27, 2021</td>
<td>1%</td>
</tr>
<tr>
<td>Federal Home Loan Mortgage Corp</td>
<td>2.50%</td>
<td>3134GTAN0</td>
<td>2,000,000.00</td>
<td>2,001,240.00</td>
<td>2.50%</td>
<td>March 26, 2021</td>
<td>2%</td>
</tr>
<tr>
<td>Federal Home Loan Banks</td>
<td>2.23%</td>
<td>3130AD2Q4</td>
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<td>1,978,100.00</td>
<td>2.25%</td>
<td>December 21, 2021</td>
<td>2%</td>
</tr>
<tr>
<td>Federal Home Loan Mortgage Corp</td>
<td>2.60%</td>
<td>3134GTAU7</td>
<td>2,000,000.00</td>
<td>1,996,480.00</td>
<td>2.60%</td>
<td>March 25, 2022</td>
<td>2%</td>
</tr>
<tr>
<td>Federal Home Loan Banks</td>
<td>2.45%</td>
<td>3130AGA83</td>
<td>2,000,000.00</td>
<td>1,997,840.00</td>
<td>2.45%</td>
<td>April 15, 2024</td>
<td>2%</td>
</tr>
<tr>
<td>Total Government Agency Investments</td>
<td></td>
<td></td>
<td>23,037,620.00</td>
<td>22,941,770.00</td>
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<td>27%</td>
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### Municipal Bond Investments

<table>
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<tr>
<th>Investments</th>
<th>Coupon Rate</th>
<th>CUSIP</th>
<th>Book Value</th>
<th>Market Value</th>
<th>Interest Rate</th>
<th>Maturity Date</th>
<th>% of Portfolio</th>
</tr>
</thead>
<tbody>
<tr>
<td>State of California Taxable Municipal Bond</td>
<td>2.25%</td>
<td>13063CKL3</td>
<td>2,015,100.00</td>
<td>2,000,000.00</td>
<td>2.25%</td>
<td>May 1, 2019</td>
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</tr>
<tr>
<td>Total Municipal Bond Investments</td>
<td></td>
<td></td>
<td>2,015,100.00</td>
<td>2,000,000.00</td>
<td></td>
<td></td>
<td>2%</td>
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### Money Market Investments

<table>
<thead>
<tr>
<th>Investments</th>
<th>Coupon Rate</th>
<th>CUSIP</th>
<th>Book Value</th>
<th>Market Value</th>
<th>Interest Rate</th>
<th>Maturity Date</th>
<th>% of Portfolio</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. Government Money Market</td>
<td></td>
<td>262006307</td>
<td>6,065,768.52</td>
<td>6,065,768.52</td>
<td>2.20%</td>
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<td>7%</td>
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<tr>
<td>Total Money Market Investments</td>
<td></td>
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<td>6,065,768.52</td>
<td>6,065,768.52</td>
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<td></td>
<td>7%</td>
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</table>

## Total Investments in Union Bank Custody

<table>
<thead>
<tr>
<th>Investments</th>
<th>Coupon Rate</th>
<th>CUSIP</th>
<th>Book Value</th>
<th>Market Value</th>
<th>Interest Rate</th>
<th>Maturity Date</th>
<th>% of Portfolio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Union Bank Avg Yld</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2.00%</td>
<td></td>
<td>36%</td>
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<td>Union Bank %</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2.07%</td>
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<td>100%</td>
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</table>

**TOTAL INVESTMENTS**

<table>
<thead>
<tr>
<th>Investments</th>
<th>Coupon Rate</th>
<th>CUSIP</th>
<th>Book Value</th>
<th>Market Value</th>
<th>Interest Rate</th>
<th>Maturity Date</th>
<th>% of Portfolio</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>86,819,632.88</td>
<td>86,819,632.88</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

There is adequate cash flow and maturity of investments to meet the City's needs for the next six months.

Prepared By: [Signature]
Reviewed By: [Signature]
DATE: June 11, 2019

TO: Honorable Mayor and Members of the City Council

FROM: Jovan D. Grogan, City Manager

PREPARED BY: Jimmy Tan, Public Works Director

SUBJECT: Adopt Resolution Accepting the Streetlight Pole Replacement Project as Complete, Authorizing the Filing of Notice of Completion with the San Mateo County Recorder’s Office, and Authorizing Release of the Construction Contract Retention in the Amount of $9,205

BACKGROUND:

In 2015, the City contracted with Tanko Lighting, Inc. to complete a condition assessment and audit of all the 2,100 streetlights throughout the city. The finished assessment identified 680 poles as structurally deficient and recommended replacement. The City’s older concrete poles have cracks the length of the pole, and most of the steel and cast iron poles are rusted due to prolonged exposure to the environment. Both pole types are heavier than average and their weight creates potential hazards if they are structurally compromised.

Concrete poles have an expected lifespan of 50 years and the majority of the City’s concrete poles are nearly 70 years old. Some of the oldest poles are 80-100 years old and are located near City Hall and downtown near the San Mateo Avenue Business District. The City’s current standard pole material is made of aluminum which has an expected 50-plus year lifespan, is more light-weight, rust resistant and holds up better in the environment.

A four-year work plan to replace the City’s deficient poles was included in the FY2017-18 Capital Improvement Program (CIP). To develop a replacement schedule, staff prioritized replacing the most damaged poles first, and where possible, to group locations geographically and by pole type to minimize construction costs. The FY2017-18 schedule primarily focused on the Pacific Heights neighborhood, as over 20 percent of the concrete poles in this neighborhood were severely cracked and damaged. Future pole replacement work will focus on replacing deteriorated steel and cast iron poles.

The Streetlight Pole Replacement Project included the removal and disposal of 36 existing concrete steel poles, new foundations with rebar if needed, installing new aluminum streetlight poles, and connection to the existing electrical to reinstate the service.
DISCUSSION:

On March 13, 2018, the City Council awarded a construction contract to Bear Electrical Solutions, Inc. in the amount of $247,100 with a project contingency of $49,420. The project was scheduled to be completed within 120 days after notice to proceed. One change order was issued to Bear Electrical Solutions, Inc. to adjust the bid items quantities, as it was determined that the fourteen concrete foundation installations were unnecessary during construction. Bear Electrical Solutions, Inc. substantially completed construction of the project on April 12, 2019. The project was delayed due to the procurement of the streetlight poles and unforeseen weather conditions.

Bear Electrical Solutions, Inc. has completed the project within the final approved budget. There are no unresolved stop notices, change orders or outstanding construction claims. The construction contract required a 5% retention, which totals $9,205 withheld by the City. Staff recommends that the City Council accept the construction project as complete, authorize filing the Notice of Completion with the San Mateo County Recorder’s Office, and approve release of the contract retention.

FISCAL IMPACT:

The Streetlight Pole Replacement Project is an established Capital Improvement Project with an approved total budget of $321,230 from the General Fund Capital Reserve and Measure A Fund to complete the design, bid, and construction phases. As detailed below, the total expenditure for the project is $190,915. The remaining budget of $130,315 will be returned to the General Fund Capital Reserve.

<table>
<thead>
<tr>
<th>Expenditures</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Contract</td>
<td>$247,100.00</td>
</tr>
<tr>
<td>City Staff – Management and Inspection</td>
<td>$6,145.00</td>
</tr>
<tr>
<td>Change Order</td>
<td>$(63,000.00)</td>
</tr>
<tr>
<td>Reproduction and Advertisement</td>
<td>$670.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$190,915.00</strong></td>
</tr>
</tbody>
</table>

ALTERNATIVES:

1. Do not accept the construction contract as complete and do not authorize filing of a Notice of Completion

RECOMMENDATION:

Adopt resolution accepting the Streetlight Pole Replacement Project as complete, authorizing the filing of notice of completion with the San Mateo County Recorder’s Office, and authorizing release of the construction contract retention in the amount of $9,205.
ATTACHMENTS:

1. Resolution
2. Project Acceptance Information Form

DATE PREPARED:

May 23, 2019

DISTRIBUTION:

None
RESOLUTION NO. 2019 - ___

RESOLUTION ACCEPTING THE STREETLIGHT POLE REPLACEMENT PROJECT AS COMPLETE, AUTHORIZING THE FILING OF A NOTICE OF COMPLETION WITH THE SAN MATEO COUNTY RECORDER’S OFFICE, AND AUTHORIZING RELEASE OF THE CONSTRUCTION CONTRACT RETENTION IN THE AMOUNT OF $9,205

WHEREAS, the City of San Bruno’s Capital Improvement Program (CIP) includes a four-year work plan to replace the City’s deficient streetlight poles; and

WHEREAS, the project consists of removing and disposing 36 concrete steel streetlight poles in the Pacific Heights neighborhood, pouring new foundations with rebar, installing new aluminum streetlight poles, and reinstating the electrical service; and

WHEREAS, on March 13, 2018, the City Council awarded the construction contract for the Streetlight Pole Replacement Project to Bear Electrical Solutions, Inc. in the amount of $247,100, a construction contingency of $49,420, and a total approved project budget of $321,230; and

WHEREAS, a change order in the amount of $63,000 was issued to the Contractor to adjust the bid item quantities to remove the foundation work as it was unnecessary during construction; and

WHEREAS, all construction work as part of this contract has been completed to the satisfaction of the City’s project management team; and

WHEREAS, the project budget expenditure is $190,915 and the remaining $130,315 will be returned to the General Fund Capital Reserve; and

WHEREAS, the construction contract requires the filing of a Notice of Completion of this project with the San Mateo County Recorder’s Office and release of the construction contract retention in the amount of $9,205 upon the acceptance of the project as complete.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby accepts Streetlight Pole Replacement Project as complete, authorizes the filing of a Notice of Completion with the San Mateo County Recorder’s Office, and authorizes release of the construction contract retention in the amount of $9,205.

Dated: June 11, 2019

ATTEST:

Melissa Thurman, City Clerk

-000-
I, Melissa Thurman, City Clerk, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of San Bruno this 11th day of June, 2019 by the following vote:

AYES: Councilmembers: __________________________________________

NOES: Councilmembers: __________________________________________

ABSENT: Councilmembers: _________________________________________
Capital Improvement Program

Project Acceptance Information Form

As of June 11, 2019

<table>
<thead>
<tr>
<th>Contract Name:</th>
<th>Streetlight Pole Replacement Project</th>
<th>Contract No.:</th>
<th>60004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Contractor:</td>
<td>Bear Electrical Solutions, Inc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction Management and Inspection Services:</td>
<td>Performed by City Staff</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Project Information:

<table>
<thead>
<tr>
<th>Project Description:</th>
<th>This project consisted of replacing (36) streetlight poles located in the Pacific Heights neighborhood from concrete poles to standard aluminum poles, as significant amount of the poles were severely cracked and damaged.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Contract Award:</td>
<td>March 13, 2018</td>
</tr>
<tr>
<td>Start of Construction:</td>
<td>March 25, 2019</td>
</tr>
<tr>
<td>Contract Change Orders (CCO):</td>
<td>One change order was issued to the Contractor in the amount of $63,000 to adjust the bid items quantities to remove the foundation work.</td>
</tr>
<tr>
<td>Substantial Completion:</td>
<td>April 12, 2019</td>
</tr>
<tr>
<td>Final Completion</td>
<td>April 26, 2019</td>
</tr>
<tr>
<td>Notice of Completion:</td>
<td>Scheduled for filing by June 14, 2019</td>
</tr>
</tbody>
</table>
## Project Costs:

<table>
<thead>
<tr>
<th></th>
<th>Budget</th>
<th>Actual</th>
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</thead>
<tbody>
<tr>
<td><strong>TOTAL PROJECT</strong></td>
<td>$321,230</td>
<td>$190,915</td>
</tr>
<tr>
<td>Construction Contract</td>
<td>$247,100</td>
<td>$247,100</td>
</tr>
<tr>
<td>Contingency</td>
<td>$49,420</td>
<td>---</td>
</tr>
<tr>
<td>Change Orders</td>
<td>---</td>
<td>$(63,000)</td>
</tr>
<tr>
<td>City Staff – Project Management</td>
<td>$24,710</td>
<td>$6,145</td>
</tr>
<tr>
<td>Reproduction &amp; Advertisement</td>
<td>---</td>
<td>$670</td>
</tr>
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</table>
City Council Agenda Item
Staff Report

DATE: June 11, 2019
TO: Honorable Mayor and Members of the City Council
FROM: Jovan D. Grogan, City Manager
PREPARED BY: Darcy Smith, Community and Economic Development Director
SUBJECT: Waive Second Reading and Adopt an Ordinance Amending Chapter 12.96 of the San Bruno Municipal Code to Establish a Planned Development District, Update the Zoning Map, and Adopt a Development Plan for the Multi-Family Residential Development located at 500 Sylvan Avenue

BACKGROUND:
The City Council held a public hearing, waived the first reading and introduced an ordinance amending Chapter 12.96 of the San Bruno Municipal Code to establish a Planned Development District, update the Zoning Map, and adopt a Development Plan for the multi-family residential development located at 500 Sylvan Avenue on May 28, 2019. The ordinance is presented now for second reading and adoption. Should the Council waive the second reading and adopt the ordinance at this meeting, the ordinance would go into effect 30 days after the second reading on July 11, 2019.

The site is currently zoned R-2 (Low Density Residential) but is also located in the Transit Corridors Plan (TCP) Area. There are five-character areas located throughout the TCP area. The subject site is located in the Central Business District (C-B-D) Character Area. The ordinance would amend the Zoning District to change from the current Low-Density Residential (R-2) zoning classification to a Planned Development District (P-D), and to adopt a related District Development Plan to establish use and development standards. The underlying Low-Density Residential (R-2) zoning classification would not allow for the project as proposed; therefore, there is a need to establish a Planned Development District (P-D), which ultimately would be consistent with the TCP Central Business District (C-B-D) Character Area requirements.

The City Council also granted other approvals on May 28, 2019 to allow for the to allow the construction of a three-story, multi-family residential building containing nine residential units at the subject property, contingent upon the formal adoption of the ordinance being considered for second reading under this agenda item. The other approvals grated by the City Council include resolutions approving/adopting the following:

Item 5.e.
- A CEQA Conformity Determination.
- A Planned Development Permit, Architectural Review Permit, Conditional Use Permit, and Authorizing the City Manager to Execute a Development Impact Fee Agreement.

The subject property is 7,364 square feet in area and is located on the northwest corner of Sylvan Avenue and Green Avenue. The site is currently developed with a vacant, nonconforming, commercial building that was previously used as a dental office for many years. The existing building was constructed in 1929 and consists of stucco finish with the primary building entrance located off of Sylvan Avenue. Secondary access to the existing building is achieved via the north side elevation. The remainder of the lot consists of asphalt paving, with some landscaping located along a portion of the Sylvan Avenue and Green Avenue frontage. In the past there has been Code Enforcement related activities related to overgrown weeds and trash located on-site.

The Architectural Review Committee reviewed this proposal on October 11, 2018 and the Planning Commission reviewed the proposal on March 16, 2019. The Planning Commission unanimously adopted all resolutions recommending the City Council approve the project.

Environmental Assessment
The 500 Sylvan Avenue project is located within the Transit Corridors Plan (TCP) area. A Program Environmental Impact Report (EIR) and Mitigation Monitoring and Reporting Program were prepared for the TCP and adopted by the City Council on February 12, 2013. The 500 Sylvan Avenue property was analyzed in the TCP EIR at a programmatic level, with potential impacts identified and mitigations applied in the program EIR to avoid or reduce potentially significant impacts.

Under California Environmental Quality Act (CEQA) Guidelines sections 15168 (Program EIR), 15162 (Subsequent EIRs and Negative Declarations), and 15183 (Projects Consistent With a Community Plan or Zoning), subsequent individual projects can utilize a previously certified program EIR if all potentially significant environmental impacts of the proposed individual project: (1) have been previously identified (i.e., are not new) and are not substantially more severe than those identified in the previous EIR, (2) have been avoided or mitigated to the extent feasible as a result of the previous EIR, and (3) have been examined in sufficient detail in the previous EIR to enable those impacts to be avoided or mitigated by the mitigations in the EIR, site-specific project revisions, or the imposition of uniformly applicable development policies. If these conditions are met, then the City can approve the individual project as within the scope of the previous EIR, and no additional environmental document is required. The certified TCP EIR and the 500 Sylvan Avenue project meet these CEQA conditions.

NEXT STEPS
If the City Council waives the second reading of the attached ordinance, the ordinance would go into effect 30 days after the second reading (July 11, 2019). The effective date of the Planned Development Permit, Architectural Review Permit, and Conditional Use Permit shall be the effective date of the associated Ordinance (July 11, 2019).

FISCAL IMPACT
The applicant submitted a deposit to cover staff and consultant costs in processing this application. The City will also obtain building permit fees and utility connection fees associated
with the building permit, anticipated to be submitted in Fiscal Year 2019-2020. Additionally, the recently adopted Development Impact Fee (DIF) Resolution included a provision for planning applications currently being processed by the City. This provision stipulates that the fees will not apply to a proposed project if the following conditions are met: (i) the development application for the project was deemed complete no later than May 1, 2019, and (ii) on or before August 1, 2019, the City and the developer of the development project have entered into a development agreement of other negotiated contract with the City for the project; provided however if the development project has not commenced construction in compliance with and prior to expiration or termination of the development agreement or other negotiated contract, then the Fees shall apply in full to the project. On May 28, 2019, the City Council approved a Resolution that authorized the City Manager to enter into a contract in accordance with the the DIF Resolution, as this development project was originally submitted for pre-submittal review in January 2017 and the application was deemed complete on August 30, 2018. The Developer has signed the Agreement that states he will make a payment of $98,271 to the City’s unrestricted capital reserve fund. Additionally, the project will be required to pay approximately $206,000 into the City’s affordable housing fund.

ALTERNATIVES

1. Do not approve the proposed ordinance
2. Propose changes to the ordinance.

RECOMMENDATION

Waive Second Reading and Adopt an Ordinance Amending Chapter 12.96 of the San Bruno Municipal Code to Establish a Planned Development District, Update the Zoning Map, and Adopt a Development Plan for the Multi-Family Residential Development located at 500 Sylvan Avenue

DISTRIBUTION:

None

ATTACHMENTS:

1. Ordinance 2019-XX Amending Chapter 12.96 of the San Bruno Municipal Code to Establish a Planned Development District, Update the Zoning Map, and Adopt a Development Plan
2. Location Map and Site Photos

DATE PREPARED:

June 3, 2019
ORDINANCE NO. 2019-______

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO
AMENDING SECTION 12.96.020 OF TITLE 12 (LAND USE) OF THE SAN
BRUNO MUNICIPAL CODE TO CHANGE THE ZONING MAP FROM R-2 (LOW
DENSITY RESIDENTIAL) TO P-D (PLANNED DEVELOPMENT) DISTRICT FOR
THE PROPERTY IDENTIFIED AS 500 SYLVAN AVENUE
(APN 020-145-480)

The City Council of the City of San Bruno ORDAINS as follows:

SECTION 1. FINDINGS.

WHEREAS, on February 23, 2018, Alan William Coon (“Applicant”) submitted an application for a
certain .17 acre site located at 500 Sylvan Avenue in the City of San Bruno, more particularly described
as Assessor’s Parcel Number 020-145-480 (“Property”); and

WHEREAS, the Applicant desires to develop a three-story multi-family residential building
consisting of nine residential units on the Property (“Project”); and

WHEREAS, in order to develop the Project, the Applicant has submitted an application to the City
of San Bruno for approval of the following: an amendment to the San Bruno Zoning Code to change to
zoning of the Property from Low Density Residential (R-2) to Planned Development (P-D); a Planned
Development Permit, an Architectural Review Permit, and a Conditional Use Permit; and

WHEREAS, the Applicant submitted a Development Plan application, dated February 23, 2018 in
accordance with the provision of San Bruno Municipal Code Section 12.96.190(F); and

WHEREAS, on March 19, 2019 the Planning Commission conducted a duly notice public hearing
and on said date the public hearing was opened, held, and closed and the Planning Commission
recommended that the City Council adopt an Ordinance to change the Zoning Map From R-2 (Low
Density Residential) to P-D (Planned Development), including the Development Plan by Resolution No.
2019-01; and

WHEREAS, a notice of public hearing was mailed on May 3, 2019 and duly published in the San
Mateo Daily Journal on May 4, 2019, and the City Council held a public hearing on May 14, 2019 and on
said date the public hearing was opened, held and closed, and the City Council continued the Project to
the May 28, 2019 City Council meeting; and

WHEREAS, on May 28, 2019, the City Council held a public hearing and on said date the public
hearing was opened, held and closed.

WHEREAS, the request to amend the San Bruno Municipal Code has been reviewed with
respect to applicability of the California Environmental Quality Act (“CEQA”) and the State CEQA
Guidelines (California Code of Regulations, Title 14, Sections 15000 et seq., hereafter the "CEQA
Guidelines"). The amendments do not require any further CEQA review because an Initial
Study/Environmental Checklist was prepared to confirm that the proposed Project would not result in any
new or substantially more significant all potentially significant effects than those analyzed in the San
Bruno Transit Corridors Plan (TCP) Certified Environmental Impact Report (EIR) that was adopted by the
City Council on February 12, 2013, pursuant to CEQA Guidelines Sections 15162 (Subsequent EIRs and Negative Declarations) and 15168 (Program EIR). All applicable mitigations in the TCP EIR will be required as conditions of approval for the proposed Project.

NOW, THEREFORE, the City Council of the City of San Bruno Ordains as follows:

1. The City Council of the City of San Bruno finds as follows:
   a. That said amendment is in general conformance with the general plan and that the public convenience and general welfare require adoption of the proposed amendment;
   b. The proposed P-D District Zoning Change can be substantially completed within the time schedule submitted by the applicant;
   c. Each unit of development, as well as the total development, can exist as an independent development capable of creating an environment of sustained desirability and stability or adequate assurance that such objective will be attained;
   d. The land uses proposed will not be detrimental to the present or potential surrounding uses but will have a beneficial effect which would not be achieved through other districts;
   e. The streets and thoroughfares proposed are suitable and adequate to carry anticipated traffic, and increased densities will not generate traffic in such amounts as to overload the street network outside the P-D District;
   f. Any proposed commercial development can be justified economically at the location proposed and will provide adequate commercial facilities for the area;
   g. Any exceptions from the standard district requirements are warranted by the design of the project and amenities incorporated in the development plan;
   h. The area surrounding the development can be planned and zoned in coordination and substantial compatibility with the proposed development and the P-D District uses proposed are in conformance with the general plan of the city.

2. The San Bruno City Council hereby amends the Zoning Map, as described in San Bruno Municipal Code Section 12.96.020, to change the zoning district of Assessor’s Parcel no. 020-145-480 from Low Density Residential (R-2) to Planned Development (P-D), as shown in Exhibit A.

3. The San Bruno City Council hereby approves the Development Plan subject to the development standards in Exhibit B.

4. Validity. The City Council of the City hereby declares every section, paragraph, sentence, cause and phrase is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

5. Effective Date. The Ordinance shall go into effect thirty (30) days after the date of its passage and adoption, and shall be posted as required by law.
Rico E. Medina, Mayor

ATTEST:

Melissa Thurman, City Clerk

APPROVED AS TO FORM:

Marc Zafferano, City Attorney

--oOo--

I hereby certify that the foregoing Ordinance No. 2019-_______ was introduced on _________, and adopted at a regular meeting of the San Bruno City Council on ____________, by the following vote:

AYES: COUNCILMEMBERS: ________________________________

NOES: COUNCILMEMBERS: ________________________________

ABSENT: COUNCILMEMBERS: ________________________________

Melissa Thurman, City Clerk
Exhibit A
Proposed Zoning Code Map Amendment (PD18-001)
Current Zoning: (R-2) Low Density Residential
Proposed New Zoning: (P-D) Planned Development District
500 Sylvan Avenue, San Bruno, CA
APN: 020-145-480

Current Zoning
(R-2) Low Density Residential

Proposed Zoning
(P-D) Planned Development District
Development Standards:

- Zoning: P-D (Planned Development)
- General Plan: Transit Oriented Development
- Project Area: .17 acres (7,364 square feet)
- Assessor’s Parcel Number: 020-145-480
- Max FAR: 2.0
- Number of Stories: 4-stories
- Maximum Height: 55’-0”
- Minimum Setbacks:
  - Front – Combined width of sidewalk and setback must be at least 10 feet
  - Rear – 10 feet
  - Right Side – None
  - Left Side – None
- Stepback – facing corridor street:
  - Above 3rd floor stepback 15 feet
- Stepback – adjacent to low density residential:
  - Above 3rd floor stepback 15 feet

Permitted Uses:
- Residential

Parking:
- 14 total parking spaces

Minor adjustments from standards stated herein may be approved or conditionally approved by the Community Development Director in accordance with Section 12.96.190 (P-D Planned Development District) of the San Bruno Municipal Code.
Location Map & Site Photos

500 Sylvan Avenue
020-145-480
PD18-001, PDP18-001, AR18-002, UP18-012

Attachment 2
Subject Site

Adjacent Property to West

Attachment 2
Adjacent Property to the North

Property to the East of the Subject Site

Attachment 2
Properties to the South of the Subject Site
DATE: June 11, 2019

TO: Honorable Mayor and Members of the City Council

FROM: Jovan D. Grogan, City Manager

PREPARED BY: Darcy Smith, Community and Economic Development Director

SUBJECT: Waive First Reading and Introduce an Ordinance Adding Chapter 8.36 (Small Wireless Facilities In the Public Right-of-Way and utility easements in public and Private Properties) to Title 8 (Streets, Sidewalks, and Rights-of-Way) and Adopt a Resolution with Small Wireless Facilities Design and Siting Guidelines, Engineering Design Standards, and Standard Conditions of Approval

BACKGROUND:

To ensure that the City has an adopted Ordinance and Resolution regulating small wireless facilities consistent with recently adopted Federal regulations, this agenda item provides for the introduction of the Small Wireless Facility Ordinance amending Title 8 (Streets, Sidewalks, and Rights-of-Way) of the San Bruno Municipal Code and the adoption of the accompanying Resolution Adopting Design and Siting Guidelines, Engineering Design Standards, and Standard Conditions of Approval for Small Wireless Facilities in the Public Right-of-Way and Within Utility Easements in Public and Private Properties. The Ordinance is provided as Attachment 1 and the Resolution is provided as Attachment 2.

On September 26, 2018, the Federal Communications Commission (FCC) adopted a Declaratory Ruling and Third Report and Order geared toward speeding up the deployment of small wireless facilities in the public right-of-way and public utility easements (hereafter, the “FCC ruling”). The FCC ruling, which went into effect January 14, 2019, sets forth limitations on state and local government regulation of small wireless facilities that are placed on existing or new utility poles and street light standards located in the public right-of-way and public utility easements. The FCC ruling clarifies and more specifically restricts the authority of state and local governments to regulate small wireless facilities in the public right-of-way and public utility easements. This ruling is significant in that there are several nuances in small “cell” wireless facilities technology and application, which set them apart from other wireless communication facilities. On December 10, 2018, the FCC denied local governments’ motion for a stay on the regulations but ruled that to the extent agencies chose to impose aesthetic requirements, they would not go into effect until April 15, 2019, allowing agencies an additional 90 days to establish and publish aesthetic standards. The City published draft Guidelines on its website for use in the interim period before the proposed Resolution is adopted.

A new network of telecommunications infrastructure known as a Small Wireless Facility has emerged as a result of growing capacity demands for wireless data. Small Wireless Facility networks have much smaller coverage areas than typical macro wireless facilities, with an antenna range of approximately 150 to 500 feet. These small wireless facilities help to
complement or stretch macro cellular facility coverage and add capacity in high demand areas. Small Wireless Facility networks provide increased capacity and data transfer rates to existing coverage areas as well as improved service to areas with weak or limited coverage.

Small wireless facilities are installed on poles within the public right-of-way and utility easements in public and private properties. They differ from the types of wireless facilities the City has previously encountered in the number of antennas and the power supplied to the antennas. The small wireless facilities are typically located on existing poles such as utility poles, streetlights or traffic signals that are 25- to 50-feet in height. Small wireless facility equipment will usually consists of a 2 to 4-foot tall antenna at the top of the pole, an electric meter, compact transmitters, receivers and other components that are also attached to the pole. Some facilities also include a ground mounted battery back-up cabinet.

In accordance with state Public Utilities Code section 7901, telephone companies, which include wireless telecommunications service providers, have a statutory right to place equipment (i.e. small wireless facility) in the public right-of-way and utility easements. However, in accordance with Public Utilities Code section 7901.1, cities have the statutory right to regulate the design, location, and placement of the equipment. This authority is limited in that local regulations cannot: 1) effectively prohibit the provision of wireless telecommunications service or 2) unreasonably discriminate among providers of wireless telecommunications service.

The FCC, at the urging of the cellular network industry, passed a declaratory ruling (FCC-CIRC1809-02) known as the “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment” on September 24, 2018. The FCC Order defines small wireless facility, provides for the expedited processing (“shot clock”) of small wireless facility applications, limits the fees that can be assessed by municipalities on the review of these applications, and places limitations on discretionary aesthetic considerations. The new application review “shot clock” for small wireless facilities is 60 days for placement on an existing structure and 90 days for installation of a new structure.

In response, a coalition of municipalities requested a stay of the FCC order which was denied. This means municipalities must respond to applications that are submitted after January 15, 2019 pursuant to the new “shot clocks”. The aesthetic guidelines for small wireless facilities must be established and published by April 15, 2019. However, the coalition is continuing to litigate the case on behalf of the member cities, including San Bruno.

Current City Wireless Facility Regulations and Applications

Currently, San Bruno regulates wireless facilities pursuant to Section 12.220 of the municipal code, which requires a Conditional Use Permit to establish a new wireless facility within a residential district among other requirements. These regulations were originally developed to regulate the placement of large macro wireless facilities on private and public properties, which are not subject to the FCC-CIRC1809-02. This approval process historically takes a minimum of 90 days to process from application submittal to final action by the Planning Commission. Included within this review period is a detailed peer review of the radio frequency emissions compliance report by an outside consultant on behalf of the City.

In mid-2018, the Planning Commission approved a small wireless facility Use Permit in front of the property at 123 Elm Avenue; a neighbor then appealed the decision to the City Council. The City Council upheld the appeal, finding that the facility was inconsistent with the height of other
infrastructure in the neighborhood. Verizon sued the City in federal court, seeking to invalidate the City’s current ordinance as too restrictive, and asking the court to overturn the City Council’s decision. The case is currently pending. Parties have agreed to court-ordered mediation, which is currently underway. The mediation is expected to address the 123 Elm Avenue appeal as well as the other eight sites that Verizon claims have been deemed approved. Verizon claims, and the City disputes, that this application has been deemed approved based on these shot clock rules.

Because the City’s current regulations were not developed with the purpose and intent to regulate small wireless facilities, it is not feasible for the City to continue to process a discretionary Conditional Use Permit application to establish new small wireless facilities within the new FCC mandated review periods. In order to ensure full compliance with the FCC Order, the City must establish a new Ordinance and application, review and decision process, as well as Design and Siting Guidelines, Engineering Design Standards, Standard Conditions of Approval for the processing of small wireless facilities in the public right-of-way in a more expeditious and streamlined manner.

Past Public Meetings

Planning Commission Study Sessions
On October 12, 2018, the first Planning Commission study session was held to provide background on the FCC ruling, the City’s current regulations for wireless communication facilities, and recommended approaches for addressing small wireless facilities. A presentation was made concerning the implications of the FCC ruling and responded to detailed questions.

On November 20, 2018, the second Planning Commission study session was held to provide background on Federal Laws governing wireless facilities and how they tie into the current FCC Order. Small wireless design and siting criteria from other communities that have implemented new ordinances were presented by staff and evaluated by the Planning Commission.

In December 2018, after public feedback was received at the November Planning Commission study session, staff created a dedicated webpage on the City’s website regarding small wireless facilities in San Bruno. To view the website, please visit: https://www.sanbruno.ca.gov/smallcells

The website contains the following information:
- Background on the Federal regulations regarding small wireless facilities
- Frequently Asked Questions (FAQs)
- Photos of what the installations may look like
- Meeting Information - Past/Upcoming meeting materials and presentations
- Sign up for email notifications
- Contact information for questions

On January 15, 2019, the third Planning Commission study session was held to provide an update on the FCC Order, and more closely analyze different types of small wireless facilities and potential design and siting criteria. The study session was immediately followed by a community engagement session to obtain public input on preferred design and siting for small wireless facilities in San Bruno.
Community Engagement Meeting
In preparation for the January community engagement session, staff published an advertisement in the newspaper, noticed the session in the posted Planning Commission agenda, emailed interested parties who asked to noticed, posted the session on the City’s webpage dedicated to Small Wireless Facilities; and announced the meeting on social media (Nextdoor). The session was primarily attended by homeowners who are concerned about the health impacts from RF associated with wireless facilities. Three feedback stations were established for the community engagement session that allowed the public to express their preferences for the type and location of small wireless facilities that would be most appropriate for San Bruno. The stations allowed the community to comment on: pole types; stand-alone pole design options; streetlight pole mounting options; location options; accessory equipment options; and antenna mounting options for wooden utility poles. The feedback indicated that the community has a preference for small wireless facilities that use camouflaging techniques to conceal the facilities within functional streetlights, with all equipment enclosed within the pole. There was also a preference for all equipment mounted on wooden utility poles to be shrouded with antennas located at the top, bayonet style, and shrouded within a streamlined cylinder. The community did not express a preference for equipment cabinets that resemble faux benches or trash cans. Location preference was for mid-block siting and at shared property lines instead of in front of residences. Overall, the session was successful in getting the public to think beyond prohibition to address health impacts that the City cannot regulate and focus on the facets of small wireless facilities the City can regulate, primarily design and siting.

Planning Commission Review of Draft Ordinance and Resolution
On March 19, 2019, the City presented the draft Ordinance and Resolution for review and comment by the Planning Commission. The Planning Commission provided feedback to staff on the proposed draft Ordinance and Resolution for consideration by the City Council. As this proposed Ordinance is included in Title 8 of the City’s Municipal Code and not the Zoning Code, the Planning Commission provided feedback only at a study session and was not required to hold a Public Hearing and adopt a Resolution with a formal recommendation to the City Council. The Commission provided feedback on a variety of topics and aspects of the Ordinance and Resolution, and modifications were made to the draft Ordinance and Resolution presented to the City Council at their meeting on May 14, 2019.

City Council Review of Draft Ordinance and Resolution
On May 14, 2019, the City presented the draft Ordinance and Resolution for review and comment by the City Council. Feedback was provided to staff on the proposed draft Ordinance and Resolution. The feedback is summarized, with responses provided under the City Council Review and Input portion of the Discussion section.

DISCUSSION:

Ordinance and Resolution Information
The City’s Community and Economic Development Department, Public Works Department, City Attorney, and outside legal counsel have been working collaboratively since October 2018 to address the current regulatory and policy issue by preparing the Small Wireless Facility Ordinance amending Title 8 (Streets, Sidewalks, and Rights-of-Way) of the San Bruno Municipal Code and accompanying Resolution Adopting Design and Siting Guidelines, Engineering Design Standards, and Standard Conditions of Approval for Small Wireless Facilities in the Public Right-of-Way and Within Utility Easements in Public and Private Properties. The Ordinance sets forth a streamlined procedure for wireless carriers seeking
permits for small wireless facilities within the public right-of-way and utility easements in public and private properties, while retaining as much regulatory authority as is allowed under federal and state law.

Because utilities and structures within the City’s public rights-of-way are regulated by Title 8 (Streets, Sidewalks, and Rights-Of-Way), small wireless facilities will be administered by the City’s Public Works Department through a newly developed Wireless Facility Permit process and will no longer be regulated by Title 12 (Land Use) which is applicable to uses to wireless facilities not located in the right-of-way and public utility easements on private properties. Encroachment permits for these facilities will be issued as they are now by the Public Works Department when there is an encroachment onto the public right-of-way. Building permits will be administered by the Building Division when placement or construction activities associated with the wireless facilities are limited to a public utility easement, which may be less common.

As a result, the Planning Commission and Planning Division will no longer review the installation of small wireless facilities within the City’s rights-of-way and public utility easements, and decisions will no longer be appealable to the City Council. Instead, the Director of Public Works, or his/her designee will be responsible for reviewing wireless permit applications to install small wireless facilities within the public right-of-way public utility easements on private properties. The Director’s decision will be appealable to the City Manager. This approval process will ensure that these applications are processed under the FCC mandated timelines (“shot clocks”).

There are other similar City permit types that do not go before the City Council on appeal, and the City has other approval or appeal bodies whose actions are final. For example, massage certificates are reviewed and issued by the City’s certification officer (the City’s Police Commander), and appealable to a license board. The board’s decisions on appeals constitute a final administrative order with no additional administrative right of appeal.

Applications for wireless facilities on private property (typically referred to as macro facilities) will continue to be regulated by Section 12.220 of the municipal code and administered by Planning staff and the Planning Commission where applicable. This would include new wireless facilities in locations such as City properties or parks.

There are two main parts to how the City will regulate small wireless facilities, (1) the Small Wireless Facilities Ordinance and (2) the Resolution adopting the Small Wireless Facilities Design and Siting Guidelines, Engineering Design Standards and Standard Conditions of Approval, both of which are attached. Below is staff’s analysis of each.

**Small Wireless Facilities Ordinance**

As stated above, applications for small wireless facility permits will be submitted for review and processing to the City’s Public Works Department.

The key features of the ordinance include:

- Review by the Public Works Department of applications for ministerial Wireless Facility Permits. An encroachment permit or building permit will be required depending on the location of the pole, whether within public right-of-way or utility easement on private property.
- Peer and Independent Consultant Review of applications at applicant expense. The City does this currently for Radio Frequency analysis and under the Ordinance can also do this for a variety of other items including structural calculation review, and evaluation as whether and to what extent a proposed project will address a gap in the applicant’s
wireless services and whether and to what extent any technically feasible and/or potentially available alternative sites or concealment techniques may exist.

- Requirements to comply with all aesthetic design guidelines and engineering standards, unless an exception is approved.
- The Director of Public Works has the discretion to grant an exception to the otherwise applicable standards.
- Application of standard conditions of approval
- A public notice will be mailed to all owners of real property and occupants (if different) within three hundred (300) feet of the proposed wireless facility location. The purpose of the notice is to advise the public of the application submittal. The notice is required to contain, at minimum: (1) a general description of the proposed project, including the project location, plans, photo simulations, or renderings that depict the wireless facility installation in context of the natural and built environment; (2) the applicant’s name and contact information as provided on the application form; and (3) contact information for the Department and (4) how to request a copy of the Decision Notice
- Before the applicable FCC shot clock expires, the City will send a written notice of decision to the applicant and all parties who requested a copy of the Decision Notice on the application.
- Decision by the Public Works Department to approve, conditionally approve or deny the small wireless facility permit. The Decision can be appealed to the City Manager.
- Right of final appeal to the City Manager. This appeal body will ensure that all appeals can be reviewed and a decision rendered in compliance with the stringent FCC shot clocks.

The Ordinance states: “This is the only San Bruno Municipal Code Chapter that applies to wireless facilities in the public-right-of-way and public utility easements on private properties, and any provisions of Chapter 12.220 that apply to wireless facilities in the right-of-way and public utility easements on private properties do not apply.” With this language, the City does not need to amend Zoning Code Chapter 12.220 Wireless Telecommunications Facilities, which will remain in effect and apply to installations on private properties and other locations outside of the right-of-way.

Resolution Adopting Design and Siting Guidelines, Engineering Design Standards and Standard Conditions of Approval

The FCC Order provides guidance for municipalities in establishing design and siting guidelines and engineering design standards for small wireless facilities. The Order states that the requirements must be “(1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance. In its Order denying a motion for stay, the FCC provided the following additional guidance regarding small wireless design guidelines.

(“[T]he aesthetic requirements to be published in advance need not prescribe in detail every specification to be mandated for each type of structure in each individual neighborhood. Localities need only set forth the objective standards and criteria that will be applied in a principled manner at a sufficiently clear level of detail as to enable providers to design and propose their deployments in a manner that complies with those standards.”).
Design and Siting Guidelines

The Design and Siting Guidelines permit three types of small wireless facilities.
- Facilities attached to existing wooden utility poles and utility lines.
- Facilities attached to streetlights and traffic signal control poles.
- New freestanding poles.

The Guidelines establish overall design guidelines that are applicable to all structures and design guidelines that are specific to each type of facility. Direction for the Guidelines came from input that was received from the three Planning Commission study sessions and the community engagement session that was held by staff in January. The Guidelines are designed to provide flexibility to respond to the many different location contexts present in San Bruno and streamline the appearance of the facilities as much as possible in an objective manner consistent with the City’s rights to regulate the installation of facilities in the right-of-way, including on the basis of aesthetics. Reasonable limitations on the overall size of the antenna and the pole-mounted accessory equipment are established to reduce obstructions and standardize their appearance.

The key aesthetic design and siting guidelines include:
- A requirement that installations should conceal to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses with regard to appearance, size, and location.
- Equipment should be located entirely on the pole in a vertical arrangement. Exterior mounted accessory equipment should be within a single shroud not to exceed 9 cubic feet in volume (exclusive of the concealing elements like shrouding). Required meters and disconnect switches that are infeasible to be shrouded for safety and/or accessibility reasons are excluded from this shrouding recommendation.
- All equipment (other than the antenna, antenna supports, ancillary wires, cables and any electric meter) should be installed underground in any area where the existing utilities are not primarily located above ground.
- All cables, wires and other connectors should be routed through conduits within poles whenever possible, and all external conduits, conduit attachments, cables, wires and other connectors must be concealed from public view.
- Small wireless facilities should not be installed such that the facility damages existing trees.
- Pole heights shall be minimized, but in no case shall the maximum height of any facilities exceed 50 feet.
- The top of the antenna if top mounted should be no higher than 48” above the minimum separation from supply lines required by General Order (GO) 95 by the California Public Utilities Commission (CPUC), exclusive of the required antenna mounting bracket.
- The extension of the antenna if side mounted should extend no more than 48” from the circumference of the pole.
- New poles are only permitted if: (a) the applicant demonstrates that above-ground support structures near the project site either do not exist or are not reasonably available to the applicant; or (b) the City specifically finds that a new, non-replacement support structure would be more aesthetically desirable and consistent with the objectives of these Guidelines than installations on existing structures near the project site. New poles within open space areas should be designed to resemble trees. Poles not located within
open space areas should be designed to resemble existing standalone streetlights in the vicinity.

- Siting location preferences in which Industrial and Combining Industrial zoning districts are the highest ranked preference and low-density residential districts with single-family or two-family residential uses are the least preferred locations.
- New poles are required to replicate the materials, color, and finish of existing infrastructure nearby.
- Facilities should be no closer than 300 feet away, radially, from another small wireless facility.
- The objective of the Guidelines, in regard to facility siting, is to locate them in less prominent locations and regulate the clustering of facilities so as not to overburden any one particular location.

These are a few of the design guidelines that would be established with the purpose of protecting and preserving the aesthetics of the community.

**Engineering Design Standards**
The objectives of the Engineering Design Standards are to require the applicant show that the placement of the wireless facilities on existing streetlight, traffic signal, and/or utility pole foundations can be accommodated, and future installations on new equipment can accommodate future services to reduce construction related impacts. For existing City owned facilities, such as on street light and traffic signal poles, the applicant must show the poles and foundations can accommodate the new wireless facilities under seismic loading. Disconnect switches are required so Operations staff can turn off the power to the antenna while repairing and maintaining street light heads or traffic signals.

**Standard Conditions of Approval**
The Ordinance allows for the adoption of standard conditions of approval by City Council Resolution for wireless facilities. All wireless facilities, whether approved by the approval authority or deemed approved or deemed granted by law will be automatically subject to all such standard conditions of approval.

The key standard conditions of approval relate to practical matters of construction and operation and would include:

- Maintenance of the facility
- Compliance with approved plans
- Inspection and access by City staff
- Insurance and indemnity provisions to protect the City
- Performance bonds to ensure the facility is built as approved
- Provisions for removal of the facility if necessary at carrier expense
- Traffic control and non-interference with City utilities and operations
- Permit terms and timing of installation
- Compliance and testing to ensure full adherence to FCC rules for human exposure to RF emissions. The City has the right to conduct its own independent RF Compliance Evaluations

The standard conditions of approval also provide a section for any eligible facilities request for a modification of an existing facility that does not substantially change the physical dimensions of such facility (Section 6409 Approvals) and provide a section that states the City through
granting of permits does not waive any standing by the City to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

City Council Review and Input
On May 14, 2019, the City presented the draft Ordinance and Resolution for review and comment by the City Council. Feedback was provided to staff on the proposed draft Ordinance and Resolution. Major comments are summarized below with responses provided:

- **Maximum Facility Height.** Staff recommended a maximum facility height of 50 feet to ensure maximum ability to ensure compliance with the FCC Order and achieve a desirable aesthetic design based on the wide range of existing conditions of the facility location throughout the entire span of the City’s built environment- which could range from a commercial location to a residential neighborhood. Additionally, while some members of the public expressed initial support for facilities that did not exceed the height of other existing utility infrastructure in the surrounding neighborhood, other feedback now includes support for taller poles to avoid the perceived effects of RF emissions at the pedestrian level and in residences. An objective numerical standard is required under federal law. Council supported this staff recommendation; the final Ordinance and Resolution include this revised maximum height.

- **Public Notification:** The City Council discussed changing the public notification radius to 500 feet. The Ordinance requires a public notice distributed through the United States mail to be mailed to all owners of real property and occupants (if different) within three hundred (300) feet of the proposed wireless facility location. The purpose of the notice is to advise the public of the application submittal and how to request a copy of the decision on the application. As stated at the meeting as a response to this comment, staff does not support expanding the radius beyond 300 feet. Consistency is very important in pubic noticing and the state and City standard for public notification is 300 feet. The City Council suggested other alternatives, in addition to the mailed notices to communicate with the public, such as door hangers or notices posted on the utility poles or using other forms of technology. The Ordinance requires a public notification, which would include either a letter or postcard, mailed to all owners and occupants. Additionally, staff has added the requirement to the Ordinance that the public notice be placed on the proposed utility pole, the traffic signal control pole, the streetlight, or other proposed facility location, as feasible.

- **Appeals Process and Fee.** The City Council requested more information about the appeals fee and process. Currently, the City’s adopted 2018-19 Master Fee Schedule does not include an appeals fee for wireless facility permits because they are a new application type. Fees have been established for appeals to the Planning Commission ($510) and City Council ($790), and for appeals of denial of an application by the Police ($225). Staff recommends an appeal fee of $225 to be consistent with the other appeal fee of administrative decisions by the City (Police).

Appeals Process Outline. The proposed process for future appeals of wireless facility permits is outlined below:
1. Appeal of Public Works Director's Decision of a wireless facility permit submitted to the City Manager’s office within the prescribed time in the Ordinance.

2. Appeal distributed to City Council for informational purposes, to applicant for written response, and to staff.

3. Staff prepares written recommendation after reviewing appeal and any written response by applicant.

4. City Manager schedules and holds hearing to include appellant, staff, and applicant, and then renders written Decision on wireless facility permit to approve, conditionally approve, or deny the permit.

5. Decision distributed to appellant, applicant, staff, and City Council.

- Damage to Public Infrastructure. The City Council expressed concerns regarding the restoration of public infrastructure with respect to the construction work for wireless facilities. While the wireless facility permit would allow for the presence of the facilities in rights-of-way and utility easements, the applicant or their contractor would still be required to apply for and obtain an encroachment permit for any construction work or traffic control in the public right-of-way. The encroachment permit general conditions would apply for this construction work as it would for any work performed within the right-of-way. The general conditions include provisions for restoring public infrastructure affected by construction and payment of deposits. Concrete and pavement would be required to be restored in accordance with the City’s standard specifications and details. The City would not release the deposit until the public right-of-way is restored to the City’s satisfaction. A paragraph has been added to clarify restoration requirements for street excavations within roadways that have within the previous five years received an asphalt concrete overlay or seal coat within the previous two years that could include up to repaving half or full width of the roadway.

Other Final Ordinance and Resolution Revisions
Staff made a small number of final revisions to the Ordinance and Resolution, providing clarification to ensure the most legally sound Ordinance and Resolution possible based on additional input from the City Attorney and outside legal counsel with expertise in these regulations. These revisions do not make any substantive material changes to the regulations or processing requirements. These edits have been made in the revised final Ordinance and Resolution.

FISCAL IMPACT:

None from introduction of the ordinance; if the ordinance is adopted, the City will collect application fees from new small wireless permit applications and the associated encroachment permits or building permits. These fees are anticipated to provide cost recovery for the city staff and/or consultant staff time spent processing the applications. The City Master Fee Schedule will be updated to add a deposit for this application type; until that time, staff will charge the hourly rate for the Public Works Department staff time published in the fee schedule.

ENVIRONMENTAL CLEARANCE:

The ordinance and resolution qualify for an exemption from the requirements of the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations,
Section 15061(b)(3) and 15378 (b) (5), because the Ordinance and Resolution are not a Project that has the potential for causing a significant effect on the environment.

ALTERNATIVES:

1. Decline to introduce the ordinance or adopt the resolution;
2. Provide additional direction to staff regarding the provisions of the ordinance and resolution.

RECOMMENDATION:

Waive First Reading and Introduce an Ordinance Adding Chapter 8.36 (Small Wireless Facilities in the Public Right-of-Way and Utility Easements in Public and Private Properties) to Title 8 (Streets, Sidewalks, and Rights-of-Way) and Adopt a Resolution with Small Wireless Facilities Design and Siting Guidelines, Engineering Design Standards, and Standard Conditions of Approval

ATTACHMENTS:

1. Ordinance for Introduction
2. Resolution for Adoption

DATE PREPARED:

June 3, 2019

REVIEWED BY

_____ CM
ORDINANCE NO. 2019-_______

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO ADDING CHAPTER 8.36 TO THE CITY OF SAN BRUNO MUNICIPAL CODE ESTABLISHING REGULATIONS FOR SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND WITHIN UTILITY EASEMENTS IN PUBLIC AND PRIVATE PROPERTIES

The City Council of the City of San Bruno ORDAINS as follows:

SECTION 1. FINDINGS.

WHEREAS, the Legislature of the State of California has in Government Code Sections 65302, 65560, and 65800 conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, it is in the public interest for the City to establish reasonable, uniform and comprehensive regulations of Small Wireless Facilities in the Public Right-of-Way and utility easements in public and Private Properties in response to Federal and California State law and FCC Order 18-133 which permits small wireless facility infrastructure deployment through relaxation of barriers, affecting the local permit process; and

WHEREAS, the regulations would not increase impediments for the installation of small wireless facilities under Federal Telecommunications Act of 1996 but illustrate the desired level of design quality and configuration of any proposed small wireless facility; and

WHEREAS, Title 8 of the City’s Municipal Code governs the permitting, installation, and regulation of obstructions within the City’s public rights-of-way (ROW) and within utility easements in public and private properties; and

WHEREAS, the City’s public rights-of-way and utility easements are a uniquely valuable public resource, closely linked with the City’s character, making the regulation of small wireless facilities in the public rights-of-way and within utility easements in public and private properties necessary to protect and preserve the aesthetics of the community; and

SECTION 2. REGULATION.

Chapter 8.36 (Small Wireless Facilities in the Public Right-of-Way and utility easements in public and Private Properties) is hereby added to Title 8 (Streets, Sidewalks, and Rights-of-Way) of the San Bruno Municipal Code. This regulation shall prevail over any conflicting provisions of the San Bruno Municipal Code or the other ordinances, resolutions, policies, and regulations of the City of San Bruno.

CHAPTER 8.36

SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND WITHIN UTILITY EASEMENTS IN PUBLIC AND PRIVATE PROPERTIES

Sections:

8.36.010 Purpose and Intent
8.36.020 General Definitions
8.36.010 Purpose and Intent

A. The City of San Bruno intends this Chapter 8.36 to establish reasonable, uniform and comprehensive standards and procedures for wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City’s territorial boundaries in the public right-of-way, consistent with and to the extent permitted under Federal and California State law.

The standards and procedures contained in this chapter are intended to, and should be applied to, protect and promote public health, safety and welfare, and also balance the benefits that flow from robust, advanced wireless services with the City’s local values, which include, without limitation, the aesthetic character of the City, its neighborhoods and community. This chapter is also intended to reflect and promote the community interest by: (1) protecting the City’s visual character from potential adverse impacts or visual blight created or exacerbated by wireless communications infrastructure; (2) protecting and preserving the City’s environmental resources; and (3) promoting access to high-quality, advanced wireless services for the City’s residents, businesses and visitors.

B. This is the only San Bruno Municipal Code Chapter that applies to wireless facilities in the public-right-of-way and public utility easements on private properties, and any provisions of Chapter 12.220 that apply to wireless facilities in the right-of-way and public utility easements on public and private properties do not apply.

C. Appeals of [wireless facility permits and any associated permits] shall be heard under the provisions of this chapter, and no other San Bruno Municipal Code provisions related to appeals shall apply.

8.36.020 General Definitions

The abbreviations, phrases, terms and words used in this chapter will have the meanings assigned to them in this section unless context indicates otherwise. In the event that any definition assigned to any phrase, term or word in this section conflicts with any Federal- or State-mandated definition, the Federal- or State-mandated definition will control.

A. “Accessory equipment” means any equipment other than the antenna(s) associated with a wireless facility, which includes, but is not limited to, cabling, generators, fans, air
conditioning units, electrical panels, equipment cabinets, pedestals, meters, vaults, splice boxes and surface location markers.

B. “Approval authority” means the commission, board or official responsible for review of permit applications and vested with the authority to approve or deny such applications. The approval authority for a wireless permit is the Public Works Director or designee, on appeal, the City Manager. The approval authority for a Section 6409 approval or a temporary wireless permit is the Public Works Director.

C. “Base station” means the same as defined by the FCC in 47 C.F.R. § 1.6100(b) (1), as may be amended.

D. “City Manager” means the City Manager of the City of San Bruno, or the City Manager’s designee.

E. “Collocation” means the same as defined by the FCC in 47 C.F.R. § 1.6.002(g) (1) and (2), as may be amended.

F. “CAPON” means a certificate of public convenience and necessity granted by the CPUC or its duly appointed successor agency pursuant to California Public Utilities Code § 1001 et seq., as may be amended.

G. “CPUC” means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.

H. “Department” means the Department of Public Works of the City of San Bruno or its duly appointed successor agency.

I. “Director” means the Director of Public Works of the City of San Bruno, or the Director’s designee.

J. “Eligible Facilities Request” means the same as defined in shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b) (3), or any successor provision.

K. “FCC” means the Federal Communications Commission or its duly appointed successor agency.

L. “FCC shot clock” means the time frame within which the City generally must act on a given wireless application, as defined by 47 C.F.R. 1.6003(c) (1) and 1.6100(c) (2) and as may be amended from time to time.

M. “Independent Consultant” means a consultant hired by the City of San Mateo to process or review wireless facility applications.

N. “Personal wireless services” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

O. “Personal wireless service facilities” means the same as defined in 47 U.S.C. § 332(c) (7) (C) (i), as may be amended, which defines the term as facilities that provide personal wireless services.

P. “Public right-of-way” has the same meaning as “street” in San Bruno Municipal Code Section 8.04.110.C.

Q. “RF” means radio frequency or electromagnetic waves.

R. “Section 6409” means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.

S. “Section 6409 Collocation” means the same as defined by the FCC in 47 C.F.R. § 1.6100(b) (2), as may be amended.

T. “Support Structure” means any structure capable of supporting a base station.

U. “Temporary wireless facilities” means portable wireless facilities intended or used to provide wireless services on a temporary or emergency basis, such as a large-scale special event in which more users than usual gather in a confined location or when a
disaster disables permanent wireless facilities. Temporary wireless facilities include, without limitation, cells-on-wheels (“COWs”), sites-on-wheels (“SOWs”), cells-on-light-trucks (“COLTs”) or other similarly portable wireless facilities not permanently affixed to the site on which they are located. Specific time limits for the placement of temporary wireless facilities are addressed in San Bruno Municipal Code Section 8.36.120.

V. “Tower” means the same as defined by the FCC in 47 C.F.R. § 1.6100(b) (9), as may be amended.

W. “Transmission equipment” means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(8), as may be amended

X. “Utility Pole” means a support structure in the public right-of-way designed to support electric, telephone, and similar utility lines. A tower is not a utility pole

Y. “Wireless” means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

Z. “Wireless Facility” means the antennas and associated equipment used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s). For the purpose of this Ordinance, this includes Small Wireless Facilities as defined by the FCC in 47 C.F.R. 1.6002 (l), as may be amended.

8.36.030 Administration.

A. Director of Public Works. The Director or their designee is responsible for administering this Chapter and establishing rules and regulations for this purpose. All such rules and regulations must be in written form and posted on the City’s website or otherwise made publicly available to prospective applicants. As part of the administration of this Chapter, the Director may:

1. Interpret the provisions of this Chapter;
2. Establish reasonable rules and regulations, which may include, without limitation, regular hours for appointments with applicants, as the Director deems necessary or appropriate to organize, document and manage the application intake process;
3. Develop and implement standards and procedures governing the placement and modification of wireless facilities consistent with the requirements of this Chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;
4. Develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this Chapter;
5. Determine the amount of and collect, as a condition of the completeness of any application, any fee established by this Chapter;
6. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;
7. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
8. Require, as part of, and as a condition of completeness of any application, notice to members of the public that may be affected by the placement or
8.36.040 Applicability

A. Applicable Wireless Facilities. The provisions in this chapter shall be applied to all existing wireless facilities within the City’s public rights-of-way and all applications to construct, install, operate, collocate, modify, reconstruct, relocate or otherwise deploy wireless facilities within the City’s public rights-of-way, except as may be expressly provided otherwise in this chapter.

B. Exempt Wireless Facilities. Notwithstanding subsection (A), the provisions in this chapter will not be applicable to: (1) wireless facilities not proposed or currently located in the public right-of-way; (2) wireless facilities owned and operated by the City for public purposes; (3) amateur radio facilities; and (4) wireless facilities or equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power generation, transmission and distribution facilities subject to CPUC General Order 131-D.

C. Pre-existing Facilities in the Public Right-of-Way. Any wireless facility already existing in the Public Right-of-Way as of the date of this Chapter’s adoption shall remain subject to the provisions of the City Code in effect prior to this Chapter, unless and until a renewal of such facility’s then-existing permit is granted, at which time the provisions of this Chapter shall apply in full force going forward as to such facility. The review of any request for a renewal of a permit for such pre-existing facilities shall be conducted pursuant to this Chapter, rather than the portion(s) of the City Code under which it was previously reviewed.

D. Special Provisions for Section 6409 Approvals. Notwithstanding subsection (a), all requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station located in the public right-of-way and submitted pursuant to Section 6409 will be reviewed under the application procedures in Section 8.36.060 and the standards in Section 8.36.150. If the applicant’s request does not qualify for approval under Section 6409, the applicant may submit the same or a substantially similar application for a wireless facility permit under the general provisions in this chapter.

8.36.050 Required Approvals

A. Wireless Facility Permit. A wireless facility permit, subject to the Director’s review and approval in accordance with the procedures and design regulations in this chapter, is required for:

1. Any new wireless facility proposed on an existing, new, or replacement support structure with accessory equipment in the public right-of-way;
2. Any collocations, modifications or other changes to an existing wireless facility not subject to Section 6409 in the public right-of-way; and
3. Any wireless facility installed on City-owned support structures or other personal property in the public rights-of-way pursuant to a valid master license agreement with the City.
B. Temporary Wireless Facility Permit. A temporary wireless facility permit, subject to the Director’s prior review and approval in accordance with the procedures and standards in Section 8.36.130 is required for any temporary wireless facility, unless deployed in connection with an emergency pursuant to Section 8.36.1308.36.120(bB).

C. Section 6409 Approval. A Section 6409 approval (addressed in Municipal Code Section 8.36.140) is required for applications submitted pursuant to Section 6409.

D. Other Permits and Regulatory Approvals. In addition to any wireless facility permit, Section 6409 approval, temporary wireless facility permit or other permit or approval required under this chapter, the applicant must obtain all other permits and regulatory approvals as may be required by any other Federal, State or local government agencies, which includes, without limitation, any other permits and/or approvals issued by other City departments or divisions. Furthermore, any permit or approval granted under this chapter or deemed granted or deemed approved by law shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or approvals.

8.36.060 Application Requirements

A. Application Required. The approval authority shall not approve any request for a wireless facility permit, Section 6409 approval or temporary wireless facility permit except upon a complete and duly filed application consistent with this section and any other written rules the City or the Director may establish from time to time in any publicly-stated format.

B. Application Content. All applications for a wireless facility permit, Section 6409 approval or temporary wireless facility permit must include all the information and materials required by the Director for the application. All applications shall, at a minimum: (1) require the applicant to demonstrate that the proposed project will be in planned compliance with all applicable health and safety laws, regulations or other rules, which includes, without limitation, all building codes, electric codes and all FCC rules for human exposure to RF emissions; and (2) contain sufficient evidence (such as a valid CPCN) of the applicant’s regulatory status as a telephone corporation under the California Public Utilities Code.

C. Procedures for a Duly Filed Application. Any application for a wireless facility permit or Section 6409 approval will not be considered duly filed unless submitted in accordance with the procedures in this section. Any application for a temporary wireless facility permit must be filed in accordance with the procedures in Section 8.36.1308.36.120.

1. Voluntary Pre-Submittal Conference. Before application submittal, the applicant is strongly encouraged to schedule and attend a pre-submittal conference with the Director or his/her designee for all proposed projects. The voluntary pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, any latent issues in connection with the proposed or existing wireless facility, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The Department shall use reasonable efforts to provide the applicant with an appointment within ten working days.
after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the services rendered in the pre-submittal conference.

2. Submittal Appointment. All applications must be submitted to the City at a pre-scheduled appointment with the Director. Applicants may generally submit one application per appointment but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The Director shall provide the applicant with an appointment within a reasonable time after the Director receives a written request. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed unless the applicant received a written exemption from the Director at a pre-submittal conference.

D. Denials Without Prejudice. To promote efficient review and timely decisions, if the applicant fails to tender a substantive response to the Department within 90 calendar days after the Director deems the application incomplete in a written notice to the applicant, the Director may, in the Director’s discretion, either deny the application without prejudice or grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant’s reasonable control will be considered good cause to grant the extension.

E. Peer and Independent Consultant Review.

1. Authorization. The City Council authorizes the Director to, in the Director’s discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection with any permit application.

2. Scope. The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include, without limitation: (a) permit application completeness and/or accuracy; (b) pre-construction planned compliance with applicable regulations for human exposure to RF emissions; (c) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (d) whether and to what extent a proposed project will address a gap in the applicant’s wireless services; (e) whether and to what extent any technically feasible and/or potentially available alternative sites or concealment techniques may exist; (f) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the City’s discretion to review; and (g) any other issue identified by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant complete any required work, including written reports and attendance at meetings with City staff and/or the applicant.

3. Consultant Fees—Deposit. In the event that the Director elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include, without limitation, any costs incurred by the independent consultant to attend and participate in any meetings or hearings. Before the independent consultant may perform any services, the
applicant shall tender to the City a deposit in an amount equal to the estimated cost for the services to be provided, as determined by the Director. The Director may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant’s services. In the event that the deposit exceeds the total costs for consultant’s services, the Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection by the appropriate City official or designee. In the event that the reasonable costs for the independent consultant’s services exceed the deposit, the Director shall invoice the applicant for the balance. The City shall not issue any construction or encroachment permit to any applicant with any unpaid deposit requests or invoices.

8.36.070 Public Notice Requirements

A. Notice Requirements for Wireless Facility Permit Applications. Once an application for a Wireless Facility Permit is submitted, a public notice shall be mailed by the Approval Authority to all owners of real property and the site address (if different) if any part of which is located within three hundred (300) feet of the proposed wireless facility location. The notices will be distributed through the United States mail using the recipient list provided per the Section 8.36.060(a) above prepared by the City. The notice must contain, at minimum: (1) a general description of the proposed project, including the project location, plans, photo simulations, or renderings that depict the wireless facility installation in context of the natural and built environment; (2) the applicant’s name and contact information as provided on the application form; and (3) contact information for the Department and how to request a copy of the Decision Notice referenced in 8.36.070(C). In addition to the mailed public notice, a notice shall be placed on the utility pole, the traffic signal control pole, the streetlight, or other proposed facility location, as feasible. This notice shall be posted for a minimum of ten (10) calendar days.

B. Notice Regarding FCC shot clock. Not less than 15 calendar days and no more than 30 calendar days prior to the date when the applicant believes that the applicable FCC shot clock expires, and in addition to any public notice required prior to a decision, an applicant for a wireless facility permit must provide written notice to the Approval Authority that contains: (1) a statement indicating the date the applicant believes the applicable FCC shot clock expires; (2) a general description for the proposed project and any assigned application number; and (3) the applicant’s name and contact information.

C. Decision Notices. Before the applicable FCC shot clock expires, the approval authority or its designee shall send a written notice of decision (“Decision Notice”) to the applicant and all parties who requested a copy of the Decision Notice on the application. In the event that the approval authority denies the application (with or without prejudice), the written notice must contain: (1) the reasons for the decision and (2) instructions for how and when to file an appeal.

8.36.080 Decisions-Exceptions

A. Required Findings for Approval. The approval authority may approve or conditionally approve an application for a wireless facility permit submitted under this chapter when the approval authority finds all of the following:
1. The proposed wireless facility complies with all applicable design and siting guidelines; and
2. The applicant has demonstrated that its proposed wireless facility will be in compliance with all applicable FCC rules and regulations for human exposure to RF emissions; and
3. The applicant has proposed to place the wireless facility in the most-preferred location or, if the wireless facility is not proposed in the most-preferred location, the applicant has demonstrated a good-faith effort that the more-preferred alternative won’t serve the service objectives and/or is technically infeasible; and

B. Conditional Approvals; Denials without Prejudice. Subject to any applicable Federal or California laws, nothing in this chapter is intended to limit the approval authority’s ability to conditionally approve or deny without prejudice any application governed under this chapter as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the General Plan and any specific plan, the San Bruno Municipal Code and/or this section.

C. Exceptions. Decisions on applications for placement of wireless facilities in the public right-of-way shall, at a minimum, ensure that the requirements of 8.36.080-060 are satisfied, unless it is determined that applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter may be waived on a one-time basis, but only to the minimum extent required to avoid the prohibition or violation.

8.36.090 Standard Conditions of Approval

A. Conditions of Approval Adopted by City Council Resolution. The City Council may, either on its own motion or upon a recommendation from the Director, adopt by resolution standard conditions of approval for wireless facilities subject to this chapter. All wireless facilities, whether approved by the approval authority or deemed approved or deemed granted by law shall be automatically subject to all such standard conditions of approval as may be adopted in a resolution by the City Council.

B. Modifications to Standard Conditions. The approval authority (or the appellate authority) shall have discretion to modify or amend any standard conditions of approval on a case-by-case basis as may be necessary or appropriate to protect and promote the public health, safety and welfare, allow for the proper operation of the approved wireless facility, maintain compliance with applicable laws and/or to advance the goals or policies in the General Plan and any specific plan, the San Bruno Municipal Code and/or this chapter.

8.36.100 Appeals.

A. Appeals. Any person adversely affected by the decision of the Director pursuant to this Chapter may appeal the decision to the City Manager, who may decide de novo, and whose written decision will be the final decision of the City.

B. Decisions Granting Exceptions. Where the Director grants an application based on an exception, the decision shall be automatically appealed to the City Manager.

C. Timing. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law. All appeals must be filed within five (5) business days of the written decision of the Director, unless the Director extends the time therefor. An
extension may not be granted when the extension would result in approval of the application by operation of law.

**8.36.10 Design Standards.**

A. Generally Applicable Design Standards. All new wireless facilities and collocations, modifications or other changes to existing wireless facilities not covered under Section 6409 must conform to the generally applicable design and siting guidelines adopted by resolution of the City Council.

B. Administrative Design and Engineering Standards and Application Requirements. The Director may develop, and from time to time amend, design and engineering standards and application requirements consistent with the generally applicable design regulations to clarify the aesthetic and public safety goals and standards in this chapter for City staff, applicants and the public. In the event that a conflict arises between the design and siting guidelines adopted by City Council by resolution and the administrative design and engineering standards adopted by the Director, the design and siting guidelines adopted by City Council by resolution shall control.

**8.36.120 Temporary Wireless Facilities.**

A. General Requirements for Temporary Wireless Facilities. Except as provided in this section, the requirements, procedures and standards in this section shall be applicable to all applications for a temporary wireless permit for a temporary wireless facility.

1. Applications for Temporary Wireless Facilities. The Director shall not approve any temporary wireless facility subject to a temporary wireless permit except upon a duly filed application consistent with this section and any other written application requirements or procedures the Director may publish in any publicly-stated format. Applicants for a temporary wireless permit must submit, at a minimum: (a) a temporary wireless permit application on the most current form prepared by the Department; (b) the applicable fee for the application; (c) a site plan that shows the proposed temporary wireless facility and its equipment, physical dimensions and placement on the proposed site relative to property lines and existing structures; (d) an RF compliance report in accordance with the City’s requirements; and (e) an insurance certificate for general commercial liability that names the City as an additional insured, includes coverage for the time period in which the temporary wireless facility will be placed and carries at least $1,000,000.00 in coverage per occurrence. Applications must be submitted in person to the Director unless the Director grants written consent to receive an application by mail or electronic means. No pre-submittal conference or appointment is required for a temporary wireless permit application.

2. Administrative Review for Temporary Wireless Facilities. After the Director receives a duly filed application for a temporary wireless permit, the Director shall review the application for completeness. After the Director deems the application complete, the Director shall review the application for conformance with the required findings in this section and render a written decision to the applicant. Any denials must include the reasons for the denial. The review shall be administrative in nature and shall not require notice or a public hearing.
3. Required Findings for Temporary Wireless Facilities. The Director may approve or conditionally approve a temporary wireless permit for a temporary wireless facility only when the Director finds all of the following:
   a. The proposed temporary wireless facility will not exceed 50 feet in overall height above ground level; and
   b. The proposed temporary wireless facility will be placed as far away from adjacent property lines as possible, or otherwise in a location that will be least likely to cause adverse impacts on adjacent properties; and
   c. Any excavation or ground disturbance associated with the temporary facility will not exceed two feet below grade; and
   d. The proposed temporary wireless facility will be compliant with all generally applicable public health and safety laws and regulations, which includes, without limitation, compliance with maximum permissible exposure limits for human exposure to RF emissions established by the FCC; and
   e. The proposed temporary wireless facility will not create any nuisance or violate any noise limits applicable to the proposed location; and
   f. The proposed temporary wireless facility will be identified with a sign that clearly identifies the: (i) site operator, (ii) the operator’s site identification name or number, and (iii) a working telephone number answered 24 hours per day, seven days per week by a live person who can exert power-down control over the antennas; and
   g. The proposed temporary wireless facility will be removed within 30 days after the Director grants the temporary wireless permit, or such longer time as the Director finds reasonably related to the applicant’s need or purpose for the temporary wireless facility; and
   h. The applicant has not been denied a wireless permit for any permanent wireless facility in the same or substantially the same location within the previous 365 days.

B. Temporary Wireless Facilities for Emergencies. Temporary wireless facilities may be placed and operated within the City without a temporary wireless permit only when a duly authorized Federal, State, County or City official declares an emergency within a region that includes the City in whole or in part. Any temporary wireless facilities placed pursuant to this section must be removed within 15 days after the date the emergency is lifted, as determined by the City Council. Any person or entity that places temporary wireless facilities pursuant to this section must send a written notice that identifies the site location and person responsible for its operation to the Director as soon as reasonably practicable and prior to any actual placement of the facilities. The Director, or a designee, may modify or disallow the placement of the temporary wireless facilities as is needed to ensure public health and safety and when it is in the best interest of the City.

8.36.130 Breach; Termination of Permit.

A. For breach. A wireless permit may be revoked by the Director for failure to comply with the conditions of the permit or applicable law. Upon revocation, the wireless facility must be removed within the time frame designated by the City; provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the
revocation and removal shall be paid by entities who own or control any part of the wireless facility.

B. For installation without a permit. A wireless facility installed without a wireless permit (except for those exempted by this Chapter) must be removed; provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.

C. Municipal Infraction. Any violation of this Chapter will be subject to the same penalties as a violation of the San Bruno Municipal Code Title 5 Nuisances – Chapter 5.08 Enforcement, Nuisance Abatement and Cost Recovery.

8.36.140 Special Provisions for Section 6409 Approvals.

A. Applicability. This section applies to all eligible facilities requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station located in the public rights-of-way submitted pursuant to Section 6409.

B. Additional Section 6409 Definitions. In addition to the definitions in Section 8.36.020, the abbreviations, phrases, terms and words used in this section will have the following meanings assigned to them unless context indicates otherwise. In the event that any definition assigned to any phrase, term or word in this section conflicts with any Federal or State-mandated definition, the Federal or State-mandated definition will control.

1. “Eligible facilities request” means the same as defined by the FCC in 47 C.F.R. § 1.6100(b) (3), as may be amended.
2. “Eligible support structure” means the same as defined by the FCC in 47 C.F.R. § 1.6100(b) (4), as may be amended.
3. “Existing” means the same as defined by the FCC in 47 C.F.R. § 1.6100(b) (5), as may be amended.
4. “Site” means the same as defined by the FCC in 47 C.F.R. § 1.6100(b) (6), as may be amended.
5. “Substantial change” means the same as defined by the FCC in 47 C.F.R. § 1.6100(b) (7), as may be amended.

C. Required Approval. Eligible facilities requests shall require an administrative approval in such form determined by the Director consistent with all valid and enforceable terms and conditions of the underlying permit or other prior regulatory authorization for the tower or base station. Each application for approval of an eligible facilities request shall be subject to the Director’s review and approval, conditional approval or denial pursuant to the standards and procedures in this section.

D. Decisions.

1. Administrative Review. The Director shall administratively review applications for approval of an eligible facilities request, and may act on such application without prior notice or a public hearing.
2. Decision Notices. The Director shall send a written notice of decision to the applicant before the Section 6409 FCC shot clock expires. In the event that the Director denies the application, the written notice to the applicant must contain: (a) the reasons for the decision; and (b) a statement identifying the applicable FCC shot clock.
3. **Required Findings for Approval.** The Director may approve or conditionally approve any application for approval of an eligible facilities request when the Director finds that the proposed project:
   a. Involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station;
   b. Does not substantially change the physical dimensions of the existing wireless tower or base station; and
   c. Remains in compliance with all applicable FCC RF standards.

4. **Criteria for Denial.** Notwithstanding any other provision in this chapter, and consistent with all applicable Federal laws and regulations, the Director may deny any application for approval of an eligible facilities request when the Director finds that the proposed project:
   a. Does not meet the findings required in subsection (d)(3);
   b. Involves the replacement of the entire support structure; or
   c. Violates any legally enforceable law, regulation, rule, standard or permit condition reasonably related to public health or safety.

5. **Conditional Approvals.** Subject to any applicable limitations in Federal or State law, nothing in this section is intended to limit the Director’s authority to conditionally approve an eligible facilities request to protect and promote the public health and safety.

**SECTION 3. NO MANDATORY DUTY OF CARE.** This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or parties within the city or outside of the city, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

**SECTION 4. CONSTITUTIONALITY; SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, invalid or ineffective by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

**SECTION 5. CEQA EXEMPTION.** The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3) and 15378 (b) (5), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project that has the potential for causing a significant effect on the environment. The Council therefore directs that the Planning Division may file a Notice of Exemption with the San Mateo County Clerk.

**SECTION 6. EFFECTIVE DATE.** This Ordinance shall take effect thirty (30) days from and after the date of its adoption.

**SECTION 7. PUBLICATION.** The City Clerk is directed to cause publication of this Ordinance as required by law.
I hereby certify that the foregoing Ordinance No. 2019-_______ was introduced on ________, and adopted at a regular meeting of the San Bruno City Council on ____________, by the following vote:

AYES: COUNCILMEMBERS:_____________________________________

NOES: COUNCILMEMBERS:_____________________________________

ABSENT: COUNCILMEMBERS:_____________________________________
RESOLUTION NO. 2019-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO ADOPTING DESIGN AND SITING GUIDELINES, ENGINEERING DESIGN STANDARDS, AND STANDARD CONDITIONS OF APPROVAL FOR SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND WITHIN UTILITY EASEMENTS IN PUBLIC AND PRIVATE PROPERTIES

WHEREAS, it is in the public interest for the City to establish reasonable, uniform and comprehensive design and siting guidelines, engineering design standards, and conditions of approval for the installation of small wireless facilities in response to Federal and California State law and FCC Order 18-133 which permits wireless infrastructure deployment through relaxation of barriers, affecting the local permit process; and

WHEREAS, the design and siting guidelines, engineering design standards, and conditions of approval provide greater direction and assure a degree of consistency in the small wireless facility design and configuration; and

WHEREAS, the design and siting guidelines, engineering design standards, and conditions of approval would not increase impediments for the installation of small wireless facilities under Federal Telecommunications Act of 1996 but illustrate the desired level of design quality and configuration of any proposed small wireless facility; and

WHEREAS, the adoption of design and siting guidelines, engineering design standards, and conditions of approval by resolution will increase administrative efficiencies should future amendments to them become necessary; and

WHEREAS, Title 8 of the City’s Municipal Code governs the permitting, installation, and regulation of obstructions within the City’s public rights-of-way (ROW) and within utility easements in public and private properties; and

WHEREAS, the City’s public rights-of-way and utility easements are a uniquely valuable public resource, closely linked with the City’s character, making the regulation of small wireless facilities in the public rights-of-way and within utility easements in public and private properties necessary to protect and preserve the aesthetics of the community; and

WHEREAS, being authorized to do so, the City wishes to establish design and siting guidelines, engineering design standards and standard conditions of approval applicable to small wireless facilities in the public rights-of-way and within utility easements in public and private properties; and
WHEREAS, these guidelines and standards contained are intended to, and should be applied to, protect and promote public health, safety and welfare, and also balance the benefits that flow from robust, advanced wireless services with the City's local values, which include, without limitation, the aesthetic character of the City, its neighborhoods and community; and

WHEREAS, these guidelines and standards are also intended to reflect and promote the community interest by: (1) ensuring that the balance between public and private interest is maintained on a case-by-case basis; (2) protecting the City’s visual character from potential adverse impacts or visual blight created or exacerbated by small wireless facility infrastructure; (3) protecting and preserving the City’s environmental resources; and (4) promoting access to high-quality, advanced wireless services for the City’s residents, businesses and visitors; and,

WHEREAS, on [Date] the City Council conducted a duly noticed public meeting and received testimony from City staff and all interested parties regarding the design and siting guidelines; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San Bruno as follows:

SECTION 1. INCORPORATION OF RECITALS. The recitals above are each incorporated by reference and adopted as findings of the City Council.

SECTION 2. DEFINITIONS. The definitions set forth in Section 8.36.020 of the Municipal Code are incorporated by reference into this Resolution.

SECTION 3. BACKGROUND AND PURPOSE. The City of San Bruno is establishing these Design and Siting Guidelines and Engineering Design Standards for small wireless facilities in the public right-of-way and within utility easements in public and private properties in order to regulate the design and placement of this infrastructure.

These Design and Siting Guidelines provide objective aesthetic design and siting requirements that all wireless facilities installed within the public right-of-way and utility easements in public and private properties must meet for approval by the City.

Only small wireless facilities as defined in 47 C.F.R. § 1.6002(l) (also referred to as “small cells”) that meet the requirements of these guidelines are subject to these guidelines. Three different types of small wireless facilities are permitted in San Bruno within the public right-of-way and within utility easements in public and private properties. The types include (1) attachments to wooden (or other material) utility poles and utility lines, (2) placement on streetlights and traffic signal control poles, and (3) new freestanding poles. An overview of the guidelines that apply to each type of facility is presented in Section 4.
SECTION 4: Design Guidelines Applicable to all Small Wireless Facilities.

To ensure minimizing visual impacts, small wireless facilities should be placed as follows:

a. Installations should conceal to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses with regard to appearance, size, and location.

b. All equipment and antenna should be shrouded and where possible behind any street signs located on the pole.

c. Only one small wireless facility is permitted per structure.

d. Installations should be located on poles that are located outside of driveway and intersection sight lines. Where feasible, installations shall be located on poles that are located as close as feasible to shared property lines between two adjacent lots and not directly in front of residences and businesses.

e. Equipment should be located entirely on the pole in a vertical arrangement. Exterior mounted accessory equipment should be within a single shroud not to exceed 9 cubic feet in volume (exclusive of the concealing elements like shrouding). Required meters and disconnect switches that are infeasible to be shrouded for safety and/or accessibility reasons are excluded from this shrouding recommendation.

f. Ground-mounted equipment may be permitted in locations that do not obstruct pedestrian or vehicular traffic and within a reasonable distance from the pole. Ground-mounted equipment is not permitted if the approval authority finds that the above-ground equipment would unreasonably interfere with the public’s ability to use the right-of-way for uses that include without limitation travel, social, expressive and/or aesthetic uses. The approval authority may condition approval based on new or enhanced landscaping to conceal ground-mounted equipment.

g. All equipment (other than the antenna, antenna supports, ancillary wires, cables and any electric meter) should be installed underground in any area where the existing utilities are not primarily located above ground.

h. All cables, wires and other connectors should be routed through conduits within poles whenever possible, and all external conduits, conduit attachments, cables, wires and other connectors must be concealed from public view.
i. All wireless facilities must include signage that accurately identifies the equipment owner/operator, the site name or identification number and a toll-free number to the owner/operator’s network operations center. Wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under existing and future FCC or other United States governmental agencies for compliance with RF emissions regulations. RF notification signs should be placed where appropriate, and not at pedestrian eye level, unless required by the FCC or other regulatory agencies.

j. Facilities should use PG&E Smart Meters or flat-rate billing. Ground-mounted electric meters are prohibited.

k. Small wireless facilities shall not be located on decorative streetlights.

l. Small wireless facilities should not be installed such that the facility damages existing trees. The approval authority may condition approval based on tree assessment results provided by a certified arborist. If pruning is required for the installation, a separate permit must be obtained from Community Services.

m. Wireless facilities and all accessory equipment and transmission equipment must comply with all noise regulations and shall not exceed, either individually or cumulatively, the applicable ambient noise level standards in San Bruno Municipal Code Chapter 6.16 Noise Regulations.

n. Pole heights shall be minimized, but in no case shall the maximum height of any facilities exceed 50 feet). Legally required lightning arresters and beacons shall be included when calculating the height of facilities. Pole height is measured from the top of foundation, which should be flushed with the ground, to the top of pole or top of antenna, whichever is greater.

o. Wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. All wireless facilities shall be constructed from graffiti-resistant materials. The approval authority may require additional concealment elements as the approval authority finds necessary to blend the security measures and other improvements into the natural and/or built environment. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures.

p. All wireless facilities shall not interfere with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure or any other public health or safety facility.
No person shall install, use or maintain any facilities (in whole or in part) that rest upon, in or over any public right-of-way, when such installation, use or maintenance: (1) endangers or is reasonably likely to endanger the safety of persons or property, or (2) when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or (3) when such facilities unreasonably interfere with or unreasonably impede the flow of pedestrian or vehicular traffic, including any legally parked or stopped vehicle, ingress into or egress from any residence or place of business, use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture and/or other objects permitted at or near the location where the wireless facilities are located.

SECTION 5: Design Guidelines Applicable to Small Wireless Facilities on Wooden (or other material) Utility Poles and Utility Lines.

a. All installations on utility poles and utility lines shall fully comply with the California Public Utilities Commission (CPUC) general orders (GOs), including, but not limited to, GO 95. None of the following design guidelines are meant to conflict with or cause a violation of GO 95, including, but not limited to, its guidelines for a safe installation on a utility pole. Accordingly, size limits can be adjusted at the Director's discretion to ensure compliance with CPUC rules on safety.

b. All wireless facility equipment installed on poles should be completely contained within equipment shroud. Equipment shroud and lines should be painted, treated or finished to match existing utility pole and line aesthetics. Utility line installations should be colored to a non-reflective color.

c. The top of the antenna if top mounted should be no higher than 48” above the minimum separation from supply lines required by GO 95, exclusive of the required antenna mounting bracket. The antenna should be shrouded.

d. The extension of the antenna if side mounted should extend no more than 48” from the circumference of the pole.

e. Only one equipment shroud, containing all required accessory equipment, should be installed per pole. Outer edge of equipment shroud should project no more than 44" 18" off the pole circumference and measure no more than nine cubic feet in size.

f. All antennas should be shrouded. Antenna shroud should have an outer diameter of 44" 15" or less and measure no more than five cubic feet in size. The shroud should be no more than 4 feet tall, including antenna, radio head, mounting bracket, and all other hardware necessary for a complete installation.
g. Antenna shroud should be no more than 30 percent greater in diameter than the utility pole it is attached to, exclusive of the pole mounting device, and the transition between the pole and the shroud should be tapered where feasible.

h. All cables, wires, and other connectors should be hidden within conduits that are painted, treated or finished to match existing utility pole aesthetics in finish and color.


a. Equipment should be painted, treated or finished to match existing streetlight pole and traffic signal control pole aesthetics and materials in finish and color.

b. The antenna should be mounted at the top of the streetlight pole or traffic signal control pole where the arm extends from the pole where feasible. The top of the antenna if top mounted should be no higher than 48” above the top of the existing pole.

c. All antennas should be shrouded. Antenna shroud should have an outer diameter of 1415” or less and measure no more than five cubic feet in size. The shroud should be no more than 4 feet tall, including antenna, radio head, mounting bracket, and all other hardware necessary for a complete installation.

d. Antenna shroud should be no more than 30 percent greater in diameter than the streetlight or traffic signal control pole it is attached to and the transition between the pole and the shroud should be tapered.

e. All cables, wires, and other connectors should be hidden within the base and shaft of the streetlight or traffic signal control pole. Where this is not feasible, the equipment should be installed in an underground vault.

SECTION 7: Design Guidelines Applicable to Small Wireless Facilities on New Poles

a. New poles are only permitted if: (a) the applicant demonstrates that above-ground support structures near the project site either do not exist or are not reasonably available to the applicant; or (b) the City specifically finds that a new, non-replacement support structure would be more aesthetically desirable and consistent with the objectives of these Guidelines than installations on existing structures near the project site.
b. New poles within open space areas should be designed to resemble trees. The species of tree design should be similar to those found within the vicinity of the open space.

c. Poles not located within open space areas should be designed to resemble existing standalone streetlights in the vicinity.

d. Poles should have a maximum diameter of 20 inches and should be tapered toward the top wherever possible.

e. When technically feasible, all antennas and associated equipment shall fit within the diameter of the poles with no exterior wires or conduit. If all antennas and equipment cannot fit within the pole for technical reasons, then the installation shall be subject to the standards above.

f. Pole material and finishes should match the existing materials of the City standard streetlight poles or match aesthetics and materials of existing decorative poles.

g. Pole heights shall be minimized, but in no case should the maximum height of any facilities exceed 50 feet. Legally required lightning arresters and beacons should be included when calculating the height of facilities. Pole height is measured from the top of foundation, which should be flushed with the ground, to the top of antenna or top of highest pole attachment, whichever is greater.

h. Antennas should be mounted on the top of the pole.

i. Relocated poles may be subject to guidelines in this section and their respective pole type section.

SECTION 8: Siting Guidelines for Small Wireless Facilities

a. Preferred Siting Locations. When evaluating compliance with this chapter, the approval authority will take into account whether any or more preferred locations are technically feasible and potentially available. All applicants for a small wireless facility permit must propose new wireless facilities in locations within the public rights-of-way or utility easements in public and private properties according to the following preferences, ordered from most preferred to least preferred:

(1) Industrial and Combining Industrial districts;
(2) Community Office or Administrative and Research districts;
(3) Planned Development districts with non-residential uses;
(4) Specific plan or transit-oriented development districts;
(5) Central Business districts;
(6) General Commercial, Neighborhood Commercial and Limited Commercial Combining districts;
(7) Open space and conservation districts;
(8) Planned Development districts with residential uses;
(9) Medium-density residential districts with multi-family (medium or high density) residential uses;
(10) Low-density residential districts with single-family or two-family residential uses.

b. Preferred Support Structures. When evaluating compliance with this chapter, the approval authority will take into account whether any or more preferred support structures are technically feasible and potentially available. All applicants for small wireless facilities must propose new wireless facilities on support structures within the public rights-of-way according to the following preferences, ordered from most preferred to least preferred:

(1) New facilities on existing utility poles or support structures;
(2) New facilities on existing or replacement streetlights or new or replacement traffic signal control poles;
(3) New facilities on new standalone support structures.

c. Facilities shall not be located in front of business windows, primary walkways, primary entrances or exits, or in such a way that it would impede a delivery to the building.

d. Facilities should be located near shared property lines between two adjacent lots as much as possible or along a secondary rear property street frontage.

e. Mid-block locations are preferred instead of at more visible corners and street intersections except if proposed on traffic signal control poles.

f. New poles should be located in the parkway strip whenever possible and in alignment with existing trees, utility poles, and streetlights.

g. New poles should be an approximately equal distance between trees when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.

h. A small wireless facility should be no closer than 300 feet away, radially, from another small wireless facility.
SECTION 9: Engineering Design Standards Applicable to all Small Wireless Facilities.

The following engineering design standards apply:

a. Separation of service should be provided by installing all new electrical conduit(s) or utilizing existing empty conduit(s) with conduit owner’s expressed consent in writing.

b. Disconnect switch should be mounted on the pole. Bottom of disconnect switch should measure 10 feet above grade.

c. All equipment, including the shroud, should be mounted to provide seven feet of clearance from the ground.

d. For proposed facilities on streetlight or traffic signal control poles, a hand hole should be provided at the top of the pole to maintain fiber and electrical service for streetlights and future attachments.

e. Pole foundation calculations should be prepared and stamped by a California professionally licensed structural engineer and should be provided to City for review. Pole foundation calculations should account for all new and existing pole attachments and the pole.

f. Pole structural calculations, including seismic loads, showing the load impacts of the wireless facility on City streetlight and traffic signal control poles should be prepared and stamped by a California professionally licensed structural engineer and should be provided to City for review.

g. Design wind velocity should be 115 mph minimum per TIA-222 rev G, IBC 2012 with ASC 710, and amendments for local conditions.

h. For new freestanding poles, install eight 2-inch PVC (Schedule 40 or better) conduit sweeps to accommodate small wireless facilities (electrical and fiber) with up to four separate sweeps for future service.

SECTION 10: Conditions of Approval

Standard Conditions for Wireless Facility Permits Pursuant to San Bruno Municipal Code Chapter 8.36. In addition to all other conditions adopted by the approval authority, all wireless permits, whether approved by the approval authority or deemed approved by the operation of law, shall be automatically subject to the conditions in this section. The approval authority (or the appellate authority on appeal) shall have discretion to modify or amend these conditions on a case-by-case basis as
may be necessary or appropriate under the circumstances to protect public health and safety or allow for the proper operation of the approved facility consistent with the goals and applicable provisions of San Bruno Municipal Code Chapter 8.36.

All wireless facilities, whether approved by the approval authority or deemed approved or deemed granted by law shall be automatically subject to the following standard conditions of approval:

1. **Permit Term.** This permit will automatically expire 10 years and one day from its issuance if a new permit has not been applied for in writing at least 120 days prior to permit expiration, except when California Government Code § 65964(b), as may be amended or superseded in the future, authorizes the City of San Bruno (“City”) to establish a shorter term for public safety or substantial land use reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.

2. **Compliance with Approved Plans.** Before the Public Works Department issues any encroachment permit and/or other ministerial permits required to commence construction in connection with this permit, the Permittee must incorporate this permit, all conditions associated with this permit and the approved photo simulations into the project plans (the “Approved Plans”). The Permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the Permittee or required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Public Works Director’s (“Director’s”) prior review and approval, who may refer the request to the original approval authority if the Director finds that the requested alteration, modification or other change substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.

3. **Post-Installation Certification.** Within 60 calendar days after the Permittee commences full, unattended operations of a wireless facility approved or deemed-approved under San Bruno Municipal Code Chapter 8.36, the Permittee shall provide the Director with documentation reasonably acceptable to the Director that the wireless facility has been installed and/or constructed in substantial compliance with the Approved Plans. Subject to the Director’s discretion, such documentation may include, but shall not be limited to, as-built drawings, site surveys, GIS data and site photographs.
4. **Timing of Installation.** The installation and construction authorized by a wireless facility permit shall begin within one (1) year after its approval, or it will expire without further action by the City. The installation and construction authorized by a wireless facility permit shall conclude, including any necessary post-installation repairs and/or restoration to the right-of-way and/or public utility easement, within thirty (30) days following the day construction commenced.

5. **Maintenance Obligations; Vandalism.** The Permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the Approved Plans and all conditions in this permit. The Permittee shall keep the site area free from all litter and debris at all times.

The Permittee shall remove and remediate any graffiti on the facility within 24 hours of being notified of its appearance. This condition also gives the City of San Bruno consent to have the graffiti painted out for the permittee. If the graffiti is not removed within 24 hours of being notified, the City’s graffiti removal vendor will be instructed to remove the graffiti and provide a detailed accounting of the cost to the property owner, who will be responsible for reimbursing the City for the graffiti removal.

6. **Compliance with Laws.** The Permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“Laws”) applicable to the Permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this permit, which includes without limitation any Laws applicable to human exposure to radio frequency (“RF”) emissions. The Permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the Permittee’s obligations to maintain compliance with all Laws. In the event that the City fails to timely notice, prompt or enforce compliance with any applicable provision in the San Bruno Municipal Code, any permit, any permit condition or any applicable law or regulation, the applicant or Permittee will not be relieved from its obligation to comply in all respects with all applicable provisions in the San Bruno Municipal Code, any permit, any permit condition or any applicable law or regulation.

7. **RF Exposure Compliance.** All facilities must comply with all standards and regulations of the Federal Communications Commission (“FCC”) and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, Permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance
with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.

8. **Adverse Impacts on Other Properties.** The Permittee shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the Permittee’s or its authorized personnel’s construction, installation, operation, modification, maintenance, repair, removal and/or other activities at the site. The Permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the San Bruno Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City. The Director or the Director’s designee may issue a stop work order for any activities that violates this condition.

9. **Backup Power; Generators.** The Permittee shall operate backup power generators only during (a) commercial power outages or (b) for maintenance purposes during normal construction hours in accordance with the San Bruno Municipal Code. The Director may approve a temporary power source and/or generator in connection with initial construction, major repairs or in the event of an emergency. The Permittee shall not operate any permanent backup generators located in the public right-of-way or public utility easement.

10. **Inspections; Emergencies.** The Permittee expressly acknowledges and agrees that the City’s officers, officials, staff or other designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the Permittee, or at any time during an emergency. The City’s officers, officials, staff or other designee may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The Permittee, if present, may observe the City’s officers, officials, staff or other designee while any such inspection or emergency access occurs.

11. **Permittee’s Contact Information.** The Permittee shall furnish the Director with accurate and up-to-date contact information for a person responsible for the wireless facility, which includes without limitation such person’s full name, title, direct telephone number, facsimile number, mailing address and email address. The Permittee shall keep such contact information up-to-date at all times and
immediately provide the Director with updated contact information in the event that either the responsible person or such person’s contact information changes.

12. **Indemnification.** The Permittee shall defend, indemnify and hold harmless the City, City Council and City boards, commissions, agents, officers, officials, employees and volunteers from any and all (1) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("Claims") brought against the City or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the City’s approval of this permit, and (2) other Claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the Permittee's or its agents’, directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this permit or the wireless facility. In the event the City becomes aware of any Claims, the City will use best efforts to promptly notify the Permittee and shall reasonably cooperate in the defense. The Permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City’s defense, and the property owner and/or Permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The Permittee expressly acknowledges and agrees that the Permittee’s indemnification obligations under this condition are a material consideration that motivates the City to approve this permit, and that such indemnification obligations will survive the expiration or revocation of this permit.

13. **Performance Bond.** Before the Public Works Department issues any encroachment permit and/or other ministerial permits required to commence construction in connection with this permit, the Permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code §65964(a), the Director shall take into consideration any information provided by the Permittee regarding the cost to remove the wireless facility to a standard compliant with applicable laws. The performance bond shall expressly
survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility in accordance with this condition.

14. **Recall to Approval Authority; Permit Revocation.** The approval authority may recall this permit for review at any time due to complaints about noncompliance with applicable laws or any approval conditions attached to this permit. At a duly noticed public hearing and in accordance with all applicable laws, the approval authority may revoke this permit or amend these conditions as the approval authority deems necessary or appropriate to correct any such noncompliance.

15. **Record Retention.** The Permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the Permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the Permittee. The Permittee may keep electronic records; provided, however, that hard copies or electronic records kept in the City’s regular files will control over any conflicts between such City-controlled copies or records and the Permittee’s electronic copies, and complete originals will control over all other copies in any form.

16. **Undergrounded Utilities.** In the event that other public utilities or cable television operators in the public right-of-way underground their facilities where the Permittee’s wireless facility is located, the Permittee must underground its equipment except the antennas and antenna supports. Such undergrounding shall occur at the Permittee’s sole cost and expense except as reimbursed pursuant to law.

17. **Electric Meter Removal.** In the event that the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the Permittee on its own initiative and at its sole cost and expense shall apply to the City for permission to remove the separate or ground-mounted electric meter and enclosure and restore the affected area to its original condition.

18. **Rearrangement and Relocation.** The Permittee acknowledges that the City, in its sole discretion and at any time, may: (1) change any street grade, width or location; (2) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes,
cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (3) perform any other work deemed necessary, useful or desirable by the City (collectively, “City Work”). The City reserves the rights to do any and all City Work without any admission on its part that the City would not have such rights without the express reservation in this permit. In the event that the Director determines that any City Work will require the Permittee’s facility to be rearranged and/or relocated, the Permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the Permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the Permittee’s facility within a reasonable time after the Director’s notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the Permittee’s sole cost and expense. The City may exercise its rights to rearrange or relocate the Permittee’s facility without prior notice to Permittee when the Director determines that the City Work is immediately necessary to protect public health or safety. The Permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs is provided. In addition, the Permittee shall indemnify, defend and hold the City, its agents, officers, officials, employees and volunteers harmless from and against any Claims in connection with rearranging or relocating the Permittee’s facility, or turning on or off any water, oil, gas, electricity or other utility service in connection with the Permittee’s facility.

19. **Damage to Public Property.** The Permittee shall promptly restore the surface or subsurface of the right-of-way or public property and/or repair or replace the surface, subsurface, and/or public improvement thereon, therein, or thereunder, in as good a condition as before in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer for damage or disturbance caused by the wireless facilities. If Permittee does not repair the damage or disturbance as just described, then City shall have the option, upon fifteen (15) days prior written notice to Permittee, to perform or cause to be performed such reasonable and necessary work on behalf of Permittee and to charge Permittee for the actual and reasonable costs incurred by the City at City’s standard rates.

a. **Exception.** If the damage or disturbance caused by the wireless facilities present a public safety or hazardous concern as deemed by the City Manager, Fire Chief, police Chief, City Engineer, or Public Works Director or designee, the City reserves the right to make repairs immediately and to charge Permittee for all actual and reasonable costs incurred by the City. City shall have the right to disable, alter, relocate, sever, disrupt, remove, tear out, dig-up, or otherwise damage wireless facilities of Permittee. City shall inform Permittee of any actions taken and Permittee
shall remove its equipment. Notwithstanding the above, before any such actions are taken, the City shall notify Permittee to give notice of the emergency or immediate hazard or dangerous condition.

i. In the event of an action taken by City, neither the City nor any agent, Contractor, or employee of the City shall be liable to Permittee or its Contractors or its customers or other third parties for any harm so caused to them by the reasonable actions of the City or its agents, Contractors, or employees in responding to such public hazard or dangerous condition. When practical and if possible, City will consult with Permittee in advance to assess the necessity of such actions and to minimize, to the extent practical under the circumstances, damage to and disruption of either the public property involved or the wireless facilities involved. Following notice from the City, Permittee shall reasonably cooperate with the City, at no expense to City, to remedy the hazard and secure the route area.

ii. In the event of an emergency discovered by the Permittee, Permittee shall notify the City immediately.

20. Public Emergency Disruption. In the event of a public emergency, the City will have the right to immediately perform, without prior written notice to Permittee, reasonable and necessary work on behalf of Permittee to repair and return public property to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. The City shall provide written notice to Permittee of the repairs as soon as practicable after the work has begun. Permittee agrees that any severed City-owned Conduit and/or fiber must be completely repaired or replaced to the nearest splice point. If the City needs to perform any part of the necessary repairs, relocation, and/or removal work, it shall be entitled to seek payment for such actual and reasonable repairs, relocation, and/or removal costs from Permittee and may draw upon a performance bond and/or Deposit in full or partial satisfaction of such costs, if payment is not made by Permittee. The Public Works Director or their designee shall have the authority to designate a public emergency, in addition to the provisions in Chapter 8.36 of the San Bruno Municipal Code.

21. Pavement. For any pavement cuts by Permittee, Permittee agrees to restore the pavement in as good a condition as or better than before to the satisfaction of the City Engineer and to reimburse the City for all actual and reasonable costs arising from the restoration. Additional conditions will be applied to permits where street excavations are proposed for roadways overlaid with asphalt concrete within the previous five years or for roadways that have received a seal coat within two years, up to and including repaving of half or full width of roadway.
Facilities installation and repairs shall be planned well enough in advance to avoid excavating in newly resurfaced roadways.

19.22. **Landscaping.** The Permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the Permittee or at the Permittee’s direction on or about the site. In the event that any trees are damaged or displaced, the Permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only ISA Certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). The box size and other standards for any replacement trees shall be subject to the Director’s approval in consultation with the licensed arborist. The Permittee shall, at all times, be responsible to maintain any replacement landscape features.

23. **Demand for Payment.** Upon the receipt of a demand for payment by City, Permittee shall promptly reimburse City for actual and reasonable costs. Failure to pay will entitle the City to draw upon the performance bond and/or deposit within thirty (30) days of the demand for payment.

20.24. **Encroachment Permit General Conditions.** Encroachment Permits shall be obtained by the Permittee pursuant to San Bruno Municipal Code Chapter 8.16. The Permittee shall comply with the City of San Bruno’s Encroachment Permit General and Special Conditions.

21.25. **Building Permit Requirement.** A building permit shall be obtained by the Permittee pursuant to San Bruno Municipal Code Title 11 for small wireless facilities within utility easements in public and private properties.

22.26. **Insurance Requirements.** Commercial general liability (or comprehensive) and property damage insurance indicating the City of San Bruno as an additional insured is required.

Coverage shall be at least as broad as:

i. Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than $2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
ii. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than $1,000,000 per accident for bodily injury and property damage.

iii. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.

If the contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the contractor.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status
The City, its elected and appointed officials, employees, and agents are to be covered as insureds on the auto policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and on the COL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage
For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, or agents shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation
Each insurance policy required above shall provide that coverage shall not be canceled except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the City.

Waiver of Subrogation
Contractor hereby grants to City a waiver of any right to subrogation, which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance.

Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions
Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers
Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage
Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor’s obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

23.27. Public Noticing. All residences and/or businesses impacted by project construction are to be notified in writing at least 48 hours in advance describing work schedule, including dates, time frames, and on-site project manager name and cell phone number prior to commencing work.


25.29. Traffic Control Plans (“TCPs”). Site-specific TCP’s are required to be submitted for review a minimum of ten (10) business days prior to the scheduled start date. TCP’s shall be signed by California licensed traffic engineer.
26-30. **Underground Service Alert (USA).** Forty-eight (48) hours before commencing work, the Permittee shall contact Underground Service Alert (USA) at 1-800-227-2600 to verify elevations and locations of all existing utilities.

27-31. **Private Sewer Laterals and Water Services.** The City of San Bruno does not mark private sewer laterals or water services in the public right-of-way or public utility easement as part of the Underground Service Alert (USA) program. Permittee is to take precautions to locate and protect private sewer laterals and water services from damage during construction. In the event any sewer lateral damage is discovered, the Permittee is required to immediately dig and repair the sewer lateral to restore sewer service. In the event any water service damage is discovered, the Permittee shall immediately contact the City’s Water Division at 650-616-7160 to coordinate the repair work. The Permittee shall reimburse the City for all costs and expenses in connection with damage repair work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs is provided. If new facilities are being installed by the boring method the Permittee is also required to video inspect any sewer and storm mains that are crossed by their facilities as part of this project, a copy of this video is to be provided to the City.

28-32. **Commencement of Operations.** The operation of the approved facility shall commence no later than one (1) month after the completion of installation, or the wireless facility permit will expire without further action by the City.

29-33. **Noninterference.** Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a wireless facility permit, the Permittee shall provide the City with documentation establishing to the City’s satisfaction that the Permittee has the legal right to use or interfere with any other structure, improvement, or property within the public right-of-way or public utility easement to be affected by Permittee's facilities.

30-34. **No Right, Title, or Interest.** The permission granted by a wireless facility permit shall not in any event constitute an easement on or an encumbrance against the public right-of-way or public utility easement. No right, title, or interest (including franchise interest) in the public right-of-way or public utility easement, or any part thereof, shall vest or accrue in Permittee by reason of a wireless
encroachment permit or the issuance of any other permit or exercise of any privilege given thereby.

31. **No Possessor Interest.** No possessory interest is created by a wireless facility permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that City has given to Permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a wireless facility permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interact taxes or other taxes, fees, and assessments levied against Permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this permit.

32. **Agreement with City.** If not already completed, Permittee shall enter into the appropriate agreement with the City, as determined by the City, prior to constructing, attaching, or operating a facility on Municipal Infrastructure. This permit is not a substitute for such agreement.

33. **Abandonment.** If a facility is not operated for a continuous period of 6 months, the wireless facility permit and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the 6 month period (i) the approval authority has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No later than ninety (90) days from the date the facility is determined to have ceased operation or the Permittee has notified the approval authority of its intent to vacate the site, the Permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the approval authority. The Permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at Permittee’s expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned, but will not be effective for the entirety thereof until all users cease use thereof.

34. **Attorney’s Fees.** In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the Permittee shall be required to pay any and all
costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with Permittee to waive said fees or any part thereof. The foregoing shall not apply if the Permittee prevails in the enforcement proceeding.

B. Standard Conditions for Section 6409 Approvals. In addition to the conditions provided in Section A of these Standard Conditions of Approval and any supplemental conditions imposed by the approval authority (or the appellate authority on appeal), as the case may be, all permits for Section 6409 Approvals granted pursuant to these Standards shall be subject to the following additional conditions, unless modified by the approving authority:

1. **Permit Subject to Conditions of Underlying Permit.** Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.

2. **No Permit Term Extension.** The City's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City's grant or grant by operation of law of an eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.

3. **No Waiver of Standing.** The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

C. Small Wireless Facilities Requests. In addition to the conditions provided in Section A of these Standard Conditions of Approval and any supplemental conditions imposed by the approval authority (or the appellate authority on appeal), as the case may be, all permits for a small wireless facility granted pursuant to these Standards shall be subject to the following condition, unless modified by the approval authority:

1. **No Waiver of Standing.** The City's grant of a permit for a small wireless facility request does not waive, and shall not be construed to waive, any standing by the City to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.
SECTION 11: If any provision of this Resolution or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the Resolution that can be given effect without the invalid provision or application, and to this extent, the provisions of this Resolution are severable. The City council declares that it would have adopted this Resolution irrespective of the invalidity of any portion thereof.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby adopts the design and siting guidelines and engineering design standards for small wireless facilities in the public right-of-way and within utility easements in public and private properties for the City of San Bruno.

---oOo---

I hereby certify that foregoing Resolution No. 2019 - __ was adopted by the San Bruno City Council at a regular meeting on __, 2019, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

_________________________________
Melissa Thurman, City Clerk
DATE: June 11, 2019

TO: Honorable Mayor and Members of the City Council

FROM: Marc Zafferano, City Attorney


BACKGROUND:

At its meeting on October 9, 2018, the City Council directed staff to work with the City’s code publisher, Quality Code Publishing (“QCP”) to obtain a technical review of the City’s Code, except the Zoning Code which will be reviewed and revised separately, and recommend amendatory actions. It is intended that this comprehensive Municipal Code update occur on an iterative basis. Previously, the City Council adopted amendments to all of Title 1 (General Provisions) and to a portion of Title 2 (Administration and Personnel), specifically Chapter 2.04 (City Council) and Chapter 2.32 (Elections). The amendments contained in this proposed ordinance relate to all of the remaining chapters in Title 2.

DISCUSSION:

Chapter 2.04 (City Council)

As noted above, this Chapter was previously amended, no additional changes are proposed, and it is omitted from the redline version of the ordinance attached.

Chapter 2.06, San Bruno Redevelopment Agency

This chapter is obsolete and is proposed to be repealed. As of February 1, 2012, redevelopment agencies throughout the State ceased to exist. On February 28, 2012, the City of San Bruno adopted a resolution confirming that it would serve as the Successor Agency to the dissolved Redevelopment Agency of effective February 1, 2012 (confirm date) under the general direction of an Oversight Board.

Chapter 2.08, Planning Commission

No substantive changes are proposed to this Chapter.
Chapter 2.12, City Manager

Section 2.05, Secretary. This section regarding staffing in the city manager’s office is updated to reflect current practice that city manager is provided such administrative and other staff as may be required and approved by the city council. This section retains existing law that such positions are not part of the competitive service of the city (also known as “confidential positions”). Compensation is by reference to the city’s compensation system.

Section 2.10.060, Powers and duties. The amendments clarify that pursuant to Government Code section 40602, the city manager may be designated as the official to approve binding contracts.

Section 2.12.080 Ex officio member of boards, etc. This section currently provides that the city manager is an ex officio member of all boards, commissions, and committees appointed by the mayor or the city council. It is recommended that this section be deleted because it does not comport with current or best practices.

2.12.100 City manager not covered by civil service. The amendment updates the wording from “civil service” to “competitive service.”

Chapter 2.16, City Attorney

No substantive changes are proposed to this Chapter.

Chapter 2.20, City Clerk

The chapter is re-organized so that it consistent with other chapters relating to appointed public officials. Also, a section is added that as an appointed official, the city clerk serves at the pleasure of the city council and another section relating to duties clarifies that the city clerk may appoint deputies as authorized by the city council.

Chapter 2.24, City Treasurer

This chapter is recommended for repeal in its entirety because Measure R passed in November 2015 thus changing the position from an elected position to an appointed one. The transfer of duties of the former elected city treasurer are addressed in Chapter 2.28.050 relating to the Finance Director.

Chapter 2.28, Finance Director

Section 2.28.050 Financial and accounting duties of city clerk transferred. This section addressed duties and legal obligations under the Government Code that were transferred from the city clerk to the finance director. New subsection B is proposed to add a similar provision relating to the duties of the former elected city treasurer position,
which became appointive pursuant to Measure R, which passed in November 2015. In addition, the section is re-titled to include a reference both to the city clerk and to the finance director.

Section 2.28.060 Appointment - When city manager shall serve as finance director. A minor wording adjustment is made in this section to comport with current practices - “civil service” is changed to “competitive service”.

Chapter 2.32, Elections

As noted above, this Chapter was previously amended to reflect new state law that required local agencies to hold election in even-numbered years; no additional changes are proposed, and it is omitted from the redline version of the ordinance attached.

Chapter 2.36, Personnel System

Section 2.36.210 (Political Activity) This section is updated to conform to law. The state has declared that the political activities of public employees are of statewide concern and the state pre-empts the area. The state prohibits local public entities from regulating the political activities of public officers or employees, subject to a number of exceptions. (Cal. Gov’t Code §3201, §3203) Specifically, local public entities may prohibit officers and employees from engaging in political activities and from engaging in political activities on the premises of the local agency. (Cal. Gov’t Code §3207)

While local authority is limited in terms of making laws related to employee political activity, the state law is replete with prohibitions with which city employees, public officers, and public officials must comply or face penalties including but not limited to criminal investigation and/or prosecution. Some prohibitions include:

- No using public agency funds or resources to advocate for a partisan position or to support personal political activities (Gov’t Code §54964);
- May not participate in any political activity while in uniform (Gov’t Code §3206);
- May not knowingly, directly or indirectly, solicit a contribution or donation for a political campaign from any city officer or employee (Gov’t Code §3205(a);
- May not use the authority of his or her official position to exert influence or persuade another officer or employee to do or refrain from political action (Gov’t Code §3204);
- May not make promises to provide a person with money, gifts, a promotion, or other compensation in return for a contribution or vote (Gov’t Code §3204; §3205.5, Elections Code §18520);
- May not threaten to take an action against a person in order to secure a contribution or influence a vote (Gov’t Code §3204 and §3205.5; Elections Code §18521 and §18522);
- May not enclose any political argument or statement in a city pay envelope (Elections Code §18542); and
May not take actions that obstruct or corrupt the election process (Elections Code §18501, §8502 §18540)

Chapter 2.40, Peace Officer Standards and Training

No substantive changes are proposed to this Chapter.

Chapter 2.44, Purchasing And Bid Procedures

Staff is proposing several substantial changes to this Chapter to increase staff efficiency and reduce costs associated with constructing public works projects.

As a general law city, San Bruno is required to comply with the Public Contracts Code §20162 requiring a formal advertising and bidding process for public works contracts exceeding $5,000. As part of its effort to streamline processes and utilize best practices, staff has proposed updates to the city’s policy and code relating to purchasing and bidding. Staff recommends that like most cities in San Mateo County and over 1,000 local agencies across California, the city council consider electing to make San Bruno subject to the Uniform Public Construction Cost Accounting Procedures Act (“the Act”).

Enacted in 1983, the Act as set forth in the Public Contracts Code §22000, et seq., allows a local agency to replace the low statutory public works bidding thresholds with higher amounts, provided the agency: (1) opts-in to the requirements of the Act and the procedures adopted by the California Uniform Cost Accounting Commission, (2) informs the State Controller’s Office of such election by resolution, and (3) establishes informal bidding procedures for public project contracts below the Act’s formal bidding threshold.

With the adoption of a proposed resolution (Attachment 2) and ordinance, public projects would follow a different process depending on the value of the contract. For those projects valued at $60,000 or less, also known as “direct hire”, a contract for a public project may be performed by city employees, by force account, by negotiated contract, or by purchase order.

For public projects of $200,000 or less (“informal bidding”), the contract may be let by an informal bidding process that requires an advertising and noticing procedure consistent with Act’s requirements, and which may be awarded by the city manager, subject to the City’s expenditure authority threshold of $75,000. In addition, the city council may on a 4/5ths vote, award a contract at $212,000 to the lowest responsible bidder in an informal bid process if all bids received are in excess of the amount specified in this section and if it determines the cost estimate was reasonable.

Contracts for public projects greater than $200,000 (“formal bidding”), and awarded by the city council, must be procured through a formal procedure prescribed by the Act and which is substantially similar to the city’s current noticing and bidding procedures for projects over $5,000.
In summary, public agencies that voluntarily elect to become subject to the Act benefit from the direct hire account limit and a higher, more realistic threshold for informal bidding. Further, the California Construction Cost Accounting Commission reviews the informal bid limits for inflation and other factors every five years to determine whether an adjustment should be made to the threshold amounts.

The state indicates that the Act’s procedures result in more projects being completed in a timely manner as a result of a streamlined award process for mid- and small-scale projects under $200,000 (or as noted above, $212,000 with a 4/5 City Council vote). The City’s participation will increase efficiency by reducing the staff time and costs associated with the bidding process, but will not change the dollar threshold required for City Council approval, which remains at $75,000 or above. Nor does participation have any impact on projects in excess of the Act’s formal bidding limit, as those will continue to follow the existing formal bidding procedure.

In addition to proposed changes for public project construction bidding, the ordinance modernizes a number of other provisions. It clarifies the contracting procedures for supplies, services, equipment, and technology at different value thresholds while continuing to recognize the benefits of cooperative purchasing (“piggybacking”) as well as exceptions to competitive bidding such as emergency procedures (temporary eliminating competitive bidding during declared emergency), sole source procurement (only one source of supply), and city council discretion to waive a competitive process in the interests of the city when adhering to such a process is counter to the goal of competitive bidding of achieving the best quality at the lowest price.

In addition, the code authorizes design-build when accomplished within the specific requirements set forth in the Public Contract Code. Finally, there is a new section addressing contracts for concessions allowing the city manager or council, depending on contract value, to award to the highest ranked proposer taking into consideration the economic return to the city and other factors.

Chapter 2.46, Procedures for the Disposition of Property

No substantive changes are proposed to this Chapter.

Chapter 2.48 Emergency Preparedness

The history of emergency preparedness ordinances in California dates back to World War II, when the state established “war councils” to assist in scouring the coastline for incoming threats. Having discovered that volunteers were useful in these efforts, the state continued the program, but renamed them “disaster councils” and adapted them more generally for disasters as articulated in Cal. Gov’t Code 8610, and following.
This chapter accordingly provides the authority under which the City of San Bruno responds to disasters, authorizes its emergency plan, and protects itself financially from claims of injured volunteer disaster workers. To be accredited, the City must have its ordinance approved by the state. Long ago, San Bruno took the required steps and its disaster council was first accredited on June 16, 1949. The City also adopted a resolution relative to volunteer workers’ compensation benefits in 1948 and adopted a resolution agreeing to abide by the California Disaster and Civil Defense Master Mutual Aid Agreement in 1950. These documents are elements of compliance with the state’s emergency planning.

In 1999, the City established a disaster council by ordinance (section 2.48.030), consisting of the members of the Emergency Preparedness Committee, later renamed the Community Preparedness Committee, whose volunteer members are appointed by the Mayor and subject to approval by the City Council. Since that time, the state has updated its model emergency ordinance to recommend that individuals in certain positions be designated as the disaster council. These positions include: 1) the Mayor and/or City Manager; 2) the Director of Emergency Services; 3) the assistant Director of Emergency Services; 4) Chiefs of emergency services; and 5) representatives of civic or other organizations as appointed by the disaster council. These positions have been designated because the disaster council’s duties include coordination with state emergency relief efforts, directing the City’s emergency activities, making and issuing rules necessary to respond to the emergency, directing employees of the City, and entering into binding contracts for the provision of emergency services.

To comply with the state’s model ordinance, and in consideration of the scope and nature of the required duties, staff recommends that the City’s disaster council consist of the Mayor, the City Manager, the Chief of Police, and the Fire Chief. The Emergency Preparedness Committee as a whole would continue to serve in an advisory role to the City Council in times of emergency and otherwise, consistent with its adopted bylaws, and the proposed amendments to this Chapter retain all of the Committee’s duties.

The state requires cities to update their ordinances and resolutions in order to maintain accreditation. The state requires that the disaster council meet at least once a year and that the city will abide by the California Emergency Services Act. The Act establishes the Governor’s Office of Emergency Services, which is charged with coordinating statewide emergency preparedness, post disaster recovery, mitigation, and overseeing emergency plans.

In addition, the City must re-authorize and update two resolutions. One resolution provides that the City will abide by the California Disaster and Civil Defense Master Mutual Aid Agreement. The other resolution provides that San Bruno will continue to register Disaster Service Workers (DSW). The DSW resolution, after adoption, protects the city because all such workers, if injured, receive state worker’s compensation rather than the city being potentially liable. Draft resolutions are attached as Attachments 3 and 4.
As required, the City will be sending these documents to the State for review and approval after City Council’s initial review. Staff will return with any changes recommended by the state.

Chapter 2.50, Culture and Arts Commission.

Section 2.12.080 Ex officio member of boards, etc. This section currently provides that the city manager is an ex-officio, non-voting member of the commission and serves as secretary. It is recommended that this section be deleted because it does not comport with current or best practices.

FISCAL IMPACT:

None.

RECOMMENDATION:


ALTERNATIVES:

1. Request additional information before providing direction to staff.

DISTRIBUTION:

None.

ATTACHMENTS:

1. Redline version of amendments to remainder of Title 2
2. Draft Resolution electing to implement the Uniform Public Construction Cost Accounting Act
3. Draft Resolution regarding Master Mutual Aid Agreement
4. Draft Resolution regarding workers compensation benefits for volunteer disaster service workers
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE MUNICIPAL CODE AS PART OF A COMPREHENSIVE UPDATE

WHEREAS, the city adopted a codification of the general ordinances of the city of San Bruno entitled the “San Bruno Municipal Code Revised and Republished December 1998” ("the Municipal Code" or "the Code") which was authorized and approved by Ordinance No. 1604 and adopted January 11, 1999, pursuant to Government Code Sections 50022.1-50022.10;

WHEREAS, since that time, the Municipal Code has been regularly amended and augmented with new ordinances expanding its volume and complexity; and

WHEREAS, at its meeting on October 9, 2018, the City Council directed staff to work with the City’s code publisher, Quality Code Publishing ("QCP") to obtain a technical review of the City’s Code with the purpose of identifying citation conflicts and inconsistencies with state law as well as obsolete provisions, and recommend amendatory actions; and

WHEREAS, in response to the analysis and recommendations of QCP and additional staff recommendations, the City is amending its Code on an iterative basis; and

WHEREAS, the amendments contained in this Ordinance relate to Title 2 (Administration and Personnel) and are generally recommended for reasons of compliance, consistency, citation updates, and/or to reflect current terminology and/or practices.

NOW, THEREFORE, the City Council of the City of San Bruno does ordain as follows:

SECTION 1. Recitals. The above recitals are incorporated as though set forth in this section.

SECTION 2. Editorial guidance. The following non-substantive editorial style is used. Words that are underlined are additions; words with a line through are deleted; and words in [brackets] are instructions for the Code publisher and which instructions are not to be published in the City’s Code unless worded as an “editor’s note”.

In addition, the Code publisher will arrange definitions and other changes alphabetically to conform to the Code’s current style and will, as needed, re-order numbering and lettering changes caused by these amendments. The City Clerk and the City Attorney are authorized to work with the Code Publisher to effectuate non-substantive amendments to ensure consistency as to form and style of the Code.

Further, the code publisher is directed to substitute the name of an office and/or position wherever possible rather than use a gender pronoun without further or formal amendments.

SECTION 3. Title 2, Administration and Personnel, is amended and restated to read, as follows:

TITLE 2
ADMINISTRATION AND PERSONNEL
Chapter 2.04 CITY COUNCIL

This Chapter is omitted because it was previously amended.

Chapter 2.06 SAN BRUNO REDEVELOPMENT AGENCY

2.06.010 Finding.

It is hereby found, determined, and declared that there is a need for an agency, as such “agency” is defined in California Health and Safety Code Section 33003, to function in the city of San Bruno in accordance with the provisions of Part 1, commencing with Section 33000, of Division 24 of the Health and Safety Code of the state of California. (Ord. 1600 § 1, 1998: Ord. 1491 § 1, 1988)

2.06.020 Establishment of agency.

The agency is hereby established pursuant to Section 33101 of the California Health and Safety Code. The agency is hereby authorized to transact business and exercise all powers under provisions of Part 1, commencing with Section 33000, of Division 24 of the Health and Safety Code of the state of California.

The area in which the San Bruno redevelopment agency shall function shall be within the corporate city limits of the city of San Bruno, California. Nothing herein shall prevent the San Bruno redevelopment agency from entering into a joint exercise of powers with one or more agencies or governmental entities. (Ord. 1600 § 1, 1998: Ord. 1491 § 1, 1988)

2.06.030 Name.

The agency established herein is designated as “The San Bruno Redevelopment Agency.” (Ord. 1600 § 1, 1998: Ord. 1491 § 1, 1988)

2.06.040 Designation of San Bruno city council as agency.

The San Bruno city council hereby declares itself to be the San Bruno redevelopment agency pursuant to the provisions of Section 33200 of the California Health and Safety Code.
The city council further declares that all of the rights, powers, duties, privileges, and immunities of Part 1, commencing with Section 33000, of Division 24 of the Health and Safety Code of the state of California are vested in the city council in its independent capacity as the San Bruno redevelopment agency. (Ord. 1600 § 1, 1998: Ord. 1491 § 1, 1988)

2.06.045 Designation—Findings.

Establishment of the San Bruno city council as the San Bruno redevelopment agency is based upon the finding that the San Bruno city council presently has the greatest ability to expedite and facilitate the requirements of Part 1, commencing with Section 33000, of Division 24 of the Health and Safety Code of the state of California consistent with the needs, goals, and objectives of the community.

The city council further finds and determines that the designation of the city council as the redevelopment agency will serve the public interest and promote the public health, safety, and welfare in an effective manner in that this public body is best able to serve the needs of the community to implement the purposes of Part 1, commencing with Section 33000, of Division 24 of the Health and Safety Code of the state of California. (Ord. 1600 § 1, 1998: Ord. 1491 § 1, 1988)

2.06.050 Salary of agency members.

The members of the San Bruno redevelopment agency shall receive no compensation for the office of agency board member, however, members shall receive their actual and necessary expenses incurred in the discharge of their duties. (Ord. 1600 § 1, 1998: Ord. 1491 § 1, 1988)

2.06.060 Executive director of agency.

The executive director of the San Bruno redevelopment agency shall be the city manager of the city of San Bruno and shall serve for an indefinite term concurrent with his or her service to the city of San Bruno as city manager. The executive director shall have general supervision and management control over the administration of the San Bruno redevelopment agency’s business affairs, financial affairs and personnel matters, subject to the direction of the agency board. The executive director may designate an assistant director during the executive director’s absence or incapacity. (Ord. 1600 § 1, 1998: Ord. 1491 § 1, 1988)

2.06.070 Agency counsel.

The agency counsel of the San Bruno redevelopment agency shall be the city attorney of the city of San Bruno and shall serve for an indefinite term concurrent with his or her service to the city of San Bruno as city attorney. The agency counsel shall act as the legal advisor to the San Bruno redevelopment agency and may appoint or authorize additional legal counsel from time to time. (Ord. 1600 § 1, 1998: Ord. 1491 § 1, 1988)

2.06.080 Cooperative agreement.

The city of San Bruno and the San Bruno redevelopment agency may enter into a cooperative agreement to facilitate the exercise of powers and functions of the San Bruno
redevelopment agency in the planning, financing, and carrying out of its community activities. (Ord. 1600 § 1, 1998: Ord. 1491 § 1, 1988)

Chapter 2.08 PLANNING COMMISSION

2.08.010 Establishment.

A. There is established a city planning commission.

B. The commission shall consist of seven members, who at the time of their appointment and at all times thereafter shall be residents of the city but not employees of the city. The members of the commission shall be appointed by and serve at the pleasure of the mayor with the approval of a majority of the city council, subject to removal at any time, pursuant to city council procedures. The terms of office of the members shall be four years. If a vacancy shall occur in such appointment other than by expiration of term, it shall be filled by appointment for the unexpired term. (Ord. 1602 § 2, 1998)

2.08.020 Duties.

The planning commission shall have such duties as are set forth as duties for planning commissions pursuant to state law. The commission shall also have the duties of a planning agency pursuant to Section 65400 et seq., of the Government Code. It shall have such other duties as set forth by ordinance. (Ord. 1602 § 2, 1998)

2.08.030 Officers.

Annually the planning commission shall elect one of its voting members as chairperson and another as vice chairperson, in accordance with the by-laws of the commission. (Ord. 1602 § 2, 1998)

2.08.040 Meetings.

A. Regular meetings of the planning commission shall be on the first and third Tuesdays of each month at seven p.m. If at any time any regular meeting day falls on a legal holiday, such regular meeting shall be held on the next business day if practical. The regular meetings shall be held in the San Bruno Senior Center, or alternative location as designated by the City Council chambers of the City Hall, 567 El Camino Real, San Bruno.

B. Special meetings, adjournments and continuances of meetings, hearings, closed sessions during meetings and disorderly conduct during meetings shall be governed by Sections 2.04.040 through 2.04.090, with all references therein to the city council and the mayor or presiding officer to be applicable, for purposes of this section, to the planning commission and its chairperson or presiding officer. (Ord. 1608 § 4, 1999)

2.08.050 By-laws—Rules of procedure— Quorum.

A. By-laws. The commission shall prepare by-laws governing its operations and including rules of procedure governing the conduct of its meetings. Except as provided in the rules of procedure to the contrary, Robert’s Rules of Order Revised or Rosenberg’s Rules, as
specified in the by-laws, shall govern the conduct of such meetings. The by-laws shall be approved by the city council. The commission shall review its by-laws on an annual basis.

B. Quorum. Four general members of the commission shall constitute a quorum for the transaction of business. (Ord. 1602 § 2, 1998)

2.08.060 Minutes—Annual report.

A. Minutes. The commission shall issue copies of the minutes of each commission meeting to the city manager, the city clerk and the city council.

B. Annual Report. The commission shall annually provide a report to the city council concerning the commission's actions, activities and achievements during the preceding year, its goals for the subsequent year and any recommendations for improvement in providing service to the city. (Ord. 1602 § 2, 1998)

Chapter 2.12 CITY MANAGER

2.12.010 Office established—Appointment and removal.

The office of city manager is established. The city manager shall be appointed by and serve at the pleasure of the city council. (Ord. 1349 § 1, 1980; prior code § 2-3.1)


The city shall obtain a surety bond conditioned upon the faithful performance of the duties of the city manager if required by the city council. The city manager shall furnish a surety bond conditioned upon the faithful performance of his or her duties if required by the city council. The sum of such bond shall be in a reasonable amount recommended by the city attorney and as determined by the city council. (Ord. 1349 § 1, 1980; prior code § 2-3.2)

2.12.030 Compensation—Reimbursement for expenses.

The city manager shall receive such compensation as may be fixed by resolution of the city council. He or she shall be reimbursed for all sums necessarily and reasonably incurred by the city manager in the performance of his or her duties of this office. (Ord. 1349 § 1, 1980; prior code § 2-3.3)

2.12.040 Performance of duties during absence, vacancy, and disability.

The city council shall, by resolution, approve a list of duly qualified persons, in an order of succession, who would perform the duties of the city manager during the absence or disability of the latter, or in the case of a vacancy in such office. The persons designated shall furnish a surety bond conditioned on the faithful performance of the duties of the city manager where required by the city council and in a reasonable amount recommended by the city attorney and as determined by the city council. (Ord. 1349 § 1, 1980; prior code § 2-3.4)

2.12.050 Secretary.

The city manager shall be provided a secretary who shall be specifically excluded from the civil service system of the city and who shall receive such compensation as may be fixed by
the city council, and such administrative and other staff as may be required and approved by the city council and who shall be specifically excluded from the competitive service of the city with compensation as set forth in the city's compensation system. (Ord. 1349 § 1, 1980; prior code § 2-3.5)

2.12.060 Powers and duties.

The city manager shall be the administrative head of the city government under the direction and control of the city council. He or she shall be responsible for the efficient administration of all the affairs of the city which are under his or her control. In addition to his or her general powers of the city manager as administrative head, and not as a limitation thereon, he or she shall have the following powers and duties:

A. To see that this code and all ordinances, rules, and regulations of the city are duly enforced, and that all franchises, permits, privileges, and contracts granted or approved by the city are faithfully observed or performed;

B. To manage and control the department heads of the city, and through them, their subordinates, except the city clerk, city treasurer, and city attorney;

C. To accomplish interdepartmental personnel transfers;

D. To consolidate or combine offices, positions, departments and units under his or her direction, subject to the approval of the city council and the authority of the personnel board to classify employees;

E. To appoint and remove subordinate officers and employees, subject to such limitations and restrictions as may be imposed by the civil service system and memoranda of understanding between the city and employee associations approved by the city council;

F. To attend all meetings of the city council, unless excused there from by the city council;

G. To recommend to the city council such measures and actions as he or she deems necessary or expedient;

H. To prepare and submit to the city council an annual budget, and to keep the city council fully advised as to the financial conditions and needs of the city;

I. To act as purchasing agent of the city and as such to approve the purchase of all goods and services for all departments or divisions of the city for which the council has made an annual budget appropriation. To make emergency purchases of items when, in the opinion of the city manager, the purchase is required for the operation of the government and to the extent authorized by the city council.

J. To investigate the affairs of the city, any department or division thereof under his or her jurisdiction, and all complaints regarding the administration of the city government and public utilities services in the city;
K. To exercise general supervision of all property under the jurisdiction and control of the city;

L. To devote such time to the duties of his or her the city manager's office as shall be determined by the work requirements thereof;

M. To provide leadership for civic movement designed to benefit the residents of the city when so authorized by the city council;

N. To perform such other duties and exercise such other powers as may be authorized by the city council.

O. To execute in the name of the city council and city, any warrant drawn on the city treasurer, all instruments requiring the city seal, and all written contracts and conveyances made or entered into by the city, and authorized or approved by the city council, unless the city council shall expressly provide for other manner of execution of such contract, and further, for the purpose of this section, whenever a motion or resolution of the city council authorizes or directs the “city manager” to sign a document, the term “city manager” shall include the city manager and any other officer or employee of the city when that officer or employee is acting as city manager. (Ord. 1349 § 1, 1980; prior code § 2-3.6)

[Editor’s note: New subsection “O” states with more specificity the inherent powers in this section authorizing the city manager to execute all city documents, warrants, instruments, and conveyances.]

2.12.070 Duty of other officers to cooperate.

All officers and employees shall cooperate with and assist the city manager in administering the affairs of the city most efficiently, economically, and harmoniously, as far as may be consistent with their duties. (Ord. 1349 § 1, 1980; prior code § 2-3.7)

2.12.080 Ex officio member of boards, etc.

The city manager shall be an ex officio member of all boards, commissions, and committees appointed by the mayor or the city council. (Ord. 1349 § 1, 1980; prior code § 2-3.8)

2.12.090 City council to deal with city employees only through city manager.

The city council and its members shall deal with the administrative service of the city only through the city manager. Except for the purpose of inquiry, neither the city council nor any of its members shall give orders to any subordinate of the city manager. (Ord. 1349 § 1, 1980; prior code § 2-3.9)

2.12.100 City manager not covered by civil service competitive service.

The office of the city manager is excluded from the civil service competitive service system of the city. The city manager shall not be entitled to or subject to the benefits, advantages, protection, or procedures of such system. (Ord. 1349 § 1, 1980; prior code § 2-3.10)
Chapter 2.16 CITY ATTORNEY

2.16.010 Legal department created.

A legal department is created which shall be under the direction of the city attorney and function under the direction of the city council and general supervision of the city manager, and shall consist of the city attorney and such other employees as the city council may approve. (Ord. 1349 § 1, 1980; prior code § 2-4.1)

2.16.020 Appointment—Qualifications.

A. The city attorney shall be selected and appointed by the city council on the basis of his or her qualifications, with special reference to his or her actual experience in the field of municipal law and in respect to the duties of his or her the office as herein after set forth. He or she shall hold office at and during the pleasure of the city council.

B. The position of city attorney shall be a full-time position and the appointee shall not be entitled to engage in private practice without specific approval of the city council, nor shall the city attorney be entitled to make court appearances except on behalf of the city. To become and remain eligible for this position, the appointee shall be an attorney duly admitted and qualified to practice in the Supreme Court of the state of California, and shall have been an active member in good standing of the State Bar of California for at least three years prior to his or her appointment. Nothing contained in this chapter shall be construed to prohibit the city council from retaining special counsel to represent the city in certain legal matters, nor to prevent the council from retaining the services of a qualified attorney-at-law on a full or part-time basis to act as city attorney, de facto or de jure, upon the discharge, resignation or disability of any city attorney appointed pursuant to this chapter. (Ord. 1349 § 1, 1980; prior code § 2-4.2)

2.16.030 Compensation and expenses.

The city attorney shall receive such compensation and expense allowance as the city council shall, from time to time, determine. (Ord. 1349 § 1, 1980; prior code § 2-4.3)

2.16.040 Powers and duties.

In addition to the powers and duties set forth in the Government Code of the state of California, the city attorney shall:

A. Represent and advise the city council and all city officers upon all matters of law pertaining to the city and to their office;

B. Frame all ordinances and resolutions required by the city council;

C. Represent and appear for the city, its authorized agents, officers, and employees, in any and all actions and proceedings in which the city, or its agents, officers, or employees, in or by reason of their official capacity only, is concerned or is a party thereto. The city council shall have control of all legal proceedings, however, and shall direct and control the prosecution and defense of all actions and proceedings to which the city is a party or in which it is interested, and may employ special counsel, if it feels the interests of the city require same, to assist the city attorney, or to prosecute or defend in any such action or proceeding;
D. Attend all meetings of the city council and planning commission, and attend other meetings at the request of the city manager;

E. Render legal opinions or advice, in writing, whenever requested to do so by the council or any of the city boards, commissions, or city officers;

F. Approve the form and execution of all bonds, contracts and other instruments to which the city is a party;

G. Specify the minimum requirements of insurance policies and bonds required to be filed with the city, and no such policy or bond shall be deemed to satisfy legal requirements of the city unless in conformity with such specifications or otherwise approved by the city attorney;

H. Devote such time to the duties of his or her the office, and attend such conferences, meetings, and proceedings as the council may specify from time to time, and as shall be determined by the work requirements of the legal department;

I. Keep on file in his or her the city attorney’s office all written communications, opinions, brief and papers used in the normal course of legal activities of this department. He or she The city attorney shall deliver all books, records, papers, documents, and property of every description, belonging to the city, to his or her the city attorney’s successor in office;

J. Act as director of the legal department, subject to the general administrative direction of the city council;

K. Serve as executive advisor to the city manager and city council on nonlegal matters involving program development, leadership and public relations. (Ord. 1535 § 1, 1992; Ord. 1349 § 1, 1980; prior code § 2-4.4)

Chapter 2.20 CITY CLERK

2.20.010 Office and office hours.

There shall be an office of the city clerk in the City Hall. Such office shall be open for the transaction of all city business between the hours of eight a.m. and five p.m. every calendar day except Saturdays, Sundays, and legal holidays.

[Publisher: This section is former section 2.20.020 and unchanged but moved to the beginning of the chapter so that organization is consistent with other chapters.]

2.20.020 Appointment—Qualifications.

The city clerk shall be selected and appointed by the city council on the basis of qualifications for the office of city clerk. The city clerk shall hold office at and during the pleasure of the city council.

[Publisher: This is new section. In 2015, the electorate voted to change the city clerk from an elected position to an appointed one.]

2.20.010-030 Duties.
The city clerk shall have the following duties:

A. To maintain custody of official city records;

B. To keep an accurate record of the proceeds of the city council in books bearing appropriate titles and devoted exclusively to such purposes, respectively, which books shall have a comprehensive general index;

C. To keep a book marked “ordinances” and record in it all city ordinances with his or her certificate attached to each, stating its number; that it is a true and correct copy of a city ordinance; and that it has been published or posted pursuant to law;

D. To be custodian of the city seal;

E. To administer oaths and affirmations and take and certify affidavits and depositions pertaining to city affairs and businesses;

F. To acknowledge instruments within the city;

G. To appoint deputies;

H. To perform such additional duties as are prescribed by state law or by ordinance.

(Ord. 1349 § 1, 1980; prior code § 2-5.1)

2.20.020 Office and office hours.

There shall be an office of the city clerk in the City Hall. Such office shall be open for the transaction of all city business between the hours of eight a.m. and five p.m. every calendar day except Saturdays, Sundays, and legal holidays. (Ord. 1349 § 1, 1980; prior code § 2-5.2)

[Publisher: This section is retained but moved to the beginning of the chapter.]

2.20.030 Compensation.

The city clerk shall receive such compensation as may be determined by the city council.

(Ord. 1349 § 1, 1980; prior code § 2-5.3)

2.20.040 Bond.

Before entering upon the duties of his or her office, the city clerk shall execute a bond to the city. Except as otherwise provided by statute, the bonds shall conform to the provisions of the Government Code relating to bonds of public officers. The penal sum of the bond shall be in a reasonable amount recommended by the city attorney and fixed by resolution of the city council. (Ord. 1349 § 1, 1980; prior code § 2-5.4)

Chapter 2.24 CITY TREASURER

2.24.010 Duties.

The city treasurer shall have the following duties:
A. To receive and safely keep all money coming into his or her hands as treasurer;

B. To comply with all laws governing the deposit and securing of public funds and the
handling of trust funds in his or her possession;

C. To pay out money only on warrants signed by legally designated persons;

D. To submit to the city clerk regularly, at least once each month, a written report and
accounting of all receipts, disbursements, and fund balances. He or she shall file a copy with the
city council. (Ord. 1349 § 1, 1980; prior code § 2-6.1)

2.24.020 Office and hours.

The city treasurer shall have an office in the City Hall, which he or she shall keep open
for such times and hours as he or she deems necessary for the proper conduct thereof or as
determined by the city council. (Ord. 1349 § 1, 1980; prior code § 2-6.2)

2.24.030 Compensation.

The city treasurer shall receive such compensation as may be determined by the city
council. (Ord. 1349 § 1, 1980; prior code § 2-6.3)

2.24.040 Bond.

Before entering upon the duties of his or her office, the city treasurer shall execute a
bond to the city. Except as otherwise provided by statute, the bond shall conform to the
provisions of the Government Code relating to bonds of public officials. The penal sum of the
bond shall be in a reasonable amount recommended by the city attorney and fixed by resolution
of the city council. (Ord. 1349 § 1, 1980; prior code § 2-6.4)

Chapter 2.28 FINANCE DIRECTOR

2.28.010 Office established.

There is established in the government of the city, the office of finance director. (Ord.
1349 § 1, 1980; prior code § 2-7.1)

2.28.020 Duties—Generally.

The finance director has the following duties and responsibilities:

A. To maintain and operate the general accounting system of the city and each of its
divisions and services;

B. To perform such accounting functions duties in accordance with modern municipal
accounting practices;

C. To maintain, or to prescribe and require the maintenance of municipal property
inventory records in accordance with modern municipal accounting practices;
D. To be responsible for the administration and collection of municipal taxes, licenses, and permit files;

E. To prepare, audit, present, and disburse payrolls and other claims and demands against the city;

F. To assist in the purchase of supplies, materials, and equipment required by the city;

G. To assist in the preparation and administration of the annual budget;

H. To cooperate with other city officers in the control of municipal revenues and expenditures in accordance with modern municipal accounting practices. (Ord. 1349 § 1, 1980; prior code § 2-7.2)

2.28.030 Financial reports.

The finance director shall prepare and present to the city council in sufficient detail to show the exact financial condition of the city, the following reports:

A. A statement of all receipts, disbursements, and balances of the city, which shall be prepared quarterly, or more frequently, if requested;

B. An annual statement of report of the financial condition of the city;

C. Such other financial reports as the city council or city manager may direct. (Ord. 1349 § 1, 1980; prior code § 2-7.3)

2.28.040 Additional duties and functions.

The finance director shall perform such other additional duties and functions as may be prescribed by the city council or city manager. (Ord. 1349 § 1, 1980; prior code § 2-7.4)

2.28.050 Financial and accounting duties of city clerk transferred; duties of elected city treasurer transferred.

A. In accordance with Sections 40805.5 and 37209 of the Government Code, the duties imposed upon the city clerk by Sections 37201 through 37208, inclusive, of the Government Code, and the financial and accounting duties imposed upon the city clerk by Sections 40802 through 40805, inclusive, of the Government Code are transferred to the finance director. (Ord. 1349 § 1, 1980; prior code § 2-7.5)

B. All duties imposed upon an elected city treasurer are transferred to the finance director including but not limited to Sections 41001-41005 and Sections 53630 - 53683 inclusive, of the Government Code.

2.28.060 Appointment—When city manager shall serve as finance director.

The finance director is appointed by the city manager and serves under the civil competitive service of the city. The city manager shall serve as finance director in the absence of an appointment. (Ord. 1349 § 1, 1980; prior code § 2-7.6)
2.28.070 Appointment and duties of deputies.

With the consent of the city manager, the finance director may appoint one or more deputy finance directors. Each deputy director shall perform the duties prescribed by the director and city manager. (Ord. 1349 § 1, 1980; prior code § 2-7.7)

2.28.080 Bond.

When the director enters upon his or her duties the duties of that office, he or she the finance director shall execute a bond to the city required by Sections 37209 and 36518 of the Government Code. The bond shall conform to the provisions of the Government Code relating to bonds for public officers. The penal sum of the bond shall be in a reasonable amount recommended by the city attorney and fixed by resolution of the city council. (Ord. 1349 § 1, 1980; prior code § 2-7.8)

Chapter 2.32 ELECTIONS

This Chapter is omitted as it was previously amended.

Chapter 2.36 PERSONNEL SYSTEM

2.36.010 Adoption.

The personnel system set out in this chapter is adopted to establish an equitable and uniform procedure for dealing with personnel matters; to attract to municipal service the best and most competent persons available; to assure that appointments and promotions of employees will be based on merit and fitness as determined by competitive test; and to provide a reasonable degree of security for qualified employees. (Ord. 1630 § 2, 2000)

2.36.020 Applicability of chapter—Competitive service.

A. The provisions of this chapter shall apply to all offices, positions and employments in the service of the city, except the following:

1. Elective officers; provided, that, in the event the people of the city shall, at a general municipal election or special election held for that purpose, elect to change the status of any one or more elective officers of the city to that of appointive officers, then at the expiration of the term of office of any such officer, the person holding the office at the time of the expiration of such term, providing that he or she the elective officer shall have served in such position for a period of at least six months continuously immediately prior to the expiration of such term of office, shall assume regular status in the competitive service without preliminary examination or working tests and shall thereafter be subject in all respects to the provisions of this chapter;

2. Positions on appointive boards, commissions and committees;

3. All employees whose compensation is not paid by the city;

4. Temporary employees, seasonal employees and others that are not regular city employees (e.g., nonpermanent part-time workers);
5. The city manager, assistant city manager, executive assistant, administrative assistant, clerical personnel and/or other positions assigned to the city manager’s office;

6. The city attorney, any assistant, paralegal, legal secretary, law clerk or clerical personnel; and

7. All employees assigned to the city’s personnel function in the city manager’s office or as otherwise designated.

B. Offices, positions and employments not exempted by subsection A of this section, shall constitute the competitive service of the city. (Ord. 1630 § 2, 2000)

2.36.030 City council—Powers and duties.

The city council shall have the following powers and duties:

A. Approve the personnel system rules and regulations and all amendments thereto. Request the city manager, personnel officer or personnel board research and prepare amendments and revisions to such rules as deemed appropriate and necessary.

B. Approve compensation and pay plan, position classification plan and all amendments thereto.

C. Recognize and approve any and all agreements with those recognized bargaining units representing city employees. (Ord. 1630 § 2, 2000)

2.36.040 Personnel officer—Office established—Appointment.

There is established the position of personnel officer, who shall be the city manager. The personnel officer may delegate the powers and duties vested in him or her to subordinate employees. (Ord. 1630 § 2, 2000)

2.36.050 Personnel officer—Powers and duties.

The powers and duties of the personnel officer shall be as follows:

A. Attend meetings of the personnel board and serve as its secretary;

B. Administer all the provisions of this chapter and of the personnel system rules and regulations not specifically reserved to the city council or the personnel board;

C. Prepare and forward to the city council revisions and amendments to the personnel system rules and regulations. The city attorney shall approve the legality of such revisions and amendments prior to their submission to the city council;

D. Under the direction of the city council, supervise the preparation of a position classification plan, including class specifications, and revisions of the plan; the plan, and any revisions thereof, shall become effective upon approval by the city council; and

E. Under the direction of the city council, supervise the preparation of a plan of compensation, and revisions thereof, covering all classifications in the competitive service; the
plan and any revisions thereof shall become effective upon approval by the city council. (Ord. 1630 § 2, 2000)

2.36.060 City manager—Powers and duties.

In addition to those powers and duties that may be assigned by virtue of his or her role as personnel officer, the city manager shall:

A. Appoint or remove all employees subject to the provisions of the personnel system rules and regulations, and agreements between the city and its officially recognized bargaining units representing employee groups, except those employees appointed and removed by the city council. The city manager may delegate this appointing authority to the assistant city manager or other such appointed department heads as the city manager sees fit;

B. Negotiate agreements between the city and its officially recognized bargaining units representing employee groups; and

C. Serve as the “Municipal Employee Relations Officer” as set forth in the City of San Bruno Employer-Employee Relations Resolution No. 1970-20, subsequently amended by Resolution No. 1971-10, and as amended from time to time by the city council. (Ord. 1630 § 2, 2000)

2.36.150 Contracting for special services.

The city council may contract with any qualified person or agency for the establishment or operation of the personnel system. The contract may include delegation to the person or agency so retained of all or a part of the responsibilities and duties imposed in this chapter, but shall not include the delegation of powers and duties vested in the city council, city manager, personnel officer or personnel office. (Ord. 1804 § 1, 2012; Ord. 1630 § 2, 2000)

2.36.160 Appropriation of funds.

The city council shall appropriate such funds as are necessary to carry out the provisions of this chapter. (Ord. 1630 § 2, 2000)

2.36.170 Adoption of personnel system rules and regulations.

Personnel system rules and regulations, prepared by the personnel officer, subject to this chapter and to revision by the city council, shall be adopted and may be amended from time to time by resolution of the city council. The rules shall establish specific procedures and regulations governing the following phases of the personnel system.

A. Preparation, installation, revision and maintenance of a position classification plan covering all positions in the competitive service, including employment standards and qualifications for each class;

B. Preparation, revision and administration of a plan of compensation directly correlated with the position classification plan, providing a rate or range of pay for each class;

C. Public announcement of all tests and the acceptance of applications for employment;
D. Preparation and conduct of tests and the establishment and use of resulting employment of persons eligible for appointment;

E. Certification of persons from employment lists;

F. Evaluation of employees during the probationary period;

G. Transfer, promotion, demotion and reinstatement of employees in the competitive service;

H. Separation of employees from the city service through layoff, suspension and dismissal;

I. Standardization of hours of work, attendance and leave regulations, working conditions and the development of employee morale, welfare and training;

J. Suitable provision for orderly and equitable presentations to the city council by employees relating to general conditions of employment;

K. Content, maintenance and use of personnel records and forms; and

L. Such other matters as deemed appropriate by the personnel officer and the city council. (Ord. 1630 § 2, 2000)

2.36.180 Appointments to competitive service—Regular.

A. Appointments and promotions to vacant positions in the competitive service shall be made in accordance with the personnel system rules and regulations and shall be based on merit and fitness to be ascertained so far as practicable by competitive examination.

B. Examinations shall be used and conducted to aid in the selection of qualified employees. Examinations shall consist of such recognized selection techniques as achievement and aptitude tests and other written tests, personal interview, performance tests, evaluation of daily work performance, work samples or any combination of these which will, in the opinion of the personnel officer, test fairly the qualifications of candidates. Physical ability tests may be, and medical examinations may be, given as part of any examination based on position applied for.

C. In any examination the personnel officer may include, in addition to competitive tests, a qualifying test or tests and set minimum standards therefor.

D. Appointments shall be made by the officer in whom the power to make appointments is vested by law.

E. When appointment is to be made to a vacancy in the competitive service it shall be made from the persons on the eligibility listing in accordance with the personnel system rules and regulations.

F. All regular appointments, including promotional appointments, shall be for a probationary period in accordance with the personnel system rules and regulations.
G. During the probationary period, an employee may be rejected at any time by the city manager without cause, hearing or the right of appeal, except as otherwise provided in the personnel system rules and regulations or applicable memorandum of understanding. (Ord. 1630 § 2, 2000)

2.36.190 Appointments to competitive service—Provisional.

A. In the absence of appropriate employment lists, a provisional appointment may be made by the appointing authority of a person meeting the minimum training and experience qualifications for the position. An employment list shall be established within six months for any permanent position filled by provisional appointment. The city council may, by a three-fifths vote, extend the period for any provisional appointment for not more than thirty days by any one action. When a position is to be filled by provisional appointment, or a provisional appointment is to be extended, the city council shall direct the city clerk to record such action in the minutes of the meeting of the city council.

B. No special credit shall be allowed in meeting any qualification or in the giving of any test or the establishment of any employment or promotional lists for service rendered under a provisional appointment.

C. During the period of suspension of an employee or pending final action on proceedings to review suspension, demotion or dismissal of an employee, such vacancy may be filled by the city manager subject to the provisions of this chapter and the personnel rules and regulations. (Ord. 1630 § 2, 2000)

2.36.200 Discrimination prohibited.

No person in the competitive service, or seeking admission thereto, shall be employed, promoted, demoted, discharged or in any way favored or discriminated against because of political opinions or affiliations or because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation or age in any matter prohibited by law. (Ord. 1630 § 2, 2000)

2.36.210 Political activity.

A. Officers and employees of the city, serving in their official capacity or representing to another person that they are doing so, shall not engage in political activity which is incompatible with the normal operations of the city.

B. Incompatibility with normal city operations may be found where the activity in question adversely affects the administration of city business, hinders the delivery of public services, or otherwise substantially interferes with city charges, duties or responsibilities.

A. Except as otherwise provided by the laws of California, or as necessary to meet requirements of federal law as it pertains to a particular employee or employees, no restriction shall be placed on the political activities of any officer or employee of the city.

B. As provided by Section 3207 of the California Government Code, the city council may prohibit and does prohibit the following:

(1) Officers and employees engaging in political activity during working hours.
(2) Political activities on the premises of the local agency.

C. The city manager may promulgate administrative rules and regulations to carry out the intent of this section and general law related to political activity of municipal officers and employees. The city manager may promulgate administrative rules and regulations to carry out the intent of this section and general law related to political activity of municipal officers and employees and reflecting the city’s interest in promoting an unbiased election process.

D. Appeal from the application of such administrative rules and regulations shall be in accordance with the personnel system rules and regulations, provisions set forth in the city’s memoranda of understanding with its employee collective bargaining groups or where the latter agreements are not applicable, then directly to the city council.

E. Violation of this section shall not constitute an infraction or a misdemeanor. Violation of this section shall be punishable in a manner set forth in administrative rules and regulations promulgated by the city manager, personnel rules and regulations or in an applicable memorandum of understanding. (Ord. 1630 § 2, 2000)

Chapter 2.40 PEACE OFFICER STANDARDS AND TRAINING

2.40.010 Intention to receive state aid.

The city desires to qualify to receive aid from the state under the provisions of chapter 1, title 4, part 4 of the Penal Code of the state. (Prior code § 18-25)

2.40.020 Adherence to state standards.

The city while receiving aid from the state pursuant to Chapter 1, Title 4, Part 4 of the Penal Code of the state will adhere to the standards for recruitment and training established by the California Commission on Peace Officer Standards and Training. (Prior code § 18-26)

2.40.030 Public safety dispatchers.

Pursuant to Section 13512, Chapter 1, the commission and its representatives may make such inquiries as deemed appropriate by the commission to ascertain that the San Bruno police department’s public safety dispatcher personnel adhere to standards for selection and training established by the Commission on Peace Officer Standards and Training. (Ord. 1498 § 1, 1988)

Chapter 2.44 PURCHASING AND BID PROCEDURES

Sections:
2.44.010 Adopted—Purpose.
2.44.020 Purchasing authority designated—Purchasing officer.
2.44.030 Departmental estimates of requirements—Exemption from centralized purchasing.
2.44.040 Use of purchase orders; written contract required.
2.44.050 Professional and special services.
2.44.060 Contract procedure for supplies, nonprofessional services, equipment and technology.
2.44.070 Public Projects – Uniform Construction Cost Accounting Act
2.44.010 **Adopted—Purpose.**

A purchasing system is adopted in order to establish efficient procedures for the acquisition of supplies, services and equipment at the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchases, to clearly define authority for the purchasing function and to assure the quality of purchases. A purchasing system is adopted.

Approval of city budget appropriations by the city council authorizes expenditure of city funds in accordance with that appropriation and the established level of city services.

2.44.020 **Purchasing authority designated—Purchasing officer.**

The city manager is designated as the purchasing officer for the city of San Bruno. He or she may delegate the duties of purchasing to a purchasing officer or any other city employee. Within those amounts permitted by this ordinance, and in conformance with those rules and procedures specified in administrative policy, the city manager may delegate the duties of purchasing for a department to that department head.

As the purchasing officer, the city manager shall have authority to:

A. Purchase or contract for supplies, services and equipment required by any using department in accordance with purchasing procedures prescribed by this chapter, and such administrative regulations as the city manager shall adopt for the internal management and operation of the purchasing system and such other rules and regulations as shall be prescribed by the city council;

B. Negotiate and recommend execution of contracts for the purchase of supplies, services and equipment;

C. Act to procure for the city the needed quality in equipment at least expense to the city;

D. Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases;

E. Prepare and recommend to the city council rules governing the purchase of supplies, services and equipment for the city;

F. Supervise the inspection of all supplies, services and equipment purchased to insure conformance with specifications;
G. Recommend the transfer of surplus or unused supplies and equipment between departments as needed and the sale of all supplies and equipment which cannot be used by a department or which have become unsuitable for city use;

H. Join with other governmental agencies in joint purchasing and/or sale endeavors where the purchasing procedures substantially conform to this chapter and state law, are consistent with state and federal statutory or grant requirements and serve the city’s interest in making an efficient and economical purchase.

I. Maintain a bidder’s list, vendors catalogue file, and records needed for the efficient operation of the purchasing system.

2.44.030 Exceptions.

A. The purchasing officer may authorize in writing any other governmental agency or city department to purchase or contract for specified supplies, services and equipment independently of the purchasing department. He or she shall ensure that such purchases or contracts by other governmental agencies be made in conformance with the procedures established by state law and that such purchases or contracts by city departments are made in conformance with this chapter. This authority includes the authority to act as lead agency when appropriate.

B. Bidding may be dispensed with when an emergency, as described in Public Contract Code Section 20168, requires that an order be placed with the nearest available source of supply.

C. Bidding may be dispensed with when the commodity can be obtained from only one vendor.

D. Private consultants and professional services agreements need not be secured through the use of those bidding procedures specified in Section 2.44.080, however, written agreements are required and the city council must approve all consultant and professional services agreements exceeding twenty-five thousand dollars.

2.44.040 Departmental estimates of requirements—Exemption from centralized purchasing.

A. All departments using centralized purchasing shall file detailed estimates of their requirements in supplies, services and equipment in such manner, at such time, and for such future periods as the purchasing officer or city manager, or his or her designee shall prescribe.

B. Pursuant to an adopted administrative policy, the purchasing officer or city manager may authorize any department to purchase or contract for specific supplies, services, equipment, and technology independently of centralized purchasing.

2.44.050 Use of contract procedures.

Purchases of supplies, services and equipment shall be by bid procedures pursuant to Section 2.44.080 of this chapter for purchases exceeding a gross aggregate value of fifteen thousand dollars.
2.44.060 2.44.040 Use of purchase orders; written contract required.

Purchases of supplies, services and equipment in the amount specified in the administrative policies of the city of San Bruno shall only be made by purchase order.

A. Purchases of supplies, professional and special services, non-professional services, equipment, and technology may not be made by purchase order unless within the stated limit specified in the administrative policy of the city of San Bruno as may be amended from time to time.

B. All other city purchases shall be by written contract or as provided in the City’s administrative policy as may be amended from time to time.

2.44.070 Written contract required for public works projects and major acquisitions.

Purchases and contracts for supplies, services, and equipment in an amount exceeding the limits set forth in Section 2.44.050 and those associated with a public project as defined in Public Contract Code Section 20160 et seq., shall be by written contract with the lowest responsible bidder pursuant to the procedures set forth in Section 2.44.080 of this chapter.

2.44.050 Professional and special services.

A. The city shall engage in a selective process when seeking to retain specially trained persons or firms to provide professional services such as architecture, engineering, surveying and construction management and special services such as financial, economic, accounting, economic, legal and administrative or other matters involving specialized expertise or unique skills.

B. Where possible and appropriate, the city shall make reasonable efforts to obtain more than one proposal in a fair and equitable process. The method and details of these procedures shall be outlined in administrative regulations of adopted by the city.

2.44.080 2.44.060 Contract procedure for public works projects and major acquisitions—supplies, nonprofessional services, equipment and technology.

A. Contracts for $15,000 or less.

1. Open market procedures may be dispensed with as specified in Section 2.44.040 (Use of purchase orders; written contract required) or Section 2.44.120 (Exceptions to formal contract procedures).

2. For contracts for supplies, nonprofessional services, equipment, and technology having an estimated amount exceeding $5,000 exclusive of tax and freight, the city manager shall solicit open market quotes or bids by written requests to prospective vendors by telephone, mail, electronic mail, or by public notice posted on a bulletin board in City Hall or on the city’s website. Whenever possible and in the best interest of the city, the city manager will obtain at least three quotes and a contract shall be awarded to the lowest responsible quote.

B. Contracts Greater than $5,000.
Purchases of equipment, supplies, and services in an amount exceeding the limits set forth in Section 2.44.050 and public works contracts exceeding the expenditure limitation of Public Contract Code Section 20162 shall be accomplished using the bidding procedure described in this section. Except as otherwise provided herein, contracts greater than fifteen thousand dollars ($15,000) for supplies, nonprofessional services, or services not involving a unique ability, equipment, and technology shall be by written contract with the lowest responsible bidder, pursuant to the procedure described in this section:

1. Notice Inviting Bids. Notices inviting bids shall include a general description of the articles to be purchased or sold, supplies, services, equipment and technology to be purchased, and shall state where bid blanks and specifications may be secured, and the time and place for opening bids.

2. Published Notice. Notice inviting bids shall be published at least ten days before the date of opening the bids. Notice shall be published at least twice, not less than five days apart, in the case of public projects and at least once in the case of all other major acquisitions, in a newspaper of general circulation, printed and published in the city of San Bruno.

3. Bidder's List. The city manager, or his or her designee, shall also solicit sealed bids from all responsible prospective suppliers whose names are on the bidder's list or who have requested their names to be added thereto.

4. Bidder's Security. All bids presented in connection with a public project as defined in Public Contract Code Section 20160, et seq., shall be accompanied by bidder's security in the form and amount prescribed by Public Contract Code Section 20170 et seq., which security shall be dealt with as prescribed therein. In the case of all other major acquisitions, when determined necessary by the purchasing officer, or his or her designee, bidder's security may be prescribed in the public notices inviting bids. In all cases bidders shall be entitled to return of bid security provided that a successful bidder shall forfeit his or her bid security upon refusal or failure to execute the contract within ten days after the notice of award of contract has been mailed, unless the city is responsible for the delay. The city council may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder. If the city council awards the contract to the next lowest bidder, the amount of the lowest bidder's security shall be applied by the city to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder. When deemed necessary by the city manager, bidder's security shall be required in an amount that the city manager deems appropriate for the procurement. Bidders shall be entitled to a return of the bid security upon the city's execution of the contract with the successful bidder or upon the re-advertisement for bids; except that a successful bidder shall forfeit its bid security upon refusal or failure to execute the contract within the time period specified in the contract documents after the notice of award of contract has been mailed, unless the city is responsible for the delay.

5. Bid Opening Procedure. Sealed bids shall be submitted to the purchasing officer city manager, or his or her designee, and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notice. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty calendar days after the bid opening.
6. Rejection of Bids. In its discretion, the city council may reject any and all bids presented and readvertise for bids.

7. Award of Contracts. Contracts shall be awarded by the city manager or by city council, as specified in the city’s purchasing policy, to the lowest responsible bidder except as otherwise provided herein.

In evaluating bids or proposals for goods subject to California State sales tax, excepting public works projects, a local business shall be given preference under certain limited conditions. Where other factors are considered substantially equal between bidders, and price is the remaining determining factor, a preference shall be extended to the local business’ portion of the bid or proposal subject to California state sales tax as follows: (a) if the bid or proposal amount subject to sales tax is less than thirty thousand dollars, the city shall extend a five percent preference; and (b) if the bid or proposal amount subject to sales tax is thirty thousand dollars or more, the city shall extend a preference to the local business of one thousand five hundred dollars plus one percent of the amount exceeding thirty thousand dollars.

8. Tie Bids. If two or more bids received are for the same amount or unit price, quality and service being equal, and if the public interest will not permit the delay of re-advertising for bids, the city council may accept the one it chooses or accept the lowest bid made by negotiation with the tie bidders or may utilize a public drawing.

9. Performance Bonds. The purchasing officer or city manager shall have authority to require a performance bond before entering a contract in such amount as he or she finds reasonably necessary to protect the best interests of the city. If the purchasing officer or city manager requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids.

[Publisher: In some cases, like this section, sub-numbering is changed from original for ease of reading during the review and adoption of the ordinance.]

2.44.085 City may perform its own work.

If the city council shall reject all bids, it may, in lieu of soliciting or advertising for bids, determine and declare by a four-fifths vote of all of its members that the work in question may be more economically or satisfactorily performed by day labor, or the materials or labor may be purchased at a lower price in the open market, notwithstanding that the value or cost of such labor or materials may exceed the limits specified in this chapter. After adoption of a resolution to this effect, the purchasing officer may proceed to have the same done in the manner specified in the resolution without further observance of the procedures specified in Section 2.44.080, above.

2.44.090 Open market procedure and exceptions.

A. Open market purchases shall, whenever possible, be based on at least three bids. and shall be awarded to the lowest responsible bidder.

B. The purchasing officer, or his or her designee, shall solicit open market bids by written requests to prospective vendors, by telephone, or by public notice posted on a public bulletin board in the San Bruno City Hall.
C. Purchases of supplies, equipment and services may be made by the purchasing officer, his or her designee, or a department head when authorized, in the open market without observing the procedure prescribed by Section 2.44.080 where the estimated value, exclusive of sales tax and freight, does not exceed:

1. The statutory amount permitted in the case of public projects as defined in Public Contract Code Section 20160 et seq.;

2. Fifteen thousand dollars in those instances permitting open market procedures pursuant to Section 2.44.050 of this chapter; or

3. Fifteen thousand dollars in the case of all other purchases not otherwise specifically governed by state or federal law.

2.44.100 Inspection, testing and acceptance responsibility.

The responsibility for the inspection, testing and acceptance of all supplies, equipment and contractual services performed shall rest with the purchasing department or purchasing agent concerned.

2.44.070 Public Projects – Uniform Cost Accounting Act (UCAA)

A. Definitions. For the purposes of this article the following words and phrases shall have the following meanings:

“Act” means the Uniform Cost Accounting Act (UCAA) (California Public Contracts Code Section 22000, et seq.).

“Commission” means the California Uniform Construction Cost Accounting Commission.

“Facility” means any plant, building, structure, ground facility, utility system, subject to the limitation of subsection (4) of the definition for public project below, real property, streets and highways, or other public work improvement.

“Public project” means any of the following:

1. Construction, reconstruction, erection, alteration, renovation, improvement, demolition and repair work involving any city owned, leased or operated facility;

2. Painting or repainting of any city owned, leased, or operated facility;

3. In the case of a city owned utility system, “public project” shall include only the construction, erection, improvement, or repair of dams, reservoirs, power plants, and electrical transmission lines of two hundred thirty thousand volts and higher;

4. “Public project” does not include maintenance work. For purposes of this section, “maintenance work” includes all of the following:

   a. Routine, recurring and usual work for the preservation or protection of any city owned or city operated facility for its intended purposes,

   b. Minor repainting,
(c) Resurfacing of streets and highways at less than one inch.

(d) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.

(e) Work performed to keep, operate, and maintain city owned water, power or waste disposal systems, including, but not limited to, dams, reservoirs, power plants and electrical transmission lines of two hundred thirty thousand volts and higher.

B. Public projects contracting procedures. The city shall follow the contracting procedures set forth in Article 3 of the Uniform Public Construction Cost Accounting Act (Section 22030, et seq., of the Public Contracts Code).

C. Contractors list. The public works director shall compile and maintain a list of qualified contractors identified according to categories of work. This list shall comply with the requirements of the Act and the criteria promulgated, from time to time, by the commission.

D. Informal bidding—Notice.

(1) When a public project is to be performed which qualifies for informal bidding, notice of such project shall be given as follows except where the product or service is proprietary:

(a) Mailed notice shall be sent to all contractors on the contractors list for the category of work being bid; and

(b) Mailed notice shall be given to all construction trade journals specified by the commission for the receipt of such notice for Yolo County;

(c) Additional notice to other contractors and/or trade journals may, in the discretion of the city, be given.

(2) If the product or service to be acquired is proprietary in nature such that it can only be obtained from a certain contractor or contractors, notice inviting bids may be sent only to such contractor or contractors.

(3) All mailing of notices to contractors and construction trade journals shall be completed not less than ten days before bids are due.

(4) The notice shall describe the project in general terms, how to obtain more detailed information about the project and shall state the time and place for submission of bids.

D. Award of contracts. Subject to the city manager’s overall contract authority, the city manager is authorized to award contracts for public projects of two hundred thousand dollars or less or the amount as specified in the Act for project projects which are subject to informal bidding.
E. Rejection of bids. The city manager or the city council, as the case may be, may, in the manager’s or council’s discretion, reject all bids and proceed as authorized by the Act.

F. Approval of plans and designs. The city engineer, or designee, is authorized to approve plans and designs, and all amendments and addenda thereto, for performance of a public project of the city.

2.44.080 Inspection, testing and acceptance responsibility.

The responsibility for the inspection, testing and acceptance of all supplies, equipment, technology and contractual services performed shall rest with the purchasing department or purchasing agent concerned.

[Publisher: This was former s. 2.44.100 (with the addition of technology) but moved so this obligation follows all the procurement types.]

2.44.090 Splitting orders to avoid competitive bidding prohibited.

The purchases of supplies, services, equipment, and technology shall not be split or separated into smaller orders for the purpose of evading the competitive bidding provisions of this chapter.

2.44.100 Change Orders.

Following the award of a contract for supplies, services, equipment, and technology or public project, such contract may be amended by the issuance of a change order provided the change which is the subject of the amendment is reasonably related to the scope of the original contract. The city manager will maintain control relative to the scoping, estimating and negotiating of the proposed change(s) and the finance director will certify the availability of funds for the proposed change in the event that the change order increases the contract cost. The total contract budget may include a council authorized contract contingency. Any change order that exceeds the authority limits granted herein or within an administrative policy with respect to purchasing procedures shall be submitted to the city council for approval.

2.44.110 Cooperative purchasing agreements with other agencies.

To foster greater economy and efficiency, the city may avail itself of state and local intergovernmental agreements for procurement or use of common goods and services. Joint procurements, state cooperative purchasing programs, and assignment of existing contract rights (“piggyback procurements”) with other public agencies may be used when consistent with applicable state and federal statutory or grant requirements. The city manager is empowered and authorized to act under the provisions of this chapter to procure for the city supplies, services, equipment, and technology in conjunction with such voluntary cooperative purchasing agreements or programs which may be available and advantageous to the city. This authority includes the authority to act as lead agency when appropriate.

2.44.120 Exceptions to Formal Contracting Procedures.

A. Emergency procedures. In accordance with Public Contract Code sections 20168 and 22050, in the case of an emergency, the city manager may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure
the necessary supplies, services, equipment, and technology for those purposes, without giving notice for bids to let contracts.

“Emergency” as used in this chapter as defined in Public Contract Code section 1102, means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

The city manager must report such emergency to the city council no later than seven days after the action, or at the next regularly scheduled city council meeting, provided it is no later than fourteen days after the emergency action was taken. The city manager’s report must explain why the action was necessary to respond to the emergency and why the emergency did not permit a delay resulting from a competitive solicitation for bids. The city council shall review the emergency action and determine by a four-fifth’s vote whether such emergency action is still needed.

B. **Sole and single source (non-competitive).** The city is not required to engage in the competitive bidding process when procuring supplies, services, equipment, and technology for which there exists only a sole source of supply as documented by the city manager acting within his/her procurement authority.

D. **Private consultants and professional services agreements**

C. **Discretion to waive competitive process.** The city council may waive the requirements for formal competitive bidding or other procedures set forth in this chapter, in limited circumstances and when permissible under applicable law, when the city council determined that such waiver serves the best interests of the city because competitive bidding would frustrate or undermine the the public policy goal of such process.

2. 44. 130 **Design build.**

Nothing in this chapter shall preclude the City from utilizing the design-build project delivery method where authorized by and in accordance with the provisions and requirements set forth in Public Contract Code Section 22160, et seq., as it may be amended from time to time.

2.44.140 **Revenue Generating Contracts/Concessions.**

To the extent they are not otherwise governed by city policies, concession agreements are contracts where the city grants permission to use city facilities or property to vendors to sell products or services, for which the city receives a percentage of the proceeds and/or a flat rate of compensation. Generally, these arrangements are at no direct cost to the city or cost are minor and incidental.

Where it is determined that a number of potential vendors are available to provide similar products or services, a competitive negotiations procedure should be followed, and the city manager may award a contract to the highest ranked proposer, taking into consideration the economic return to the city, quality of the product, service and experience of the vendor. The city council shall approve revenue generating/concessions contracts that exceed the City Manager’s contract authority.

2.44.110 2.44.150 **Administrative appeal.**
Any individual or business entity aggrieved by any purchasing decision or public works project contract executed by a department head, purchasing officer, or designee of such department head or purchasing officer may seek administrative review by the city manager.

A. Such review may only be initiated by an individual or business entity with a financial interest in the purchasing decision.

B. The aggrieved individual or business entity, or their authorized agent or representative, must file a written appeal with the city manager, stating the nature of the complaint, identifying the reason or reasons for such complaint, and explain the remedy they are seeking by way of their review, and giving a return address for a response.

C. Such written review must be delivered or postmarked no later than five business days following the date of the purchasing decision that is administratively appealed.

D. Upon consideration, the city manager will, in writing, rescind, confirm, or modify the subordinate purchasing decision made; and a copy of such written determination shall be mailed to the appellant.

E. 1. The administrative review provided by this Section is conclusive as to all:
   a. Public works project contracts as defined in Public Contract Code Section 20160, et seq., less than five thousand dollars qualifying under the Act for direct hire;
   b. Purchasing of goods, supplies or professional or consulting services, supplies, services, equipment and technology less than fifteen thousand dollars.

   2. Administrative appeals to the city council pursuant to Chapter 1.32 of this city code may be made:
      a. In public works project contracts or purchasing decisions where the amount involved exceeds the limits set in subsection (E)(1), above;
      b. In public works project contracts or purchasing decisions where the city manager has made the original purchasing decision;
      c. In every instance where the administrative review by the city council is required by law.

Chapter 2.46 PROCEDURES FOR THE DISPOSITION OF PROPERTY

2.46.010 Adopted—Purpose.

In order to establish efficient procedures for the disposition of personal property which is no longer usable for public purpose intended, or is otherwise obsolete, outmoded, in a state of disrepair, or requiring service costs in excess of salvage value; and to thereafter dispose of such personal property to the best advantage of the city, a procedure for the disposition of personal property is established. (Ord. 1501 § 1, 1988)

2.46.020 Disposition authority designated—Purchasing officer.
The city manager is designated as the purchasing officer for the city of San Bruno. He or she may delegate the duties of disposing of personal property to a designated department head or any other city employee. (Ord. 1501 § 1, 1988)

2.46.030 Transfer of personal property.

Whenever any items of personal property are no longer needed by any city department having possession thereof, such fact shall be reported to the purchasing officer as well as to other departments within the city. Whenever any department has need for any such materials, it may requisition same without cost, and a transfer of such property shall take place. An account of such property transfers shall be maintained in the department of finance. (Ord. 1501 § 1, 1988)

2.46.040 Disposal of unneeded personal property.

Whenever any item of personal property is, in the opinion of the purchasing officer, surplus and no longer needed by the city, the city may dispose of such property, and shall pay the proceeds of such sale, if any, into the city treasury. Disposition may include discarding of such property when warranted.

A. If in the opinion of the department disposing of personal property, in which any single item of property proposed for disposal exceeds in its present value, the amount of five thousand dollars, such property must be disposed of by sealed bid, public auction or by negotiated sale to secure the highest salvage or sale value to the city of San Bruno.

B. The sale or disposition of personal property wherein any single item of property proposed for disposal does not exceed the amount of five thousand dollars may be disposed of by any reasonable method approved by the finance director.

C. The purchasing officer or his or her designee may determine that particular items of personal property, or aggregate items subject to disposition may be disposed of by action of the city council.

D. Personal property used to trade in, trade up, credit or exchange for alternative personal property is not subject to the procedures provided in this chapter. (Ord. 1501 § 1, 1988)

2.46.050 Disposal for public purposes.

Notwithstanding any other provision of this chapter, whenever, in the opinion of the purchasing officer, the disposal of personal property may serve an alternative public purpose, the city may transfer such property to another public or governmental entity needing such personal property at a sale price less than its estimated value, or for no sale price at all. (Ord. 1501 § 1, 1988)

2.46.060 Agreements with other governmental agencies.

The purchasing officer may authorize in writing any other governmental agency to dispose of personal property by any lawful method. This authority includes the authority to act as lead agency when appropriate in the sale of property of other governmental agencies by the city of San Bruno. (Ord. 1501 § 1, 1988)
Chapter 2.48 EMERGENCY PREPAREDNESS

Sections:
2.48.010 Purpose of chapter.
2.48.020 Definitions.
2.48.030 Disaster council
2.48.040 Powers and duties.
2.48.050 Director and Assistant Director of Emergency Services.
2.48.060 Powers and Duties of the Director and Assistant Director of Emergency Services.
2.48.070 Emergency organization.
2.48.080 Compliance with the California Emergency Services Act.
2.48.090 Emergency plan.
2.48.100 Expenditures
2.48.110 Relationship with San Mateo Operational
2.48.120 Certain acts prohibited.
2.48.130 Emergency Preparedness Committee

2.48.010 Purpose of chapter.

A. The declared purposes of this ordinance are to provide for the preparation and carrying out of plans for the protection of persons and property within this jurisdiction in the event of an emergency; the direction of the emergency organization; and the coordination of the emergency functions with all other public agencies, corporations, organizations, and affected private persons.

B. Any expenditures for emergency activities, including mutual aid activities, shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of the city.

2.48.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings set forth in this section:

A. “Emergency” shall mean the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within this jurisdiction caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, or earthquake, or other conditions, including conditions resulting from war or imminent threat of war, but other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities, requiring the combined forces of other political subdivisions to combat.

B. “Emergency preparedness” or “emergency services” shall mean the preparation for and execution of all emergency functions, other than functions for which military forces are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters. Such term shall not include, nor does any provision of this chapter apply to any condition relating to a labor controversy.
C. “Local emergency” means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by conditions such as air pollution, fire, flood, storm, epidemic, riot, drought, cyberterrorism, sudden and severe energy shortage, plant or animal infestation or disease, the Governor’s warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.

D. “State of emergency” means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions such as air pollution, fire, flood, storm, epidemic, riot, drought, cyberterrorism, sudden and severe energy shortage, plant or animal infestation or disease, the Governor’s warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy or conditions causing a “state of war emergency,” which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.

E. “State of war emergency” means the condition that exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent.

2.48.030 Disaster council

There is hereby established the San Bruno disaster council which shall consist of the Mayor as Chair, Director of the Office of Emergency Services as Vice-Chair, the City Manager, the Chief of Police, and the Fire Chief.

2.48.040 Powers and duties.

It shall be the duty of the City of San Bruno Disaster Council, and it is hereby empowered, to develop and recommend for adoption by this governing body, emergency and mutual aid plans and agreements and such ordinances and resolutions and rules and regulations as are necessary to implement such plans and agreements. The Disaster Council shall meet at least once per year, upon call of the chair or, upon call of the vice chair (in the absence of the chair).

2.48.050 Director and Assistant Director of Emergency Services.

There is an office of director of emergency services. The city manager shall be the director. If the city manager is absent or unable to fulfill the duties of director of emergency services, the assistant city manager or acting city manager, as established by resolution of the city council, shall serve as director during the period of emergency.
2.48.060  Powers and Duties of the Director and Assistant Director of Emergency Services.

A. The director is hereby empowered to:

1. Request the governing body to proclaim the existence or threatened existence of a “local emergency” if the governing body is in session, or to issue such proclamation if the governing body is not in session. Whenever a local emergency is proclaimed by the director, the governing body shall take action to ratify the proclamation within seven (7) days thereafter or the proclamation shall have no further force or effect.

2. Request the Governor to proclaim a “state of emergency” when, in the opinion of the director, the circumstances are beyond the jurisdiction’s capacity to adequately respond to or recover from the emergency.

3. Control and direct the effort of this emergency organization for the accomplishment of the purposes of this ordinance.

4. Direct cooperation between and coordination of services and staff of this emergency organization; and resolve questions of authority and responsibility that may arise between them.

5. Represent this jurisdiction in all dealings with public or private agencies on matters pertaining to emergencies as defined herein.

6. In the event of the proclamation of a “local emergency” as herein provided, the proclamation of a “state of emergency” by the Governor, or the existence of a “state of war emergency,” the director is hereby empowered:

   (a) To make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations must be confirmed at the earliest practicable time by the governing body;

   (b) To obtain vital supplies, equipment, and such other properties found lacking and needed for the protection of life and property and to bind the jurisdiction for the fair value thereof and, if required immediately, to commandeer the same for public use;

   (c) To require emergency services of any officer or employee and, in the event of the proclamation of a “state of emergency” in the county in which this city is located or the existence of a “state of war emergency,” to command the aid of as many citizens of this community as deemed necessary in the execution of duties; such persons shall be entitled to all privileges, benefits, and immunities as are provided by state law for registered disaster services workers;

   (d) To requisition necessary personnel or material of the departments or agencies; and

   (e) To execute all ordinary power as city manager all of the special powers conferred by this ordinance or by resolution or emergency plan pursuant hereto adopted
by the governing body, all powers conferred by any statute, by any agreement approved by the governing body, and by any other lawful authority.

B. The director of emergency services shall designate the order of succession to that office, to take effect in the event the director is unavailable to attend meetings and otherwise perform duties during an emergency. Such order of succession shall be approved by the Governing body.

C. The assistant director shall, under the supervision of the director and with the assistance of emergency service chiefs, develop emergency plans and manage the emergency programs of this jurisdiction; and shall have such other powers and duties as may be assigned by the director.

D. In the event of the proclamation of a local emergency or state of emergency, or the existence of a state of war emergency, the director shall also have the following powers:

1. To make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency. Such rules and regulations must be confirmed at the earliest practicable time by the city council;

2. To obtain vital supplies, equipment and other property found lacking and needed for the protection of life and property, and to bind the city for the fair value thereof. If required immediately, he or she shall have the power to commandeer the same for public use;

3. To require emergency service of any city officer or employee. In the event the proclamation of a state of emergency in San Mateo County or the existence of a state of war emergency, to command the aid of as many citizens of the community as he or she deems necessary in the execution of these duties. Such persons shall be entitled to all privileges, benefits and immunities as are provided by state law for registered disaster service workers; and

4. To requisition necessary personnel or material for any city department or agency.

5. To execute:

   (a) All of his or her ordinary powers as city manager;

   (b) All of the special powers conferred upon him or her by this chapter or by resolution adopted pursuant thereto; and

   (c) All powers conferred upon him or her by any statute, agreement approved by the city council or by any other lawful authority, and in conformity with Section 38791 of the Government Code.

6. To exercise complete authority over the city and to exercise all police power vested in the city by the constitution and general laws of the state.

2.48.070 Emergency organization.
All officers and employees, together with those volunteer forces enrolled to aid them during an emergency, and all groups, organizations, and persons who may by agreement or operation of law, including persons impressed into service under the provisions of 2.48.060(D)(3) of this chapter, be charged with duties incident to the protection of life and property during such emergency, shall constitute the emergency organization of the city of San Bruno.

2.48.080 Compliance with the California Emergency Services Act.

The City of San Bruno Disaster Council shall comply with the California Emergency Services Act.

2.48.090 Emergency plan.

The City of San Bruno Disaster Council shall be responsible for the development of the Emergency Plan, which plan shall provide for the effective mobilization of all of the resources of this jurisdiction, both public and private, to meet any condition constituting a local emergency, state of emergency, or state of war emergency; and shall provide for the organization, powers and duties, services, and staff of the emergency organization. Such plan shall take effect upon adoption by resolution of the governing body.

2.48.100 Expenditures.

Any expenditure made in connection with emergency activities, including mutual aid activities, shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of City of San Bruno.

2.48.110 Relationship with San Mateo Operational Area.

The city shall be a member of the San Mateo Operational Area Disaster Organization, which serves to coordinate emergency services and disaster plans, programs and agreements between the political subdivision and the officer of emergency services of the state. The mayor, or an alternate from and designated by the city council shall be a member of said disaster organization, which serves as the governing body for the area disaster organization.

2.48.120 Certain acts prohibited.

It shall be a misdemeanor, punishable in accordance with Section 1.28.010(A) (Violations of a misdemeanor or infraction) of this code, during an emergency, to:

A. Willfully obstruct, hinder, or delay any member of the emergency organization in the enforcement of any lawful rule or regulation issued pursuant to this ordinance, or in the performance of any duty imposed upon him by virtue of this ordinance.

B. Do any act forbidden by any lawful rule or regulation issued pursuant to this ordinance, if such act is of such a nature as to give or be likely to give assistance to the enemy or imperil the lives or property of inhabitants of this city, or to prevent, hinder, or delay the defense or protection thereof.

C. Wear, carry, or display, without authority, any means of identification specified by the emergency agency of the State.
2.48.130 Emergency Preparedness Committee.

A. There is hereby established the San Bruno Emergency Preparedness Committee of the city. The committee shall consist of five members, who shall be residents of the city and not employees of the city (members serving at the time this ordinance takes effect are excepted).

B. The committee shall be assisted by the director of public works or his or her designated representative, the chief of police or his or her designated representative, and the fire chief or his or her designated representative. (Ord. 1621 § 2, 1999)

C. Members of the committee shall be appointed by and serve at the pleasure of the mayor with the majority approval of the city council, subject to removal at any time, pursuant to city council procedures. If a vacancy shall occur in such appointment other than by expiration of term, it shall be filled by appointment for the unexpired term. (Ord. 1621 § 2, 1999)

D. The term of office of each member is four years. (Ord. 1621 § 2, 1999)

E. The emergency preparedness committee shall have the following duties:

1. To prepare the citizens of the city for disasters and emergencies through the provision of emergency preparedness education;

2. To advise and make recommendations to the director of emergency services regarding the posture of the city to render emergency relief to its citizens and their property in the event of a major disaster;

3. To maintain liaison with the county disaster office through the disaster coordinator;

4. To compile and maintain a file for ready reference of all resources available within the city that may be required for emergency relief;

5. To act as a planning staff at the direction of the director of emergency services to prepare plans for the protection and relief of the community in event of a disaster; and

6. To perform such other duties and functions as may be directed by the director of emergency services.

F. Any official recommendation or actions of the emergency preparedness committee shall be made to the director of emergency services.
G. The director of emergency services may approve, modify or deny such recommendations or actions, or refer them to the city council. He or she may also refer matters back to the emergency services committee for further study. (Ord. 1621 § 2, 1999)

H. All members of the committee shall be voting members.

I. Three committee members shall constitute a quorum for the transaction of business. (Ord. 1621 § 2, 1999)

J. The committee shall elect a chairperson, vice chairperson and secretary for a one year term each January. In the absence of a chairperson, or if a vacancy occurs in the office of chairperson, the vice chairperson shall serve as chairperson.

K. The committee shall establish a regular meeting schedule. In accordance with the Ralph M. Brown Act, all meetings shall be open and public, except as otherwise permitted by law. Such regular meeting schedule shall be approved by resolution of the city council.

L. Special meetings, adjournments and continuances of meetings, hearings, executive sessions during meetings and disorderly conduct during meetings shall be governed by Sections 2.04.040 through 2.04.090, with all references therein to the city council and the mayor or residing officer to be applicable, for purposes of this section, to the committee and its chairperson or presiding officer. (Ord. 1639 § 2, 2001; Ord. 1621 § 2, 1999)

M. By-laws. The committee shall prepare by-laws governing its operations and including rules of procedure governing the conduct of its meetings. Except as provided in the rules of procedure to the contrary, Robert’s Rules of Order Revised shall govern the conduct of such meetings. The by-laws shall be approved by the city council. The committee shall review its by-laws on an annual basis. (Ord. 1621 § 2, 1999)

N. Minutes. The committee shall issue copies of the minutes of each committee meeting to the city manager, the city clerk and the city council.

O. Annual Report. The committee’s actions, activities and achievements during the preceding year, its goals for the subsequent year and any recommendations for improvement in providing service to the city. A summary of the annual report shall be presented orally at a regular city council meeting. (Ord. 1621 § 2, 1999)

Chapter 2.50 CULTURE AND ARTS COMMISSION

2.50.010 Findings and purpose.
The city council finds and declares:

A. Preservation of San Bruno’s diverse cultural heritage is a significant and vital community interest.

B. Cultural and artistic development and growth enhance the quality of life and improve the image and character of the community.

C. The city council of San Bruno deems acquiring and maintaining art and supporting and promoting cultural and artistic programs and events to be important and beneficial to the city of San Bruno and its citizens.

D. The city council finds and declares the establishment of a Culture and Arts Commission will increase the general welfare by promoting and preserving the city’s cultural and artistic resources. (Ord. 1688 § 3, 2003)

2.50.020 Establishment.

The San Bruno culture and arts commission is hereby established. (Ord. 1688 § 3, 2003)

2.50.030 Definition.

Culture and arts means but is not limited to: performance arts, such as drama, music, and dance; visual, textile or textile arts, such as painting, sculpture, photography, lighting, holograms, graphics, video art, pottery, quilting, and applied art; literary arts, such as literature, poetry, and journalism; communications arts involving film, television, and radio; and other similar expressions of cultural meaning and heritage. The city council intends that culture and arts shall be defined broadly. (Ord. 1688 § 3, 2003)

2.50.040 Members—Terms.

The culture and arts commission is an advisory commission and shall consist of seven commissioners, who at the time of their appointment and continuously during their incumbency shall not be employees of the city. The term of the office of the commissioners shall be four years. However, the city council may by written policy institute terms of less than four years initially and whenever necessary in order to create staggered vacancies. (Ord. 1688 § 3, 2003)

2.50.050 Appointment—Removal—Vacancy.

The members of the commission shall be appointed by a majority of the city council, subject to removal at any time, pursuant to city council procedures. If a vacancy shall occur in such appointment other than by expiration of term, it shall be filled by appointment for the unexpired term by a majority of the city council. The members of the commission shall serve at the pleasure of the city council. (Ord. 1688 § 3, 2003)

2.50.060 Qualifications.

The members shall be selected from among those in the community, including up to two non-residents, who have a special knowledge of and a demonstrated interest in the arts and who are interested in promoting such activity. In making appointments to the commission, the
city council may consider representation on the commission from a number of arts-related disciplines and activities, including but not limited to, the following:

A. Performance arts, such as drama, music, and dance;

B. Visual, tactile or textile arts, such as painting, sculpture, photography, lighting, holograms, graphics, video art, pottery, quilting, and applied art;

C. Literary arts, such as literature, poetry and journalism;

D. Communications arts involving film, television, and radio;

E. Art education, such as schools, libraries and community education; and

F. Funding, such as fundraisers, representatives of public and private funding agencies and art patrons. (Ord. 1688 § 3, 2003)

2.50.070 Compensation.

No person shall receive any compensation for his or her services as a member of the commission, except for reimbursement of all such expenses necessarily and legitimately incurred and authorized during the performance of official duties. (Ord. 1688 § 3, 2003)

2.50.080 Officers.

The commission shall select one of its voting members as chairperson and another as vice chairperson, each serving a term not to exceed one year. (Ord. 1688 § 3, 2003)

2.50.090 Meetings.

A. The commission shall establish a regular meeting schedule. In accordance with the Ralph M. Brown Act, all meetings shall be open and public, except as otherwise permitted by law. Such regular meeting schedule shall be approved by resolution of the city council.

B. Special meetings, adjournments and continuance of meetings, hearings, closed sessions during meetings, and disorderly conduct during meetings shall be governed by Section 2.04.040 through 2.04.090, with all references therein to the city council and the mayor or presiding officer to be applicable, for purposes of this section, to the commission and its chairperson or presiding officer. (Ord. 1688 § 3, 2003)

2.50.100 By-laws—Rules of procedure—Quorum.

A. By-laws. The commission shall prepare by-laws governing its operations and including rules of procedure governing the conduct of its meetings. Except as provided in the rules of procedure to the contrary, Robert’s Rules of Order Revised or Rosenberg’s Rules, as specified in the by-laws, shall govern the conduct of such meetings. The by-laws shall be approved by the city council. The commission shall review its by-laws on an annual basis.

B. Quorum. Four members of the commission shall constitute a quorum for the transaction of business. (Ord. 1688 § 3, 2003)
2.50.110 Ex-officio members.

The city manager or his or her designee shall serve as an ex officio, non-voting member and shall serve as secretary to the commission. (Ord. 1688 § 3, 2003)

2.50.120 Minutes—Annual report.

A. Minutes. The commission shall issue copies of the minutes of each commission meeting to the city manager, the city clerk, and the city council.

B. Mission Statement and Annual Report. The commission shall create a mission statement detailing the commission’s long-range plans and the steps the commission will make in order to achieve its objectives. The mission statement may include a needs assessment of the community, an inventory of public artworks, cultural facilities, and art services within the community. Within the commission’s first year, the commission shall make an initial written report to the city council regarding its mission plan. Thereafter, the commission shall provide an annual written report to the city council regarding its mission statement, long range plans, its action plan, the commission’s actions, activities, and achievements during the preceding year, and any recommendations for improvement in providing services to the city. A summary of the report shall be presented orally at a regular city council meeting. (Ord. 1688 § 3, 2003)

2.50.130 Duties and responsibilities.

The commission shall have the duties and responsibilities listed below.

A. To review and make recommendations to the city council for its action in all matters pertaining to culture and art, including formulating policies,

B. To develop a five-year capital improvement program for culture and arts in San Bruno for review and approval by the city council.

C. To create an annual budget that supports and reflects the long-range culture and arts goals as articulated in the five-year capital improvement program for review and approval by the city council.

D. To make recommendations to the city council for its action on the acquisition, selection and placement of public art.

E. To make initial and periodic inventories of existing public art, location and condition and to locate and catalog potential public art sites which shall be reported to the city council.

F. To make recommendations to the city council for its action on issues related to planning, supporting and developing culture and art related facilities, projects, programs, and events.

G. To cooperate with other governmental agencies and civic groups in the advancement of sound planning of culture and arts in the city of San Bruno, subject to approval by the city council,

H. To administer the art in public places program as set forth in Chapter 3.40 of the San Bruno Municipal Code.
I. To perform such duties as may be assigned to the commission by the city council.  
(Ord. 1688 § 3, 2003)

2.50.140 Gifts.

The commission may receive donations, gifts, legacies, endowments or bequests for purposes consistent with the commission’s goals and objectives, subject to the final approval of the city council. All monetary donations, gifts, legacies, endowments and bequests shall be turned over to the director of finance or his or her designee and shall be kept in a special fund designated for culture and art purposes. (Ord. 1688 § 3, 2003)

SECTION 4. California Environmental Quality Act (CEQA). This ordinance is not a “project” pursuant to Section 21065 of the Public Resource Code because it does not change the existing regulatory scheme.

SECTION 5. Severability. If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

SECTION 6. Effective Date. The City Clerk shall certify to the adoption of this ordinance and shall cause a summary thereof to be published in a newspaper of general circulation at least five (5) days prior to the meeting at which the proposed ordinance is to be adopted and shall post a certified copy of the proposed ordinance in the office of the City Clerk, and within fifteen (15) days of its adoption, shall cause a summary of it to be published, including the vote for and against the same, and shall post a certified copy of the adopted ordinance in the office of the City Clerk, in accordance with California Government Code Section 36933.

INTRODUCED on the _____ day of _______________, 2019, and PASSED AND ADOPTED by the City Council of the City of San Bruno on this _____ day of _______________, 2019, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

____________________________________
[INSERT NAME]
Mayor of the City of San Bruno
ATTEST:
[INSERT NAME]
City Clerk
RESOLUTION NO. ___
CITY OF SAN BRUNO, COUNTY OF SAN MATEO
STATE OF CALIFORNIA

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO ELECTING TO BECOME SUBJECT TO THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING PROCEDURES SET FORTH IN THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT AND DIRECTING THE CITY MANAGER TO NOTIFY THE STATE CONTROLLER OF THIS ELECTION

WHEREAS, California Public Contract Code Section 22000, et seq., the Uniform Public Construction Cost Accounting Act (the "Act"), establishes a uniform cost accounting standard for construction work contracted by local agencies; and

WHEREAS, the California Uniform Construction Cost Accounting Commission (the "Commission"), established under the Act, has developed uniform public construction cost accounting procedures for implementation by local public agencies in the contracting for construction of public projects; and

WHEREAS, the City Council of the City of San Bruno elects to become subject to the procedures set forth in the Act, and to the Commission's policies and procedures manual, as they may each be amended from time to time.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF SAN BRUNO elects, under California Public Contract Code Section 22030, to become subject to the Uniform Public Construction Cost Accounting Act, and to the California Uniform Construction Cost Accounting Commission's policies and procedures manual, as they may each be amended from time to time; and

BE IT FURTHER RESOLVED that the City Council directs the City Manager or designee to notify the State Controller's Office of this election.

ATTEST:
Melissa Thurman, City Clerk

____________________
I, Melissa Thurman City Clerk, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of San Bruno this ___ day of ___ 2019 by the following vote:

AYES: Councilmembers: __________________________________________

NOES: Councilmembers: __________________________________________

ABSENT: Councilmembers: ________________________________________
RESOLUTION NO. ____________

RESOLUTION BY THE CITY COUNCIL OF SAN BRUNO
REGARDING MASTER MUTUAL AID AGREEMENT

WHEREAS, EARL WARREN, Governor of the State of California, on the 15th day of November, 1950, executed the California Disaster and Civil Defense Master Mutual Aid Agreement on behalf of the State of California and all its Departments and Agencies;

NOW, THEREFORE, the City Council of the City of San Bruno does, by resolution, hereby approve and agree to abide by said California Disaster and Civil Defense Master Mutual Aid Agreement; and the City Clerk is hereby authorized and directed to send a certified copy of this resolution to the California Governor’s Office of Emergency Services.

Adopted and approved ________________, ______
(Date)

______________________________
Mayor, City of San Bruno

ATTEST:

______________________________
Clerk/Recorder

Mail a certified copy to:
California Governor’s Office of Emergency Services
Attn: Preparedness /Local Disaster Council
3650 Schriever Avenue
Mather, CA 95655
RESOLUTION NO.______________

RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SAN BRUNO
RELATIVE TO WORKERS’ COMPENSATION BENEFITS FOR
REGISTERED DISASTER SERVICE WORKER VOLUNTEERS

WHEREAS, Section 8585.5 of the Government Code provides: The California Governor’s Office of Emergency Services (Cal OES) shall establish by rule and regulation various classes of disaster service worker volunteers and the scope of the duties of each class. Cal OES shall also adopt rules and regulations prescribing the manner in which disaster service worker (DSW) volunteers of each class are to be registered. All of the rules and regulations shall be designed to facilitate the payment of workers’ compensation; and

WHEREAS, Cal OES adopted rules and regulations establishing classes of DSW volunteers, the scope of duties of each class, and the manner of registration; and

WHEREAS, Section 8612 of the Government Code provides: Any disaster council which both agrees to follow the rules and regulations established by Cal OES pursuant to the provisions of Section 8585.5 and substantially complies with those rules and regulations shall be certified by the office. Upon that certification, and not before, the disaster council becomes an accredited disaster council; and

WHEREAS, the City of San Bruno has registered and will hereafter register DSW volunteers; and

WHEREAS, the City of San Bruno desires to become an “accredited disaster council” organization in order that injured DSW volunteers registered with it may benefit by the provisions of Chapter 10 of Division 4 of Part 1 of the Labor Code;

NOW, THEREFORE, the Council of the City of San Bruno hereby agrees to follow the rules and regulations established by Cal OES pursuant to the provisions of Government Code Section 8585.5.

The Clerk/Recorder is hereby instructed to send a certified copy hereof to Cal OES.

Effective: ________________, _____

(Date)

______________________________
Mayor, City of San Bruno
ATTEST:

____________________
Clerk/Recorder

Mail a certified copy to:
California Governor’s Office of Emergency Services
Preparedness Branch
3650 Schriever Avenue
Mather, CA 95655
DATE: June 11, 2019

TO: Honorable Mayor and Members of the City Council

FROM: Marc Zafferano, City Attorney

SUBJECT: Review Report and Provide Direction Regarding Amendments to San Bruno Municipal Code Title 3 (Revenue and Finance) as part of a comprehensive Municipal Code Update

BACKGROUND:

At its meeting on October 9, 2018, the City Council directed staff to work with the City’s code publisher, Quality Code Publishing (“QCP”) to obtain a technical review of the City’s Code and recommend amending actions. It is intended that this comprehensive Municipal Code update occur on an iterative basis. Previously, the City Council adopted amendments to Title 1, General Provisions, and Title 2, Administration and Personnel. Title 3, Revenue and Personnel, consists of the following chapters and are being amended as generally explained below and described more specifically in the discussion section of this report.

**Article 1 Business Taxes**

Chapter 3.04 Definitions Amendments
Chapter 3.08 General Provisions Amendments
Chapter 3.12 Applications for License – Payment of Tax Amendments
Chapter 3.16 Schedule of Taxes Amendments

**Article 2 Other Taxes**

Chapter 3.20 Definitions Amendments
Chapter 3.24 Tax Function Transfers No change
Chapter 3.28 Sales and Use Tax No change
Chapter 3.32 Transient Occupancy Tax Amendments
Chapter 3.36 Real Property Documentary Stamp Tax Amendments
Chapter 3.38 Additional Provisions Amendments

**Article 3 Fees**

Chapter 3.40 Art in Public Places Amendments
DISCUSSION:

General Comment

Some definitions in Title 3 differ slightly from the same word or phrase in other chapters in the Municipal Code. In order to bring the definitions into alignment, a few definitions are revised and some definitions in Title 3 will simply refer to the section in the chapter that regulates that particular business. It is recommended that other definitions await the review and amendment of later chapters such as the zoning code due to the more in-depth policy review and examination required.

Chapter 3.04, Definitions (Article I, Business Taxes)

Section 3.04.030, Auxiliary Unit.
Eliminated “milk receiving stations for dairies” from list of facilities that constitute an “auxiliary unit” as not relevant today.

Section 3.04.150, Family.
Over time and as a result of litigation, codes have moved away from regulating zoning based on biological or legal relationships which intruded into privacy and moved toward regulating based on space, occupancy maximum, building codes, and/or shared housekeeping obligations. The current definition is revised to avoid these issues by referring to the zoning code’s definition of “housekeeping” as “a single living unit, consisting of a room or suite or combination of rooms, providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.”

Section 3.04.170, Gross receipts.
This is a minor revision updating citation language.

Section 3.04.190, Peddler.
Cal. Gov’t Code Section 51036, and following (also known as SB 946) is the new state law regulating street vendors, both roaming and stationary, and which will necessitate a change to the city’s existing law contained in Chapter 4.18 (Pushcart and Sidewalk Vendors) and may also require changes to Chapter 4.16 (Peddlers) and Section 6.12.080 (Solicitation regulations).

In Title 3, there are definitions for both “peddler” and “solicitor” with the difference being that peddlers take orders for immediate delivery and solicitors for future delivery. Peddlers are regulated in Chapter 4.16. The definition in that chapter combines peddlers and solicitors into one definition called “peddler.” This amendment to Title 3 (and that to “Solicitor” below) makes a similar change.
Section 3.04.200, Person.
Eliminated from the definition of “person” is “Massachusetts business or common law trust” because that reference is outdated.

Section 3.04.230, Sale.
Adds a title to a referenced section for the purpose of clarity.

3.04.240, Solicitor.
See comments above under “peddler.” The term “solicitor” should be removed from the code as redundant and as additional titles are amended.

Chapter 3.08, General Provisions.

Section 3.08.020, License required – Violations.
Adds a chapter title to a reference chapter for the purpose of clarity.

Section 3.08.100, Exemptions – constitutional and statutory.
The PUC regulates charter party carriers, which are transportation companies operating on a pre-arranged basis like a limousine for hire. In 2013, the PUC created a new transportation category called a “transportation network company” or “TNC” to regulate companies like Uber and Lyft. As provided by Section 5431(a) of the Public Utilities Code, a TNC means “an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.”

TNCs are subject to state jurisdiction as a charter-party carrier. Recently, the legislature enacted two new laws to regulate TNCs. One statute requires TNCs to obtain local and national criminal background checks on each participating driver. (Ca. Pub. Util. section 5445.2, also known as AB 1289). Another enactment protects drivers who operate in multiple jurisdictions as part of a transportation network company from having to obtain a license in every jurisdiction. (Ca. Bus. & Prof. Code s. 16550.2) The law provides a TNC driver is only required to obtain a single business license in the jurisdiction in which the driver is domiciled, regardless of the number of local jurisdictions in which the driver might operate. If the local jurisdiction where the driver is domiciled does not require such a business license, the drive is not required to obtain a business license in any other jurisdiction. An additional exception has been added to subsection A of this section of the City’s code to provide for this business license exemption.

Chapter 3.12, Applications for License – Payment of Tax

Section 3.12.100, Contents of license.
Added the title of a referenced section for purpose of clarity.
Section 3.12.250, Designated penalty.
Added the title of a referenced section for purpose of clarity.

Chapter 3.16, Schedule of Taxes.

Section 3.16.120, Peddlers and solicitors.
Added the titles of referenced sections for purpose of clarity.

Section 3.16.130, Public dances – Place of public dance.
Added the title of a referenced section for purpose of clarity.

Section 3.16.150, Condominium projects.
Added the title of a referenced section for purpose of clarity.

Section 3.16.170, Single-family residential structures.
Added the title of a referenced section for purpose of clarity.

Chapter 3.20, Definitions (Article II, Other Taxes)

Section 3.20.100, Rental agent.
In order to address collection of transient occupancy taxes (TOT) by companies like AirBnb, a new definition of “rental agent” is added to this section in order to facilitate the collection of TOT from such companies. The amendment defines “rental agent” to mean “any person other than an operator who collects rent from a transient for the transient’s occupancy of a hotel.”

Chapter 3.28, Sales and Use Tax

Section 3.28.040, Exemptions.
Adds the title of a referenced section and titles of referenced state statutes for the purpose of clarity.

Section 3.28.070, Additional seller’s permit not required.
Adds the title of a referenced state statute for the purpose of clarity.

Section 3.28.080, Rules of construction.
Adds the titles of referenced state statutes for the purpose of clarity.

Chapter 3.32, Transient Occupancy Tax

Numerous sections add “rental agent” as defined in 3.20.100 to its provisions. This clarifies existing law that transients (i.e. guests) are required to pay the tax even if they book a room through an internet platform (“rental agent.”) As part of an upcoming regulatory ordinance scheduled for review later this year, individuals who host guests in
their homes through the use of a rental agent such as an internet platform will be required to remit the tax to the City unless the City has entered into an agreement with the rental agent.

**Section 3.32.030 (Operator’s duties)**
Changes the title and adds a provision clarifying that if an operator or rental agent fails or refuses to collect the tax, the operator or rental agent is liable to the city for the amount of the uncollected tax.

**Section 3.32.070 (Failure to collect and report tax)**
Adds a provision that nothing in this section prohibits the tax administrator from assessing the full amount of any unremitting taxes and penalties solely against the operator in lieu of assessing some or all of those taxes and penalties against the rental agent.

**Section 3.32.110 (Actions to collect)**
Adds provisions reinforcing the amendments to Section 3.32.030, as described above.

**Chapter 3.36, Real Property Documentary Stamp Tax**

**Section 3.36.020 (Tax imposed – Amount.)**
Amendment strikes state law citation that is no longer valid. Title to referenced state statute added for purpose of clarity.

**Section 3.36.040, Exemptions.**
Amendment strikes invalid citations and updates a federal bankruptcy definition of "corporation" with a new citation, which when referenced, defines "corporation as follows: “The term “corporation”-- (A) includes--(i) association having a power or privilege that a private corporation, but not an individual or a partnership, possesses; (ii) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association; (iii) joint-stock company; (iv) unincorporated company or association; or (v) business trust; but (B) does not include limited partnership.

**Chapter 3.40, Art in Public Places**

**Section 3.40.030, Art defined.**
Adds a title to a referenced chapter and section for purpose of clarity.

**FISCAL IMPACT:**

None at this time. Once the City adopts a regulatory ordinance for short term rentals, the City will be able to collect TOT from either the hosts or the rental agent, resulting in increased revenue to the City. City costs to implement the tax collection and regulatory programs can be recovered from registration fees.
RECOMMENDATION:

Review Report and Provide Direction Regarding Amendments to San Bruno Municipal Code Title 3 (Revenue and Finance) as part of a comprehensive Municipal Code Update

ALTERNATIVES:

1. Request additional information before providing direction to staff.

DISTRIBUTION:

None.

ATTACHMENTS:

1. Redline version of amendments to Title 3.
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO
AMENDING TITLE 3 (REVENUE AND FINANCE) OF THE MUNICIPAL CODE AS
PART OF A COMPREHENSIVE UPDATE

WHEREAS, the city adopted a codification of the general ordinances of the city of San
Bruno entitled the “San Bruno Municipal Code Revised and Republished December 1998” (“the
Municipal Code” or “the Code”) which was authorized and approved by Ordinance No. 1604
and adopted January 11, 1999, pursuant to Government Code Sections 50022.1-50022.10;

WHEREAS, since that time, the Municipal Code has been regularly amended and
augmented with new ordinances expanding its volume and complexity; and

WHEREAS, at its meeting on October 9, 2018, the City Council directed staff to work
with the City’s code publisher, Quality Code Publishing (“QCP”) to obtain a technical review of
the City’s Code with the purpose of identifying citation conflicts and inconsistencies with state
law as well as obsolete provisions, and recommend amendatory actions; and

WHEREAS, in response to the analysis and recommendations of Municode and
additional staff recommendations, the City is amending its Code on an iterative basis; and

WHEREAS, the amendments contained in this Ordinance relate to Title 3 (Revenue and
Finance) and are generally recommended for reasons of compliance, consistency, citation
updates, and/or to reflect current terminology and/or practices.

NOW, THEREFORE, the City Council of the City of the City of San Bruno does ordain
as follows:

SECTION 1. Recitals. The above recitals are incorporated as though set forth in this
section.

SECTION 2. Editorial guidance. The following non-substantive editorial style is used.
Words that are underlined are additions; words with a line through are deleted; and words in
[brackets] are instructions for the Code publisher and which instructions are not to be published
in the City’s Code unless worded as an “editor’s note”.

In addition, the Code publisher will arrange definitions and other changes alphabetically
to conform to the Code’s current style and will, as needed, re-order numbering and lettering
changes caused by these amendments. The City Clerk and the City Attorney are authorized to
work with the Code Publisher to effectuate non-substantive amendments to ensure consistency as
to form and style of the Code.
Further, the code publisher is directed to substitute the name of an office and/or position wherever possible rather than use a gender pronoun without further or formal amendments.

**SECTION 3.** Title 3, Administration and Personnel, is amended and restated to read, as follows:

**TITLE 3**
**REVENUE AND FINANCE**

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**Article I. Business Taxes**

**Chapter 3.04 DEFINITIONS**

**3.04.010 Generally.**

For the purposes of this article the words and phrases set forth in Sections 3.04.020 through 3.04.270 shall have the meanings respectively ascribed to them. (Ord. 1420 § 1, 1983; prior code § 12-1.1)

**3.04.020 Apartment house.**

“Apartment house” means any building, or portion thereof, which is designed, built, rented, leased, let or hired out to be occupied, or which is occupied as the home or residence of three or more families living independently of each other and doing their own cooking in the building, and includes flats and apartments. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (A))

**3.04.030 Auxiliary unit.**
“Auxiliary unit” means an establishment primarily engaged in performing supporting services for other establishments of the same business rather than for the general public or for other businesses. “Auxiliary unit” includes but is not limited to the following:

A. A separate research and development or testing laboratory operated for manufacturing plants of the same business.

B. A separate warehouse or storage yard for merchandise of establishments of the same business for its own use and not for public storage.

C. Trading stamp redemption stores.

D. An automotive repair shop or storage garage operated by a department store, manufacturing, or transportation company, for its own use and not for the public (commercial) repair or storage of vehicles.

E. A separate repair shop serving various establishments of the same business primarily for the maintenance and repair of its own machinery and equipment.

F. Showrooms in which sales do not take place.

G. Milk receiving stations for dairies.

H. Field engineering support activities.

I. Separate establishments engaged in news collection, editorial work, or advertising sales related to the publishing activity of the same company.

J. A separate establishment providing equipment to construction establishments of the same business.

K. Computing, tabulating, or data processing establishments primarily operated for a business’ own use, rather than for the general public or for other business firms.

L. Purchasing offices of multiunit firms.

M. Accounting and billing offices operated for company use. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (B))

3.04.040 Average number of persons employed.

“Average number of persons employed” means the number of employees, as defined in Section 3.04.140, employed within the city, earning wages during pay periods nearest the
fifteenth day of each month as reported to the state department of employment on forms which are used for reporting payments under the Unemployment Insurance Act, for each month of the previous calendar year, adding the same and dividing by twelve. If the employer has been in business less than one year, he or she may use the average number of employees who will be employed by him or her during the remainder of the calendar year. At the option of the licensee, the average number of persons employed daily in his or her business for one year for the purpose of fixing the license tax due under this chapter shall be determined by ascertaining the total number of hours of service performed by all employees in the city during the previous year and dividing the total amount of hours of service thus obtained by the number of hours of service constituting a year’s work of one full-time employee according to the custom or laws governing such employment. In computing the average number of persons employed, fractions of numbers shall be excluded. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (C))

3.04.050 Business.

“Business” means professions, trades and occupations and every kind of calling, whether or not carried on for profit or livelihood. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (D))

3.04.070 Central administrative office.

“Central administrative office” means an establishment primarily engaged in general administrative, supervisory, accounting/purchasing, engineering and systems planning, advertising, legal, financial, or related management functions performed centrally for other establishments of the same business. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (F))

3.04.080 Community apartment.

“Community apartment” means a development in which an undivided interest in land is coupled with the right of exclusive occupancy of any apartment located thereon. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (G))

3.04.090 Condominium.

“Condominium” means an estate in real property consisting of any undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential building. Such separate interest may, with respect to the duration of its enjoyment, be either an estate of inheritance, or perpetual estate, an estate for life, an estate for years, such as a leasehold or subleasehold, or a right to use. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (H))

3.04.100 Condominium project.

“Condominium project” means an undertaking whereby either:

A. Real property is developed or will be developed with dwellings consisting of two or more dwelling units; or
B. The estate or interest in one or more existing dwellings consisting of two or more dwelling units has been converted or is to be converted to one or more of the following forms of estates or interests in real property:

1. Condominiums;
2. Community apartments;
3. Stock cooperatives;
4. Such other estate or property interest by which a purchaser or occupant of a dwelling unit in such a dwelling may obtain a transferable, monetary equity accumulating right of ownership, occupancy, or use of such dwelling unit or the airspace therein, as opposed to the right of a mere tenant or lessee in a dwelling unit. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (I))

3.04.110 Condominium unit.

“Condominium unit” means a dwelling unit within a condominium project. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (J))

3.04.120 Development and construction.

“Development and construction” means any and all acts, connected with the building, erection, construction, creation, production, conversion into, subdivision to create or improvement to create any condominium project or single-family residential structure. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (K))

3.04.130 Electrical musical device.

“Electrical musical device” means any machine, apparatus, or device operated or which may be operated by electricity, and:

1. Is designed or constructed for the purpose of producing or playing any musical tone or combination of tones;
2. The use, operation or playing of which is commenced, permitted, or allowed by the deposit of any coin, slug, or token in any slot or receptacle attached thereto; and
3. Which does not dispense any article or thing which cannot be operated as a game or contest. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (L))

3.04.140 Employee.

“Employee” means any person engaged in the operation or conduct of any business, whether as owner, any member of owner’s family, partner, agent, manager, solicitor and any and all persons employed or working in said business. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (M))
3.04.150 Family.

“Family” means one or more persons occupying a premises and living as a single housekeeping unit as defined in 12.80.265 (Housekeeping unit) of Chapter 12.80 (Definitions) of Title 12 (Land Use) of this code, as distinguished from a group occupying a motel, club, fraternity or sorority house. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (N))

3.04.160 Fixed place of business.

“Fixed place of business” means a place of business regularly kept open, with someone in charge thereof, for the transaction of the particular business engaged in during the hours customary to transact such business. Any person residing in the city and maintaining in his or her home any office for the transaction of details incidental to a business carried on elsewhere shall be deemed to have a fixed place of business. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (O))

3.04.165 Gambling club.

“Gambling club” means any establishment where legal gambling or gaming is conducted or licensed, specifically including any business or other enterprise that conducts or operates legal gambling or gaming. “Gambling club” does not include any facility operated by any bona fide nonprofit society, club, fraternity, labor, or other organization organized for similar purposes, which has adopted bylaws and duly elected directors and members, where the tables are for the exclusive use of the members of the organization, and no charge is made for any of the facilities. “Legal gambling” means any card or other game, except for bingo, played for currency, check, credit or any other thing of value which is not prohibited and made unlawful by Chapter 9 (commencing with Section 319) or Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code, or otherwise prohibited by any ordinance of the city of San Bruno. (Ord. 1476 § 3, 1987)

3.04.170 Gross receipts.

“Gross receipts,” except as otherwise specifically provided, means and includes the total of amounts actually received or receivable from the sales and/or the total amounts actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, including interest and carrying charges in connection with such sales or services, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise.

A. Included in such term shall be all receipts, cash, credits, redemption stamps, and property of any kind or nature, without any deduction therefrom on account of the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever.

B. Not included in such term shall be the following:
1. Cash discounts allowed and taken on sales;

2. Sales, use, transient occupancy or any taxes, required by law to be included or added to the purchase price and collected from the consumer or purchaser;

3. Such part of the purchase price of property returned by purchasers upon rescission of the contract of sale as is refunded in either case or by credit;

4. Receipts of persons acting as agents, brokers or trustees, provided the agent, broker, or trustee has furnished the collector with the names and addresses of the others and the amounts paid to them, other than receipts received as commissions or fees earned, or charges of any character received for the performance of any service as agent, broker, or trustee. However, any agent, broker, or trustee dealing stocks or any other similar written instruments evidencing a right to participate in the assets of any business, or dealing in bonds or other evidences of indebtedness, who also deals in such property as a principal, shall include in the gross receipts by which the tax is measured the amount of his or her trading profits resulting from such dealings. No deduction from receipts attributable to trading as a principal shall be made unless such deduction is provided for in this section;

5. Receipts of refundable deposits, except that refundable deposits forfeited and taken into the income of the business shall not be excluded;

6. As to a retail gasoline dealer, a portion of his or her receipts from the sale of motor vehicle fuel equal to the motor fuel license imposed by and previously paid under the provisions of Part 2 of Division 2 of the Revenue and Taxation Code of the state;

7. As to retail gasoline dealer, the special motor fuel tax imposed by Section 4041 of Title 26 of the United States Code, as it may be amended from time to time, if paid by the dealer or collected by him or her from the consumer or purchaser;

8. That portion of the receipts of a general contractor which represents payments to subcontractors; provided, that such subcontractors are licensed (or taxed) under this article, and provided, that the general contractor furnishes the tax collector with the names and addresses (personal and/or business) of the subcontractor and the amounts paid or payable to each subcontractor;

9. Cash value of sales, trades, or transactions between departments or units of the same business, commonly called “interdepartmental transfers;”

10. Sales for convenience where sales of new goods, wares, or merchandise are made by a person engaged in selling such articles to another person similarly engaged where:

   i. The primary purpose of the particular transaction of sale is to accommodate the purchaser rather than to make a sale in the ordinary course of business, and the price paid is essentially the book value of the article; and
ii. Where, in the particular kind of business involved, a similar manner of dealing is frequent or customary in the circumstances under which the particular sale is made; and

iii. Where goods, wares, or merchandise of like or similar kind and of substantially equivalent value to that which was sold is received in consideration;

11. The amount of gross receipts which has been subject to a license tax paid to any other city;

12. Gross receipts from the sale of alcoholic beverages. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (P))

3.04.180 Mechanical amusement devise.

“Mechanical amusement device” means any machine, device, or contrivance designed, constructed or operated for the playing of any game or contest, or for the exhibition of any display or picture for amusement, the use, operations, or playing of which is dependent upon or is commenced, permitted, or allowed by the deposit of any coin, slug, or token in any slot or receptacle attached thereto or connected therewith. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (Q))

3.04.190 Peddler.

“Peddler” means as defined in Section 4.16.020 (Definitions) of Chapter 4.16 (Peddlers) of this code, any person engaging in the business of going from house to house, from place to place, or in or along the streets or sidewalks within the city selling goods, wares, merchandise, or other things of value in his or her actual possession. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (R)

[Publisher: This definition combines the two definitions which makes it consistent with 4.16.020 and 6.12.080.]

[Related references: 3.16.120, 6.12.080]

3.04.200 Person.

“Person” means any domestic or foreign corporation, association, syndicate, joint stock corporation, partnership of any kind, club, Massachusetts business or common law trust, society or individual transacting and carrying on any business in the city, other than as an employee. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (S))

3.04.210 Room.

“Room” means a space in a structure for living, eating, sleeping, or cooking. “Room” does not include bathrooms, toilet compartments, halls, storage or utility space, and similar areas. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (T))
3.04.220 Roominghouse.

“Roominghouse” means a dwelling other than a hotel where lodging is provided for three or more persons for compensation. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (U))

3.04.230 Sale.

“Sale,” as used in Section 3.16.160 (Condominium projects), means a conveyance or transfer of title to a condominium unit, to a community apartment, or to a single-family residence or lot, an issuance of stock and leasehold interest pertaining to a condominium unit or to a community apartment, or any other issuance or transfer of an equity interest in a condominium project unit to a unit purchase in such form as may be appropriate to the particular type of condominium project. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (V))

3.04.240 Solicitor.

“Solicitor” means the same thing as “peddler” and which is defined in Section 3.04.190 herein, any person engaging in the business of going from house to house, from place to place, or in or along the streets or sidewalks within the city selling or taking orders for goods, wares, merchandise, or other things of value for future delivery, or for services to be performed. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (W))

[Publisher: This definition combines the two definitions which makes it consistent with 4.16.020 and 6.12.080.]

[Related references: 3.16.120, 6.12.080]


“Standard Industrial Classification Manual” means the most recently published edition of the Standard Industrial Classification Manual of the Office of Management and Budget of the Executive Office of the President of the United States. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (X))

3.04.260 Stock cooperative.

“Stock cooperative” means a corporation which is formed or availed of primarily for the purpose of holding title to, either in fee simple or for a term of years, improved real property, where all or substantially all of the shareholders of such corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation, which right of occupancy is transferable only concurrently with the transfer of the share or shares of stock or membership certificate in the corporation held by the person having such right of occupancy. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (Y))

3.04.270 Temporary vendor.
“Temporary vendor” means any person engaging in the business of selling or taking orders for goods, wares, merchandise, or other things of value, whether in his or her actual possession or for future delivery, from a fixed place of business, for a period of time not exceeding thirty days, without any intention of engaging in such business at such location on a permanent basis. (Ord. 1420 § 1, 1983; prior code § 12-1.1 (Z))

3.04.280 Vehicle vendor.

“Vehicle vendor” means any person (natural person, firm, partnership, association, corporation, or other entity) vending from a vehicle used for the purposes of selling, or offering for sale, goods or merchandise to the public. “Vending vehicles” means and includes but is not limited to any catering truck, lunch wagon, eating car, van or trailer. (Ord. 1714 § 3, 2006)

Chapter 3.08 GENERAL PROVISIONS

3.08.010 Purpose.

This article is enacted solely to raise revenue for municipal purposes and is not intended for the purpose of regulation. (Ord. 1405 § 1, 1982; prior code § 12-2.1)

3.08.020 License required—Violations.

A. There are imposed upon all businesses in the city license taxes in the amounts set forth in Chapter 3.16 (Schedule of Taxes).

B. It is unlawful for any person, either for himself or herself or for any other person, to commence, transact or carry on any business in the city not excluded by this article, without first having procured a license from the city to do so, or without complying with any and all regulations contained in this article. (Ord. 1405 § 1, 1982; prior code § 12-2.2)

3.08.030 Unlawful business not authorized.

No license issued under the provisions of this article shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any ordinance of the city. (Ord. 1405 § 1, 1982; prior code § 12-2.3)

3.08.040 Conformance to other regulations required.

The payment of a license tax and the issuance of a license to any person by the city shall not entitle the licensee to carry on any business unless he or she has complied with all the requirements of this code and all other applicable laws, nor to engage in or to carry on any business in any building or in any premises designated in such license if such building or premises are situated in an area or locality in which the conduct of such business is in violation of this code, or any ordinance of the city, or any other law. (Ord. 1405 § 1, 1982; prior code § 12-2.4)
3.08.050 Evidence of doing business.

When any person shall by use of signs, circulars, cards, telephone book, or newspapers, advertise, hold out, or represent that he or she is in business in the city, for one transaction or more, or when any person holds an active license or permit issued by a governmental agency indicating that he or she is in business in the city, such facts shall be considered prima facie evidence that he or she is conducting a business in the city. (Ord. 1405 § 1, 1982; prior code § 12-2.5)

3.08.060 Enforcement of article—Exhibit of certificate on demand required.

A. It shall be the duty of the tax collector and his or her authorized deputies or assistants to enforce the provisions of this article. The chief of police shall render such assistance as the tax collector may require.

B. In the performance of his or her duties under this article, the tax collector and his or her authorized deputies and assistants may examine all places of business in the city to ascertain whether the provisions of this article have been complied with. They and any police officer shall be authorized to enter, free of charge, at any reasonable time, any place of business required to be licensed under this article and demand exhibition of its license certificate.

C. It is unlawful for any person having such license certificate in his or her possession or under his or her control to willfully fail to exhibit such certificate on demand of the tax collector, any authorized deputy or assistant of the tax collector, or any police officer. (Ord. 1405 § 1, 1982; prior code § 12-2.6)

3.08.070 Branch establishment—Separate businesses at one location.

A. Separate licenses shall be obtained for each branch establishment or location of the business engaged in, as if each such branch establishment or location were a separate business.

B. Separate licenses shall be obtained for each separate type of business at the same location.

C. Each license shall authorize the licensee to engage only in the business licensed thereby at the location of in the manner designated in such license.

D. Warehouses, distributing plants and other locations which generate no additional gross receipts but are used in connection with and incidental to a business licensed under this article shall not be deemed to be separate places of business or branch establishments. (Ord. 1405 § 1, 1982; prior code § 12-2.7)

3.08.080 Carrying on two or more businesses.
A. Any person managing, carrying on, or conducting two or more separate businesses subject to the payment of a license tax under more than one classification in this article, whether or not at the same location or under the same management shall pay a separate license tax for each of said businesses.

B. The gross receipts derived from that portion of the two or more businesses which is subject to a license tax other than on the basis of gross receipts, shall be deducted from the total gross receipts in determining the annual gross receipts upon which the tax based upon gross receipts is predicated. (Ord. 1405 § 1, 1982; prior code § 12-2.8)

3.08.090 Exhibiting licenses.

A. Every person having a license under the provisions of this article and carrying on a business at a fixed place of business shall keep such license posted and exhibited while in force, in some conspicuous part of the place of business.

B. Every person having such a license and not having a fixed place of business shall carry such license with him or her at all times while carrying on the business for which the license was granted. If a vehicle is used in the conduct of the business, a windshield sticker shall be attached thereto as otherwise required by this article. (Ord. 1405 § 1, 1982; prior code § 12-2.9)

3.08.100 Exemptions—Constitutional and statutory.

A. Except as may be otherwise specifically provided in this article, the terms hereof shall not be deemed or construed to apply to any of the following persons:

1. Any public utility which pays to the city a tax under a franchise or similar agreement;

2. Insurance companies and associations to the extent that cities are precluded from levying license taxes under Article 13, Section 28 of the State Constitution;

3. Banks and financial corporations to the extent that cities are precluded from levying license taxes under Part 11 of Division 2 of the Revenue and Taxation Code;

4. Any person transacting or carrying on any business exempt by virtue of the Constitution or applicable Statutes of the United States or the state from the payment of such taxes as prescribed in this article; and

5. To the extent exempted by federal or state law, including but not limited Ca. Bus. & Prof. Code 16550.2 (Driver operating in multiple local jurisdictions).

B. The tax collector may require the filing of a verified statement from any person claiming to be excluded or exempt by the provisions of this section. Such statement shall set
forth all facts upon which the exclusion or exemption is claimed. (Ord. 1405 § 1, 1982; prior code § 12-2.10)

3.08.110 Exemptions from payment of tax—Charities, disabled persons and other persons.

A. Charitable and Nonprofit Organizations and Events. The provisions of this article shall not require the payment of a license tax to conduct, manage, or carry on:

1. Any business, occupation, or activity from any institution or organization which is conducted, managed or carried on wholly for the benefit of charitable purposes or from which profits not derived, either directly or indirectly, by any individual;

2. Any entertainment, concert, exhibition or lecture on scientific, historical, literary, religious or moral subjects within the city, whenever the receipts of any such event are to be appropriated to any church or school or to any religious or benevolent purpose; or

3. Any entertainment, dance, concert, exhibition, or lecture by any religious, charitable, fraternal, educational, military, state, county or municipal organization or association whenever the receipts of any such event are to be appropriated for the purpose and objects for which the organization or association was formed, and from which profit is not derived, either directly or indirectly, by any individual.

This subsection shall not exempt any organization or association from complying with any other provisions of this code which may require a permit for any activity thereof, nor any person acting as a promoter of any such activity for profit of livelihood.

B. Disabled Persons. The provisions of this article shall not require the payment of a license tax by:

1. Any honorably discharged or relieved veteran of any of the armed forces of the United States who provides a certificate of disability from the Veteran’s Administration, is physically unable to earn a livelihood by manual labor, is a voter or resident, respectively, of this state, and desires to hawk, peddle or vend goods, wares, and merchandise owned by him or her or to distribute circulars;

2. Any city employee who is injured during the course of the performance of his or her duties, and who becomes physically disabled as a result therefrom; provided, that such exemption shall first be approved by the city council.

C. Auctioneers. The provisions of this article shall not require the payment of a license tax by any real estate auctioneer whose business is limited exclusively to auctioning real estate, except if such auctioneer has a fixed place of business in the city.

D. Young Persons With Limited Revenues. The provisions of this article shall not require the payment of a license tax by any individual person of the age of sixteen years and under whose annual gross receipts from any and all businesses is five hundred dollars or less.
E. Highway Carriers. The provisions of this article shall not require the payment of a license tax for the operation of vehicles for the sole purpose of transportation of property for hire, where such activity is subject to the highway carriers uniform business license tax and defined as intercity transportation business pursuant to the Highway Carriers’ Uniform Business License Tax Act; provided, however, that:

1. Persons who make deliveries of goods, wares, or merchandise, or other personal property on a basis other than for-hire shall not be entitled to such exemption in connection with such activities; and

2. Any person who conducts any business in the city other than as defined as intercity transportation business in said act shall be required to pay a business license tax as specified in this chapter.

F. Application for Exemption. Any person claiming an exemption pursuant to this section shall file a verified statement with the tax collector stating the facts upon which the exemption is claimed. The tax collector, upon a proper showing contained in the verified statement, shall issue a license to such person claiming exemption under this section without payment to the city of the license tax required by this article. (Ord. 1405 § 1, 1982; prior code § 12-2.11)

3.08.120 Revocation of exemption.

The tax collector may revoke any exempt license granted pursuant to the provisions of this article upon information that the licensee is not entitled to the exemption. In such revocation the procedure to be followed and right of appeal and hearing shall be provided as is applicable to issuance or refusal to issue licenses, the amount of license tax due, or the classification of the business for purposes of calculating the license tax. (Ord. 1405 § 1, 1982; prior code § 12-2.12)

3.08.130 Interstate commerce—Relief from undue burdens.

A. No license tax authorized by this article shall be so applied as to occasion an undue burden upon interstate commerce.

B. If a licensee or applicant for a license believes that the license tax places an undue burden on such commerce, he or she may apply to the tax collector for an adjustment of the tax so that it shall not be discriminatory or unreasonable as to such commerce. Such application may be made before, at or within six months after payment of the prescribed license tax.

C. The applicant shall, by affidavit and supporting testimony, show his or her method of business and the gross volume or estimated gross volume of business and such other information as the tax collector may deem necessary in order to determine the extent, if any, of such undue burden on such commerce.
D. The tax collector shall conduct an investigation. After obtaining the written approval of the city attorney, the tax collector shall within fifteen days after the applicant has submitted the necessary information fix the license tax for the applicant in an amount that is reasonable and nondiscriminatory. If the license tax has already been paid, the tax collector shall order a refund of the amount over and above the license tax so fixed. In fixing the license tax to be charged, the tax collector shall be authorized to base the license tax upon a percentage of gross receipts or any other measure which will assure that the license tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the license tax as prescribed by this article.

E. Should the tax collector determine the gross receipts measure of license tax to be the proper basis, he or she may require the applicant to submit, either at the time of termination of the applicant’s business in the city or at the end of each three months, a sworn statement of the gross receipts and pay the amount of license tax therefor: provided, that no additional license tax during any one calendar quarter shall be required after licensee shall have paid an amount equal to the annual license tax as prescribed in this article. (Ord. 1405 § 1, 1982; prior code § 12-2.13)

3.08.140 Calculation of tax—Persons doing business within and outside city.

A. Business Within and Outside of City—Apportionment.

1. Each person who transacts and carries on a business in the city and maintains fixed places of business both within and outside the city, and who is subjected to a business license tax based upon gross receipts pursuant to this article shall apportion that portion of his or her gross receipts derived from business transacted or carried on within the city as the basis for liability for business license tax pursuant to this article.

2. When such apportionment cannot be accurately made between cities wherein business is transacted by accounting methods normally or customarily used by the taxpayer, the taxpayer shall apportion as that portion of the gross receipts derived from business transacted or carried on within the city that proportion of his or her gross receipts which the cost of doing business within the city bears to the total costs of doing business both within and outside the city.

B. Business Without Fixed Place of Business in City—Apportionment.

1. Each person who transacts and calls on a business in the city who does not maintain a fixed place of business in the city and is subject to a business license tax based upon gross receipts pursuant to this article shall apportion his or her gross receipts in the same manner as provided in subsection A of this section for persons maintaining fixed places of business within and outside the city.

2. Each person to whom this subsection applies shall be allowed as a credit against the business tax otherwise due the city, an amount equal to the amount of business tax or business license tax paid to another city for the same period to the extent that such tax is attributable to gross receipts derived from business transacted and carried on in the city;
provided, however, that no credit shall be allowed in excess of the amount of business license tax which would otherwise be due to the city.

C. Business With Fixed Place of Business Only Within City Doing Business Outside City—Credit For Taxes Paid.

1. Each person who transacts and carries on a business at a fixed place of business within the city and who transacts and carries on such an activity outside the city without a fixed place of business shall compute his or her tax liability pursuant to this article as if his or her entire business were conducted and transacted within the city.

2. Such person shall be allowed as a credit against the business license tax otherwise due to the city an amount equal to the amount of business tax or business license tax paid to another city for the same period on account of business carried out and transacted in such city, but no credit shall be allowed in excess of the amount of business license tax which would otherwise be due to the city.

3. This subsection shall not apply to any business licensed pursuant to Section 3.16.015.

D. Flat Tax Not Subject to Apportionment. The apportionment provisions of this section shall not apply to any business license tax to the extent payable on a flat rate basis. (Ord. 1420 § 2, 1983; Ord. 1405 § 1, 1982; prior code § 12-2.14)

Chapter 3.12 APPLICATIONS FOR LICENSE—PAYMENT OF TAX

3.12.010 Application—Generally.

Every person required to be licensed under this article shall apply to the tax collector for a business license. (Ord. 1420 § 3, 1983; prior code § 12-3.1)


A. When a person applies for the first business license for a business or a newly established business the applicant shall submit to the tax collector a written statement containing the following information on a form furnished by the tax collector and sworn to by a person authorized to administer oaths:

B.

<table>
<thead>
<tr>
<th>Type of Business</th>
<th>Information to be Furnished</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Bowling alley</td>
<td>1. Number of alleys.</td>
</tr>
<tr>
<td>2. Cardrooms</td>
<td>2. Maximum number of tables authorized by cardroom license.</td>
</tr>
</tbody>
</table>
4. Shuffleboards
5. Businesses taxed based upon annual gross receipts

4. Number of games.
5. Estimated gross receipts for the period to be covered by the license to be issued.

Where the number of games, alleys, tables, or devices is unknown at the time of the application, the applicant shall submit estimated numbers.

B. Such estimate of gross receipts or numbers of games, alleys, tables, or devices, if accepted by the tax collector as reasonable, shall be used in determining the amount of license tax to be paid by the applicant. The amount of the tax so determined shall be tentative only, and such person shall, within thirty days after the expiration of the period for which the license was issued, furnish the tax collector a sworn statement, upon a form furnished by the tax collector, showing the gross receipts during the period of such license or the number of games, alleys, tables, or devices which were in actual use at the commencement of the license period. The license tax for such period shall be finally ascertained and paid in the manner provided by this chapter for ascertaining and paying of renewal license taxes for other businesses, after deducting from the payment found to be due the amount paid at the time such first license was issued. The tax collector shall not issue to any such person another license for the same or any other business until such person shall have furnished to him or her the written statement and paid the license tax as required in this chapter.

C. Business licenses based upon number of card tables authorized shall be paid in advance based upon actual numbers of tables authorized.

D. When a person applies for the second the initial licensing period business license for a business or newly established business the tax of which is based upon gross receipts, and the initial licensing period was less than one fiscal year, the basis of the tax imposed for the second license year shall be a dollar amount of gross receipts determined by the following formula:

\[
\text{Actual amount of gross receipts from initial licensing period} \times \frac{\text{Total number of days in the fiscal year}}{\text{Number of days in the fiscal year of the initial licensing period}}
\]

(Ord. 1420 § 3, 1983; prior code § 12-3.2)

3.12.030 Renewal licenses.

An applicant for a renewal license shall submit to the tax collector a written statement setting forth such information concerning the applicant’s business during the preceding licensing period as may be required by the tax collector to enable him or her to ascertain the amount of the license tax to be paid by the applicant for the ensuing licensing period. Such statement shall be furnished on a form provided by the tax collector and shall be sworn to before a person authorized to administer oaths. (Ord. 1420 § 3, 1983; prior code § 12-3.3)
3.12.040 Limitations.

A. No greater or less amount of money shall be charged or received for any license tax other than provided for in this article.

B. In no case shall any mistake made by the city in stating the amount of a license tax prevent or prejudice the collection by the city of what shall actually be due from anyone carrying on a business subject to a license tax under this article. No statement shall be conclusive as to the matters set forth therein, nor shall the filing of the same preclude the city from collecting by appropriate action such sum as is actually due and payable under this article. (Ord. 1405 § 1, 1982; prior code § 12-3.4)


All license taxes due under this article shall be paid in advance in lawful money of the United States, at the office of the tax collector. (Ord. 1405 § 1, 1982; prior code § 12-3.5)

3.12.060 Confidentiality of information.

It is unlawful for the tax collector or any person having an administrative duty under the provisions of this article to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person or business or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof set forth in any statement or to permit any statement or copy of any statement or book containing any abstract or particulars thereof, to be seen or examined by any person. Nothing in this section, however, shall be construed to prevent the following:

A. The disclosure to or the examination of records and equipment by another city official, employee or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this article or collecting taxes imposed under this article;

B. The disclosure of information to, or the examination of records by federal or state officials, or the tax officials of any city or county or the tax officials of the city and its auditors if a reciprocal arrangement exists, or to a grand jury or a court of law, upon subpoena;

C. The disclosure of information and results of examination of records of particular taxpayers, or relating to particular taxpayers, to a court of law in a proceeding brought to determine the existence or amount of any business license tax liability of the particular taxpayers to the city;

D. The disclosure after the filing of a written request to that effect to the taxpayer himself or herself, or to his or her successors, receivers, trustees, executors, administrators, assignees and guarantors if directly interested, of information as to the items included in the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest and
penalty; provided further, that the city attorney approve such disclosure and that the tax collector may refuse to make any disclosure referred to in this subsection when in his or her opinion the public interest would suffer thereby;

E. The disclosure of the names and addresses of taxpayers pursuant to this article, and the general type or nature of their businesses;

F. The disclosure of statistical information or compilations as to various categories of businesses and their gross receipts, where no financial data relative to specific business is released. (Ord. 1405 § 1, 1982; prior code § 12-3.6)

3.12.070 Audit of statements and records.

A. Any statement submitted to the tax collector and each of the several items therein contained shall be subject to audit and verification by the tax collector, his or her deputies, or authorized employees of the city who are hereby authorized to examine, audit and inspect such books and records of the business which is the subject of the statement as may be necessary in their judgment to verify or ascertain the amount of business license tax due. Records which shall be maintained for audit purposes, shall include state and federal income tax returns, schedules and records included in such returns.

B. All persons subject to the provisions of this article shall keep complete records of business transactions, including sales receipts, purchases and other expenditures, state and federal income tax returns (including schedules and records included in such returns). Such persons shall retain such records for a period of at least three years. No person required under this section to keep records shall refuse to allow authorized representatives of the tax collector to examine such records at reasonable times and places. (Ord. 1405 § 1, 1982; prior code § 12-3.7)

3.12.080 Determination of tax or license classification—Right to hearing.

A. Initial Determination. The tax collector shall determine the amount of license tax due or the proper classification for a business by means of such information as he or she may be able to obtain if:

1. Any person fails to file any required statement within the time prescribed; or

2. If, after demand therefor has been made by the tax collector, he or she fails to file a corrected statement within fifteen days after notification to do so; or

3. It appears to the satisfaction of the tax collector that a statement filed does not set forth the facts of the business for which a license is required; or

4. If a licensee or an applicant for a license believes that his or her individual business is not assigned to the proper classification because of circumstances peculiar to it.
B. Notice of Determination. If such determination is made, the tax collector shall give notice of the amount so assessed, or classification found to be appropriate in the following manner:

1. By serving it personally; or

2. By depositing it in the United States mail, postage prepaid, addressed to the person so assessed at the address appearing on his or her last business license or application therefor.

C. Right to Hearing. Such persons may, within ten days after the serving or mailing of such notice, apply in writing to the tax collector for a hearing on the amount of the license tax or classification determined.

If such application is made, the tax collector shall give not less than five days’ written notice, in the manner prescribed herein, to the licensee to show cause, at a time and place fixed in the notice, why the amount specified therein should not be fixed or classification determined for such license.

At such hearing the licensee may appear and offer evidence why such specified tax should not be fixed as the license tax or such classification prescribed.

After such hearing the tax collector shall determine the proper tax to be charged or classification prescribed. He or she shall forthwith give written notice to the licensee in the manner prescribed herein of such determination and the amount of such tax. (Ord. 1405 § 1, 1982; prior code § 12-3.8)

3.12.090 Reporting of gross receipts.

When an applicant for a business license is required to pay a business license tax measured by gross receipts, except in case of an application for an original license pursuant to Section 3.12.020 (Application – Statements required in determining amount of tax), he or she shall not be required to report the exact amount of his or her gross annual receipts, but shall report to the tax collector the particular bracket of the schedules in this article within which his or her gross annual receipts fall. (Ord. 1405 § 1, 1982; prior code § 12-3.9)

3.12.100 Contents of license.

Upon application for a license under this article and upon the payment of the prescribed license tax, the tax collector shall issue to such applicant a license which shall contain the following:

A. The business licensed;

B. The place where such business is to be transacted and carried on;
C. The date of the expiration of the license;

D. Such information as may be necessary for the enforcement of the provisions of this article. (Ord. 1405 § 1, 1982; prior code § 12-3.10)

3.12.110 How and when tax payable.

A. Annual Licenses. Unless otherwise specifically provided in this article, all annual license taxes shall be due and payable on the first day of August of each year and delinquent on the first day of September of each year.

B. Licenses Other Than Annual. Except as otherwise specifically proved in this article, license taxes other than annual shall be due and payable and delinquent as follows:

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Due Date</th>
<th>Delinquent Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quarterly</td>
<td>February 1st</td>
<td>March 1st</td>
</tr>
<tr>
<td></td>
<td>May 1st</td>
<td>June 1st</td>
</tr>
<tr>
<td></td>
<td>August 1st</td>
<td>September 1st</td>
</tr>
<tr>
<td></td>
<td>November 1st</td>
<td>December 1st</td>
</tr>
</tbody>
</table>

2. Daily Each day in advance

(Ord. 1405 § 1, 1982; prior code § 12-3.11)

3.12.120 Penalty—Failure to pay tax when due.

If a person responsible for payment of a business license tax fails to pay such tax when due, there shall be added a penalty of twenty percent of such license tax on the last day of each month after the due date thereof. The amount of the penalty to be added shall not exceed one hundred percent of the amount of the license tax due. If, after a payment is made to the tax collector, the records of the taxpayer are examined, audited, or inspected and it is determined by the tax collector that the amount paid was, in fact, less than the amount due, the penalty applicable for failure to pay the tax when due shall begin to apply from the date the amount of the deficiency was delinquent rather than from the date of notice by the tax collector of the deficiency. (Ord. 1405 § 1, 1982; prior code § 12-3.12)

3.12.130 Transfer of license.

A. No license issued pursuant to this article shall be transferable from one person to another.

B. If a license is issued for the transaction of business at a particular place of business, the license, upon application and payment of a fee in an amount established by resolution of the city council, may have the same license amended to reflect the transfer of the business under the same license at some other location. (Ord. 1405 § 1, 1982; prior code § 12-3.13)
3.12.140 Duplicate licenses.

The tax collector may issue a duplicate license to a licensee to replace a license previously issued which has been lost or destroyed. To obtain a duplicate license, the licensee shall file a statement that the license has been lost or destroyed and pay the tax collector a duplicate license fee in an amount established by resolution of the city council. (Ord. 1405 § 1, 1982; prior code § 12-3.14)

3.12.150 Granting of waivers, variances by tax collector.

The tax collector shall have the power for good cause shown:

A. To extend the time for filing any required sworn statement for a period not exceeding thirty days;

B. To waive any penalty that would otherwise have accrued;

C. To compromise any claim involving five hundred dollars or less as to the amount due; provided, that claims involving greater amounts shall only be compromised with the consent of the city council. (Ord. 1405 § 1, 1982; prior code § 12-3.15)


A. Upon the issuance of a business license for any business which is taxed according to the number of vehicles used in the business, the tax collector shall deliver to the licensee one windshield sticker for each vehicle used by the licensee in the conduct of his or her business. The sticker shall be attached to the windshield of such vehicle. If the vehicle does not have a windshield, the sticker shall be attached in a conspicuous place in the operator’s compartment of each vehicle.

B. If subsequent to the issuance of any license and prior to its expiration date, any licensee uses any vehicle in his or her business for which a windshield sticker has not been issued, he or she shall procure a windshield sticker for each such vehicle from the tax collector. The tax collector shall furnish such windshield sticker without cost other than any additional license tax which may be due, upon satisfactory proof of the use of such vehicle by the licensee.

C. No person subject to license under this article shall drive, operate, use, or cause to be driven, operated, or used, any vehicle in the conduct of his or her business without a sticker being attached as required in this article, or to remove or deface or cover up the sticker, or to place the same upon any vehicle other than a vehicle used by the licensee in his or her business. (Ord. 1405 § 1, 1982; prior code § 12-3.16)


A. Upon the issuance of any license for any electrical musical device or mechanical amusement device, the tax collector shall deliver to the licensee one sticker for each device used
in the conduct of his or her business. Such sticker shall be attached in a conspicuous place on the device.

B. If subsequent to the issuance of any license and prior to its expiration date, any licensee uses any electrical musical device or mechanical amusement device for which a sticker has not been issued, he or she shall procure a sticker from the tax collector. The tax collector shall furnish such sticker without cost other than any additional license tax which may be due upon production of satisfactory proof of the use of such device by the licensee.

C. No person subject to license under this article shall operate or use, or cause to be operated or used, any electrical musical device or mechanical amusement device in the conduct of his or her business without a sticker being attached as required in this article, or to remove, deface or cover up the sticker, or place, cause to be placed, or permit the placing of such sticker upon any such device other than the one used by the licensee in his or her business. (Ord. 1405 § 1, 1982; prior code § 12-3.17)

3.12.180 Minimum license tax—Persons refusing to permit audits.

If a licensee or person engaged in business for which a license is required refuses to permit an audit pursuant to Section 3.12.070, the minimum business license tax shall be one thousand five hundred dollars per year. (Ord. 1420 § 4, 1983; prior code § 12-3.18)

3.12.190 License tax a debt.

The amount of any license tax and penalty imposed pursuant to this article shall be a debt to the city. An action may be commenced in the name of the city in any court of competent jurisdiction for the amount of any delinquent license tax and penalties. (Ord. 1405 § 1, 1982; prior code § 12-3.19)


Any action commenced to enforce the payment of any business license tax due, or any other requirement of this article shall be commenced within four years of the accrual of the cause of action. (Ord. 1405 § 1, 1982; prior code § 12-3.20)


A. Except as provided in subsection C of this section, no refund for any overpayment of business license taxes imposed by this article shall be allowed in whole or in part unless a claim for refund is filed with the tax collector within a period of three years from the last day of the calendar month following the period for which the overpayment was made.

B. All claims for refund of the amount must be filed with the tax collector on forms furnished by him or her and in the manner prescribed. The tax collector may refund the amount overpaid upon the filing of such claim if he or she determines that an overpayment has been made.
C. The filing of a claim shall not be required if the amount due has been verified by an independent auditor selected by the city. (Ord. 1405 § 1, 1982; prior code § 12-3.21)

3.12.220 Appeals—Due date of tax finally determined.

A. Who May Appeal. Any person aggrieved by any decision of the tax collector regarding the issuance or refusal to issue a license, the appropriate license classification of the business, or the amount of a license tax may appeal to the city council by filing a notice of appeal with the city clerk within fifteen days of such decision. The notice of appeal shall be accompanied by an appeal fee in an amount established by resolution of the city council and shall state the grounds for the appeal.

B. Public Hearing. The city clerk shall set a time and place for a public hearing of such appeal before the city council and shall give the appellant not less than ten days’ written notice thereof in the following manner:

1. By serving it personally; or

2. By depositing it in the United States mail, postage prepaid, addressed to such person at the address appearing on his or her last business license or application.

At the public hearing the city council shall consider the evidence presented by the appellant, the tax collector, and other interested parties prior to making a decision. The hearing may be continued from time to time.

C. Findings of City Council. The findings of the city council shall be final and conclusive. They shall be served upon the appellant in the manner prescribed in subsection B of this section by the city clerk.

D. Due Date of Tax. The amount of any license tax finally determined as provided in this section shall be due and payable as of the date the original license tax was due and payable, together with any penalties that may be due thereon; provided, however, that if the amount of such license tax is fixed in accordance with the original statement of the appellant no penalty shall attach by reason of any delinquency. (Ord. 1405 § 1, 1982; prior code § 12-3.22)

3.12.230 Remedies cumulative.

All remedies provided under this article shall be cumulative. The use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions of this article. (Ord. 1405 § 1, 1982; prior code § 12-3.23)

3.12.240 Effect on past actions and obligations.

Neither the adoption of the ordinance codified in this article, nor its superseding of any portion of any other ordinance of the city shall in any manner be construed:
A. To affect prosecution for violation of any other ordinance committed prior to the effective date of the ordinance codified in this chapter; or

B. As a waiver of any license or other penal provisions applicable to such violation; or

C. To affect the validity of any bond or cash deposit required by any ordinance to be posted, filed, or deposited.

All rights and obligations pertaining to the foregoing shall continue in full force and effect. (Ord. 1405 § 1, 1982; prior code § 12-3.24)

3.12.250 Designated penalty.

A. Any person violating Section 3.12.070 shall be guilty of a misdemeanor.

B. Any person violating any other provision of this article or failing to comply with any of the other mandatory provisions thereof shall be guilty of an infraction.

C. The penalty for misdemeanors and infractions is as set forth in Section 1.28.010 (Violations a misdemeanor or infraction). (Ord. 1405 § 1, 1982; prior code § 12-3.25)

Chapter 3.16 SCHEDULE OF TAXES

3.16.010 Generally applicable tax rate.

A. Every person having a fixed place of business transacting, engaging in or carrying on a business in the city, except a business as to which the tax rate established by another section of this article is made specifically applicable, shall pay a business license tax based upon the annual gross receipts of such businesses as follows:

<table>
<thead>
<tr>
<th>Gross Receipts</th>
<th>Annual Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $75,000</td>
<td>$75.00</td>
</tr>
<tr>
<td>$75,000 or more, but less than $100,000</td>
<td>$100.00</td>
</tr>
<tr>
<td>Over $100,000</td>
<td>$110.00, plus $5.25 for each additional $5,000 or fraction thereof up to $500,000</td>
</tr>
<tr>
<td>Over $500,000</td>
<td>$530.00, plus $4.00 for each additional $5,000 or fraction thereof up to $1,000,000</td>
</tr>
<tr>
<td>Over $1,000,000</td>
<td>$930.00, plus $2.75 for each additional $5,000 or fraction thereof up to $5,000,000</td>
</tr>
<tr>
<td>Over $5,000,000</td>
<td>$3,130.00, plus $1.65 for each additional $5,000 or fraction thereof</td>
</tr>
</tbody>
</table>
B. Persons having a fixed place of business selling at retail any goods, wares or merchandise which are classified under “retailing industries” in the most recently published annual statement studies published by Robert Morris and Associates may be entitled to a credit against the foregoing annual tax if:

1. The most recent average cost of sales for the retailing industry in which such business is categorized is greater than the average cost of sales for all retailing industries studied; and

2. The most recent average operating profit for such retailing industry is less than the average operating profit for all retailing industries studied. The credit allowed shall be equal to the sum of:

   a. The difference between the foregoing average cost of sales figures; and

   b. The difference between the foregoing average operating profit figures. The determination of the average costs and profits for various industries shall be made with reference to said publication of Robert Morris and Associates. The determination as to the appropriate category in which a particular business is to be placed shall be made with reference to the Standard Industrial Classification Manual. The credit allowed shall be calculated to the nearest 0.1 %. (Ord. 1625 § 2, 1999)

3.16.015 Central administrative offices—Auxiliary units—Manufacturing.

A. Every person who, at a fixed place of business within the city, transacts, engages in or carries on any central administrative office, auxiliary unit or manufacturing establishment shall pay an annual license tax based upon the area of the place of business occupied and the average number of persons employed, as follows:

<table>
<thead>
<tr>
<th>Area of Place of Business Occupied</th>
<th>Annual Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>999 square feet or less</td>
<td>$150.00</td>
</tr>
<tr>
<td>13000—2,499 square feet</td>
<td>250.00</td>
</tr>
<tr>
<td>2,500—4,999 square feet</td>
<td>350.00</td>
</tr>
<tr>
<td>5,000—9,999 square feet</td>
<td>550.00</td>
</tr>
<tr>
<td>10,000 square feet or more</td>
<td>850.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number of Employees</th>
<th>Additional Annual Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>1—10</td>
<td>$7.50 per employee</td>
</tr>
<tr>
<td>11—25</td>
<td>$75.00, plus $5.00 for each employee in excess of 10</td>
</tr>
<tr>
<td>26—50</td>
<td>$195.00, plus $4.00 for each employee in excess of 25</td>
</tr>
<tr>
<td>51 or more</td>
<td>$350.00, plus $3.00 for each employee in excess of 50</td>
</tr>
</tbody>
</table>
If the nature or method of operation of any such central administrative office, auxiliary unit or manufacturing establishment is such that gross receipts may be attributable to such office, unit or establishment, such business shall be taxed pursuant to Section 3.16.010 if use of that section as a basis for calculation of the tax would produce a higher tax than this section.

The terms “central administrative office,” “auxiliary unit” and “manufacturing establishment” shall have the meanings and descriptions set forth in the Standard Industrial Classification Manual and in Sections 3.04.030 and 3.04.070 of this code. (Ord. 1625 § 2, 1999)

3.16.020 Amusement concessions.

Every person conducting any amusement concession, not in conjunction with a carnival or fair, shall pay a license tax for each concession and device as follows:

<table>
<thead>
<tr>
<th>Type of Concession</th>
<th>Quarterly Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Merry-go-round, Ferris wheel, dodgem, swing or other mechanical device for the carrying of passengers</td>
<td>$75.00</td>
</tr>
<tr>
<td>B. Ball and ring throwing games, spin-the-wheel, mechanical and electrical games, shooting gallery, keno, lotto and similar games of chance</td>
<td>50.00</td>
</tr>
<tr>
<td>C. Sales of merchandise or foodstuffs, not in connection with any game of chance</td>
<td>30.00</td>
</tr>
</tbody>
</table>

(Ord. 1625 § 2, 1999)

3.16.030 Apartments and rooming houses.

Every person conducting the business of apartment house or rooming house shall pay an annual license tax of fifty dollar base fee and one dollar for each room, based on a three room minimum. (Ord. 1625 § 2, 1999)

3.16.040 Commercial property rental.

Every person conducting the business of commercial property rental shall pay an annual license tax of a fifty dollar base fee and ten dollars for up to the first one thousand square feet and ten dollars for each additional one thousand square feet of property available for commercial rental. (Ord. 1625 § 2, 1999)

3.16.050 Bowling alleys and similar games.

Every person conducting a public bowling alley, skee ball, bat ball or other similar device, equipment or means of entertainment shall pay an annual license tax of forty dollars for each alley. (Ord. 1625 § 2, 1999)

3.16.060 Boxing or wrestling exhibitions.
Every person staging a boxing or wrestling exhibition shall pay a license tax of two hundred dollars for each such exhibition. (Ord. 1625 § 2, 1999)

3.16.070 Carnivals and circuses.

Every person conducting any carnival, circus, menagerie, wild west show, rodeo or any other like or similar exhibition or amusement shall pay a license tax of three hundred dollars for the first day and seventy-five dollars for each additional day, payable in advance. (Ord. 1625 § 2, 1999)

3.16.080 Gambling clubs.

Every person, corporation, partnership or other entity conducting the business of a gambling club shall pay a quarterly tax in advance, and due on January 1st, April 1st, July 1st and October 1st of each calendar year. Commencing January 1, 1995, the tax per quarter shall be calculated as follows:

<table>
<thead>
<tr>
<th>Tables Permitted by Gambling Club License</th>
<th>Quarterly Tax Per Table</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum 10</td>
<td>$400</td>
</tr>
<tr>
<td>11 to 15</td>
<td>1,200</td>
</tr>
<tr>
<td>16 to 20</td>
<td>1,800</td>
</tr>
<tr>
<td>21 to 25</td>
<td>2,400</td>
</tr>
<tr>
<td>26 to 30</td>
<td>3,000</td>
</tr>
<tr>
<td>31 to 35</td>
<td>3,600</td>
</tr>
<tr>
<td>36 to 40</td>
<td>4,200</td>
</tr>
<tr>
<td>41 to 45</td>
<td>4,800</td>
</tr>
<tr>
<td>46 to 50</td>
<td>5,400</td>
</tr>
<tr>
<td>51 to 55</td>
<td>6,000</td>
</tr>
<tr>
<td>56 to 60</td>
<td>6,600</td>
</tr>
</tbody>
</table>

Beginning with the above schedule, the tax paid by gambling clubs shall automatically increase July 1st of each year, commencing July 1, 1995, by the greater of two percent or the average of the annual percentage increase in the All Urban Consumer Price Index for the San Francisco/ San Jose/Oakland area for the months ending February 28th (or 29th) and April 30th.

Notwithstanding the above, in the event a gambling club operator reduces the number of tables operated, the amount of tax paid shall be reduced accordingly, except that in no event shall the applicable tax fall below the amount of tax upon one-half the highest number of tables operated. (For example, if a gambling club operator reduces the number of tables operated from forty to ten, the tax liability shall be based upon twenty tables.) The amount of tax paid under this provision shall be based upon the above schedule and successor schedules as the tax is automatically increased each year. (Ord. 1625 § 2, 1999)

3.16.090 Electrical musical devices.
A. No person shall operate, maintain or permit to be operated or maintained in any place of business or premises open to the public and occupied by or under the control of such person any electrical musical device without having first applied for and received a license for each electrical musical device so operated and maintained.

B. Application for such license shall be made to the tax collector, upon a form to be provided by such officer, and shall be accompanied by a business license tax of twenty-five dollars for any fiscal year within which it is proposed to operate or maintain any such device, at the time of such application. (Ord. 1625 § 2, 1999)

3.16.100 Mechanical, electronic and video amusement devices.

A. No person shall operate, maintain or permit to be operated or maintained in any place of business or premises open to the public or under his or her control any mechanical amusement device without first having applied for and received a license therefor.

B. Application for such license shall be made to the tax collector, upon a form to be provided by such officer, and shall be accompanied by a business license tax of thirty dollars for each such device for any fiscal year within which it is proposed to operate or maintain any such device.

C. Each license and the application therefor shall specify the person to whom such license is issued, a description of the device, with the manufacturer’s name and serial number, to which the same shall exclusively apply.

D. Such licenses shall not be transferable either from person to person nor from one device to another.

E. Any mechanical amusement device operated or maintained in violation of this section shall be a public nuisance and subject to abatement as such. (Ord. 1625 § 2, 1999)

3.16.110 Nonresident contractors and other businesses.

Every person not having a fixed place of business in the city who:

A. Engages in the business of contracting within the city; or

B. Engages in a business within the city not specifically licensed by another section of this chapter shall pay a license tax of seventy-five dollars per year. (Ord. 1625 § 2, 1999)

3.16.120 Peddlers and solicitors.

A. Every person who conducts the business of peddler or solicitor shall pay a business license tax of forty dollars per day for the first day and ten dollars per day thereafter; provided, that if the tax collector determines pursuant to Section 3.08.130 that such tax places an
undue burden on interstate commerce he or she may adjust the tax to be based upon gross receipts pursuant to Section 3.16.010 (Generally applicable tax rate) measured upon business done within the city, or as otherwise authorized pursuant to Section 3.08.130 (Interstate commerce – Relief from undue burdens).

B. Persons maintaining a regular route of established deliveries of food products shall pay the annual license tax required under Section 3.16.010 (Generally applicable tax rate).

C. This section shall not apply to persons soliciting or peddling goods solely to merchants with a fixed place of business for the purpose of resale. (Ord. 1625 § 2, 1999)

3.16.125 Vehicle vendors.

Every vehicle vendor who engages in business in the city shall pay a license tax of seventy-five dollars per year. (Ord. 1714 § 4, 2006)

3.16.130 Public dances—Place of public dance.

A. Every person conducting a public dance, as defined in Section 4.08.020 (Definitions) of Chapter 4 (License and Regulations), shall pay a business license tax of fifty dollars.

B. Every person operating a business in which public dancing is performed, conducted, allowed, carried on or proposed to be performed, conducted, allowed or carried on not less than three times or on three days within a period of six months shall pay a business license tax as follows:

1. If the dancing is accompanied by mechanized music, an annual tax of two hundred dollars; or

2. If the dancing is accompanied by live or unmechanized music, an annual tax of four hundred fifty dollars. (Ord. 1625 § 2, 1999)

3.16.140 Shuffleboards.

Every person engaged in the business of operating or maintaining and offering for use by patrons any shuffleboards or other game or amusement device other than mechanical amusement devices otherwise licensed, shall pay in advance an annual license tax of fifteen dollars for each such game. (Ord. 1625 § 2, 1999)

3.16.150 Temporary vendors.

Every person conducting the business of temporary vendor shall pay an annual business license tax of forty dollars for the first day and ten dollars per day for each subsequent day. (Ord. 1625 § 2, 1999)
3.16.160 Condominium projects.

A. Tax Imposed—Purpose. A business license tax is imposed solely for revenue purposes upon the development and construction of all condominium projects, in the sum of one thousand dollars per planned salable condominium unit. No tax shall be imposed upon the development and construction of a condominium unit for which a completed sale or transfer of interest to the purchaser or occupant has occurred.

B. Condominium License.

1. A condominium license shall be issued by the director of finance upon the payment of the required license tax provided herein, or upon execution of an agreement between the city and the owner or owners of record of all property within the condominium project, approved as to form by the city attorney and approved as to substance by the city council, agreeing to pay the tax either wholly or partially on a deferred basis.

2. Such agreement may provide for an initial payment, periodic payments on specific dates, payments contingent upon sales of units or any combination thereof.

3. Such agreement shall require that any deferred payments be in such amounts as to guarantee that the city shall receive a sum at least equal to the amount it would have received if the total amount of the tax had been paid initially without such an agreement and had been prudently invested in interest bearing accounts as authorized by law.

4. Such agreement shall provide further that the owner shall furnish to the city a faithful performance bond issued by a corporate surety authorized to do business in the state, or an instrument of credit for one or more financial institutions subject to regulation by the state or federal government, or such other security instrument as may be approved by the city attorney guaranteeing payment of the tax.

C. Failure to Obtain License Unlawful. It is unlawful to engage in, permit, suffer or assist in the construction, development or occupation of any condominium project or condominium unit for which a license has not been obtained as provided in this section.

D. Failure to Pay License Tax—Denial of Permits. No permit for building, construction, demolition, grading, subdividing, condominium conversion, variance, conditional use permit or occupancy shall be granted unless the license provided for in this section is obtained. Notwithstanding any other provision of law, no occupancy permit may be obtained under any circumstances until the condominium business license tax has been paid. A certificate of occupancy is required for the occupancy of any condominium unit. Separate occupancy permits may be granted upon separate payment of the required license tax.

E. Remedies of This Section—Supplementary and Cumulative. The remedies for failure to pay the tax imposed by this section are supplementary to any other remedy provided by law for the failure to pay a business license tax and are also cumulative both with regard to each remedy provided by this article and by law.
F. Tax Refund. If the condominium project is abandoned before substantial work has
begun in the case of a condominium project described in subsection A of Section 3.04.100
(Condominium project) of Chapter 3.04 (Definitions), i.e., new development, or before the
issuance by the California Real Estate Commissioner of a Public Report in the case of a
conversion project described in subsection B of Section 3.04.100 (Condominium project) of
Chapter 3.04 (Definitions), the tax paid shall be refunded to the person who paid it upon his or
her filing of a statement that he or she has abandoned the project, and upon his or her
relinquishment of the issued condominium license. In the event of any refund, it is unlawful for
any person to proceed with the project without first applying for and receiving the applicable
condominium business license, and payment of the business license tax is required for the
issuance of a condominium business license. In the event such refund is requested, the matter
shall be referred to the city council for determination of a reasonable amount to cover the cost of
processing the application. (Ord. 1625 § 2, 1999)

3.16.170 Single-family residential structures.

A. Tax Imposed—Purpose. A single-family residential business license tax is
imposed solely for revenue purposes upon the development and construction of all single-family
residential structures in the sum of one thousand dollars per planned salable unit.

B. Exceptions. No such tax shall be imposed upon the development or construction
of any such single-family residential unit for which a completed sale has occurred or for which a
condominium license tax has been paid pursuant to Section 3.16.160 (Condominium Projects) of
Chapter 3.16 (Schedule of Taxes). Such tax shall not be applicable to any person constructing no
more than one single-family residential structure during any one-year period for his or her own
personal residence.

C. Single-family Residential Business License. A single-family residential business
license shall be issued by the director of finance upon the payment of the required license tax
provided herein.

D. Failure to Obtain License Unlawful. It is unlawful to engage in, permit, suffer or
assist in the construction, development or occupation of any single-family residential structure
for which a license has not been obtained as provided in this section.

E. Failure to Pay License Tax—Denial of Permits. No permit for building,
construction, demolition, grading or any final subdivision map, shall be granted or approved
unless the license provided for in this section is obtained.

F. Remedies of This Section—Supplementary and Cumulative. The remedies for
failure to pay the tax imposed by this section are supplementary to any other remedy provided by
law for the failure to pay a business license tax and are also cumulative both with regard to each
remedy provided by this article and by law.

G. Tax Refund. If the project involving the development and construction of a
single-family residential structure is abandoned before substantial work is done, and any building
permit issued to authorize such construction and development is revoked or otherwise terminated, the tax paid shall be refunded to the person who paid it upon his or her filing of a statement that he or she has abandoned the project, and upon relinquishment of his or her single-family residential business license. In the event of any refund, it is unlawful for any person to proceed with the project without first applying for and receiving the applicable single-family residential business license, and the payment of the business license tax is required for the issuance of the license. In the event such refund is requested, the matter shall be referred to the city council for determination of a reasonable amount to cover the cost of processing the application. (Ord. 1625 § 2, 1999)

3.16.180 Airport parking facilities.

“Airport parking facility” means any privately owned or operated facility with the purpose of providing, for any form of consideration, parking or storage of motor vehicles, motorcycles or other similar means of conveyances for persons going to or from the San Francisco International Airport.

Every person, corporation, partnership or other entity conducting the business of an airport parking facility shall pay a quarterly tax due as follows:

The airport parking facility tax shall be eight percent of gross receipts. Said tax shall only be applicable to gross receipts generated by the parking or storage of vehicles at the airport parking facility. Each operator of an airport parking facility shall, on or before the last day of the month following the close of each calendar quarter make a return to the city of the total tax. At the time the return is filed, the full amount of the tax shall be remitted to the city.

Upon finding of public benefit, the city council may, by ordinance, decrease the airport parking facility tax set forth above. (Ord. 1626 § 1, 1999)

Article II. Other Taxes

Chapter 3.20 DEFINITIONS

3.20.010 Generally.

As used in this article, the following words, phrases or terms shall have the meanings set forth in Sections 3.20.020 through 3.20.090. (Ord. 1357 § 1, 1980; prior code § 22-1.1(part))

3.20.020 Hotel.

“Hotel” means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodginghouse, roominghouse, apartment house, dormitory, public or private club, mobile home or housetrailer at a fixed location, or other similar structure or portion thereof. (Ord. 1357 § 1, 1980; prior code § 22-1.1(a))
3.20.030 Occupancy.

“Occupancy” means the use or possession, or the right to use or possess any room or rooms or portions thereof, in any hotel for dwelling, lodging or sleeping purposes. (Ord. 1357 § 1, 1980; prior code § 22-1.1(b))

3.20.040 Operator.

“Operator” means the person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character other than as an employee, the managing agent shall also be deemed an operator for the purposes of this article and shall have the same duties and liabilities as his or her principal compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both. (Ord. 1357 § 1, 1980; prior code § 22-1.1(c))

3.20.050 Person.

“Person” means, except as used in the definition of “transient,” any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit. (Ord. 1357 § 1, 1980; prior code § 22-1.1(d))

3.20.060 Rent.

“Rent” means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever. (Ord. 1357 § 1, 1980; prior code § 22-1.1(e))

3.20.070 State sales and use tax law.

“State sales and use tax law” means the Bradley-Burns Uniform Local Sales and Use Tax Law, Part 1.5, Division 2 of the Revenue and Taxation Code of the state. (Ord. 1357 § 1, 1980; prior code § 22-1.1(f))

3.20.080 Tax administrator.

“Tax administrator” means the director of finance of the city. (Ord. 1357 § 1, 1980; prior code § 22-1.1(g))

3.20.090 Transient.

“Transient” means any individual who exercises occupancy or is entitled to occupancy of a specific room by reason of concession, permit, right of access, license, or other agreement for a
period of thirty consecutive calendar days or less, counting portions of calendar days as full days. Any such individual so occupying space in a hotel shall be deemed to be a transient until the period of thirty days has expired unless there is an agreement in writing providing for a longer period of the room. In determining whether an individual is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this article may be considered. (Ord. 1357 § 1, 1980; prior code § 22-1.1(h))

3.20.100 Rental agent

“Rental agent” means any person other than an operator who collects rent from a transient for the transient’s occupancy of a hotel.

Chapter 3.24 TAX FUNCTION TRANSFER

3.24.010 Delegation of duties to county.

The city council delegates to the county and to its proper officers and employees the functions of assessing, levying and collection of municipal taxes for the city pursuant to Title 5, Division 1, Part 2 of the Government Code. (Ord. 1357 § 1, 1980; prior code § 22-2.1)

3.24.020 Contract with county to perform services.

A. The city council will enter into an appropriate contract with the county for the carrying out of the purposes of this article.

B. The term of such contract shall be five years commencing with the assessment of 1954-55 taxes and shall continue for a period of five years each, unless, in the meantime, the city council or the board of supervisors of the county shall vote not to continue the term at a meeting to be held at least one year before the expiration of any five-year period. (Ord. 1357 § 1, 1980; prior code § 22-2.2)

3.24.030 Reservation of duties of city treasurer.

The duties of the city treasurer are reserved to such officer and not included in the transfer accomplished by this article. The city treasurer shall, upon payment by the county auditor or controller of sums due the city, keep and disburse the same in accordance with existing custom, practice and regulation of the city. (Ord. 1357 § 1, 1980; prior code § 22-2.3)

Chapter 3.28 SALES AND USE TAX

3.28.010 Short title.

This chapter shall be known as “Uniform Local Sales and Use Tax Regulations” of the city. (Ord. 1357 § 1, 1980; prior code § 22-3.1)

3.28.020 Purpose.
The purpose of this chapter is to adopt sales and use tax regulations which:

A. Comply with and incorporate provisions of state sales and use tax law;

B. Impose a ninety-five hundredths of one percent (0.95%) tax which can be administered and collected by the state board of equalization in the manner most consistent with the board’s existing procedures in state sales and use tax collection;

C. Can be administered so as to minimize both the cost of collecting city sales tax and the burden of record keeping of taxpayers. (Ord. 1357 § 1, 1980; prior code § 22-3.2)

3.28.030 Generally.

A. Sales Tax. For the privilege of selling tangible personal property at retail, a tax is imposed upon all retailers in the city after the operative date of the ordinance codified in this article. The gross receipts from such sales shall include delivery charges when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made.

B. Use Tax. An excise tax is imposed upon the storage, use, or other consumption in the city of tangible personal property purchased from any retailer on or after the operative date of the ordinance codified in this article for storage, use, or other consumption in the city at the rate of ninety-five hundredths of one percent (0.95%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to sales or use tax regardless of the place to which delivery is made. (Ord. 1357 § 1, 1980; prior code § 22-3.3)

3.28.040 Exemptions.

A. There shall be exempt from the sales tax imposed by subsection A of Section 3.28.030 (Generally) the following:

1. The amount of any sales or use tax imposed by the state upon a consumer;

2. The gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the city in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this state, the United States, or any foreign government.

B. There shall be exempt from the use tax imposed by subsection B of Section 3.28.030 (Generally) the following:

1. The amount of any sales or use tax imposed by the state upon a consumer;

2. The storage, use, or other consumption of tangible personal property, the gross receipts from the sale of which has been subject to sales tax under a sales and use tax ordinance
enacted in accordance with state sales and use tax law by any city and county, city, or county in this state;

3. In addition to the exemptions provided in sections 6366 (Aircraft; component parts; presumptions relating to common carrier status) and 6366.1 (Aircraft for leasing to carriers in interstate or foreign commerce or to foreign governments) of the Revenue and Taxation Code, the storage, use or other consumption of tangible personal property purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this state, the United States, or any foreign government.

In the event that the Legislature of the State of California adopts an act which amends or repeals and reenacts Section 7202 (Sales tax on tangible personal property at retail; imposition; included provisions) of the Revenue and Taxation Code to provide an exemption from city sales and use taxes for operators of water borne vessels in the same, or substantially the same, language as that existing in subdivisions (i)(7) and (i)(8) of Section 7202 of the Revenue and Taxation Code as those subdivisions read on October 1, 1983, on the operative date of such act Section 3.28.040 of the San Bruno City Code shall be amended to read as it read immediately prior to the adoption of Ordinance No. 1425. (Ord. 1425 § 1, 1983; Ord. 1357 § 1, 1980; prior code § 22-3.4)

3.28.050 Application of state law.

Except as otherwise provided in this chapter and except insofar as they may be inconsistent with state sales and use tax law:

A. All of the provisions of Part 1, Division 2 of the Revenue and Taxation Code, as amended and in force and effect on January 1, 1961, applicable to sales and use taxes are adopted and made a part of this chapter as though fully set forth herein:

B. All amendments of the Revenue and Taxation Code of the state enacted subsequent to the effective date of the ordinance codified in this chapter which relate to sales and use taxes and which are not inconsistent with state sales and use tax law shall automatically become a part of this chapter. (Ord. 1357 § 1, 1980; prior code § 22-3.5)

3.28.060 Place of consummation of sale.

For the purpose of this chapter all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his or her agent to any out of state destination. In the event a retailer has no permanent place of business in the state or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and pursuant to Ordinance No. 1425, adopted December 12, 1983. (Ord. 1357 § 1, 1980; prior code § 22-3.6)

3.28.070 Additional seller’s permit not required.
If a seller’s permit has been issued to a retailer under Section 6067 (Issuance; non-assignability; display) of the Revenue and Taxation Code, an additional seller’s permit shall not be required by reason of this chapter. (Ord. 1357 § 1, 1980; prior code § 22-3.7)

3.28.080 Rules of construction.

A. Whenever, and to the extent that, in Part 1, Division 2 of the Revenue and Taxation Code, the state is named as the taxing agency, the city shall be substituted therefor.

B. Nothing in this section shall be deemed to require the substitution of the name of the city for the word “state” in the following instances:

1. When the word “state” is used as part of the title of the state controller, treasurer, board of control, board of equalization, treasury, or Constitution;

2. In any section when the result of the substitution would require action to be taken by or against the city or any agency thereof, rather than by or against the State Board of Equalization in performing the functions incident to the administration or operation of this chapter;

3. In those sections which refer to the exterior boundaries of the state where the result of the substitution would be to provide an exemption from the sales or use tax with respect to certain gross receipts storage, use, or other consumption of tangible personal property which would not otherwise be exempt from such taxes while those gross receipts or such storage, use or other consumption remains subject to tax by the state under the provisions of Part 1, Division 2, of the Revenue and Taxation Code;

4. In the phrase “retailer engaged in business in this state” in section 6203 (Collection by retailer from purchaser) of the Revenue and Taxation Code or the definition of such phrase in that section;

5. In Sections 6701 (Authority to require; amount; increase or decrease; notice and sale; auction; surplus), 6702 (Notice to withhold; service time; withholding payments or transfer to taxpayers) (except in the last sentence thereof), 6711 (Authority to sue; statute of limitations), 6715 (Use tax actions; service of process), 6797 (Notice of sale), and 6828 (Board’s authority to act for people) of such Revenue and Taxation Code, as adopted.

C. Nothing in this section shall be construed to impose a sales or use tax with respect to certain gross receipts or certain storage, use, or consumption which would not be subjected to tax by the state under the foregoing provisions of the Revenue and Taxation Code. (Ord. 1357 § 1, 1980; prior code § 22-3.8)

3.28.090 Disposition of funds.
All money collected under and pursuant to the provisions of this chapter shall be deposited and paid into the general fund of the city. Forty-five percent of the net receipts from sales and use taxes shall be used to reduce the payment of city obligations that would normally be paid out of funds derived from real and personal property taxes and the remaining fifty-five percent shall be added to the unbudgeted reserve of the city. (Ord. 1357 § 1, 1980; prior code § 22-3.9)

3.28.100 Enjoining collection prohibited.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the state or the city, or against any officer thereof, to prevent or enjoin the collection under this chapter or under state sales and use tax law of any tax or amount of tax to be collected. (Ord. 1357 § 1, 1980; prior code § 22-3.10)

Chapter 3.32 TRANSIENT OCCUPANCY TAX

3.32.010 Tax imposed—Amount—Debt to city.

For the privilege of occupancy in any hotel or motel, each transient is subject to and shall pay a tax in the amount of twelve percent of the rent charged by the operator. Such tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator, a rental agent, or to the city. The transient shall pay the tax to the operator or rental agent of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient’s ceasing to occupy space in the hotel. If for any reason the tax is not paid to the operator or rental agent of the hotel, the tax administrator may require that such tax shall be paid directly to the tax administrator. (Ord. 1779 § 1, 2009; Ord. 1531 § 2, 1991; Ord. 1465 § 1, 1986; Ord. 1357 § 1, 1980; prior code § 22-4.1)

3.32.020 Exemptions.

No tax shall be imposed upon:

A. Any person as to whom, of any occupancy as to which, is beyond the power of the city to impose the tax herein provided;

B. Any federal or state officer or employee when on official business;

C. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the tax administrator. (Ord. 1357 § 1, 1980; prior code § 22-4.2)

3.32.030 Operator’s and rental agent duties.
A. Each operator or rental agent shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of rent charged. The operator or rental agent shall provide a receipt for payment to each transient.

B. No operator or rental agent of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof:
   1. Will be assumed or absorbed by the operator or rental agent; or
   2. Will not be added to the rent; or
   3. If added, any part will be refunded except in the manner hereinafter provided.

C. If an operator or rental agent fails or refuses to collect the tax, the operator or rental agent shall be liable to the city for the amount of uncollected tax. (Ord. 1357 § 1, 1980; prior code § 22-4.3)

3.32.040 Registration.

Within thirty days after commencing business, each operator of any hotel renting occupancy to transients shall register such hotel with the tax administrator and obtain from him or her a transient occupancy registration certificate, to be at all times posted in a conspicuous place on the premises. Such certificate shall, among other things, state the following:

A. The name of the operator;

B. The address of the hotel;

C. The date upon which the certificate was issued;

D. This transient occupancy registration certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the tax administrator for the purpose of collecting from transients the transient occupancy tax and remitting said tax to the tax administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this city. This certificate does not constitute a permit. (Ord. 1357 § 1, 1980; prior code § 22-4.4)

3.32.050 Reporting and remitting.

A. Each operator and each rental agent shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the tax administrator, make a return to the tax administrator, on forms provided by him or her, of the total rents collected and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the tax administrator.
B. The tax administrator may establish shorter reporting periods for any certificate holder if he or she deems it necessary in order to insure collection of the tax and he or she may require further information in the return.

C. Returns and payments are due immediately upon cessation of business for any reason.

D. All taxes collected by operators or rental agents pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the tax administrator. (Ord. 1357 § 1, 1980; prior code § 22-4.5)

3.32.060 Penalties and interest.

A. Original Delinquency. Any operator or rental agent who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten percent of the amount of the tax in addition to the amount of the tax.

B. Continued Delinquency. Any operator or rental agent who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the ten percent penalty first imposed.

C. Fraud. If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.

D. Interest. In addition to the penalties imposed, any operator or rental agent who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid. Interest shall be imposed on penalties from thirty days after an operator or rental agent is notified of a delinquency.

E. Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid. (Ord. 1357 § 1, 1980; prior code § 22-4.6)

3.32.070 Failure to collect and report tax—Determination of tax and notice of same—Hearing.

A. If any operator or rental agent fails or refuses to collect such tax and to make any report and remittance of such tax within the time required by this chapter, the tax administrator shall proceed in such matter as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due.

B. When the tax administrator has procured such facts and information he or she shall proceed to determine and assess against the operator or rental agent the tax, interest, and penalties provided for by this chapter.
C. In case such determination is made, the tax administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator or rental agent at his or her last known place of address.

D. The operator or rental agent may within ten days after the service or mailing of such notice apply in writing to the tax administrator for a hearing on the amount assessed. If such an application is not made within the time prescribed, the tax, interest, and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable.

E. If such application is made, the tax administrator shall give not less than five days’ written notice to the operator or rental agent in the manner prescribed herein of the time and place at which a hearing shall be conducted on the subject of the amount due. At such hearing, the operator or rental agent may appear and offer evidence why the specified tax, interest, and penalties should not be fixed as determined by the tax administrator.

F. After such hearing the tax administrator shall determine the proper amount to be remitted, and shall give written notice to the operator or rental agent of such determination in the manner prescribed herein. The amount determined to be due as tax, interest, and penalties shall be payable fifteen days from the date of notice unless an appeal is taken as provided in Section 3.32.080. (Ord. 1357 § 1, 1980; prior code § 22-4.7)

G. Nothing in this section shall prohibit the tax administrator from assessing the full amount of any unremitted taxes and penalties solely against the operator in lieu of assessing some or all of those taxes and penalties against the rental agent.

3.32.080 Appeals.

A. Any operator or rental agent aggrieved by any decision of the tax administrator with respect to the amount of such tax, interest, and penalties, if any, may appeal to the council by filing a notice of appeal with the city clerk within fifteen days of the service or mailing of the notice of determination of tax due.

B. The city council shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to the appellant not less than ten days prior to the date of the hearing in the manner prescribed by subsection C of Section 3.32.070.

C. The findings of the council shall be final and conclusive and shall be served upon the appellant in the manner prescribed for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (Ord. 1357 § 1, 1980; prior code § 22-4.8)

3.32.090 Records to be kept by operators.

Every operator or rental agent shall keep for a period of three years all records as may be necessary to determine the amount of such tax for which the operator or rental agent he or she may have been liable pursuant to this chapter. The tax administrator shall have the right to inspect such records at all reasonable times. The rental agent shall provide the operator with
copies of all records necessary for the operator to comply with its obligations under this chapter. (Ord. 1357 § 1, 1980; prior code § 22-4.9)

3.32.100 Refunds and tax credits.

A. Refunds and credits against taxes collected may be claimed and processed pursuant to this section. They shall be allowed whenever the amount of any tax, interest, or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city.

B. An operator, a rental agent, or a transient may claim a refund or credit by providing a claim in writing to the tax administrator on a form furnished by him or her stating under penalty of perjury the specific grounds upon which the claim is founded. No refund shall be paid unless the claimant establishes his or her right thereto by written records showing entitlement.

C. An operator or rental agent may claim a refund or a credit only when it is established in a manner prescribed by the tax administrator that the person from whom the tax was collected was not a transient. No refund or credit shall be allowed unless the amount of the tax so collected has either been refunded to the person from whom it was collected or credited to rent subsequently payable by him.

D. A transient may obtain a refund only when the tax was paid by him or her directly to the tax administrator, or when the transient has paid the tax to the operator or rental agent and establishes to the satisfaction of the tax administrator that the transient has been unable to obtain a refund from the operator or rental agent who collected the tax. (Ord. 1357 § 1, 1980; prior code § 22-4.10)

3.32.110 Actions to collect.

A. Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the city.

B. Any such tax collected by an operator or rental agent which has not been paid to the city shall be deemed a debt owed by the operator or rental agent to the city. If the operator or rental agent fails or refuses to collect the tax, the uncollected tax shall be deemed a debt owed by the operator or rental agent to the city.

C. Any person owing money to the city under the provisions of this chapter shall be liable to the city in an action brought in the name of the city for the recovery of such amount. Nothing in this section shall prohibit the tax administrator from assessing the full amount of any unremitted taxes and penalties solely against the operator in lieu of assessing some or all of those taxes and penalties against the rental agent. (Ord. 1357 § 1, 1980; prior code § 22-4.11)

Chapter 3.36 REAL PROPERTY DOCUMENTARY STAMP TAX

3.36.010 Title.
This chapter shall be known as the “Real Property Transfer Tax Regulations.” It is adopted pursuant to the authority contained in Part 6.7 (commencing with Section 11901) of Division 2 of the Revenue and Taxation Code. (Ord. 1357 § 1, 1980; prior code § 22-5.1)

3.36.020 Tax imposed—Amount.

A. The tax imposed herein is on each deed, instrument or writing by which any lands, tenements, or other realty sold within the city shall be granted, assigned, transferred or otherwise conveyed to or vested in, the purchaser or purchasers, or any other person or persons, by his or her or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrances remaining thereon at the time of sale) exceeds one hundred dollars.

B. The rate of such tax is twenty-seven and one-half cents for each five hundred dollars or fraction thereof.

C. The transfer of any mobile home installed on a foundation system, pursuant to Section 18851 of the Health and Safety Code, and subject to this chapter. The purchaser of a new mobile home which is sold and installed for occupancy as a residence in accordance with Section 18613 (Permit for location, installation, or reinstallation of manufactured homes or mobile homes, etc.) of the Health and Safety Code, on or after July 1, 1980, shall be subject to the tax imposed pursuant to this chapter. (Ord. 1357 § 1, 1980; prior code § 22-5.2)

3.36.030 Persons liable for payment.

Any tax imposed pursuant to this chapter shall be paid by any person who makes, signs, or issues any document or instrument subject to the tax, or for whose use or benefit the same is made, signed, or issued. (Ord. 1357 § 1, 1980; prior code § 22-5.3)

3.36.040 Exemptions.

The tax imposed by this chapter shall not apply to:

A. Any instrument in writing given to secure a debt;

B. Any deed, instrument, or writing to which the United States or any agency or instrumentality thereof any state or territory, or political subdivision thereof, is a party when the exempt agency is acquiring title;

C. Any deed, instrument, or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustor as a result of or in lieu of foreclosure; provided, that such tax shall apply to the extent that the consideration exceeds the unpaid debt, including accrued interest and cost of foreclosure.
Consideration, unpaid debt amount and identification of grantee as beneficiary or mortgagee shall be noted on such deed, instrument or writing or stated in an affidavit or declaration under penalty of perjury for tax purposes;

D. Mobile homes held in the mobile home dealer’s inventory;

E. The making, delivering, or filing of conveyances to make effective any plan of reorganization or adjustment:

1. Confirmed under the Federal Bankruptcy Act, as amended,

2. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code, as amended,

3. Approved in an equity receivership proceeding in a court involving a corporation, as defined in Subdivision (3) of Section 506 of Title 11 of the United States Code, as amended, Section 101 (Definitions) of Title 11 (Bankruptcy) of the United States Code, as amended, or

4. Whereby a mere change in identity, form or place of organization is effected.

Subdivisions 1 through 4, inclusive, of this subsection shall apply only if the making, delivery or filing of instruments of transfer or conveyances occurs within five years from the date of such confirmation, approval or change;

F. The making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:

1. The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935,

2. Such order specified the property which is ordered to be conveyed,

3. Such conveyance is made in obedience to such order;

G. In the case of any realty held by a partnership, by reason of any transfer of an interest in a partnership or otherwise, if:

1. Such partnership (or another partnership) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, and

2. Such continuing partnership continues to hold the realty concerned.
If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for the purposes of this chapter, such partnership shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination.

Not more than one tax shall be imposed pursuant to this chapter by reason of a termination described in the immediately previous paragraph and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination.

Not more than one tax shall be imposed pursuant to this chapter by reason of a termination described in the immediately previous paragraph and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination. (Ord. 1357 § 1, 1980; prior code § 22-5.4)

3.36.050 Tax administrator.

The county recorder shall administer this chapter in conformity with the provisions of Part 6.7 of Division 2 of the Revenue and Taxation Code of the state and the provisions of any county ordinance adopted pursuant thereto. (Ord. 1357 § 1, 1980; prior code § 22-5.5)

3.36.060 Refunds.

Claims for refund of taxes imposed pursuant to this chapter shall be governed by the provisions of Chapter 5 (commencing with section 5096) of Part 9 of Division 1 of the Revenue and Taxation Code. (Ord. 1357 § 1, 1980; prior code § 22-5.6)

Chapter 3.38 ADDITIONAL PROVISIONS

3.38.010 Payment of assessed taxes required prior to legal action.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the city or an officer thereof, to prevent or enjoin the collection of taxes sought to be collected pursuant to Title 3 of this code; and payment of all tax, interest and penalties shall be required as a condition precedent to seeking judicial review of any tax liability. (Ord. 1786 § 1, 2010)

Article III. Fees

Chapter 3.40 ART IN PUBLIC PLACES

Note
* Editor’s note: In July 2007, under the direction of the city attorney, Ch. 9.33 was renumbered to be Ch. 3.40, under new Article III, Fees.

3.40.010 Findings.
The city council finds and declares:

A. San Bruno’s community is largely built-out. The city is undergoing an intense infill through home remodeling and additions, large housing developments, and commercial redevelopment.

B. The city has been consistently mindful of incorporating aesthetic considerations into the city’s residential and commercial growth. For example, the city’s planning commission reviews at two levels all applications for new construction and for additions that substantially increase a home or building size. The city has a Beautification Task Force that recognizes those in the community who maintain their homes and landscapes in an aesthetically pleasing fashion. An agreement with a developer to develop the former Navy site includes a requirement for artwork.

C. The city finds that it is important to develop, support and maintain the city’s cultural and artistic heritage, resources and assets in order to enhance the community’s aesthetic quality of life, to add to a sense of community, and to improve the image and character of the community as it grows.

D. The financial burden of developing, supporting and maintaining the city’s cultural and artistic resources and assets should be distributed in a manner roughly proportionate to the building impact of each project in the community.

E. Establishment of an art in public places program will promote the city’s goal of developing the community’s aesthetic qualities and will promote the general welfare of the community. (Ord. 1684 § 1, 2003)

3.40.020 Purpose.

The purpose of this chapter is to create an Art in Public Places program funded by the community as a whole for the purpose of creating, conducting and sponsoring art programs, events and exhibits and for the purpose of accepting, commissioning, acquiring, selecting, installing, maintaining, and insuring art work in the city of San Bruno. (Ord. 1684 § 1, 2003)

3.40.030 Art defined.

Art shall be defined as in Chapter 2.50.030, (Culture and Arts Commission – Definition). (Ord. 1684 § 1, 2003)

3.40.040 Fund created.

The “City Art Fund” is hereby established to account for fees paid pursuant to this chapter. This fund shall be maintained by the city finance director or designee, and shall be used solely for the purpose of sponsoring, conducting and hosting art programs, events and exhibits and for the purpose of accepting, commissioning, acquiring, selecting, installing, maintaining, and insuring art work to be displayed in the city. (Ord. 1684 § 1, 2003)
3.40.050 Program allocation.

The program allocation, as used in this chapter, shall be established as part of the city’s building division permit collection fee system. In the absence of a development agreement or other similar agreement providing for public art or an art fund fee, the program allocation shall be as follows:

A. Five percent of residential building, mechanical, electrical, or plumbing permit fee;

B. Seven percent of commercial (non-residential) building, mechanical, electrical, or plumbing permit fee. (Ord. 1684 § 1, 2003)

3.40.060 Program compliance.

No final city approval, such as a final inspection or certificate of occupancy, for any project subject to this chapter shall be granted or issued unless and until full compliance with the provisions of this chapter is achieved, until all required fees under this chapter have been paid. (Ord. 1684 § 1, 2003)

3.40.070 Administration of art in public places program.

A. As set forth in Chapter 2.50.130H, the Culture and Arts Commission shall administer the art in public places program under the general direction of the city council.

B. General Considerations. The commission shall consider at a minimum the aesthetic quality, harmony and propriety of proposed artwork with existing on-site improvements, maintenance of the artwork, and proposed location of and public accessibility to the artwork. The commission shall consider whether a proposed program or event comports with the findings and purposes of this chapter.

C. Relationship to Planning Commission.

1. If a development project is subject to planning commission review and approval and includes on site placement of art work, the culture and arts commission shall first review a completed application for consistency with subsection B of this section, including any recommended conditions of approval, and forward its recommendation to the planning commission;

2. The planning commission shall consider the recommendations and conditions of approval of the culture and arts commission.

D. Relationship to City Council.
1. The culture and arts commission shall seek approval from the city council for all expenditures of the culture and arts commission from the city art fund;

2. The city council may call up any matter relating to the culture and arts commission for de novo review and action by the city council or refer to the redevelopment agency board where appropriate. The decision of the city council or redevelopment agency board shall be final. (Ord. 1684 § 1, 2003)

3.40.080 Ownership of public art.

Artwork donated to the city and accepted by the city shall be the property of the city. (Ord. 1684 § 1, 2003)

SECTION 4. California Environmental Quality Act (CEQA). This ordinance is not a “project” pursuant to Section 21065 of the Public Resource Code because it does not change the existing regulatory scheme.

SECTION 5. Severability. If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

SECTION 6. Effective Date. The City Clerk shall certify to the adoption of this ordinance and shall cause a summary thereof to be published in a newspaper of general circulation at least five (5) days prior to the meeting at which the proposed ordinance is to be adopted and shall post a certified copy of the proposed ordinance in the office of the City Clerk, and within fifteen (15) days of its adoption, shall cause a summary of it to be published, including the vote for and against the same, and shall post a certified copy of the adopted ordinance in the office of the City Clerk, in accordance with California Government Code Section 36933.

INTRODUCED on the _____ day of ______________, 2019, and PASSED AND ADOPTED by the City Council of the City of San Bruno on this _____ day of ______________, 2019, by the following vote:

AYES: 
NOES: 
ABSTAIN: 
ABSENT:

____________________________________
[INSERT NAME]
Mayor of the City of San Bruno
ATTEST:
[INSERT NAME]
City Clerk