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INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM AND LEGALITY

Pran Jain

City Attorney

OAKLAND CITY COUNCIL
ORDINANCE No. _____ C.M.S.

REPORT AND ORDINANCE, RECOMMENDED BY THE PLANNING COMMISSION, TO: (A) DESIGNATE MICRO AND MINI TELECOMMUNICATIONS FACILITIES AS CONDITIONALLY PERMITTED IN ALL HBX (HOUSING-BUSINESS MIX) ZONES; (B) AMEND ZONING CODE SECTION 17.134.020(A) TO REQUIRE THE MAJOR CONDITIONAL USE PERMIT PROCEDURE FOR TELECOMMUNICATIONS FACILITIES IN ALL HBX ZONES; (C) AMEND ZONING CODE SECTION 17.128.110 TO REQUIRE THE SITE ALTERNATIVES ANALYSIS PROCEDURE FOR CERTAIN TELECOMMUNICATIONS FACILITIES IN THE HBX ZONES; (D) ADD NEW ZONING CODE SECTION 17.128.025 TO CLARIFY THAT A MAJOR CONDITIONAL USE PERMIT IS REQUIRED FOR TELECOM FACILITIES LOCATING IN CLOSE PROXIMITY TO BOTH RESIDENTIAL AND HBX ZONES; AND (E) MAKE OTHER NON-SUBSTANTIVE CHANGES TO THE ZONING CODE AS NECESSARY FOR CLARITY TO ENACT THIS REGULATION

WHEREAS, HBX zones (HBX-1, -2 and -3) are mapped in areas of West, Central and East Oakland with a unique mix of residences, commercial and industrial businesses; and

WHEREAS, In HBX zones, residential homes are typically adjacent to buildings which are commercial or otherwise non-residential, which are often the preferred locations of telecom facilities; and

WHEREAS, The Planning Code (OMC Section 17.65.010) cites these purposes of the HBX zones:

The purposes of the Housing and Business Mix zones are to:

- A. Allow for mixed use districts that recognize both residential and business activities
- B. Establish development standards that allow residential and business activities to compatibly co-exist
- C. Provide a transition between industrial areas and residential neighborhoods
- D. Encourage development that respects environmental quality and historic patterns of development
- E. Foster a variety of small, entrepreneurial, and flexible home-based businesses; and

WHEREAS, Micro, Mini, Macro and Monopole Telecommunications facilities are defined in the Oakland Planning Code (OMC Section 17.10.870 and following); and

WHEREAS, Micro, Mini, Macro and Monopole Telecommunications facilities are conditionally permitted for all residential zoning districts, regulated with the major conditional use permit procedure of OMC Section 17.134.020 (A) (3), and are appealable to the City Council; and

WHEREAS, Micro and Mini Telecommunications facilities are permitted in HBX zones, and require a regular design review permit be approved by the Director of City Planning, appealable to the Planning Commission, which is a lesser standard of regulatory review when compared to the major conditional use permit procedure; and

WHEREAS, the discrepancy in the Planning Code's regulations for Micro and Mini Telecommunications facilities in HBX zones, as compared to residential zones, means that residents living in a residential zone are conferred certain benefits which are not conferred on residents of HBX zones -- such as the ability to testify before the City Planning Commission at a public hearing, or the ability to appeal a Telecommunications facility application to the City Council; and

WHEREAS, this ordinance is intended to amend regulations in the Planning Code, to resolve the discrepancy between Telecommunications permitting in the residential and the HBX zones;

WHEREAS, after a duly noticed public hearing on January 29, 2011, the Oakland Planning Commission voted to recommend the ordinance to the Oakland City Council; now, therefore

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

Section 1. The City Council finds and determines the forgoing recitals to be true and correct and hereby makes them a part of this Ordinance.

Section 2. Title 17 of the Oakland Planning Code is hereby amended to make regulation of Telecommunications facilities in HBX zones the same as in residential zones; as detailed in **Exhibit A**, attached hereto and hereby incorporated herein by reference.

Section 3. Prior to adopting this Ordinance, the City Council independently finds and determines that this action complies with CEQA because the zoning text amendment is exempt, each as a separate and independent basis, under CEQA Guidelines Section 15061(b)(3) (the "General Rule" that CEQA applies only to projects which have the potential for causing a significant effect on the environment); Section 15307 ("Actions by Regulatory Agencies for Protection of Natural Resources")—because the ordinance makes citing new telecom equipment subject to a more rigorous administrative and Commission-level review; Section 15183 ("Projects Consistent with a Community Plan, General Plan, or Zoning"). As a further separate and independent basis, the proposal relies on the previously certified Final Environmental Impact Report for the Land Use and Transportation Element of the General Plan, adopted 1998; the

Oakland Estuary Policy Plan Environmental Impact Report, adopted 1998; the Final EIR for the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR certified in December 2010; and various Redevelopment Plan Final EIRs.

Section 4. This Ordinance shall be effective 30 days from the date of final passage by the City Council, but shall not apply to (a) building/construction related permits already issued and not yet expired, or (b) to zoning applications approved by the City and not yet expired, or to (c) zoning applications deemed complete by the City as of the date of final passage. However, zoning applications deemed complete by the City prior to the date of final passage of this Ordinance may be processed under provisions of these Planning Code amendments if the applicant chooses to do so.

Section 5. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 6. If any section, subsection, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of the remaining portions which shall remain in full effect.

Section 7. That the record before this Council relating to this Ordinance includes, without limitation, the following:

1. the application, including all accompanying maps and papers;
2. all relevant plans and maps;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City;
4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application;
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations.

Section 8. That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City's decision is based are respectively: (a) the Community and Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF, and PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____