

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

An Urgency Ordinance of the City Council of the City)
of Lafayette Amending Lafayette Municipal Code,)
Title 4, Chapter 6-15 relating to Wireless) Ordinance No. 674
Communications Facilities and Determining the)
Ordinance to be Exempt from Environmental Review)

WHEREAS, the City of Lafayette (the "City") is a municipal corporation duly organized under the constitution and laws of the State of California; and

WHEREAS, by virtue of the police powers delegated to it by the California Constitution, the City has the authority to enact laws which promote the public health, safety, and general welfare of its citizens, including public rights-of-way; and

WHEREAS, Chapter 6-15 of the Lafayette Municipal Code (the "Code") governs the installation and modification of wireless facilities in the City, including those in the public rights-of-way; and

WHEREAS, significant changes in federal laws that limit local authority over wireless communications facilities have occurred since the City Council last amended Chapter 6-15; and

WHEREAS, in light of these changes in federal laws, the City deems it necessary and appropriate to provide for standards and regulations related to the placement or modification of telecommunications infrastructure in the City's public right-of-way; and

WHEREAS, therefore the City deems it necessary and appropriate to enact regulations for wireless telecommunications facilities in the public rights-of-way by urgency ordinance under Cal. Gov. Code Section 36937(b) because the matters herein concern "the immediate preservation of the public peace, health or safety" of the City's citizens.

THE PLANNING COMMISSION RECOMMENDS THAT THE CITY COUNCIL OF THE CITY OF LAFAYETTE ORDAIN AS FOLLOWS:

Section 1. **Incorporation of Recitals.** The Planning Commission hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the Planning Commission as if fully set forth herein.

Section 2. **Amendments to the Lafayette Municipal Code Chapter 6-15.** Lafayette Municipal Code Chapter 6-15 is hereby amended as set forth in Exhibit A, attached hereto.

Section 3. **Urgency Findings.** The City adopts this ordinance as an urgency measure pursuant to Government Code Section 36937(b) to protect the public peace, health and safety.

- a. Since the City Council last amended Chapter 6-15, significant changes in federal laws that affect local authority over wireless communication facilities and other related infrastructure deployments have occurred, including, but not limited to, the following:
 - i. On August 2, 2018, the Federal Communications Commission ("FCC") adopted a Third Report & Order and Declaratory Ruling in the rulemaking proceeding titled Accelerating

Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, 33 FCC Rcd. 7705 (rel. Aug. 3, 2018) (the "August Order"), that, among other things, contained a declaratory ruling prohibiting express and de facto moratoria for all personal wireless services, telecommunications services and their related facilities under 47 U.S.C. § 253(a) and directed the Wireless Telecommunications Bureau and Wireline Competition Bureau to hear and resolve all complaints on an expedited basis. The declaratory ruling in the August Order was made effective upon release of the August Order which occurred on August 3, 2018; and

- ii. On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order in the same rulemaking proceeding, --- FCC Rcd. ---, FCC 18-133 (rel. Sep. 27, 2018) (the "September Order"), which, among many other things, created new shorter "shot clocks" for small wireless facilities (as defined in the September Order); altered existing "shot clock" regulations to require local public agencies to do more in less time; established a national standard for an effective prohibition related to small wireless facilities that replaced the existing "significant gap" test adopted by the United States Court of Appeals for the Ninth Circuit and provided that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition. The September Order was made effective 90 days after publication in the Federal Register, that is, on January 14, 2019. The September Order also established that local governments should publish aesthetic standards by April 15, 2019 and that the standards must be in place before an application is submitted in order for the standards to apply to that proposed wireless facility.
- b. In light of the FCC Orders, the City deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction, and maintenance of telecommunications antennas and infrastructure within the City's public rights-of-way, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority.
 - c. Further, most portions of the FCC Orders are already in effect, so if the City does not immediately amend the Code, there is a risk that the City may not be able to enforce provisions of its Code or comply with the new federal regulations.
 - d. The City's public rights-of-way are a valuable resource, and the regulation of wireless installations in the public rights-of-way is necessary to protect and preserve aesthetics in the community.
 - e. If not adequately regulated, the installation of small wireless facilities within the public rights-of-way can pose a threat to the public health, safety, and welfare, including disturbance to the public rights-of-way through the installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines; land use conflicts and incompatibilities including excessive height or poles and towers; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise, or lack of camouflaging of wireless facilities, including the associated pedestals, meters, equipment and power generators, all of which may negatively impact the City and its citizens.
 - f. Therefore, the City deems it necessary and appropriate to enact regulations for wireless telecommunications facilities in the public rights-of-way by urgency ordinance under Cal. Gov.

Code Section 36937(b) because the matters herein concern “the immediate preservation of the public peace, health or safety” of the City’s citizens.

Section 4. CEQA. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City’s boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a “project” within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt CEQA because the City Council’s adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land). The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Contra Costa within five working days of the passage and adoption of the Ordinance.

Section 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 6. In accordance with California Government Code Section 36937(b), this ordinance shall become effective immediately upon its passage and adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Lafayette at a regular meeting of the City Council held on the 8th of April, 2019 by the following vote:

AYES: **Burks, Anderson, Bliss, Candell and Gerringer**
NOES: **None**
ABSTAIN: **None**
ABSENT: **None**

ATTEST:


Joanne Robbins, City Clerk

APPROVED:

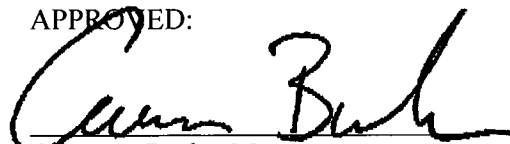

Cameron Burks, Mayor

Exhibit A

Chapter 6-15 - WIRELESS COMMUNICATIONS FACILITIES

Sections:

6-1501 - Purpose.

The purpose of this chapter is to establish standards for location, design, placement, permitting, maintenance, and modifications of Wireless Communications Facilities consistent with applicable federal standards. The standards contained in this chapter are designed to:

- (a) Protect and promote public health, safety and community welfare;
- (b) Protect the visual character of the City of Lafayette and minimize potential adverse aesthetic impacts of Wireless Communications Facilities through appropriate design, siting, screening and location standards;
- (c) Protect the environmental resources of Lafayette;
- (d) Implement the goals of the General Plan and maintain the semi-rural character and beauty of the City by preserving its open and uncluttered topographic features in their natural state;
- (e) Ensure the availability of competitive, varied and high-quality wireless communications services to the residents, schools, government and businesses of Lafayette;
- (f) Ensure that all wireless communications providers and carriers are treated fairly, without unreasonably discriminating among service providers of functionally equivalent services;
- (g) Streamline the permitting process, while ensuring compliance with all applicable regulations;
- (h) Manage development in and/or use of the public right-of-way in order to minimize disruption to the primary public use and enjoyment of the right-of-way;
- (i) Encourage and facilitate public/private partnerships to improve Lafayette's wireless communications infrastructure;
- (j) Ensure that wireless communications services will serve an effective role in the community's emergency preparedness and response;
- (k) Ensure that properties within the vicinity of Wireless Communications Facilities are not significantly impacted by noise, traffic, aesthetic, or other impacts over which the City has purview;
- (l) Ensure that the city recoups costs from wireless communications providers and/or property owners for any potential liability, damage or adverse impacts caused to the City, public rights-of-way and City property or facilities; and
- (m) Ensure Wireless Communications Facilities are maintained and reviewed on a regular basis to ensure compliance with conditions and development standards.

(Ord. No. 613, § 2(exh. A), 12-10-2012)

6-1502 - Definitions.

- (a) "Antenna" means any system of poles, panels, rods, reflecting discs, wires or similar devices used for the transmission or reception of electromagnetic or other similar wireless signals, including but not limited to radio waves and microwaves. An antenna does not include the support structure upon which the antenna is mounted.
- (b) "Co-location" means the mounting of one or more Wireless Communications Facilities, including antennas, on an existing Wireless Communications Facility or utility pole.
- (c) "Enclosure building, shed, or shelter" means a building, shed, fence, or other enclosure used to house equipment associated with a Wireless Communications Facility.
- (d) "Equipment cabinet" means a cabinet used to house equipment associated with a wireless communication facility.
- (e) "Height of a Wireless Communications Facility" means the vertical distance measured from the natural undisturbed ground surface below the center of the base of said facility to the top of the facility itself or, if higher, to the tip of the highest antenna or piece of equipment attached thereto. In the case of building-mounted facilities the height of the facility includes the height of the portion of the building on which it is mounted. In the case of crank-up or other similar towers whose height can be adjusted, the height of the facility shall be the maximum height to which it is capable of being raised.
- (f) "Federal Communications Commission ("FCC")" is an independent United States government agency responsible for the regulation of interstate and international communications by radio, television, wire, satellite, and cable.
- (g) "Monopole" means a single freestanding pole, post, or similar non-lattice structure used to support antennas and equipment associated with a wireless communication facility.
- (h) "Mount" means to attach, fix, or otherwise place antenna(s) to a structure or building.
- (i) "Public safety facilities" means facilities used only for public safety functions such as police, fire and emergency operations.
- (j) "Radio frequency ("RF")" is a rate of oscillation, which corresponds to the frequency of radio waves, and the alternating currents which carry radio frequency, electromagnetic, or other wireless signals.
- (k) "Related equipment" means all equipment ancillary to the antenna used for transmission and reception of radio frequency, electromagnetic, or other wireless signals. Such equipment may include, but is not limited to, cable, conduit and connectors.
- (l) "Roof-mounted or building-mounted antenna" means an antenna directly attached or affixed to the roof of, on the facade, or elsewhere on an existing building, tank or similar structure other than a Wireless Communications Facility.
- (m) "Small cell facility" shall have the same meaning as "small wireless facility" in 47 C.F.R. 1.6002(l), or any successor provision (which is a personal wireless services facility that meets the following conditions that, solely for convenience, have been set forth below):
 - (1) The facility—
 - (i) is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or
 - (ii) is mounted on a structure no more than 10 percent taller than other adjacent structures, or
 - (iii) does not extend an existing structure on which it are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

- (2) 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;
- (3) 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;
- (4) The facility does not require antenna structure registration under 47 C.F.R. Part 17;
- (5) The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x); and
- (6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b).
- (n) "Significant gap" means a gap in a wireless provider's own personal wireless services that is demonstrably significant based on scientifically valid and reliable data and other substantial evidence.
- (o) "Stealth facility" means any Wireless Communications Facility which is designed to blend into the surrounding environment by means of screening, concealment, or camouflage. The antenna and related equipment are either not readily visible beyond the property on which they are located, or, if visible, appear to be part of the existing natural or built environment rather than as a Wireless Communications Facility.
- (p) "Wireless communications facility" means an unstaffed facility, generally consisting of antennas, an equipment cabinet or enclosure building, shed, or shelter, and related equipment, which receives and/or transmits radio frequency, electromagnetic, or other wireless signals for the purpose of transmitting voice or data.

(Ord. No. 613, § 2(exh. A), 12-10-2012)

6-1503 - Applicability.

Except for the exemptions outlined in this chapter, the following provisions shall apply to all types of Wireless Communications Facilities within any zoning district, including in the public rights-of-way.

(Ord. No. 613, § 2(exh. A), 12-10-2012)

6-1504 - Exemptions.

The Zoning Administrator, or the designated representatives, may find that certain types of Wireless Communications Facilities are exempt from the requirements of this chapter and do not require a Wireless Communications Facility permit. Exempt facilities shall include:

- (a) Private, noncommercial Wireless Communications Facilities which (1) are contained entirely on-site for the purpose of serving the premises on the site and (2) have no potential visual, noise, or thermal impact, or radio frequency, electromagnetic, or other wireless signal interference on surrounding properties;
- (b) HAM radios;
- (c) Any proposed Wireless Communications Facility used solely for public safety functions is exempt from the requirements of this chapter; and

- (d) Standard or routine maintenance of a Wireless Communications Facility is exempt from the requirements of this chapter.

Each such exempt facility above shall fully comply with any other applicable requirements of the Municipal Code to the extent not specifically exempted in this section, including but not limited to the California Building Code, California Electrical Code, California Plumbing Code, California Mechanical Code, and California Fire Code.

(Ord. No. 613, § 2(exh. A), 12-10-2012)

6-1505 - General requirements.

All Wireless Communications Facilities shall:

- (a) Comply with the following:
- (1) The General Plan and any other land use plan, policy and guideline adopted by the City of Lafayette, including, but not limited to, the Zoning Ordinance, Noise Ordinance, and adopted specific plans;
 - (2) The California Environmental Quality Act (CEQA);
 - (3) The Federal Communications Act and all applicable requirements of the Federal Communications Commission and any other governmental agency with jurisdiction over the Wireless Communications Facilities;
 - (4) Federal Aviation Administration (FAA) regulations and permit requirements;
 - (5) Any applicable public easements, and/or conditions of approval affecting development on any given parcel;
 - (6) Human and occupational radio frequency emission standards adopted by the Federal Communications Commission (FCC), which shall include any combined radio frequency levels produced by antennas located on the same parcel in addition to all antennas within the vicinity of the proposed facility; and
 - (7) The Uniform Building Code, Uniform Electrical Code, Uniform Mechanical Code, Uniform Fire Code and subject to the building permitting process;
- (b) Be an accessory use, secondary to the primary use on a parcel.
- (c) If located in the public right-of-way, be limited to the following types: (1) small cell facilities; (2) modifications that do not substantially change the physical dimensions of an existing wireless tower or base station (pursuant to 47 U.S.C. § 1455(a)); and (3) any other type of facility expressly allowed in the public right-of-way by state or federal law.

(Ord. No. 613, § 2(exh. A), 12-10-2012)

6-1506 - Development standards.

All Wireless Communications Facilities, except those in the public right-of-way, shall conform to the development standards below. Aesthetic standards for Wireless Communications Facilities in the public right-of-way will be set separately through resolution adopted by the City Council.

- (a) Permitted Zoning Districts: Wireless communications facilities are permitted in all zoning districts.
- (b) Preferred Sites: The following is a list of preferred locations for Wireless Communications Facilities:
- (1) On a city-owned property (which does not include the public right-of-way) in any zoning district;
 - (2) On an existing building or structure in any zoning district except a residential zoning district;
 - (3) Within commercial, office, and retail zoning districts;

- (4) Co-located on an existing legal conforming Wireless Communications Facility.
- (c) Discouraged Sites: The following is a list of discouraged locations for Wireless Communications Facilities:
 - (1) Single-family and multi-family residential zones or properties with residential uses;
 - (2) Educational facilities.
 - (d) Stealth Facilities: Wireless communications facilities located in any of the following locations must be designed as a stealth facility:
 - (1) Properties designated as historic landmarks.
 - (2) Religious facilities.
 - (3) Educational facilities.
 - (4) Commercial, office, and retail zoning districts.
 - (e) Quantity: Not more than one monopole and one appurtenant above grade equipment cabinet, enclosure, building shed or shelter is permitted on any parcel in a Residential Zoning District. The City may waive this requirement if the facilities are consolidated and installed immediately adjacent to one another. The City shall also retain the authority to limit the number of antennas and related equipment at any site in any zoning district in order to minimize potential visual, environmental, and operational impacts.
 - (f) Setbacks: All components of new Wireless Communications Facilities must comply with the setback and yard requirements for the applicable zoning district. Depending upon specific site constraints and circumstances, the City may choose not to apply this requirement to antennas proposed to be co-located on existing monopoles or utility poles (e.g., microcell sites), nor to underground equipment, if it would preclude use of the proposed site. No portion of any Wireless Communications Facility shall overhang a property line. This restriction shall apply to any portion of any antennas as they rotate or are in a fixed position.
 - (g) Equipment Size: Antennas and related equipment shall be the smallest and least visible size feasible.
 - (h) Vertical Clearance: Wireless communications facilities, including antennas and pole-mounted equipment, located within or adjacent to the public right-of-way or access easement shall have at least a vertical clearance of 14'-6" on the street side and 10'-0" on the opposite side (away from the street). Ground-mounted equipment is exempt from this development standard.
 - (i) Underground: Any equipment that is not installed underground shall be screened by structures, topography, or vegetation to the maximum extent feasible, as determined by the hearing authority. The City prefers that all equipment be placed underground to the maximum extent feasible, excluding antennas, remote radio units, surge protectors, and other pole-mounted equipment necessitating exposure.
 - (j) Cables and Conduit: Coaxial cables, conduit lines and electrical boxes for ground-mounted antennas shall be placed underground or within approved structures. Coaxial cables and conduit lines for roof-mounted or building-mounted antennas shall be placed or camouflaged to minimize their visual impact to the maximum extent feasible.
 - (k) Building Design: Roof-mounted or building-mounted antennas shall be in scale and architecturally integrated with the building design to appear visually unobtrusive. Screening may include locating the facility within existing steeples and towers or within a new architectural addition to a building or structure, which is architecturally compatible with the building.
 - (l) Artificial Natural Features: No artificial trees, rocks, or similar natural features are permitted.
 - (m) Public Art: Applicants are encouraged to design Wireless Communications Facilities to serve as public art, particularly those in commercial, office, or retail zoning districts.

- (n) Colors and Materials: Unless otherwise required by City, County, State or Federal rules or regulations, wireless communication facilities shall have a non-reflective finish and shall be painted a neutral color consistent with the predominant background color, as determined by the hearing authority.
- (o) Lighting: Unless otherwise required by applicable Federal rules or regulations, no Wireless Communications Facility shall propose new exterior lighting, except as required by the Uniform Building Code, Uniform Electrical Code, for emergencies, or to replace and upgrade existing lighting.
- (p) Signage: The facilities shall not bear any signage, other than certification, warning, information, safety, and directional signage, or other non-commercial signage required by law or expressly permitted by the City. Sign copy shall not include identification of the wireless provider, except where required by law.
- (q) Tree and Landscape Preservation: Wireless communications facilities shall be installed in a manner so as to preserve existing protected trees and landscaping, as defined in Section 6-1702(p) LMC, whether or not it is utilized for screening.
- (r) Site Disturbance: Disturbance of existing topography and on-site vegetation shall be minimized, unless such disturbance would substantially reduce the visual impacts of the facility.
- (s) Access: No facility shall be built so as to cause the right-of-way in which the facility is located to fail to comply with the Americans with Disabilities Act or otherwise obstruct access.
- (t) Security: All facilities shall be designed so as to be resistant to and minimize opportunities for unauthorized access, climbing, vandalism, graffiti, and other conditions, which would result in hazardous conditions, visual blight, or attractive nuisances.

(Ord. No. 613, § 2(exh. A), 12-10-2012)

6-1507 - Permitting authority.

The Planning Commission, the Zoning Administrator, or the designated representatives are authorized to approve, approve subject to conditions, or deny applications for Wireless Communications Facilities. The review process may be incorporated as part of a specific larger development project, provided that the process and applicable standards are in accordance with the provisions of this Chapter. The Planning Commission, the Zoning Administrator, or the designated representatives are also authorized to grant exceptions, to the minimum extent necessary, any provision of this Chapter or the related design standards to avoid violating applicable laws or, within the meaning of federal law, prohibiting or effectively prohibiting the provision of personal wireless services.

(Ord. No. 613, § 2(exh. A), 12-10-2012)

6-1508 - Permit requirements.

All Wireless Communications Facilities not specifically exempted from these regulations in accordance with this Chapter are subject to the following permitting requirements:

- (a) Minor Wireless Communications Facility Permit: The Zoning Administrator shall be the hearing authority for a Minor Wireless Communications Facility Permit. Wireless communications facilities that meet all of the following applicable standards of this subsection require Minor Wireless Communications Facility Permit approval:
 - (1) The proposed Wireless Communications Facility meets one or more applicable "preferred sites" criteria;

- (2) The proposed Wireless Communications Facility presents no visual impact, is completely hidden from the right-of-way, is built below a parapet, or is fully screened and/or mitigated with a stealth design;
- (3) The proposed Wireless Communications Facility meets the setback, yard area, and height limitations required in the zoning district;
- (4) The proposed Wireless Communications Facility meets all applicable design and development standards of this Chapter; and
- (5) If the proposed Wireless Communications Facility includes equipment cabinets, then the cabinets are placed underground or shielded from view as deemed appropriate by the Zoning Administrator.

(b) Major Wireless Communications Facility Permit:

As determined by the Planning Manager, a proposed Wireless Communications Facility that is not a Minor Wireless Communications Facility, requires a Major Wireless Communications Facility Permit. The planning commission shall act upon all Major Wireless Communications Facility Permits. A Major Wireless Communications Facility Permit shall be required for the following Wireless Communications Facilities:

- (1) Requests pursuant to Section 6-1515 for a permit for an existing Wireless Communications Facility;
- (2) Wireless communications facilities located in a residential zoning district;
- (3) Wireless communications facilities exceeding the height limitation required in the zoning district;
- (4) New Wireless Communications Facilities that are not a minor Wireless Communications Facility;
- (5) Wireless communications facilities visible from the right-of-way and requiring mitigation of visual or aesthetic impacts; and
- (6) Any new Wireless Communications Facility intended to include co-location facilities that meet the requirements of Government Code Section 65850.6.

(c) Modification to Approved Wireless Communications Facility:

For approved Wireless Communications Facilities located outside the public right-of-way, the Zoning Administrator is responsible for determining whether a modification to an approved Wireless Communications Facility is a minor or major modification. All modifications to approved Wireless Communications Facilities require a change of conditions application, except for modifications to Wireless Communications Facilities in the public right-of-way.

(1) Minor Modification:

Any proposed modification determined to be in substantial compliance with the original approved project may be approved administratively if it meets one or more of the following applicable criteria:

- (i) Modifications are consistent with the requirements of this Chapter;
- (ii) Complies with the applicable standards of a Minor Wireless Communications Facility Permit;
- (iii) Maintains design concept of the original permit;
- (iv) Modifications result in an insignificant revision to the floor plan, physical details, or site layout;
- (v) Color or material modifications consistent with the original permit;

- (vi) Minor landscape modifications;
- (vii) Modifications to bring facility in compliance with Federal Communications Commission requirements; or
- (viii) Any co-location facility that meets the requirements of Government Code Section 65850.6.

(2) Major Modification:

If the application does not meet the criteria to be considered a minor modification, then it shall be considered a Major Modification. Additionally, all requests pursuant to Section 6-1515 for a permit for an existing modification to a Wireless Communications Facility are considered a Major Modification. Major Modifications shall be evaluated by the Planning Commission, based on the findings outlined in Section 6-1512.

(3) Modification to a Wireless Communications Facility in the Public Right-of-Way:

Any proposed modification to a Wireless Communications Facility in the public right-of-way requires the submission of a Wireless Encroachment Permit application. Such modifications shall be evaluated by the Zoning Administrator, based on the findings outlined in Section 6-1512(c).

- (d) Extension of an Approved Wireless Communications Facility Permit: Property owner(s) or wireless providers may submit a change of conditions application to extend the timeframe of the Wireless Communications Facilities Permit. Section 6-1508(d) does not apply to a Wireless Encroachment Permit application. The request shall be filed at least 30 days prior to the expiration of the permit. All requests filed less than 30 days prior to, or after, the expiration of the permit will be treated as a request for a new Wireless Communications Facilities Permit rather than a change of conditions application. Timely extension requests shall be evaluated by the original hearing authority that previously took action on the project. Public notice shall be provided pursuant to Section 6-1510(d). A representative of the project will be expected to attend any required hearing. The hearing authority may approve, approve subject to conditions, or deny the extension request.
- (e) Exception: An applicant for a Wireless Communications Facility may include in its application a request for an exception to the development standards established pursuant to this Chapter. The Planning Commission shall be the hearing authority for all exception requests, except for those regarding Wireless Communications Facilities in the public right-of-way. The Zoning Administrator is the decision-making authority for exception requests related to Wireless Communications Facilities in the public right-of-way.
- (f) Building or Electrical Permit: All antennas and antenna structures shall require a building or electrical permit and/or electrical permit.
- (g) Wireless Encroachment Permit: The Zoning Administrator shall be the reviewing and decision-making authority for a Wireless Encroachment Permit, which is required for installations of new, or modifications to existing, Wireless Communications Facilities in the public right-of-way.

(Ord. No. 613, § 2(exh. A), 12-10-2012)

6-1509 - Modification of Existing Wireless Towers and Base Stations.

(a) For purposes of this section, the following definitions shall apply:

- (1) "Wireless tower" means any structure built for the sole purpose of supporting antennas and their associated facilities used to provide wireless services licensed by the FCC. A water tower, utility tower, utility pole, street light, building or other structure built primarily for any purpose *other than* supporting antennas and their associated facilities used to provide FCC-licensed wireless services, including any structure installed pursuant to California Public Utility Code Section 7901, is not a wireless tower for purposes of this section, even if the City has authorized installation of an antenna or a wireless telecommunications facility on such a structure or

permitted replacement of such a structure with a modified structure that may also accommodate antennae or wireless telecommunications facilities (such as street light replacement poles with antennae or wireless telecommunications facilities where the primary purpose of the structure remains as a street light).

- (2) "Base station" means the power supplies, electronic equipment, and antennas at an existing wireless tower site that together comprise a wireless telecommunications facility for purposes of this section.
 - (3) "Substantially change the physical dimensions" means that the modification of an eligible support structure meets any of the following criteria:
 - i. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
 - A. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.
 - ii. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, 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;
 - iii. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, 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 10% larger in height or overall volume than any other ground cabinets associated with the structure;
 - iv. It entails any excavation or deployment outside the current site;
 - v. It would defeat the concealment elements of the eligible support structure; or
 - vi. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, 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 Section 5-1509(a)(3)(i) through (iv).
- (b) Pursuant to P.L. 112-96, Sec. 6409, codified as 47 U.S.C. § 1455(a), and notwithstanding any provision of this chapter to the contrary, a request for a modification of an existing wireless tower or base station for the collocation of new transmission equipment or removal or replacement of existing transmission equipment that does not substantially change the physical dimensions of such wireless tower or base station shall be approved, conditionally approved, or denied in accordance with the applicable procedures set forth in Chapter 6-1508(c)(1) for a minor modification, as modified by this section.
 - (c) Any proposed modification to an existing wireless tower or base station for the collocation of new transmission equipment or removal or replacement of existing transmission equipment that substantially changes the physical dimensions of either the wireless tower or base station, or any

modification of any wireless telecommunications facility that does not qualify as an existing wireless tower or base station as defined herein, shall be subject to the requirements for a major modification, as set forth in Section 6-1508(c)(2).

- (d) Any proposed modification to an existing wireless tower or base station located in the public right-of-way shall be subject to the requirements for a modification to a Wireless Communications Facility in the public right-of-way, as set forth in Section 6-1508(c)(3), based on the findings outlined in Section 6-1512(c).
- (e) A request for a modification of an existing wireless tower or base station for the collocation of new transmission equipment or removal or replacement of existing transmission equipment that does not substantially change the physical dimensions of such wireless tower or base station shall be approved if the hearing authority finds that the proposed modifications:
 - (1) Do (does) not substantially change the physical dimensions of either a wireless tower or base station; and
 - (2) Based on information provided, is in compliance with all FCC and CPUC requirements, and is not otherwise detrimental to public safety, community welfare, and health, considering aspects over which the City has purview; and
 - (3) Comply with the Uniform Building Code, Uniform Electrical Code, Uniform Mechanical Code, Uniform Fire Code and subject to the building permitting process.
- (f) In addition to any other application requirements under Chapter 6-15, each application submitted under this section shall be accompanied by:
 - (1) A detailed description of the proposed modifications to the existing wireless tower and/or base station;
 - (2) A photograph or graphic depiction of the wireless tower or base station as originally constructed under the initial permit, if available, and, a photograph of the existing wireless tower or base station, and a graphic depiction of the wireless tower or base station after the proposed modification, showing all relevant dimensions; and
 - (3) A description of all construction that will be performed in connection with the proposed modification.
- (g) Nothing in this section shall be deemed to require the City to issue a permit pursuant to this provision as a matter of local law. Nothing in this section prevents the city from imposing such other conditions on the grant of the permit (including by way of example and not limitation time limits on the permit, shielding requirements, coloring, marking requirements, or construction requirements) consistent with obligations imposed with respect to the initial installation or with respect to facilities similar to those proposed by applicant.
- (h) This section is adopted to comply with P.L. 112-96, Section 6409. This section shall become null and void if P.L. 112-96, Section 6409, is rescinded. The city further reserves the right to raise all issues or assert any defenses in response to a challenge asserted under P.L. 112-96, Section 6409, including challenges to the constitutionality or validity of that Federal legislation.

(Ord. No. 613, § 2(exh. A), 12-10-2012)

6-1510 - Permit Process.

- (a) Application: An application for a Minor or Major Wireless Communications Facility Permit or for a change of conditions for an existing Minor or Major Wireless Communications Facility Permit shall be filed with the Planning Services Division on a form prescribed by the City together with the required fee, and application information. An application for a Wireless Encroachment Permit shall be filed with the Planning Department on a form prescribed by the City together with the required fee and application information.

- (b) **Hearing Authority:** The Zoning Administrator shall be the hearing authority for a Minor Wireless Communications Facility Permit. If neighborhood interest is identified based on comments received in response to public notice, the Zoning Administrator may require a public hearing for a Minor Wireless Communications Facility Permit. The Planning Commission shall be the hearing authority for a Major Wireless Communications Facility Permit. All Major Wireless Communications Facility Permits require a public hearing.

The Zoning Administrator may refer a Minor Wireless Communications Facility Permit to the Design Review Commission or Planning Commission for review and action. Wireless Encroachment Permit applications may not be subject to any public hearing requirement.

- (c) **Peer Review:** The city may retain a qualified outside consultant to assist staff in review of applications and in monitoring compliance with existing permits, and may refer Major Wireless Communications Facilities Permits to such consultant to assess the application, specifically the radio frequency exposure report, coverage maps, and alternative site analysis. The applicant is responsible for all fees incurred with the peer review.
- (d) **Public Notice:** If a public hearing is required, then notice of a public hearing on an application shall be given in the same manner as the notice for a variance as prescribed in Section 6-211.

If a public hearing is required only on the determination of the Zoning Administrator, a notice of a pending application shall be mailed to all property owners within 300-feet of the subject property. When applicable, the notices shall include the following information:

- (1) Description of the proposed Wireless Communications Facility;
 - (2) Location of the proposed Wireless Communications Facility;
 - (3) Date by which public comments regarding the application shall be submitted for consideration;
 - (4) Date of the scheduled public hearing or date that the Zoning Administrator shall make a determination on the application; and
 - (5) Appeal rights as described in Section 6-1514.
- (e) **Determination:** Within 60-days of determining that an application is complete, the Planning Commission, the Zoning Administrator, or the designated representatives may approve, approve subject to conditions, or deny an application for Wireless Communications Facilities, unless the wireless provider and the City mutually agree to an extension of up to 90-days or State or Federal law allows for additional time. The hearing authority when approving or denying an application for a Wireless Communications Facility shall adopt written findings of fact. Applications for Wireless Encroachment Permits are exempt from Section 6-1510(e).
- (f) **Imposition of Conditions:** The hearing or reviewing authority may impose conditions of approval if it determines that the conditions are necessary to carry out the purpose and intent of this Chapter.

(Ord. No. 613, § 2(exh. A), 12-10-2012)

6-1511 - Submittal Requirements.

An application for which a permit is required by this Chapter, other than applications for Wireless Communications Facilities in the public right-of-way, shall be accompanied by copies (in a quantity specified by the Planning Manager) of site plans, diagrams, photographs and photo-simulations of the proposed Wireless Communications Facility, radio frequency reports and cumulative impact analysis of the proposed facility and other Wireless Communications Facilities, coverage maps, and a needs report addressing how the proposed Wireless Communications Facility is technically necessary to address current demand and technical limitations of the wireless provider's system within the area, including, if applicable, technical evidence regarding significant gaps in the wireless provider's coverage, and alternative site analysis, demonstrating that there are no less intrusive means to close that significant gap, site security and maintenance plans, noise and acoustical information, the proposed property lease for the site or evidence establishing the applicant's right to enter the public right-of-way, and other presentation materials as may be necessary for complete review and consideration of the proposed project. The application shall include information set forth in a policy adopted by the City Council and additional information which may be reasonably required by the Planning Manager. Applications to install or modify Wireless Communications Facilities in the public right-of-way must contain information required by the Wireless Encroachment Permit application form published and, from time to time, amended by the City.

(Ord. No. 613, § 2(exh. A), 12-10-2012)

6-1512 - Findings.

- (a) A Wireless Communications Facilities Permit or a modification or change of conditions to an approved Wireless Communications Facility, other than those in the public right-of-way, may be granted when the hearing authority finds that the proposed facility:
- (1) Is consistent with the General Plan and each element of it and will not adversely affect the policies and goals set forth therein;
 - (2) Strictly adheres to the development standards and other applicable regulations within this Chapter or, if applicable, an exception is granted;
 - (3) Based on information provided, is in compliance with all FCC and CPUC requirements, and is not otherwise detrimental to public safety, community welfare, and health, considering aspects over which the City has purview;
 - (4) Will not create a nuisance or enforcement problem within the neighborhood;
 - (5) Incorporates general site considerations, including site layout, open space and topography, orientation and location of buildings, vehicular access, circulation and parking, setbacks, height, walls, fences, public safety and similar elements that provide a desirable environment for the development;
 - (6) Incorporates general architectural considerations, including the character, scale and quality of the design, the architectural relationship with the site and other buildings, building materials, colors, screening of exterior appurtenances, exterior lighting and similar elements that ensure the compatibility of this development with other buildings and structures on the subject property and adjacent properties, as well as each element being consistent with the architectural style of the building or structure;
 - (7) Incorporates general landscape considerations, including the location, type, size, color, texture and coverage of plant materials, provisions for irrigation, maintenance and protection of landscaped areas and similar elements that ensure visual relief, including appropriate visual screening;
 - (8) Is designed to blend with the surrounding environment, with minimal visual impact;

- (9) Will not have a significant adverse impact on the use of the public right-of-way or City-owned property, including but not limited to, the safe movement and visibility of vehicles and pedestrians; and
 - (10) Is designed, sited, and will be operated in a manner that does not adversely impact adjacent properties by noise, traffic, aesthetic, or other impacts over which the City has purview.
- (b) The Planning Commission may grant an exception to any requirement of this Chapter if in addition to the standard findings for a Wireless Communications Facilities Permit required by Section 1512(a), it also makes the following finding:

The applicant has demonstrated and confirmed that the Wireless Communications Facility is necessary to close a significant gap in the wireless provider's personal wireless service, and there is no less intrusive means to close that significant gap that more closely meets the purpose, intent, and findings of this Chapter.

- (c) The required findings for Wireless Encroachment Permit applications are as follows:
- (1) Except for eligible facilities requests, the Zoning Administrator shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
 - (i) The facility is not detrimental to the public health, safety, and welfare;
 - (ii) The facility complies with this Article and all applicable design and development standards; and
 - (iii) The facility meets applicable requirements and standards of state and federal law.
 - (2) For eligible facilities requests, the Zoning Administrator shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
 - (i) That the application qualifies as an eligible facilities request; and
 - (ii) That the proposed facility will comply with all generally-applicable laws.
 - (3) The Zoning Administrator may grant an exception to any requirement of this Chapter, and the associated design standards, for Wireless Communications Facilities in the public right-of-way if in addition to the applicable standard findings for a Wireless Encroachment Permit required by Sections 1512(c)(1)-(2), it also makes the following findings:
 - (i) Enforcement of the requirement or standard would violate applicable laws or, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services; and
 - (ii) The exception is narrowly-tailored to minimize deviation from the City Code.

(Ord. No. 613, § 2(exh. A), 12-10-2012)
 6-1513 - Standard Conditions.

The hearing or reviewing authority may impose conditions of approval if it determines that the conditions are necessary to carry out the purpose and intent of this Chapter. At a minimum, the hearing or reviewing authority shall impose the following conditions:

- (a) **Timeframe:** The permit shall expire ten-years from the date of approval, unless the permit is renewed by the City. The Wireless Communications Facility must be removed upon the expiration of the Wireless Communications Facility Permit.

The approval shall expire one year from the approval date unless a building or electrical permit has been issued for the project. The Planning and Building Services Manager may extend the period to exercise the permit for up to one additional year upon a showing of good cause, if such request is received in writing prior to the expiration date.

- (b) **Administrative Review:** The Wireless Communications Facility is subject to administrative review at three-year intervals, starting from the final inspection by Lafayette's Planning and Building Services Division or at any other earlier time if a good case exists, where the Zoning Administrator or the designated representative will evaluate the facility to ensure continued compliance with conditions of approval and all other applicable regulations. The property owner(s) or permittee shall submit an application form, letter requesting administrative review, current radio frequency emissions report, contact information of all parties responsible for maintaining the facility, photo documentation of the facility, inventory of all equipment associated with the facility, and as-built plans of the facility. Materials shall be submitted within 30 days of the three, six, and nine year anniversaries of the final inspection. The property owner(s) or permittee shall reimburse the City for staff time associated with the review, based on the hourly rate adopted by the City Council. The City shall notify in writing the property owner(s) and permittee about any compliance concerns and the appropriate remedies within 60 days of filing the administrative review application. Failure to comply with the requirement for administrative review may result in revocation of the permit pursuant to the revocation procedures outlined in Section 6-252.

The permittee is encouraged, at the time of each administrative review, to review the design of the Wireless Communications Facility and make voluntary upgrades to the facility for the purpose of improving safety and decreasing visual obtrusiveness.

- (c) **Other Approvals:** The permittee shall obtain all other applicable permits, approvals, and agreements necessary to install and operate the Wireless Communications Facility in conformance with Federal, State, and local laws, rules, and regulations.
- (d) **Modifications:** No changes shall be made to the approved plans or color and materials without review and approval by the Planning Services Division and/or appropriate commissions as determined by the Planning and Building Services Manager.
- (e) **Facility Maintenance:** All Wireless Communications Facilities and related equipment, including but not limited to fences, cabinets, poles, and landscaping, shall be maintained in good working condition over the life of the permit. This shall include keeping the structures maintained to the visual standards established at the time of approval. The facility shall remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as is practicable, and in no instance more than ten calendar days from the time of notification by the City or after discovery by the permittee. All of the Wireless Communications Facility equipment must be removed upon the expiration of the permit approval and/or when no longer in operation, whichever occurs first.
- (f) **Performance and Maintenance Agreement:** The property owner(s) and the permittee shall enter into a performance and maintenance agreement with the City. The terms of the agreement shall: (a) ensure compliance with this Chapter and all applicable conditions of approval, (b) require the facility to be appropriately maintained, (c) ensure new landscaping is installed and existing landscaping is maintained, preserved and protected, as indicated on the plans, and (d) require the property owners to defend, indemnify, and hold harmless the City of Lafayette, pursuant to Section 6-1513(p). The agreement shall be signed and notarized and submitted to the Planning Services Division to be recorded against the property when located on private property. The agreement shall run with the property to ensure that future property owner(s) are aware of the requirement for ongoing maintenance of the existing and approved landscaping.
- (g) **Performance Bond:** Prior to issuance of a building or electrical 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 150 percent of the cost of physically removing the Wireless Communications Facility and all related facilities and equipment on the site, based on the higher of two contractor's quotes for removal that are provided by the permittee. 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.

- (h) Construction and Maintenance Hours: The permittee shall make a good faith effort to minimize project-related disruptions to adjacent properties. Site improvement and construction work, including set-up, loading or unloading of materials or equipment, performed as part of this project is restricted to the hours between 8:00 a.m. and 6:00 p.m., Monday through Saturday. No noise-generating construction work shall be performed on Sundays or national holidays. Non-emergency maintenance is restricted to the hours between 8:00 a.m. and 6:00 p.m., Monday through Friday. No noise-generating maintenance work shall be performed on Saturdays, Sundays, or national holidays. Emergency maintenance and repairs are exempt from the restricted hours. Violation of this condition may result in issuance of a Stop Work Order or administrative citations.

- (i) RF Emission Monitoring: Wireless communications facilities, whether operating alone or in conjunction with other facilities, shall not generate radio frequency emissions in excess of the standards established by the Federal Communications Commission.

Within one month after construction of the Wireless Communications Facility and annually thereafter, the property owner(s) or permittee shall submit a current RF exposure report, prepared by a professional engineer to the Planning Services Division, to ensure that no modifications to the site, surrounding environment, or equipment wear and tear have caused an increase in RF exposure. In the event of an increase over accepted levels is detected, the permittee shall be responsible for immediately making the necessary adjustments to comply with FCC standards; otherwise revocation proceedings shall immediately begin.

- (j) Height Verification: The property owner(s) or permittee shall submit a certification letter from a California certified land surveyor or registered civil engineer, which verifies that structure height complies with the approved construction drawings.
- (k) Conflicts with Improvements: For all Wireless Communications Facilities located within the public right-of-way, the permittee shall remove or relocate, at its expense and without expense to the City, any or all of its Wireless Communications Facilities when such removal or relocation is deemed necessary by the City by reason of any change of grade, alignment or width of any public right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, public right-of-way improvements, or for any other construction, repair or improvement to the public right-of-way.
- (l) Encourage Co-Location: Where the wireless communication facility site is capable of accommodating a co-located facility upon the same site, the owner and operator of the existing facility shall allow another carrier to co-locate its facilities and equipment thereon, provided the parties can mutually agree upon reasonable terms and conditions.
- (m) City Access: The City reserves the right of its employee, agents, and designated representatives to inspect permitted facilities and property upon reasonable notice to the permittee. In case of an emergency or risk of imminent harm to persons or property within the vicinity of permitted facilities, the City reserves the right to enter upon the site of such facilities and to support, disable, or remove those elements of the facilities posing an immediate threat to public health and safety. The City shall make an effort to contact the permittee, prior to disabling or removing Wireless Communications Facility elements.
- (n) Contact Information: The permittee shall maintain on file with the City and onsite at the Wireless Communications Facility contact information of all parties responsible for maintenance of the facility.

- (o) Additional Conditions: Any approved Wireless Communication Facility within a public right-of-way shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the Engineering Services Division or Public Works to: (a) protect the public health, safety, and welfare; (b) prevent interference with pedestrian and vehicular traffic; or (c) prevent damage to a public right-of-way or any property adjacent to it.
- (p) Indemnification: The permittee and property owner shall defend, indemnify and hold harmless the City of Lafayette, its agents, officers, officials, and employees (i) from all claims, demands, law suits, writs of mandamus, and other actions or proceedings (collectively "Actions") brought against the City or its agents, officers officials, or employees to challenge, attack seek to modify, set aside, void or annul this approval, and (ii) from any damages, liabilities, claims, suites, or causes of action 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 the land owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors, pursuant to the approval issued by the City. Further, permittees shall be strictly liable for interference caused by their Wireless Communications Facilities with the City's communications systems. The permittee shall be responsible for costs of determining the source of the interference, all costs associated with eliminating the interference, and all costs arising from third party claims against the City attributable to the interference. In the event the City becomes aware of any such actions or claims the City shall promptly notify the property owner and shall reasonably cooperate in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonable withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.

(Ord. No. 613, § 2(exh. A), 12-10-2012)

6-1514 - Appeal and Reconsideration.

A final decision of the Zoning Administrator or Planning Commission to approve, approve with conditions, or deny an application for a permit, other than a Wireless Encroachment Permit, is subject to the right of appeal or reconsideration in the manner set forth in Chapter 6-2, Article 3, Sections 6-225 through 6-238. A final decision of the Zoning Administrator regarding an application for a Wireless Encroachment Permit is subject to the appeal process set forth below in Section 6-1514(a).

(a) Appeals for a Wireless Encroachment Permit:

- (1) Any person adversely affected by the decision of the Zoning Administrator regarding a Wireless Encroachment Permit may appeal the decision to the City Manager, which may decide the issues *de novo*, and whose written decision will be the final decision of the City. Any appeal shall be conducted so that a timely written decision may be issued in compliance with any legally-required deadline.
- (2) All appeals must be filed within two business days of the written decision of the Zoning Administrator, unless the Zoning Administrator extends the time therefore. An extension may not be granted where an extension would result in approval of the application by operation of law.
- (3) An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the personal wireless services facility.
- (4) If the Zoning Administrator determines that an application must be approved because a denial would result in a prohibition or effective prohibition under applicable federal law, the Zoning Administrator shall not render a decision on the application, but instead shall refer the application directly to the City

Manager for review and decision, whose review shall be conducted in accordance with paragraph (1) of this subsection.

(Ord. No. 613, § 2(exh. A), 12-10-2012)

6-1515 - Applicability to Existing Facilities.

- (a) Existing Uses or Structures: All existing Wireless Communications Facilities that have all proper use permits, building or electrical permits, encroachment permits, and other entitlements approved by the City as of the effective date of this Chapter shall be allowed to continue as they presently exist and will be considered legal non-conforming or legal conforming facilities, as the case may be. All existing Wireless Communications Facilities that do not qualify as legal non-conforming or legal conforming facilities pursuant to the foregoing sentence as of the effective date of this Chapter shall be subject to the requirements of this Chapter. All new construction, other than routine maintenance on existing Wireless Communications Facilities, shall comply with the requirements of this Chapter.

Any discretionary planning approval in effect as of the effective date of this Chapter shall only remain in effect until it expires, is abandoned or revoked in accordance with the provisions of this Chapter.

- (b) Changes in Federal or State Regulations: All Wireless Communications Facilities shall meet current standards and regulations of the Federal Communications Commission, California Public Utilities Commission, and any other agencies with authority to regulate wireless communications service providers. If existing standards or regulations are changed, the applicant shall bring its facility into compliance with new standards within 90-days of the effective date of such standards, unless the Federal or State agency mandates a different compliance schedule. Changes to approved projects are subject to the Modification to Approved Wireless Communications Facility process, pursuant to Section 6-1508(c) ND 1509, in accordance with this Chapter.

Failure to comply with adopted new State or Federal requirements shall trigger the revocation procedure as outlined in Section 6-1516(b).

(Ord. No. 613, § 2(exh. A), 12-10-2012)

6-1516 - Review, Termination, and Revocation.

- (a) Periodic Post-Approval Review: Periodic review of Wireless Communications Facilities shall be provided in the following manner:
- (1) Review of Minor Permits and Wireless Encroachment Permit: The Wireless Communications Facility is subject to administrative review at three-year intervals, starting from the final inspection by Lafayette's Planning and Building Services Division, or at any other earlier time if good cause exists, to ensure compliance with conditions of approval and all other applicable regulations. The permittee shall submit a written report, photographs, and an updated radio frequency emissions compliance report, demonstrating compliance with the terms and conditions of approval, which shall be certified by the manager.
 - (2) Review of Major Permits: The Wireless Communications Facility is subject to administrative review at three-year intervals, starting from the final inspection by Lafayette's Planning and Building Services Division, or at any other earlier time if good cause exists, to ensure compliance with conditions of approval and all other applicable regulations. The permittee shall submit a written report, photographs, and an updated radio frequency emissions compliance report, demonstrating compliance with the terms and conditions of approval. The manager shall place the matter as a consent item on the Planning Commission agenda to certify whether the facility remains in compliance with the terms and conditions of approval.

- (b) Revocation of Permit: If the terms and/or conditions of a permit for a Wireless Communications Facility are violated, the permit may be revoked pursuant to the revocation procedures outlined in Section 6-252.
- (c) Termination: The Wireless Communications Facility shall be removed within 30 calendar days of the discontinuation of the use of the Wireless Communication Facility and the site shall be restored to its previous condition. The permittee shall provide the Planning and Building Services Division with a notice of intent to vacate the site a minimum of 90 calendar days prior to vacation. For facilities located on City property, this requirement shall be included in the terms of the lease. For facilities located on other sites, the property owner(s) and permittee shall be responsible for removal of the Wireless Communications Facility within 90 calendar days of the discontinuation of the use. If the use of a permitted Wireless Communications Facility is discontinued for any reason for a period of 90 calendar days, the permit shall be void and the use shall not be resumed. The Planning Manager or the designated representative may extend the aforementioned time limits, based upon emergencies, anticipated regulation changes, or other substantiated reasons at his or her full discretion.
- (d) Removal: If a permit under this Chapter is revoked, expired, or otherwise becomes void, the Wireless Communications Facility should be removed from the site, and the site shall be restored to its original, preconstruction condition. Facilities on City-owned shall include said removal requirement within the terms of the lease.

(Ord. No. 613, § 2(exh. A), 12-10-2012)

6-1517 - Map and Inventory.

The City shall compile and maintain a map and inventory of Wireless Communications Facilities within the City and shall make the information readily available to the public. The facilities mapped shall include those which were subject to discretionary review process of this Chapter and were ultimately approved and constructed.

Facilities approved and installed prior to the adoption of this Chapter will be included in said map to the best of staff's knowledge. It is the responsibility of the wireless providers to inform the City of their pre-existing facilities and any changes in the wireless provider's status including name, ownership, and whether the Wireless Communications Facility has been discontinued.

(Ord. No. 613, § 2(exh. A), 12-10-2012)

6-1518 - Severability.

Should any section, paragraph, sentence, clause, or phrase of this Article or its application to any person or circumstance be determined by a court of competent jurisdiction to be unconstitutional or otherwise invalid or void, or should any portion of this article be preempted by state or Federal law or regulation, such court decision or preemption shall not affect the validity of the remaining portions of this article or its application to other persons and circumstances, and to that end, the provisions of this Chapter are severable.

(Ord. No. 613, § 2(exh. A), 12-10-2012)

Contra Costa Times

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2010502

LAFAYETTE, CITY OF
ATTN: ACCOUNTS PAYABLE
3675 MT. DIABLO BLVD., #210
LAFAYETTE, CA 94549-3793

PROOF OF PUBLICATION

FILE NO. Joanne Robbins Ords 673 & 674

In the matter of

Contra Costa Times

I am a citizen of the United States. I am over the age of eighteen years and I am not a party to or interested in the above entitled matter. I am the Legal Advertising Clerk of the printer and publisher of the Contra Costa Times, a newspaper published in the English language in the City of Walnut Creek, County of Contra Costa, State of California.


I declare that the Contra Costa Times is a newspaper of general circulation as defined by the laws of the State of California as determined by court decree dated October 22, 1934, Case Number 19764. Said decree states that the Contra Costa Times is adjudged to be a newspaper of general circulation for the City of Walnut Creek, County of Contra Costa and State of California. Said order has not been revoked.

I declare that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

03/28/2019

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Executed at Walnut Creek, California.



Signature

Legal No. 0006314583

BODY: City Council
DATE: Monday, April 8, 2019
TIME: 7:00 p.m.
PLACE: Lafayette Library & Learning Center, 3491 Mt. Diablo Blvd • Community Hall
RE: **ZT01-19 City of Lafayette (Applicant):** Review of Ordinances 673 and 674 City-initiated Zoning Text Amendment modifying Title 6, Part 4, Chapter 6-15- Wireless Communications Facilities, of the Lafayette Municipal Code in response to the Federal Communications Commission's order on 5G and other next-generation wireless services (small wireless facilities). Pursuant to Section 36937 and Section 36934 of the California Government Code the City is proposing to process both a regular (non-urgency) and urgency ordinance concurrently.

Notice is given that on **Monday, April 8, 2019 at 7:00 p.m.** the City Council of the City of Lafayette will conduct a public hearing at the Lafayette Library & Learning Center, 3491 Mt. Diablo Blvd, in the Community Hall. If adopted, the Zoning Text Amendment (ZT01-19) would amend the wireless communications facilities ordinance to include design standards and procedure for processing requests for small wireless facilities. Final action on this item rests with City Council.

You may review the agenda and staff report, posted the Wednesday before the hearing, by visiting the City Calendar on the City's website and clicking on the meeting date. Any last minute changes or cancellations will be posted here. The Action Agenda, summarizing the Council's action on each item including, any continuance date, is posted to the same location on the City's web site following day. If you would like to subscribe to receive agendas via email, sign-up for free on the home page of the City's website.

The application described above is available for public review at the City Offices during Planning Counter Hours. You can also view information on this application, including maps, aerial photos, and project plans online at:

www.lovelafayette.org/calendar >April 8, 2019> City Council

You are invited to provide oral testimony at the meeting. Written comments received by 5:00 p.m. on the Monday 7-days prior to the hearing date will be included with the staff report provided to each Council member prior to the hearing. Copies of comments submitted by 12:00 p.m. on the hearing date will be made available to the Council and public at the meeting; however there is no guarantee that there will be adequate time to read and discuss these comments at the meeting. Individuals who submit comments are encouraged to attend the hearing to answer any questions. Any comments received during the hearing will be distributed to the Council in the next packet if the item requires an additional hearing. Comments and questions should be directed to the Project Planner, listed below.

If you challenge the City's decision on this matter in court, you may be limited to raising only those issues you or someone else raised at the public hearings described in this notice, or in written correspondence delivered to the City at, or prior to, the public hearing. California Code of Civil Procedure §1094.6 (review of administrative decisions) is applicable to the City of Lafayette and provides for the review of any decision of the City only if the petition for writ of mandate is filed within 90 days after the decision becomes final.

Project Planner: Payal Bhagat, Senior Planner • Tel. (925) 299-3219 • Email: PBhagat@lovelafayette.org

Planning Commission email: cityhall@lovelafayette.org

/s/ Payal Bhagat, Senior Planner

March 25, 2019

CCT #6314583; Mar. 28, 2019

Contra Costa Times

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3675 MT. DIABLO BLVD., #210
LAFAYETTE, CA 94549-3793

PROOF OF PUBLICATION

FILE NO. Joanne Robbins Ord 674

In the matter of

Contra Costa Times

I am a citizen of the United States. I am over the age of eighteen years and I am not a party to or interested in the above entitled matter. I am the Legal Advertising Clerk of the printer and publisher of the Contra Costa Times, a newspaper published in the English language in the City of Walnut Creek, County of Contra Costa, State of California.

I declare that the Contra Costa Times is a newspaper of general circulation as defined by the laws of the State of California as determined by court decree dated October 22, 1934, Case Number 19764. Said decree states that the Contra Costa Times is adjudged to be a newspaper of general circulation for the City of Walnut Creek, County of Contra Costa and State of California. Said order has not been revoked.

I declare that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

04/16/2019

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Executed at Walnut Creek, California.
On this 16th day of April, 2019.


Signature

Legal No. 0006323919

NOTICE AND SUMMARY OF ADOPTION OF URGENCY ORDINANCE NO. 674 AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE AMENDING LAFAYETTE MUNICIPAL CODE, TITLE 4, CHAPTER 6-15 RELATING TO WIRELESS COMMUNICATIONS FACILITIES AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM ENVIRONMENTAL REVIEW

Notice is hereby given that on April 8, 2019, the City Council of the City of Lafayette adopted Urgency Ordinance No. 674 approving the amendments to Title 4, Chapter 6-15 of the Lafayette Municipal Code.

Ordinance 674 Amends Title 6, Chapter 6-15 - Wireless Communications Facilities of the Municipal Code to add the following: (1) standards for applications pertaining to wireless facilities in the public right-of-way (ROW), and (2) a permit process for wireless installations and modifications that will allow the City to comply with federal "shot clocks" for reviewing applications for Wireless Facilities in the ROW. The resolution would provide objective design standards for wireless facilities installed in the ROW. For all wireless facility installations in the ROW, this ordinance provides, among other regulations, the permit and review procedures as well as the operation and maintenance standards. The ordinances treat wireless installations in the ROW similar to other installations such as utility poles in the ROW by requiring an encroachment permit.

The Ordinance was adopted by the City Council by the following vote:
Ayes: **Burks, Anderson, Bliss, Candell and Geringer**
Noes: **None**
Absent: **None**

Note: The above is a simply a summary of the Ordinance. To obtain a full understanding of the Ordinance, it should be read in its entirety. A certified copy of the full text of the Ordinance is posted in the City Clerk's office at 3675 Mount Diablo Blvd., Suite 210, Lafayette, California 94549. A copy may be obtained from that office upon payment of the fee based on the City's actual cost of copying of the document.

Date: April 16, 2019
Joanne Robbins, City Clerk
CCT #6323919; Apr. 16, 2019

Contra Costa Times

175 Lennon Lane, Suite 100
Walnut Creek, CA 94598
925-943-8019

2010502

LAFAYETTE, CITY OF
ATTN: ACCOUNTS PAYABLE
3675 MT. DIABLO BLVD., #210
LAFAYETTE, CA 94549-3793

PROOF OF PUBLICATION

FILE NO. Joanne Robbins Ords 673 & 674

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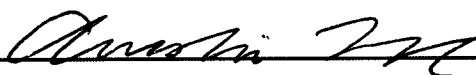
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I declare that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

03/28/2019

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Executed at Walnut Creek, California.



Signature

Legal No. 0006314583

BODY: City Council
DATE: Monday, April 8, 2019
TIME: 7:00 p.m.
PLACE: Lafayette Library & Learning Center, 3491 Mt. Diablo Blvd • Community Hall
RE: **ZT01-19 City of Lafayette (Applicant):** Review of Ordinances 673 and 674 City-initiated Zoning Text Amendment modifying Title 6, Part 4, Chapter 6-15- Wireless Communications Facilities, of the Lafayette Municipal Code in response to the Federal Communications Commission's order on 5G and other next-generation wireless services (small wireless facilities). Pursuant to Section 36937 and Section 36934 of the California Government Code the City is proposing to process both a regular (non-urgency) and urgency ordinance concurrently.

Notice is given that on **Monday, April 8, 2019 at 7:00 p.m.** the City Council of the City of Lafayette will conduct a public hearing at the Lafayette Library & Learning Center, 3491 Mt. Diablo Blvd, in the Community Hall. If adopted, the Zoning Text Amendment (ZT01-19) would amend the wireless communications facilities ordinance to include design standards and procedure for processing requests for small wireless facilities. Final action on this item rests with City Council.

You may review the agenda and staff report, posted the Wednesday before the hearing, by visiting the City Calendar on the City's website and clicking on the meeting date. Any last minute changes or cancellations will be posted here. The Action Agenda, summarizing the Council's action on each item including, any continuance date, is posted to the same location on the City's web site following day. If you would like to subscribe to receive agendas via email, sign-up for free on the home page of the City's website.

The application described above is available for public review at the City Offices during Planning Counter Hours. You can also view information on this application, including maps, aerial photos, and project plans online at:

www.lovelafayette.org/calendar >April 8, 2019> City Council

You are invited to provide oral testimony at the meeting. Written comments received by 5:00 p.m. on the Monday 7-days prior to the hearing date will be included with the staff report provided to each Council member prior to the hearing. Copies of comments submitted by 12:00 p.m. on the hearing date will be made available to the Council and public at the meeting; however there is no guarantee that there will be adequate time to read and discuss these comments at the meeting. Individuals who submit comments are encouraged to attend the hearing to answer any questions. Any comments received during the hearing will be distributed to the Council in the next packet if the item requires an additional hearing. Comments and questions should be directed to the Project Planner, listed below.

If you challenge the City's decision on this matter in court, you may be limited to raising only those issues you or someone else raised at the public hearings described in this notice, or in written correspondence delivered to the City at, or prior to, the public hearing. California Code of Civil Procedure §1094.6 (review of administrative decisions) is applicable to the City of Lafayette and provides for the review of any decision of the City only if the petition for writ of mandate is filed within 90 days after the decision becomes final.

Project Planner: Payal Bhagat, Senior Planner • Tel. (925) 299-3219 • Email: PBhagat@lovelafayette.org

Planning Commission email: cityhall@lovelafayette.org

/s/ Payal Bhagat, Senior Planner March 25, 2019
CCT #6314583; Mar. 28, 2019

Contra Costa Times

2850 Shadelands Dr., Ste. 101
Walnut Creek, CA 94598
925-943-8019

2010502

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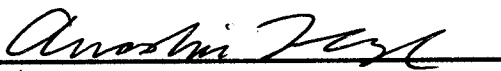
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Date: April 16, 2019
Joanne Robbins, City Clerk
CCT #6323919; Apr. 16, 2019