

ORDINANCE NO. 2470

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
WEST COVINA, CALIFORNIA APPROVING CODE AMENDMENT
NO. 16-03, RELATED TO WIRELESS TELECOMMUNICATION
FACILITIES IN THE PUBLIC RIGHT OF WAY**

WHEREAS, the City's provisions for wireless telecommunication facilities were last updated in 2011.; and

WHEREAS, the City's Municipal Code currently does not have explicit regulations pertaining specifically to wireless telecommunication facilities in the public right-of-way; and

WHEREAS, on the 16th day of February 2016, the City Council initiated a code amendment related to wireless telecommunication facilities in the public right-of-way; and

WHEREAS, the Planning Commission, did on May 14, 2019 and July 23, 2019, conduct study sessions to consider the initiated code amendment; and

WHEREAS, the Planning Commission, upon giving the required notice, did on the 26th day of November 2019 and 28th day of January 2020, conduct a duly advertised public hearing as prescribed by law to make recommendations to the City Council to approve Code Amendment No. 16-03; and

WHEREAS, the City Council, upon giving the required notice, did on the 5th day of May 2020, conduct a duly advertised public hearing as prescribed by law on the proposed ordinance; and

WHEREAS, based on review of the State CEQA Guidelines, the City Council finds and determines that the proposed ordinance is statutorily exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines, which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment; and

WHEREAS, the City Council has duly considered all information presented to it, including written staff reports and any testimony provided at the public hearing, with all testimony received being made a part of the public record.

**WHEREFORE, THE MAYOR AND THE CITY COUNCIL OF THE CITY OF
WEST COVINA HEREBY ORDAINS AS FOLLOWS:**

SECTION NO. 1: Section 26-246 of the West Covina Municipal Code is hereby amended to read as follows:

Sec. 26-246. - Planning commission may grant conditional use permits for projects located within all land-use zones.

- (a) Because there are uses that possess unique characteristics and which are impractical to include in a specific zone as a matter of right, a conditional use permit may be granted for such uses.
- (b) Notwithstanding any other provisions of this chapter, the planning commission, after application therefor and hearing, after notice in the manner provided in division 1 of this article, may authorize the conditional uses included herein if it finds the proposed location of any such uses will not be detrimental to adjacent property or to the public welfare; and that the uses are essential or desirable to the public convenience and welfare.

SECTION NO. 2: Section 26-246.5 is hereby added to Chapter 26, Article VI, Division 3 of the West Covina Municipal Code to read as follows:

Sec. 26-246.5 - Planning commission and city council review for projects located within the public right-of-way

- (a) Because there are public right-of-way uses that possess unique characteristics and which are impractical to allow as a matter of right, a conditional use permit may be granted for such uses.
- (b) Notwithstanding any other provisions of this chapter, the planning commission, after application therefor and hearing, after notice in the manner provided in division 1 of this article, may render a recommendation for city council consideration.
- (c) The city council, after notice in the manner provided in division 1 of this article, may consider the planning commission's recommendation and may authorize the public right-of-way conditional uses upon determining that the findings required by Sec. 26-685-11500 have been met.

SECTION NO. 3: Section 26-247 (Required findings for conditional use permit) of the West Covina Municipal Code is hereby amended to read as follows:

- (a) Prior to the granting of a conditional use permit for projects located within all land-use zones it shall be found:
 - (1)(a) — That the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well being of the neighborhood or community.

- ~~(2)(b)~~—That such use will not, under the circumstances of the particular case, be detrimental to the health, safety, peace or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity.
- ~~(3)(e)~~—That the site for the proposed use is adequate in size and is so shaped as to accommodate said use, as well as all yards, spaces, walls, fences, parking, loading, landscaping, and any other features necessary to adjust said use to the land and uses in the neighborhood and make it compatible therewith.
- ~~(4)(d)~~—That the site abuts streets and highways adequate in width and improvements to carry traffic generations typical of the proposed use and that street patterns of such a nature exist as to guarantee that such generations will not be channeled through residential areas on local residential streets.
- ~~(5)(e)~~—That the granting of such conditional use permit will not adversely affect the general plan of the city, or any other adopted plan of the city.
- (b) Prior to the granting of a conditional use permit for projects located within the public right-of-way it shall be found that the findings required by Sec. 26-685-11500 have been met.

SECTION NO. 4: The Chapter 26, Article XII, Division 16 title of the West Covina Municipal Code is hereby amended to read as follows:

DIVISION 16 – WIRELESS TELECOMMUNICATION FACILITIES WITHIN ALL LAND-USE ZONES

SECTION NO. 5: Section 26-685.983 (Exemptions.) of the West Covina Municipal Code is hereby amended to read as follows:

The regulations of this division do not apply to the following:

- (1) Single ground-mounted, building-mounted, or roof-mounted receive-only AM/FM radio or television antennas, DBS dish antennas, amateur and/or citizens band radio antennas, for the sole use of the occupant of the parcel on which the antenna is located.
- (2) Wireless telecommunications facilities owned and operated by the city or other public agency when used for emergency response services, public utilities, operations, and maintenance.
- (3) This exemption does not apply to free-standing or roof-mounted satellite dish antennas greater than twenty-one (21) inches in diameter.
- (4) Wireless telecommunication facilities located in the public right-of-way, which are regulated under Article XII (Special Regulations for Unique Uses), Division 29 (Wireless Telecommunication Facilities in the Public Right-of-Way) of this chapter.

SECTION NO. 6: Section 26-685.984(a) through (b) of the West Covina Municipal Code is hereby amended to read as follows:

- (a) No wireless telecommunication facilities are permitted in residential zones except for the following:
- (1) Wireless telecommunication facilities listed under section 26-685.983(1) and (2).
 - (2) Wireless telecommunication facilities located in the public right-of-way, which are regulated under Article XII (Special Regulations for Unique Uses), Division 29 (Wireless Telecommunication Facilities in the Public Right-of-Way) of this chapter.
 - (3) Wireless telecommunication facilities located in residential zones that are developed with permitted nonresidential uses.
 - (4) Wireless telecommunication facilities consisting of roof-mounted antennas located on multiple-family residential buildings.
- (b) Antennas with a solid or wire-mesh surface with a diameter or maximum width greater than twelve (12) feet are prohibited in residential zones.

SECTION NO. 7: Division 29 is hereby added to Chapter 26, Article XII of the West Covina Municipal Code to read as follows:

DIVISION 29 – WIRELESS TELECOMMUNICATION FACILITIES IN THE PUBLIC RIGHT-OF-WAY

Sec. 26-685.11000. – Purpose

This division sets forth a uniform and comprehensive set of development standards for the permitting, development, placement, design, installation, operation, and maintenance of wireless telecommunication facilities within the city's public right-of-way. The purpose of these regulations is to provide clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunication facilities. This division provides standards necessary (1) for the preservation of the public right-of-way ("PROW") in the city for the maximum benefit and use of the public, (2) to promote and protect public health and safety, community welfare, and the aesthetic quality of the city consistent with the goals, objectives and policies of the general plan, and (3) to provide for the orderly, managed and efficient development of wireless telecommunication facilities in accordance with the state and federal laws, rules and regulations, including those regulations of the Federal Communications Commission ("FCC") and California Public Utilities Commission ("CPUC"), and (4) to ensure that the use and enjoyment of the PROW is not inconvenienced by the use of the PROW for the placement of wireless facilities.

Sec. 26-685.11100. - Applicability

- (1) This division applies to the siting, construction or modification of any and all wireless telecommunication facilities proposed to be located in the public right-of-way.
- (2) Pre-Existing Facilities in the PROW. Nothing in this division shall validate any existing illegal or unpermitted wireless facilities. All existing wireless facilities shall comply with

and receive an encroachment permit, when applicable, in order to be considered legal and conforming.

(3) This division does not apply to the following: (a)

Amateur radio facilities;

(b) OTARD antennas;

(c) Facilities owned and operated by the city for its use or for public safety purposes; (d)

Any entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement, excepting that to the extent such the terms of state or federal law, or franchise agreement, are preemptive of the terms of this division, then the terms of this division shall be severable to the extent of such preemption and all remaining regulations shall remain in full force and effect. Nothing in the exemption shall apply so as to preempt the city's valid exercise of police powers that do not substantially impair franchise contract rights;

(e) Installation of a COW or a similar structure for a temporary period in connection with an emergency or event at the discretion of the city engineer, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.

(4) Public Use. Except as otherwise provided by state or federal law, any use of the PROW authorized pursuant to this division will be subordinate to the city's use and use by the public.

Sec. 26-685.11200. - Definition

- (1) "Accessory equipment" means any and all on-site equipment, including, without limitation, back-up generators and power supply units, cabinets, coaxial and fiber optic cables, connections, equipment buildings, shelters, vaults, radio transceivers, transmitters, pedestals, splice boxes, fencing and shielding, surface location markers, meters, regular power supply units, fans, air conditioning units, cables and wiring, to which an antenna is attached in order to facilitate the provision of wireless telecommunication services.
- (2) "Antenna" means any system of wires, poles, rods, reflecting discs, or similar devices of various sizes, materials and shapes including but not limited to solid or wire-mesh dish, horn, spherical, or bar configured arrangements, used for the transmission or reception of electromagnetic signals.
- (3) "Antenna array" shall mean two or more antennas having active elements extending in one or more directions, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.
- (4) "Approval authority" means the city official responsible for reviewing applications for small cell permits and vested with the authority to approve, conditionally approve or deny such applications.
- (5) "Base station" shall have the meaning as set forth in Title 47 Code of Federal Regulations (C.F.R.) Section 1.40001(b)(1), or any successor provision. This means a structure or

equipment at a fixed location that enables FCC -licensed or authorized wireless communications between user equipment and a communications network (regardless of the technological configuration, and encompassing DAS and small cells). "Base station" does not encompass a tower or any equipment associated with a tower. Base station includes, without limitation:

- (a) Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (b) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small cells).
- (c) Any structure other than a tower that, at the time the relevant application is filed with the city under this division, supports or houses equipment described in paragraphs 1. and 2. of this definition that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.
- (d) "Base station" does not include any structure that, at the time the relevant application is filed under this division, does not support or house equipment described in paragraphs 1. and 2. of this definition. Other structures that do not host wireless telecommunications facilities are not "base stations."

As an illustration and not a limitation, the FCC's definition of "base station" refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles, light standards or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

- (5) "Cellular" means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.
- (6) "City" means the City of West Covina.
- (7) "Code" means the West Covina Municipal Code.
- (8) "Collocation" means the placement of antennas, dishes, or similar devices owned or used by two (2) or more telecommunication providers on one (1) antenna support structure, building, pole, or structure.
- (9) "Concealed " or "concealment" means camouflaging techniques that integrate the transmission equipment into the surrounding natural and/or built environment such that the average, untrained observer cannot directly view the equipment but would likely recognize the existence of the wireless facility or concealment technique.
- (10) "COW" means a "cell on wheels," which is a portable, self-contained wireless telecommunications facility that can be moved to a location and set up to provide wireless telecommunication services, which facility is temporarily rolled in, or temporarily installed,

at a location. Under this division, the maximum time a facility can be installed to be considered a COW is five days. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.

- (11) "Decorative pole" means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.
- (12) "Distributed antenna system" or "DAS" means a network of spatially separated antennas (nodes) connected to a common source (a hub) via a transport medium (often fiber optics) that provide wireless telecommunications service within a specific geographic area or building. DAS includes the transport medium, the hub, and any other equipment to which the DAS network or its antennas or nodes are connected to provide wireless telecommunication services.
- (13) "Eligible facilities request" means any request for modification to an existing eligible support structure that does not substantially change the physical dimensions of such structure, involving:
- (a) Collocation of new transmission equipment;
 - (b) Removal of transmission equipment;
 - (c) Replacement of transmission equipment (replacement does not include completely replacing the underlying support structure); or
 - (d) Hardening through structural enhancement where such hardening is necessary to accomplish the eligible facilities request, but does not include replacement of the underlying support structure.

"Eligible facilities request" does not include modifications or replacements when an eligible support structure was constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. "Eligible facilities request" does include collocation facilities satisfying all the requirements for a non-discretionary collocation facility pursuant to Government Code Section 65850.6.

- (14) "Eligible support structure" means any support structure located in the PROW that is existing at the time the relevant application is filed with the city under this division.
- (15) "Existing" means a support structure, wireless telecommunications facility, or accessory equipment that has been reviewed and approved under the city's applicable zoning or permitting process, or under another applicable state or local regulatory review process, and lawfully constructed prior to the time the relevant application is filed under this division. However, a support structure, wireless telecommunications facility, or accessory equipment that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is "existing" for purposes of this division. "Existing" does not apply to any structure that (1) was illegally constructed without all proper local agency approvals, or (2) was constructed in noncompliance with such approvals. "Existing" does not apply where an existing support structure is proposed to be replaced in furtherance of the proposed wireless telecommunications facility.

- (16) "Facility(ies)" means wireless telecommunications facility(ies).
- (17) "FCC" means the Federal Communications Commission.
- (18) "FCC shot clock" means the presumptively reasonable time frame within which the city generally must act on a given wireless application, as defined by the FCC and as may be amended from time to time. The shot clock shall commence on "day zero," which is the day the WTFP application is submitted.
- (19) "Ground-mounted" means mounted to a pole, tower or other freestanding structure which is specifically constructed for the purpose of supporting an antenna or wireless telecommunications facility and placed directly on the ground at grade level.
- (20) "Lattice tower" means an open framework structure used to support one or more antennas, typically with three or four support legs.
- (21) "Located within (or in) the public right-of-way" includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the PROW.
- (22) "Ministerial permit" means any city-issued non-discretionary permit required to commence or complete any construction or other activity subject to the city's jurisdiction. Ministerial permits may include, without limitation, a building permit, construction permit, electrical permit, encroachment permit, excavation permit and/or traffic control permit.
- (23) "Modification" means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. "Modification" does not include repair, replacement or maintenance if those actions do not involve whatsoever any expansion, alteration, enlargement, intensification, reduction, or augmentation of an existing wireless telecommunications facility.
- (24) "Monopole" means a structure composed of a pole or tower used to support antennas or related equipment. A monopole includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole (e.g. water tower).
- (25) "Mounted" means attached or supported.
- (26) "OTARD antennas" means antennas covered by the "over-the-air reception devices" rule in 47 C.F.R. sections 1.4000 et seq. as may be amended or replaced from time to time.
- (27) "Permittee" means any person or entity granted a wireless telecommunication facilities permit (WTFP) pursuant to this division.
- (28) "Personal wireless services" shall have the same meaning as set forth in 47 United States Code Section 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

- (29) "Planning director" means the director of community development, or his or her designee.
- (30) "Pole" means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this code.
- (31) "Public right-of-way" or "PROW" means a strip of land acquired by reservation, dedication, prescription, condemnation, or easement that allows for the passage of people and goods. The PROW includes, but is not necessarily limited to, streets, curbs, gutters, sidewalks, roadway medians, parkways, and parking strips. The PROW does not include land owned, controlled or operated by the city for uses unrelated to streets or the passage of people and goods, such as, without limitation, parks, city hall and community center lands, city yards, and lands supporting reservoirs, water towers, police or fire facilities and non-publicly accessible utilities.
- (32) "City Engineer" means the City Engineer, or his or her designee.
- (33) "Replacement" refers only to replacement of transmission equipment, wireless telecommunications facilities or eligible support structures where the replacement structure will be of like-for-like kind to resemble the appearance and dimensions of the structure or equipment replaced, including size, height, color, landscaping, materials and style.
- (a) In the context of determining whether an application qualifies as an eligible facilities request, the term "replacement" relates only to the replacement of transmission equipment and does not include replacing the support structure on which the equipment is located.
- (b) In the context of determining whether a SWF application qualifies as being placed upon a new eligible support structure or qualifies as a collocation, an application proposing the "replacement" of the underlying support structure qualifies as a new pole proposal.
- (34) "Radiofrequency emissions" (RF) means the electromagnetic signals transmitted and received using wireless telecommunication antennas.
- (35) "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. The Middle Class Tax Relief and Job Creation Act of 2012 is also referenced herein occasionally as the "Spectrum Act".
- (36) "Small cell" means a low-powered antenna (node) that has a range of ten meters to two kilometers. The nodes of a "small cell" may or may not be connected by fiber. "Small," for purposes of "small cell," refers to the area covered, not the size of the facility. "Small cell" includes, but is not limited to, devices generally known as microcells, picocells and femtocells.
- (37) "Small cell network" means a network of small cells.
- (38) "Substantial change" has the same meaning as "substantial change" as defined by the FCC at 47 C.F.R. 1.40001(b)(7). Notwithstanding the definition above, if an existing

pole-mounted cabinet is proposed to be replaced with an underground cabinet at a facility where there are no pre-existing ground cabinets associated with the structure, such modification may be deemed a non-substantial change, in the discretion of the planning director and based upon his/her reasonable consideration of the cabinet's proximity to residential view sheds, interference to public views and/or degradation of concealment elements. If undergrounding the cabinet is technologically infeasible such that it is materially inhibitive to the project, the planning director may allow for a ground mounted cabinet. A modification or collocation results in a "substantial change" to the physical dimensions of an eligible support structure if it does any of the following:

- (a) It increases the height of the structure by more than ten percent or more than ten feet, whichever is greater;
- (b) It involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- (c) It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets. However, for towers and base stations located in the public rights-of-way, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent larger in height or overall volume than any other ground cabinets associated with the structure;
- (d) It entails any excavation or deployment outside the current site. For purposes of this subsection, excavation outside the current site occurs where excavation more than 12 feet from the eligible support structure is proposed;
- (e) It defeats the concealment or stealthing elements of the eligible support structure; or
- (f) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs 1. through 4. of this definition.
- (g) For all proposed collocations and modifications, a substantial change occurs when:
 - (i) The proposed collocation or modification involves more than the standard number of new equipment cabinets for the technology involved, but not to exceed four equipment cabinets;
 - (ii) The proposed collocation or modification would defeat the concealment elements of the support structure; or
 - (iii) The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval that is inconsistent with the thresholds for a substantial change described in this section.

The thresholds and conditions for a "substantial change" described in this section are disjunctive such that the violation of any individual threshold or condition results in a substantial change. The height and width thresholds for a substantial change described in this section are cumulative for each individual support structure. The cumulative limit is measured from the physical dimensions of the original structure for base stations, and for all other facilities sites in the PROW from the smallest physical dimensions that existed on or after February 22, 2012, inclusive of originally approved-appurtenances and any modifications that were approved prior to that date.

(39)"Support structure" means a tower, pole, base station or other structure used to support a wireless telecommunications facility.

(40)"SWF" means a "small wireless facility" as defined by the FCC in 47 C.F.R. 1.6002(l) as may be amended, which are personal wireless services facilities that meet all the following conditions that, solely for convenience, have been set forth below:

(a)The facility:

(i) Is mounted on an existing or proposed structure 50 feet or less in height, including antennas, as defined in Title 47 C.F.R. Section 1.1320(d); or

(ii) Is mounted on an existing or proposed structure no more than ten percent taller than other adjacent structures; or

(iii) Does not extend an existing structure on which it is located to a height of more than 50 feet or by more than ten percent, whichever is greater;

(b)Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;

(c)All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(d)The facility does not require antenna structure registration under 47 C.F.R. Part 17;

(e)The facility is not located on Tribal lands, as defined under Title 36 C.F.R. Section 800.16(x); and

(f) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Title 47 C.F.R. Section 1.1307(b).

(41)"Telecommunications tower" or "tower" bears the meaning ascribed to wireless towers by the FCC in 47 C.F.R. § 1.40001(b)(9), including without limitation a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed

wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

(42)"Transmission equipment" means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(43)"Utility pole" means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission. A telecommunications tower is not a utility pole.

(44)"Wireless telecommunications facility" means a mechanical device, land, and/or structure that is used to transmit and/or receive electromagnetic signals, including but not limited to antennas, microwave dishes, horn, and other types of equipment for the transmission or receipt of such signals, free-standing wireless facilities, equipment buildings or cabinets, parking areas, and other accessory development. Exceptions: The term "wireless telecommunications facility" does not apply to the following:

(a)Government-owned and operated telecommunications facilities.

(b)Emergency medical care provider-owned and operated telecommunications facilities.

(c)Mobile services providing public information coverage of news events of a temporary nature.

(d)Any wireless telecommunications facilities exempted from this code by federal law or state law.

(45)"Wireless telecommunications services" means the provision of services using a wireless telecommunications facility or a collocation facility, and shall include, but not be limited to, the following services: personal wireless services as defined in the Federal Telecommunications Act of 1996 at 47 U.S.C. § 332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.

(46)"WTFP" means a "wireless telecommunications facility permit" required by this division, which may be categorized as either a major WTFP or a minor WTFP.

Sec. 26-685.11300. - Wireless telecommunications facility permit (WTFP) review authority.

(1)Administration. The planning director is responsible for administering this division. As part of the administration of this division, the director may:

(a)Interpret the provisions of this division;

- (b) Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this division;
- (c) Collect, as a condition of the completeness of any application, any fee established by this division;
- (d) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations;
- (e) 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;
- (f) Require, as part of, and as a condition of completeness of any application, that an applicant for a wireless telecommunication facilities permit send notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;
- (g) Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and
- (h) Take such other steps as may be required to timely act upon applications for placement of wireless telecommunication facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

(2) Administrative review ("Minor WTFP") required.

- (a) Certain wireless telecommunication facilities, collocations, modifications, or replacements to an eligible support structure is subject to the planning director's review of an Administrative Review application, if the following criteria are met:
 - (i) The proposal is determined to be for a SWF, or an eligible facilities request; and
 - (ii) The proposal complies with the adopted Design Guidelines for Wireless Telecommunication Facilities in the PROW; and
 - (iii) The location of the proposed wireless telecommunication facility is no less than 500 feet from an existing or approved wireless telecommunication facility location; and
 - (iv) The location of any proposed SWF is no less than 500 feet from the location of a proposed SWF within the same application bundle.
- (b) In the event that the planning director determines that any minor WTFP application submitted does not meet the application criteria of this division, the director shall convert the application to a major WTFP and refer it to the planning commission for consideration at a public hearing.

- (3) Major Wireless Telecommunications Facilities Permit ("Major WTFP") required. All new wireless telecommunications facilities or replacements, collocations, or modifications to a wireless telecommunications facility that are not qualified for an Administrative Review shall require a Major WTFP subject to planning commission hearing and approval unless otherwise provided for in this division.
- (4) Other Permits Required. In addition to any permit that may be required under this division, the applicant must obtain all other required prior permits or other approvals from other city departments/divisions, or state or federal agencies. Any permit granted under this division is subject to the conditions and/or requirements of other required prior permits or other approvals from other city departments/division, state or federal agencies. Building and encroachment permits, and all city standards and requirements therefor, are applicable. The Planning Director and/or Planning Commission approval of any permits pursuant to this division does not constitute an encroachment permit, and/or other permits issued by other city departments/division to allow the physical installation of the wireless telecommunications facility.

Sec. 26-685.11400. - Wireless telecommunications facility permit application submittal requirements.

- (1) General. The applicant shall submit a paper copy and an electronic copy of any application, amendments, modifications, or supplements to a WTFP application, or responses to requests for information regarding a WTFP, including all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate or otherwise deploy wireless facilities within the city's jurisdictional and territorial boundaries within the PROWs, in accordance with the provisions of this section.
- (a) The city requires a pre-application submittal meeting for a major WTFP. The city does not require a pre-application submittal meeting for a minor WTFP; however, the city strongly encourages applicants to schedule and attend a pre-application submittal conference with the approval authority for all proposed minor WTFP projects, and particularly those that involve more than five minor WTFPs.
- (i) Pre-submittal conferences do not cause the FCC shot clock to begin and are 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 project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other city departments/divisions responsible for application review; and application completeness issues.
- (ii) 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 approval authority shall use reasonable efforts to provide the applicant with an appointment within five 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.

- (iii) Any request for a pre-submittal conference shall be in writing and shall confirm that any drafts to be provided to the city at the pre-submittal conference will not be deemed as "submissions" triggering the start of any FCC shot clock.
- (b) All applications for WTFPs shall be initially submitted to the planning division. Each applicant shall fully and completely submit to the city a written application on a form prepared by the Planning division.
- (c) Major WTFP applications must be submitted to the planning division at a scheduled application submission appointment. City staff will endeavor to provide applicants with an appointment within five business days after receipt of a written request therefor. A WTFP application will only be reviewed upon submission of a complete application therefor. A pre-submission appointment is not required for minor WTFPs.
- (d) For SWF, applicants may submit up to five individual applications for a WTFP in a batch; provided, however, that SWF in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each site in the batch. If any application in a batch is incomplete, the entire batch shall be deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch as described in this division, the entire batch shall be deemed withdrawn. If any application in a batch fails to meet the required findings for approval, the entire batch shall be denied.
- (e) If the wireless telecommunications facility will also require the installation of fiber, cable, or coaxial cable, such cable installations shall be included within the application form and processed in conjunction with the proposal for vertical support structure(s). Applicants shall simultaneously request fiber installation or other cable installation when seeking to install antennas in the PROW. Standalone applications for the installation of fiber, cable, or coaxial cable, or accessory equipment designed to serve an antenna must include all features of the wireless telecommunications facility proposed.
- (2) Application Contents—Minor WTFPs. The content of the application form for facilities subject to a minor WTFP shall be determined by the planning director in addition to all other information reasonably deemed necessary, but at a minimum shall include the following:

 - (a) The name of the applicant, its telephone number, mailing address, electronic mail address, and contact information, and if the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider that will be using the wireless facility.
 - (b) The name of the owner of the structure, if different from the applicant, and a signed and notarized owner's authorization for use of the structure.
 - (c) A complete description of the proposed wireless telecommunications facility and any and all work that will be required to install or modify it, including, but not limited to, details regarding proposed excavation, if any; detailed site plans showing the location of the wireless telecommunications facility, and dimensioned drawings with specifications for each element of the wireless facility, clearly describing the site and all structures and facilities at the site before and after installation or modification; and a dimensioned map

identifying and describing the distance to the nearest residential dwelling unit and any historical structure within 250 feet of the facility. Before and after 360 degree photo simulations shall be provided.

- (d) Documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the municipal code and the FCC's radio frequency emissions standards.
- (f) A copy of the lease or other agreement, if any, between the applicant and the owner of the property to which the proposed facility will be attached.
- (g) If the application is for a SWF, the application shall state as such and shall explain why the proposed facility meets the definition of a SWF.
- (h) If the application is for an eligible facilities request, the application shall state as such and must contain information sufficient to show that the application qualifies as an eligible facilities request, which information must demonstrate that the eligible support structure was not constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. This shall include copies of all applicable local permits in-effect and as-built drawings of the current site. Before and after 360 degree photo simulations shall be provided, as well as documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the municipal code and the FCC's radio frequency emissions standards.
- (i) For SWFs, the application shall also contain:
 - (i) Application Fee. The applicant shall submit the applicable SWF WTFP application fee established by city council resolution. Batched applications for Major WTFP projects must include the applicable application fee for each SWF in the batch.
 - (ii) Construction Drawings. The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings shall: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number, and physical dimensions; (ii) identify all structures within 500 feet from the proposed project site and indicate such structures' overall height above ground level; (iii) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.

- (iii) Site Survey. For any SWF proposed to be located within the PROW, the applicant shall submit a survey prepared, signed, and stamped by a California licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 500 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.
- (iv) Photo Simulations. The applicant shall submit site photographs and 360 degree photo simulations that show the existing location and proposed SWF in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point.
- (v) Project Narrative and Justification. The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a SWF as defined by the FCC in 47 C.F.R. 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the city to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a structure as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a SWF permit as provided in Section 12.18.060 (Review Procedure).
- (vi) RF Compliance Report. The applicant shall submit an RF exposure compliance report that certifies that the proposed SWF, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the city. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- (vii) Regulatory Authorization. The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the SWF proposed in the application.
- (viii) Site Agreement. For any SWF proposed to be installed on any structure owned or controlled by the city and located within the public rights-of-way, the applicant must

enter into a site agreement prepared on a form prepared by the city and approved by the city attorney that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the city's form site agreement except as may be indicated on the form itself. Any unpermitted changes to the city's form site agreement shall be deemed a basis to deem the application incomplete.

(ix) Acoustic Analysis. The applicant shall submit an acoustic analysis prepared and certified by an acoustic engineer for the proposed SWF and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the following noise regulations:

1.Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 p.m. and 7:00 a.m.;

2.At no time shall equipment noise from any facility exceed an exterior noise level of 55 dBA three feet from the source of the noise if the facility is located in the public right-of-way adjacent to a business, commercial, manufacturing, utility or school zone; provided, however, that for any such facility located within 500 feet of any property zoned residential or improved with a residential use, such equipment noise shall not exceed 45 dBA three feet from the sources of the noise.

3.The acoustic analysis shall also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.

(x) Wind Load Analysis. The applicant shall submit a wind load analysis with an evaluation of high wind load capacity and shall include the impact of modification of an existing facility.

(xi) Environmental Data. A completed environmental assessment application, or in the alternative any and all documentation identifying the proposed WTFP as exempt from environmental review (under the California Environmental Quality Act, Public Resources Code 21000— 21189, the National Environmental Policy Act, 42 U.S.C.

§4321 et seq., or related environmental laws). Notwithstanding any determination of environmental exemption issued by another governmental entity, the city reserves its right to exercise its rights as a responsible agency to review de novo the environmental impacts of any WTFP application.

(xii) Traffic Control Plan. A traffic control plan when the proposed installation is on any street in a non-residential zone. The city shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g. crane).

(xiii) Landscape Plan. A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed

irrigation with a discussion of how the chosen material at maturity will screen the SWF and its accessory equipment.

(xiv) CPCN. Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the PROW. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.

(xvi) Master Deployment Plan. A master deployment plan showing the locations of existing and proposed small wireless facilities over the next two years.

(j) If the applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all information on which the applicant relies on in support of that claim. Applicants are not permitted to supplement this showing if doing so would prevent the city from complying with any deadline for action on an application or FCC shot clock.

(3) Application Contents— Major WTFPs. The application form for a major WTFP shall require the following information, in addition to all other information determined necessary by the planning director:

(a) The name, address, and telephone number of the applicant, owner, and the operator of the proposed wireless telecommunication facility.

(b) If the applicant does not, or will not, own the support structure, the applicant shall provide a duly-executed letter of authorization from the owner of the structure. If the owner of the support structure is the applicant, but such owner/applicant will not directly provide wireless telecommunications services, the owner/applicant shall provide a duly-executed letter of authorization from the person(s) or entity(ies) that will provide those services.

(c) A full written description of the proposed wireless telecommunications facility and its purpose.

(d) Detailed engineering plans of the proposed wireless telecommunications facility and related report prepared by a professional engineer registered in the state documenting the following:

(i) Height/elevation, diameter, layout and design of the facility, including technical engineering specifications, economic and other pertinent factors governing selection of the proposed design, together with evidence that demonstrates that the proposed facility has been designed to be the least intrusive equipment within the particular technology available to the carrier for deployment.

(ii) A photograph and model name and number of each piece of the facility or proposed antenna array and accessory equipment included.

(iii) Power output and operating frequency for the proposed antenna array (including any antennas existing as of the date of the application serving the carrier identified in the application).

- (iv) Total anticipated capacity of the wireless telecommunications facility for the subject carrier, indicating the number and types of antennas and power and frequency ranges, which can be accommodated.
- (v) Sufficient evidence of the structural integrity of the support structure as required by the city.
- (e) A written description identifying the geographic service area to be served by the proposed WTFP, plus geographic or propagation maps showing applicant's service area objectives.
- (f) A justification study which includes the rationale for selecting the proposed wireless telecommunication facility design, support structure and location. A detailed explanation of the applicant's coverage objectives that the proposal would serve, and how the proposed use is the least intrusive means for the applicant to cover such objectives. This shall include:
 - (i) A meaningful comparative analysis that includes all factual reasons why the proposed location and design deviates from, or is the least compliant means of, or not the least intrusive location and design necessary to reasonably achieve the applicant's reasonable objectives of covering an established significant gap (as established under state and federal law).
 - (ii) The study shall include all eligible support structures and/or alternative sites evaluated for the proposed major WTFP, and why the alternatives are not reasonably available, technically feasible options that most closely conform to the local values. The alternative site analysis must include the consideration of at least two eligible support structures; or, if no eligible support facilities are analyzed as alternatives, why no eligible support facilities are reasonably available or technically feasible.
 - (iii) If a portion of the proposed facility lies within a jurisdiction other than the city's jurisdiction, the applicant must demonstrate that alternative options for locating the project fully within one jurisdiction or the other is not a viable option. Applicant must demonstrate that it has obtained all approvals from the adjacent jurisdiction for the installation of the extra-jurisdictional portion of the project.
- (g) Site plan(s) to scale, specifying and depicting the exact location of the proposed wireless telecommunications facility, location of accessory equipment in relation to the support structure, access or utility easements, existing utilities, adjacent land uses, and showing compliance with all design and safety requirements set forth in this division.
- (h) A completed environmental assessment application, or in the alternative any and all documentation identifying the proposed WTFP as exempt from environmental review (under the California Environmental Quality Act, Public Resources Code 21000-21189, the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., or related environmental laws). Notwithstanding any determination of environmental exemption issued by another governmental entity, the city reserves its right to exercise its rights as a responsible agency to review de novo the environmental impacts of any WTFP application.
- (i) An accurate visual impact analysis showing the maximum silhouette, view-shed analysis, color and finish palette and proposed screening for the wireless telecommunications facility, including scaled photo simulations from at least three different angles.

- (j) Completion of the RF emissions exposure guidelines checklist contained in Appendix A to the FCC's "Local Government Official's Guide to Transmitting Antenna RF Emission Safety" to determine whether the facility will be "categorically excluded" as that term is used by the FCC.
 - (k) For a facility that is not categorically excluded under the FCC regulations for RF emissions, the applicant shall submit an RF exposure compliance report prepared and certified by an RF engineer acceptable to the city that certifies that the proposed facility, as well as any facilities that contribute to the cumulative exposure in the subject area, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radio power "ERP") for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
 - (l) Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the proposed wireless telecommunications facility.
 - (m) A noise study prepared by a qualified acoustic engineer documenting that the level of noise to be emitted by the proposed wireless telecommunications facility will comply with this code, including Chapter 15, Article IV (Noise Regulations) of this code.
 - (n) A traffic control plan. The city shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g., crane).
 - (o) A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the wireless telecommunication facility.
 - (p) Certification that applicant is a telephone corporation, or a statement providing the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.
 - (q) Evidence that the proposed wireless facility qualifies as a personal wireless services facility.
 - (r) Address labels for use by the city in noticing all property owners and occupants of properties within 300 feet of the proposed wireless telecommunication facility and, if applicable, all public hearing information required by the municipal code for public noticing requirements.
 - (s) Any other information and/or studies reasonably determined to be necessary by the planning director(s) may be required.
- (4) Application Fees and Deposits. For all WTFPs, application fee(s) and the establishment of deposits to cover outside consultant costs shall be required to be submitted with any

application, as established by city council resolution and in accordance with California Government Code Section 50030.

- (a) Reasonable costs of city staff, consultant and attorney time (including that of the city attorney) pertaining to the review, processing, noticing and hearing procedures directly attributable to a WTFP shall be reimbursable to the city. To this end, the planning director, as applicable, may require applicants to enter a deposit reimbursement agreement, in a form approved by the city attorney, or other established deposit accounting mechanism for purposes of obtaining an applicant deposit from which the direct costs of city processing of an application may be drawn-down.
- (5) Effect of State or Federal Law on Application Process. In the event a state or federal law prohibits the collection of any information or application conditions required by this section, the planning director is authorized to omit, modify, or add to that request from the city's application form in consultation with the city attorney. Requests for waivers from any application requirement of this section shall be made in writing to the planning director. The planning director may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the city will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the WTFP sought. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored to minimize deviation from the requirements of the municipal code.
- (6) Applications Deemed Withdrawn. To promote efficient review and timely decisions, any application governed by this division will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the city on any application within 30 calendar days after the application is deemed incomplete in a written notice to the applicant. The planning director (as applicable) may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the application deemed automatically withdrawn that shows good cause to grant the extension.
- (7) Waiver of Applications Superseded by Submission of New Project. If an applicant submits a WTFP application, but substantially revises the proposed facility during the application process prior to any city hearing or decision on such application, the substantially revised application shall be deemed a new application for all processing purposes, including FCC shot clocks, and the prior submittals deemed waived and superseded by the substantially revised application. For purposes of this subparagraph, "substantially revised" means that the project as initially-proposed has been alternately proposed for a location 300 feet or more from the original proposal or constitutes a substantial change in the dimensions or equipment that was proposed in the original WTFP application.
- (8) Rejection for Incompleteness. WTFPs will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is incomplete, it may be rejected by the planning director by notifying the applicant in writing and specifying the material omitted from the application.

Sec. 26-685.11500. - Review procedure.

- (1) General. Wireless telecommunications facilities shall be installed and modified in a manner that minimizes risk to public safety and utilizes installation of new support structures or

equipment cabinets in the PROW only after all existing and replacement structure options have been exhausted, and where feasible, places equipment underground, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the PROW; and ensures that the city bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the PROW, or hinder the ability of the city or other government agencies to improve, modify, relocate, abandon, or vacate the PROW or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the PROW.

(2) Collocation Encouraged. Where the facility site is capable of accommodating a collocated facility upon the same site in a manner consistent with the permit conditions for the existing facility, the owner and operator of the existing facility shall allow collocation of third-party facilities, provided the parties can mutually agree upon reasonable terms and conditions therefor.

(3) Findings Required for Approval of a WTFP.

(a) Minor WTFP for SWF. For minor WTFP applications proposing a SWF, the planning director or planning commission shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:

- (i) The facility qualifies as a SWF;
- (ii) The facility is not detrimental to the public health, safety, and welfare;
- (iii) The SWF meets applicable requirements and standards of state and federal law;
- (vi) The facility meets applicable requirements under this division and complies with the adopted Design Guidelines.

(b) Minor WTFP for EFR. For minor WTFP applications proposing an eligible facilities request, the planning director shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:

- (i) That the application qualifies as an eligible facilities request; and
- (ii) That the proposed facility will comply with all generally-applicable laws.

(c) Major WTFP. No major WTFP shall be granted unless all of the following findings are made by the applicable decision-maker:

- (i) The proposed wireless telecommunications facility has been designed and located in compliance with all applicable provisions of this division;
- (ii) If applicable, the applicant has demonstrated its inability to locate on an eligible support structure;
- (iii) The applicant has provided sufficient evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the

applicant has entered into a franchise agreement with the city permitting them to use the public right-of-way;

(iv) If applicable, the applicant has provided sufficient evidence supporting the applicant's claim that compliance with the adopted Design Guidelines would be technically infeasible;

(v) The applicant has demonstrated the proposed installation is designed such that the proposed installation represents the least intrusive means possible, supported by factual evidence and a meaningful comparative analysis to show that all alternative locations and designs identified in the application review process were technically infeasible or not reasonably available.

(4)Noticing. The provisions in this section describe the procedures for the approval process, any required notice and public hearings for a WTFP application.

(a)Major WTFP Applications. Any major WTFP application shall require notice and a public hearing. The public hearing notices shall be provided as set forth in Section 26-206 of the West Covina Municipal Code.

(5)Notice of Decision. Within five days after any decision to grant, approve, deny, or conditionally grant any WTFP application, the planning director, as applicable, shall provide written notice based on substantial evidence in the written administrative record including the following:

(a)A general explanation of the decision, including the findings required for the decision, if any, and how those findings were supported or not supported by substantial evidence;

(b)A general description of the property involved;

(c)Information about applicable rights to appeal the decision, costs to appeal, and explanation of how that right may be exercised; and

(d)To be given by first class mail to the project applicant and property owner;

(e)Once a WTFP is approved, no changes shall be made to the approved plans without review and approval in accordance with this division.

(f) Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, no decision upon a WTFP shall be premised upon the environmental or health effects of RF emissions, nor shall public comments be considered to the extent they are premised upon the environmental or health effects of RF emissions.

(6)Appeals.

(a)An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless facility. Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, appeals of WTFP decision premised on the environmental effects of radio frequency emissions will not be considered.

(b) WTFP Appeals. Any person claiming to be adversely affected by a decision of a major WTFP pursuant to this division may appeal such decision as provided in accordance with the appeal provisions in Section 26-212 of the West Covina Municipal Code.

Sec. 26-685.11600 - Design and development standards.

(1) Wireless Telecommunication Facility Design and Development Standards. Wireless telecommunication facilities in the PROW are subject to the design and development standards and conditions of approval set forth herein. All wireless telecommunication facilities shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following standards:

(a) Concealment. All Wireless telecommunication facilities shall employ concealment, screening, undergrounding, and camouflage methods and techniques in order to ensure that the facility is visually screened and blends into the environment to prevent the facility from dominating the surrounding area, as well as to be compatible with the architectural character of the surrounding buildings or structures per the adopted Design Guidelines.

(b) Location.

- (i) Wireless telecommunication facilities shall not be located within the center median of any street.
- (ii) SWFs shall not be located within 15 feet from any structure used for residential purposes in the PCD-1 zone.
- (iii) SWFs shall not be located within 30 feet from any structure used for residential purposes in all other land-use zones outside of the PCD-1 zone.
- (iv) SWFs may not encroach onto or over any private or other property outside the PROW unless on a recorded utility easement.
- (v) Wireless telecommunication facilities shall not be located within the drip-line of any tree located on private property as set forth in Section 26-294 (Protection of trees during development activity) of this code.
- (vi) All wireless telecommunications facilities subject to a major WTFP shall not be located in the PROW adjacent to properties used for residential purposes.
- (vii) All wireless telecommunications facilities subject to a major WTFP shall not be located in the PROW within 100 feet of designated historic buildings.

(c) Noise. All wireless telecommunication facilities and accessory equipment shall comply with all applicable noise control standards and regulations stated in this division, including the following:

- (i) Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 p.m. and 7:00 a.m.;
- (ii) At no time shall equipment noise from any facility exceed an exterior noise level of 55 dBA three feet from the source of the noise if the facility is located in the

public right-of-way adjacent to a business, commercial, manufacturing, utility or school zone; provided, however, that for any such facility located within 500 feet of any property zoned residential or improved with a residential use, such equipment noise shall not exceed 45 dBA three feet from the sources of the noise.

- (d) Landscaping. Wireless telecommunication facilities shall not displace any existing landscape features in the PROW unless: (1) such displaced landscaping is replaced with plants, trees or other landscape features approved by the public services director or his or her designee and (2) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscape maintenance shall be performed in accordance to the public services director, or his or her designee. To preserve existing landscaping in the PROW, all work performed in connection with wireless telecommunication facilities shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees at the site for the duration of the permit term.
- (e) No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the city.
- (f) Accessory Equipment. Not including the electric meter, all accessory equipment shall be located underground unless city staff determines that there is no room in the PROW for undergrounding or that undergrounding is not feasible. Such accessory equipment shall be enclosed with a structure and shall be fully screened and camouflaged, including the use of landscaping, architectural treatment or other acceptable alternate screening method. Required electrical meters or cabinets shall be screened and/or camouflaged per the adopted Design Guidelines.
- (g) Support Structures. Only pole-mounted antennas shall be permitted in the PROW. Mounting to all other forms of support structure in the PROW are prohibited.
- (i) Utility Poles. Wireless telecommunication facilities proposed to be installed on an existing utility pole must install all antennas above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. The maximum height of any antenna or equipment above the pole shall not exceed five (5) feet. Antennas must be concealed within a shroud. All cables, wires and other connectors must be concealed within the side-arm mount or extension arm of a wood pole and within the inside of any other pole. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.
- (ii) Streetlight Poles. The maximum height of any antenna and equipment shall not exceed five (5) feet above the existing height of other streetlight pole(s) installed along the same street.
- (iii) Replacement Poles. If an applicant proposes to replace a pole that is an eligible support structure to accommodate the proposed facility, the replacement pole shall be designed to resemble the appearance and dimensions of existing poles near the

proposed location, including size, height, color, materials and style to the maximum extent feasible.

(iv) New, Non-Replacement Poles. Wireless telecommunication facilities on a new, non-replacement pole must install a new streetlight pole substantially similar to the city's and/or electric utility provider's standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed 12 inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome, and shall comply with the following:

1. The new pole must function for a purpose other than placement of a wireless facility (e.g., street light, street sign poles, etc.).

2. The design must match the dimensions and design of existing and similar types of poles and antennas in the surrounding areas.

(h) Obstructions; Public Safety. SWF and any associated equipment or improvements shall not physically interfere with or impede access to any:

(i) Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, incommode the public's use of the right-of-way, or cause safety hazards to pedestrians and motorists.

(ii) A facility shall not be located within any portion of the public right of-way interfering 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.

(iii) Doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way;

(2) Eligible Facilities Request Design and Development Standards. Approved eligible facilities requests for which the findings set forth in Section 26-685.11500 have been made are subject to the following, unless modified by the approving authority:

(a) WTFP Subject to Conditions of Underlying Permit. Any WTFP granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit and all such conditions that were applicable to the facility prior to approval of the subject eligible facility request.

(b) No Permit Term Extension. The city granting, or granting 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 granting, or granting 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

have the same term as the underlying permit or other regulatory approval for the subject tower or base station.

(c) No Waiver of Standing. The city's granting, or granting 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.

(3) Conditions of Approval. All wireless telecommunication facilities shall be subject to conditions of approval as reasonably imposed by the planning director or the approving city body, as applicable, as well as any modification of the conditions of approval deemed necessary by the planning director or approving city body.

Sec. 26-685.11700 Operation and maintenance standards.

All wireless telecommunications facilities must comply at all times with the following operation and maintenance standards:

(1) The permittee shall at all times maintain compliance with all applicable federal, state, and local laws, regulations and other rules, including, without limitation, those applying to use of the PROW. The permittee shall ensure that all equipment and other improvements to be constructed and/or installed in connection with the approved WTFP are maintained in a manner that is not detrimental or injurious to the public health, safety, and general welfare and that the aesthetic appearance is continuously preserved, and substantially the same as shown in the approved plans at all times relevant to the WTFP.

(2) Unless otherwise provided herein, all necessary repairs and restoration shall be completed by the permittee, owner, operator or any designated maintenance agent at its sole cost within 48 hours:

(a) After discovery of the need by the permittee, owner, operator, or any designated maintenance agent; or

(b) After permittee, owner, operator, or any designated maintenance agent receives notification from the city.

(3) Insurance. The permittee shall obtain and maintain throughout the term of the permit a type and amount of insurance as specified by city's risk management. The relevant policy(ies) shall name the city, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insured. The permittee shall use its best efforts to provide 30 days prior notice to the city engineer of the cancellation or material modification of any applicable insurance policy.

(4) Indemnities. The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the city, its agents, officers, officials, and employees (a) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the city or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the city's approval of

the permit, and (b) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the city becomes aware of any such actions or claims the city shall promptly notify the permittee and, if applicable, the private property owner and shall reasonably cooperate in the defense. 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 reimburse the city for any costs and expenses directly and necessarily incurred by the city in the course.

- (5)Performance Bond. Prior to issuance of a wireless encroachment permit, the permittee shall file with the city, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to 100 percent of the cost of removal of the facility as specified in the application for the WTFP or as that amount may be modified by the city engineer in the permit based on the characteristics of the installation. The permittee shall reimburse the city for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the city council. Reimbursement shall be paid when the security is posted and during each administrative review.
- (6)Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility. All facilities, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the use of the PROW, impede the flow of vehicular or pedestrian traffic, impair the primary use and purpose of poles/signs/traffic signals or other infrastructure, interfere with outdoor dining areas or emergency facilities, or otherwise obstruct the accessibility of the PROW.
- (7)Contact Information. Each permittee of a wireless telecommunications facility shall provide the city engineer with the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility ("contact information"). Contact information shall be updated within seven days of any change.
- (8)All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:
- (a)Subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems (water, sewer, storm drains, gas, oil, electrical, etc.) that result from any

activities performed in connection with the installation and/or maintenance of a wireless facility in the PROW;

(b) General dirt and grease;

(c) Chipped, faded, peeling, and cracked paint;

(d) Rust and corrosion;

(e) Cracks, dents, and discoloration;

(f) Missing, discolored or damaged artificial foliage or other camouflage;

(g) Graffiti, bills, stickers, advertisements, litter and debris. All graffiti on facilities must be removed at the sole expense of the permittee within 48 hours after notification from the city;

(h) Broken and misshapen structural parts; and (i) Any damage from any cause.

(9) All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in neat, safe and good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the planning director and public services director.

(10) The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.

(11) Each facility shall be operated and maintained to comply with all conditions of approval. The permittee, when directed by the city, must perform an inspection of the facility and submit a report to the planning director and city engineer on the condition of the facility to include any identified concerns and corrective action taken. Additionally, as the city performs maintenance on city-owned infrastructure, additional maintenance concerns may be identified. These will be reported to the permittee. The city shall give the permittee 30 days to correct the identified maintenance concerns after which the city reserves the right to take any action it deems necessary, which could include revocation of the permit. The burden is on the permittee to demonstrate that it complies with the requirements herein. Prior to issuance of a permit under this division, the owner of the facility shall sign an affidavit attesting to understanding the city's requirement for performance of annual inspections and reporting.

(12) All facilities permitted pursuant to this division shall comply with the Americans with Disabilities Act.

(13) The permittee shall be responsible for obtaining power to the facility and for the cost of electrical usage.

(14) Interference.

(a) The 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 encroachment 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 PROW or city utility easement to be affected by permittee's facilities.

(b)The facility shall not damage or interfere in any way with city property, the city's operations or the operations of prior-existing, third party installations. The city will reasonably cooperate with the permittee and/or carrier to carry out such activities as are necessary to correct the interference.

(i) Signal Interference. The permittee shall correct any such interference within 24 hours of written notification of the interference. Upon the expiration of the 24-hour cure period and until the cause of the interference is eliminated, the permittee shall cease operation of any facility causing such interference until such interference is cured.

(ii) Physical Interference. The city shall give the permittee 30 days to correct the interference after which the city reserves the right to take any action it deems necessary, which could include revocation of the permit.

(c)The city at all times reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the sites. Such actions may temporarily interfere with the operation of the facility. The city will in all cases, other than emergencies, give the applicant 30 days written notification of such planned, non-emergency actions.

(14)RF Exposure Compliance. All facilities shall comply with all standards and regulations of the 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, the permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC Office of Engineering and Technology 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.

(a)Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m. Testing is prohibited on holidays and weekends.

(15)Records. The permittee shall maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the 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 or fails to produce true and complete copies of such records within a reasonable time after a written request from the city, any ambiguities or uncertainties that

would be resolved through an inspection of the missing records will be construed against the permittee.

- (16)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.

Sec. 26-685.11800 No dangerous condition or obstructions allowed.

No person shall install, use or maintain any wireless telecommunications facility that in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

Sec. 26-685.11900 Nonexclusive grant; no possessory interests.

- (1)No permit or approval granted under this division shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the city for any purpose whatsoever. Further, no approval shall be construed as a warranty of title.
- (2)No possessory interest is created by a WTFP. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, the permittee acknowledges that the city has given to the applicant notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a WTFP may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Wireless telecommunications facility operators shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against their right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by the WTFP.
- (3)The permission granted by a WTFP shall not in any event constitute an easement on or an encumbrance against the PROW. No right, title, or interest (including franchise interest) in the PROW, 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.

Sec. 26-685.12000 Permit expiration; abandonment of applications.

- (1)Permit Term. Unless Government Code Section 65964, as may be amended, authorizes the city to issue a permit with a shorter term, a permit for any wireless telecommunications facility shall be valid for a period of ten (10) years, unless pursuant to another provision of this code it lapses sooner or is revoked. At the end of ten (10) years from the date of issuance, such permit shall automatically expire.
- (2)A permittee may apply for a new permit within 180 days prior to expiration. Said application and proposal shall comply with the city's current code requirements for wireless telecommunications facilities.
- (3)Timing of Installation. The installation and construction authorized by a WTFP shall begin within one year after its approval, or it will expire without further action by the city. The installation and construction authorized by a WTFP shall conclude, including any necessary post-installation repairs and/or restoration to the PROW, within 30 days following the day construction commenced.
- (4)Commencement of Operations. The operation of the approved facility shall commence no later than 90 days after the completion of installation, or the WTFP will expire without further action by the city. The permittee shall provide the planning director and city engineer notice that operations have commenced by the same date.

Sec. 26-685.12100 Cessation of use or abandonment.

- (1)A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for 90 or more consecutive days unless the permittee has obtained prior written approval from the director which shall not be unreasonably denied. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.
- (2)The operator of a facility shall notify the planning director and city engineer in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the planning director and city engineer of any discontinuation of operations of 30 days or more.
- (3)Failure to inform the planning director and city engineer of cessation or discontinuation of operations of any existing facility as required by this section shall constitute a violation of any approvals and be grounds for:
 - (a)Litigation;
 - (b)Revocation or modification of the permit;
 - (c)Acting on any bond or other assurance required by this article or conditions of approval of the permit;
 - (d)Removal of the facilities by the city in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
 - (e)Any other remedies permitted under this code or by law.

Sec. 26-685.12200 Removal and restoration— Permit expiration, revocation or abandonment.

- (1) Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the WTFP or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to the condition it was in prior to the granting of the WTFP, except for retaining the landscaping improvements and any other improvements at the discretion of the city. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the city. Expired, terminated or revoked wireless telecommunications facility equipment shall be removed from the site at no cost or expense to the city.
- (2) Failure of the permittee, owner or operator to promptly remove its facility and restore the property within ninety (90) days after expiration, earlier termination or revocation of the WTFP, or abandonment of the facility, shall be a violation of this code. Upon a showing of good cause, an extension may be granted by the city engineer where circumstances are beyond the control of the permittee after expiration. Further failure to abide by the timeline provided in this section shall be grounds for:

 - (a) Prosecution;
 - (b) Acting on any security instrument required by this division or conditions of approval of permit;
 - (c) Removal of the facilities by the city in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
 - (d) Any other remedies permitted under this code or by law.
- (3) Summary Removal. In the event any city director or city engineer determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes an immediate dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), such director or city engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within 60 days, the facility shall be treated as abandoned property.
- (4) Removal of Facilities by City. In the event the city removes a wireless telecommunications facility in accordance with nuisance abatement procedures stated in Chapter 15, Article IX (Administrative Nuisance Abatement) of this code or pursuant to the summary removal procedures of subsection (3), above, any such removal shall be without any liability to the city for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the city may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this code. Unless otherwise provided herein, the city has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the city destroys any such facility not timely removed by

the permittee, owner or operator after notice, or removal by the city due to exigent circumstances.

Sec. 26-685.12300 Effect on other ordinances.

Compliance with the provisions of this division shall not relieve a person from complying with any other applicable provision of this code. In the event of a conflict between any provision of this division and other sections of this code, this division shall control.

Sec. 26-685.12400 State or federal law.

The implementation of this chapter and decisions on applications for placement of wireless telecommunications facilities in the PROW shall, at a minimum, ensure that the requirements of this division are satisfied, unless it is determined that the 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 division may be waived, but only to the minimum extent required to avoid the prohibition or violation.

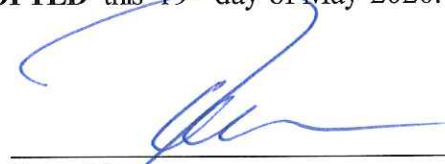
Sec. 26-685.12500 Legal nonconforming wireless telecommunications facilities in the right-of-way.

- (1) Legal nonconforming wireless telecommunications facilities are those facilities that existed but did not conform to this division on the date this division became effective.
- (2) Legal nonconforming wireless telecommunications facilities shall, within ten (10) years from the date this division became effective, be brought into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this code at such time, to the extent the city can require such compliance under federal and state law.
- (3) An aggrieved person may file an appeal to the city council of any decision the planning director, city engineer, or other deciding body made pursuant to this section. In the event of an appeal alleging that the ten-year amortization period is not reasonable as applied to a particular property, the city council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property.

SECTION NO. 8: That the City Clerk shall certify to the passage of this ordinance and shall cause the same to be published as required by law.

SECTION NO. 9: This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage.

PASSED, APPROVED AND ADOPTED this 19th day of May 2020.



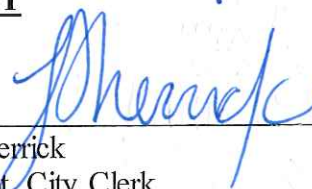
Tony Wu
Mayor

APPROVED AS TO FORM



Thomas P. Duarte
City Attorney

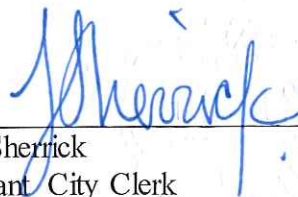
ATTEST



Lisa Sherrick
Assistant City Clerk

I, LISA SHERRICK, Assistant City Clerk, of the City of West Covina, custodian of the original records, which are public records which I maintain custody and control for the City of West Covina do hereby certify the foregoing Ordinance, being Ordinance No. 2470 as passed by the City Council of the City of West Covina, signed by the Mayor of said Council, and attested by the Assistant City Clerk, at a regular meeting of the City Council held on the 19th day of May 2020, and that the same was passed by the following vote, to wit:

- AYES: Castellanos, Shewmaker, Wu
- NOES: Lopez-Viado, Johnson
- ABSTAIN: None
- ABSENT: None



Lisa Sherrick
Assistant City Clerk