

ORDINANCE NO. 1538

CITY OF LACEY

AN ORDINANCE OF THE CITY OF LACEY, WASHINGTON RELATED TO INTERIM REGULATIONS FOR SMALL CELL WIRELESS COMMUNICATION FACILITIES, AMENDING SECTIONS 5.60.020, 5.60.060 – 5.60.100, 16.68.020 – 16.68.080, ADDING NEW SECTIONS 16.68.026, 16.68.070 AND 16.68.111, ALL OF THE LACEY MUNICIPAL CODE, DECLARING AN EMERGENCY AND APPROVING A SUMMARY FOR PUBLICATION.

WHEREAS, in 1934, Congress enacted the Communications Act of 1934, creating the FCC and granting it authority over common carriers engaged in the provision of interstate or foreign communications services; and

WHEREAS, in 1996 Congress enacted Pub. L. No. 104-104, 110 Stat. 70 (the “1996 Act”), amending the Communications Act of 1934 and implementing regulations applicable to both wireless and wireline communications facilities for the purpose of removal of barriers to entry into the telecommunications market while preserving local government zoning authority except where specifically limited under the 1996 Act; and

WHEREAS, in the 1996 Act, Congress imposed substantive and procedural limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of wireless facilities and incorporated those limitations into the Communications Act of 1934; and

WHEREAS, the City has adopted regulations that have been codified as part of the Municipal Code of the City establishing local requirements for the location, construction, and modification of wireless facilities; and

WHEREAS, in 2012 Congress passed the “Middle Class Tax Relief and Job Creation Act of 2012” (the “Spectrum Act”) (PL-112-96; codified at 47 U.S.C. § 1455(a)); and

WHEREAS, Section 6409 (hereafter “Section 6409”) of the Spectrum Act implements additional substantive and procedural limitations upon state and local government authority to regulate modification of existing wireless antenna support structures and base stations; and

WHEREAS, the 1996 Act empowers the Federal Communications Commission (the “FCC”) to prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of the 1996 Act, and subsequently added portions of the 1996 Act such as Section 6409; and

WHEREAS, the FCC adopted Declaratory Ruling and Third Report and Order No. 17-79 on September 26, 2018, which ruling clarified the scope and meaning of Sections 253 and 332(c)(7) of the Communications Act, established shot clocks for state and local approvals for the deployment of small wireless facilities, limited fees that could be collected, and provided guidance on streamlining state and local requirements on wireless infrastructure deployment and which takes effect on January 14, 2019; and

WHEREAS, many cities, including Lacey, have appealed this ruling, however at this time it is uncertain what the outcome of said appeal will be; and

WHEREAS, this ruling along with other recent changes to the mandates of the Telecommunications Act of 1996, the Middle Class Tax Relief and Job Creation Act of 2012, and other applicable federal and state laws require the City of Lacey to update its wireless regulations; and

WHEREAS, the City's current code does not specifically address small cell facilities, only macro cells and large structures; and

WHEREAS, without standards for permitting, location and aesthetics, applications for deployment for small cells, micro cells, and distributed antenna systems could be submitted and become vested, leading to the development or use of property that is incompatible with the laws adopted by the City of Lacey; and

WHEREAS, a mechanism for the zoning and permitting of small cell, microcells, and distributed antenna systems telecommunication uses and an update of existing zoning provisions for other kinds of telecommunication uses is in the best interest of the citizens of the City of Lacey.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, AS FOLLOWS:

Section 1. Section 5.60.020 of the City of Lacey Municipal Code is hereby amended as follows:

5.60.020 Definitions.

Terms used in Chapter 5.60 shall have the following meanings:

- A. "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.
- B. "Business Registration" means a requirement of all telecommunications and cable providers who are not otherwise required to license or franchise with the city.
- C. "Cable Acts" means the Federal Cable Communications Policy Act of 1984, as amended by the Federal Cable Television Consumer Protection and Competition Act of 1992, as amended by portions of the Federal Telecommunications Act of 1996, and as hereafter amended.
- D. "Cable Facilities" see "Facilities".
- E. "Cable Operator" shall have the same meaning as defined in the Cable Acts.
- F. "Cable Service" shall have the same meaning as defined in the Cable Acts.
- G. "City" means City of Lacey.
- H. "City Council" means the Lacey city council.
- I. "City Manager" means the office of the Lacey city manager or designee.

J. “Co-location” means the use of a single support structure or attachment support structure and/or site by more than one wireless communications provider. When used in the context of an Eligible Facilities Request, co-location means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmission and/or receiving radio frequency signal for communication purposes.

KJ. “Development Standards” are those standards set forth in Chapter [12.28](#) of the Lacey Municipal Code and the City of Lacey Development Guidelines.

LK. “Director” means the director of the City of Lacey Public Works Department or designee.

M. “Eligible Facilities Request” means any request for modification of an existing tower or base station that does not substantially change the physical dimensions or such tower or base station involving:

1. Co-location of transmission equipment
2. Removal of transmission equipment, or
3. Replacement of transmission equipment.

N. “Existing” means a constructed tower or base station that was reviewed, approved, and lawfully constructed in accordance with all requirements of applicable laws as of the time it was built, for example, a tower that exists as a legal, non-conforming use and was lawfully constructed is existing for the purposes of this definition.

QL. “Excess Capacity” means the volume or capacity in any existing or future duct, conduit, manhole, handhold or other utility facility within the right of way that is or will be available for use for additional telecommunications or cable facilities.

PM. “Facilities” means the plant, equipment, structures and property within the city used to transmit, receive, distribute, provide or offer telecommunications or cable service.

QN. “FCC” or “Federal Communications Commission” means the federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and cable operators on a national level.

RO. “Franchise” or “franchise agreement” means a master permit. It is ~~an agreement~~ required with any telecommunications carrier or cable operator who desires to construct, install, operate, maintain or otherwise locate facilities in rights of way and to also provide telecommunications or cable services to persons or areas in the city.

SP. “Grantee” means telecommunications carriers and cable operators granted rights and bound by obligations as more fully described herein.

TQ. “License” is an agreement with any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in rights of way and to also provide telecommunications services exclusively to persons and areas outside the city.

U. “Macrocell” means a cell used in cellular networks with the function of providing radio coverage to a large area of mobile network access. A macrocell differs from a microcell or small cell by offering a larger coverage area and high-efficiency output. The macrocell is placed on stations where the output power is higher, usually in a range of tens of watts.

V. “Master permit” means the agreement in whatever form whereby the city may grant general permission to a service provider to enter, use, and occupy the right-of-way for the purpose of locating facilities. For the purposes of this chapter, a franchise, except for a cable television franchise, is a master permit. A master permit does not include cable television franchises.

W. “Master permittee” means the person, firm, or corporation to whom or which a master agreement, as defined in this section, is granted by the city council under this and the lawful successor, transferee or assignee of said person, firm or corporation subject to such condition as may be defined in this chapter.

XR. “Open Video System” means those systems defined and regulated as open video systems by the federal Communications Commission, pursuant to Section 653 of the Federal Communications Act of 1934, as amended, [47 U.S.C. 573](#).

YS. “Ordinance” means the City of Lacey Telecommunications Ordinance, Chapters [5.60](#) of the Lacey Municipal Code.

ZF. “Overhead Facilities” means telecommunications and/or cable facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

AAU. "Person" means corporations, companies, associations, firms, partnerships, limited liability companies, other entities and individuals.

BBV. "Rights of Way" includes the surface of and space above and below any real property in the city in which the city has any interest whether in fee, easements, or otherwise, or interest as a trustee for the public, as they now or hereafter exist, including, but not limited to, all public streets, highways, avenues, roads, reservoirs, alleys, sidewalks, tunnels, viaducts, bridges, skyways, parks, trails, or any other public place, area or property under the control of the city.

CCW. "Service Connection" means a connection made to a telecommunications facility and/or cable facility for the purpose of providing telecommunications or cable services.

DD. "Service Provider" is defined in accordance with RCW 35.99.010 (6). Service provider shall include those infrastructure companies that provide telecommunications services or equipment to enable the deployment of personal wireless services.

EE. "Small Cell Wireless Facility" means a wireless communication facility where each antenna is located inside an enclosure of no more than three cubic feet in volume and all equipment associated with antenna is not cumulatively larger than twenty-eight cubic feet in volume. The following associated equipment is included in the calculation of associated equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch, and cut-off switch. The structure on which antenna facilities are mounted is: 50 feet or less, no more than 10 percent taller than other adjacent structures, or not extended to height of more than 50 feet or by more than 10 percent above its preexisting height as a result of the co-location of new antenna facilities.

FFX. "State" means the State of Washington.

GG. "Substantial Change"

1. For towers other than towers in the public rights-of-way it increases the height of the structure 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
2. 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;

3. 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 that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
4. It entails any excavation or deployment outside the current site
5. It would undermine the concealment elements of the eligible support structure; or
6. It does not comply with conditions associated with the siting approval of the construction modification of the eligible support structure equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs 1, 2, and 3 of this definition.
7. For purposes of determining whether a substantial change exists, changes in height are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to January 10, 2019.

HHY. “Surplus Space” means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Washington Utilities and Transportation Commission, to allow its use by a telecommunications carrier for a pole attachment.

IIZ. “Telecommunications Carrier” for purposes of Chapter 5.60 includes every person that directly or indirectly owns, controls, operates or manages plant, equipment, structures, or property within the city, used or to be used for the purpose of offering telecommunications service. Provided, however, this does not include lessees that solely lease bandwidth (and do not own telecommunications facilities within the city of Lacey).

JJAA. “Telecommunications Facilities” see “Facilities”.

~~KKBB~~. “Telecommunications Service” means the providing or offering for rent, sale or lease, or in exchange for other value received, the transmittal of voice, data, image, graphic or video programming information or service(s) between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium, provided, however, for the purposes of Chapter [5.60](#), cable service shall not be considered a telecommunications service. For wireless communications services and facilities see Lacey Municipal Code [16.68](#).

~~LL~~. “Tower” means any structure 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 service and fixes wireless services such as microwave backhaul and the associated site.

~~MMGG~~. “Underground Facilities” means telecommunications and/or cable facilities located under the surface of the ground, alone or in combination, direct buried or in utility tunnels or conduits, excluding the underground foundations or supports for overhead facilities.

~~NNDD~~. “Washington Utilities and Transportation Commission” or “WUTC” means the state administrative agency, or lawful successor, authorized under Title [80](#) of the Revised Code of Washington to regulate and oversee telecommunications carriers, services and telecommunications providers in the state of Washington to the extent prescribed by law.

Section 2. Section 5.60.060 of the City of Lacey Municipal Code is hereby amended as follows:

5.60.060 Registration required.

A. Business registration. All telecommunications carriers or cable operators having facilities within the city that offer or provide telecommunications or cable service within the city who are not otherwise required to acquire a license or franchise, shall register and pay all the fees with the city as set forth in Chapter [5.12](#) of the Lacey Municipal Code or as may be set by resolution.

B. Exception to registration. A person that provides telecommunications or cable services solely to itself, its affiliates or members between points in the same building, or between closely located buildings under common ownership or control, provided that such person does not use or occupy any

rights of way of the city or other ways within the city, is excepted from the registration requirements pursuant to Chapter [5.60](#).

Section 3. Section 5.60.070 of the City of Lacey Municipal Code is hereby amended as follows:

5.60.070 License or franchise application.

To the extent permitted by law, any telecommunications carrier or cable operator who currently occupies or desires in the future to occupy any rights of way with any facilities for the purpose of providing telecommunications or cable services shall file an application on a form provided by the city manager for one or more of the following:

- A. License. Required if the telecommunications carrier or cable operator provides or intends to provide services exclusively to persons or areas outside the city.
- B. Telecommunications franchise/master permit. Required if the telecommunications carrier provides or intends to provide service to any person or area within the city.
- C. Cable franchise. Required if the cable operator provides or intends to provide cable services to any person or area in the city. Services similar to cable service, such as open video systems, shall also be subject to Chapter [5.60](#), and subject to substantially similar terms and conditions as those contained in franchise agreement(s) issued to cable operator(s) in the city with respect to franchise fee obligations, public, educational, and governmental access programming obligations, and all other franchise obligations to the extent provided by law.

Section 4. Section 5.60.080 of the City of Lacey Municipal Code is hereby amended as follows:

5.60.080 Determination by the city.

Within one hundred twenty days after receiving a complete application hereunder, the ~~city council shall make a determination on behalf of the city granting or denying~~ City Engineer, or other department as the City Manager may designate, shall make a recommendation to City Council on whether to deny or grant the application in whole or in part. A recommendation to deny an application may be based on the criteria contained in LMC 16.68.050 for all small cell facilities proposed for location in the public rights-of-way and with respect to all franchise application any of the following;. If the application is

denied, the determination shall include the reasons for denial. The following criteria shall apply when determining whether to grant or deny the application:

A. The applicant must have financial and technical ability.

B. The applicant must have legal ability to provide the service or use proposed for franchise authorization.

C. The capacity of the rights-of-way to accommodate additional utility and telecommunications facilities if the application is granted.

DA. The applicant must have current registration issued by the FCC and WUTC.

EB. The applicant must demonstrate the willingness and ability to mitigate and/or repair damage or disruption, if any, to public or private facilities, improvements, services, travel or landscaping if the application is granted.

F. The damage or disruption, if any, of public or private facilities, improvements, service, travel. Or landscaping if the application is granted, giving consideration to an applicant's willingness and ability to mitigate or repair same.

G The availability of alternate locations for the proposed facilities.

HC. The grant to use the rights of way will serve the community interest.

ID. Applicable federal, state and local laws, regulations, rules and policies will be met.

Section 5. Section 5.60.090 of the City of Lacey Municipal Code is hereby amended as follows:

5.60.090 Conditions.

The following conditions apply to each license or franchise granted hereunder:

A. Area and location. As part of the construction permitting process for specific routes requested within each license or telecommunications or cable franchise, a determination will be made whether sufficient capacity is available in the rights of way. Alternate routes or locations for the proposed facilities may be considered if feasible.

1. License route. A license granted hereunder shall be limited to a grant of specific rights of way and defined portions thereof, as may be indicated in the license agreement.
2. Franchise territory. A telecommunications or cable franchise granted hereunder shall encompass all territory within the corporate limits.
3. Facilities maps. Upon request by the director, the grantee shall provide the city with maps in a format agreed to by the grantee and the city, identifying the location of all telecommunications and cable facilities within the rights of way except individual service connections.

B. Leased capacity. A grantee shall have the right to offer or provide excess conduit capacity to another telecommunications or cable provider with prior city notification, provided that:

1. Grantee shall furnish the city sixty days advance written notice of any such proposed lease or agreement;
2. The proposed lessee shall comply with all of the requirements of this chapter prior to providing telecommunications or cable service.

C. Consistency within class. All licenses and telecommunications and cable franchises granted pursuant to Chapter 5.60 shall contain substantially similar terms which, taken as a whole and considering relevant characteristics of applicants, are substantially consistent with those required of other licensees and telecommunications and cable franchisees.

D. Limitations.

1. No grant shall convey any right, title or interest in rights of way but shall be deemed a license or franchise only to use and occupy the rights of way for the limited purposes and term stated in the grant.
2. No grant shall authorize or excuse a licensee or franchisee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use rights of way.
3. No grant shall expressly or implicitly authorize a licensee or franchisee to provide service to, or install a system on private property without owner consent, or to use publicly or privately owned poles, ducts or conduits without a separate agreement with the owners and to the extent provided by law.

4. No grant shall confer any exclusive right, privilege or license to occupy or use the rights of way for delivery of telecommunications or cable services or for any other purposes.

5. Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the city's power of eminent domain.

E. Interference with the rights-of-way. No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the rights-of-way by the City, by the general public or other persons, or other persons authorized to use or be present in or upon the rights-of-way. All such facilities shall be moved by and at the expense of the grantee, temporarily or permanently as determined by the City.

F. Damage to Property. No grantee or any person acting on a grantee's behalf shall take any action or permit any action to be done which may impair or damage any rights-of-way, including specifically city property, real or personal, or public ways or other property located in, on or adjacent thereto except in accordance with this chapter.

G. Notice of Work. Unless otherwise provided in a franchise agreement, no grantee, or any person acting on the grantee's behalf, shall commence any nonemergency work in or about rights-of way. Any private property owner whose property will be affected by a grantee's work shall be afforded 10 working days advance written notice of such work.

H. Repair and Emergency Work. In the event of an emergency or an emergency repair necessary to protect the public, restore service or mitigate further damage to the system, a grantee may commence such repair and emergency response work as required under the circumstances

I. Maintenance of facilities. Each grantee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state, and local requirements.

J. Restoration of rights-of-way or other property. Restoration shall comply with the requirements outlined in F above. Additionally:

- i. When a grantee, or any person on its behalf, does any work in or affecting any rights-of-way, or any other property, it shall, at its own expense promptly remove any obstructions therefrom and restore such way or property to the same condition which existed before the work was undertaken.

- ii. If weather or other conditions do not permit the complete restoration required hereunder, the grantee shall temporarily restore the affected rights-of-way or other property. Such temporary restoration shall be at the grantee's sole expense and the grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
- iii. A grantee or other person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measure as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting rights-of-way or any other property.

K. Term. Unless otherwise specified in a license, telecommunications franchise or cable franchise agreement, the term shall be for no more than ten years.

Section 6. Section 5.60.100 of the City of Lacey Municipal Code is hereby amended as follows:

5.60.100 Applicability to use of rights of way.

The terms of Chapter [5.60](#) shall apply to all grantees.

A. General duties.

1. All grantees, before commencing any construction in the rights of way, shall acquire appropriate permits and comply with all requirements of the Lacey Municipal Code, specifically Chapters [12.16](#) and [12.22](#), and the City of Lacey Development Guidelines. In the event of a conflict between Chapter [5.60](#) and the Lacey Development Guidelines, the Lacey Development Guidelines shall control.
2. All grantees shall have no ownership rights in rights of way, even though they may be granted a license, franchise or cable franchise to construct or operate their facilities.
3. Nothing herein shall limit or otherwise affect the authority of the city to require a lease for any use, occupation, construction, installation, maintenance or location upon any property owned in fee by the city.

B. Physical location of facilities. Unless otherwise required in current or future city ordinances regarding underground construction requirements, all facilities shall be constructed, installed and located in accordance with hierarchy of the following terms and conditions:

1. Telecommunications and cable facilities shall be installed within an existing underground duct or conduit whenever excess capacity exists within such utility facility and permission can be obtained reasonably from the installer of such duct or conduit.
2. Whenever one or more existing telephone, electric utilities, cable systems or telecommunications facilities are located underground within rights of way, a licensee or franchisee shall occupy the same trench where reasonable and practical.
3. When sufficient capacity is not available in Chapter 5.60.100 B(1) or (2), the telecommunications or cable facility shall be installed underground within the rights of way below the sidewalk or within the planter strip.
4. A franchisee or licensee with written authorization to install overhead facilities shall install its telecommunications or cable facilities on pole attachments to existing utility poles only, and then only if surplus space is available.
5. When a franchisee or licensee has been granted authority to install overhead facilities as in Chapter 5.60.100 B(4) and the city directs such facilities to be relocated to allow construction or reconstruction within the right of way, a licensee or franchisee that occupies the same rights of way shall concurrently relocate its facilities underground at its expense.

C. Conduit occupancy. In furtherance of the public purpose of reduction of rights of way excavation, it is the goal of the city to encourage both the shared occupancy of underground conduit as well as the construction, whenever possible, of excess conduit capacity for occupancy of future rights of way occupants.

1. City use. At the option of the city, whenever new conduit is laid by the licensee or franchisee, the city shall be provided access to the open trench or bore hole and space shall be made available for purposes of installing one two-inch conduit for city use. There shall be no cost to the city associated with the trenching, backfilling, boring or surface restoration involved with these activities. While not an inclusive list, such option will be exercised primarily on arterial streets or near environmentally sensitive areas.

2. Use by others. When the city reasonably determines such construction is in an area in which another telecommunications or cable provider may also construct telecommunications or cable facilities in the future, the city may require the franchisee or licensee to construct or install excess conduit capacity in the rights of way, provided the expense of such excess conduit capacity shall be borne by the city or other such person who contracts with the city to bear the expense. This will be calculated as the difference between what grantee would have paid for the construction of its conduit and the additional cost only of the excess conduit. The grantee may manage the excess conduit itself and be permitted to charge a reasonable market lease rate for occupancy of the additional conduit space, provided such lease revenues shall be first applied to reimburse the city for its actual contribution to the construction of the excess conduit, plus interest compounded at the Washington State Local Government Investment Pool rate during the time in question.

D. Occupancy of city owned conduit. In furtherance of the same objectives of 5.60.100(C), if the city owns conduit in the path of grantee's proposed facilities, and provided it is technologically feasible for grantee to occupy the conduit owned by the city, grantee shall be required to occupy the conduit owned by the city in order to reduce the necessity to excavate the rights of way. Grantee shall pay to the city a reasonable fee for such occupancy.

E. Relocation or removal of facilities. Within ninety days following written notice from the city, a grantee shall, at its own expense, temporarily or permanently remove, relocate, place underground, change or alter the position of any telecommunications or cable facilities within the rights of way whenever the director shall have determined that such removal, relocation, undergrounding, change or alteration is reasonably necessary for:

1. The construction, repair, maintenance or installation of any city or other public improvement in or upon the rights of way;
2. The operations of the city or other governmental entity in or upon the rights of way.

F. Removal of unauthorized facilities.

1. A telecommunications or cable facility is unauthorized and subject to removal in the following circumstances:
 - a. Upon expiration or termination of the grantee's license, telecommunications franchise or cable franchise unless otherwise provided by law;

- b. Upon abandonment of a facility within the rights of way;
- c. If the facility was constructed or installed without the prior issuance of a required encroachment or utility permit, license, telecommunications franchise, or cable franchise;
- d. If the facility was constructed or installed at a location not permitted by the grantee's license, franchise or cable franchise;
- e. To the extent permitted by law, any such other reasonable circumstances affecting public health, safety, and welfare deemed necessary by the city manager.

2. The city manager may exercise discretion to allow an unauthorized facility to come into compliance with Chapter [5.60](#) upon written request of the unauthorized telecommunications carrier or cable operator made within thirty days after said carrier or operator is notified that the facility is unauthorized pursuant to Chapter [5.60](#). Notice shall be given in accordance with Chapter [5.60.130](#). The city manager shall make the determination of whether to allow said carrier or operator to cure by using the standards of review set forth in Chapter [5.60.130](#).

3. Failure to relocate. If a grantee is required to relocate, change or alter the telecommunications facilities constructed, operated and/or maintained hereunder and fails to do so, the City may cause such to occur.

4. Emergency removal. The city retains the right and privilege to cut or move any telecommunications facilities located within the right-of-way as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

53. Notwithstanding any other provision of Chapter [5.60](#), the city manager may, if deemed appropriate, allow a grantee or other person who may own, control or maintain a telecommunications or cable facilities within the rights of way of city to abandon such facilities in place. No facilities of any type may be abandoned in place without the express written consent of the city manager. Any plan for abandonment or removal of such facilities must be first approved by the city manager and all necessary permits must be obtained prior to commencement of such work. Upon permanent abandonment of any telecommunications or cable facilities of such persons in place, the facilities shall become the property of the city, and such persons shall submit to the city manager an instrument in writing, to be approved by the city attorney, transferring ownership of such facilities to the city. The provisions of

Section [5.60.100](#)(F)(3) shall survive the expiration, revocation or termination of any license, franchise or cable franchise granted under Chapter [5.60](#).

Section 7. Section 16.68.020 of the City of Lacey Municipal Code is hereby amended as follows:

16.68.020 Definitions.

A. “Accessory Equipment” means any equipment serving or being used in conjunction with a wireless communications facility as defined herein, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

B. “Antenna” means any device used to transmit and/or receive radio or electromagnetic waves such as but not limited to panel antennas, reflecting discs, microwave dishes, whip antennas, directional and non-directional antennas consisting of one or more elements, multiple antenna configurations, or other similar devices and configurations, and exterior apparatus designed for telephone, radio, or television communications through the sending and/or receiving of wireless communications signals.~~the specific device the surface to which is used to capture an incoming and/or to transmit an outgoing radio frequency signal.~~ Antennas include the following types:

1. Omni-Directional (or ‘whip’) Antenna. Receives and transmits signals in a three hundred-sixty degree pattern, and which is up to fifteen feet in height and up to four inches in diameter.
2. Directional (or ‘panel’) Antenna. Receives and transmits signals in a directional pattern typically encompassing an arc of one hundred-twenty degrees.
3. Parabolic (or ‘dish’) Antenna. A bowl shaped device that receives and transmits signals in a specific directional pattern.
4. Ancillary Antenna. An antenna that is less than twelve inches in its largest dimension and that is not directly used to provide persona wireless communications services. An example would be a global positioning satellite (GPS) antenna.
5. Other. All other transmitting or receiving equipment not specifically described herein shall be regulated in conformity with the type of antenna described herein which most closely resembles such equipment.

C. “Antenna Height” means the vertical distance measured from average building elevation or pole height to the highest point of the antenna, or if on a rooftop or other structure, from the top of the roof or structure to the highest point of the antenna.

D. “Camouflage” “Concealment” or “Camouflage Design Techniques” means that a wireless communication facility is camouflaged or utilizes camouflage design techniques when any measures are used in the design and siting of wireless communication facilities with the intent to minimize or eliminate the visual impact of such facilities to surrounding uses.

EB. “Co-location” means the use of a single support structure or attachment support structure and/or site by ~~more than one~~ wireless communications provider. When used in the context of an Eligible Facilities Request, co-location means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signal for communication purposes.

F. “Eligible Facilities Request” means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station involving:

1. Co-location of new transmission equipment
2. Removal of transmission equipment; or
3. Replacement of transmission equipment

G. “Existing” means a constructed tower or base station that was reviewed, approved, and lawfully constructed in accordance with all requirements of applicable laws as of the time it was built, for example, a tower that exists as a legal, non-conforming use and was lawfully constructed is existing for the purposes of this definition.

HG. “Equipment enclosure” means a small structure, shelter, cabinet, or vault used to house and protect the electronic equipment necessary for processing wireless communications signals. Associated equipment may include air conditioning and emergency generators for macrocells only.

I. “FCC” or “FCC” or “Federal Communications Commission” means the federal administrative agency, or lawful successor, authorized to regulate and oversee broadband carriers, services, and providers on a national level.

J. “Macrocell” means a cell used in cellular networks with the function of providing radio coverage to a large area of mobile network access. A macrocell differs from a microcell or small cell by offering a larger coverage area and high-efficiency output. The macrocell is placed on stations where the output power is higher, usually in a range of tens of watts.

K. "Small Cell Wireless Facility" means a wireless communication facility where each antenna is located inside an enclosure of no more than three cubic feet in volume and all equipment associated with antenna is not cumulatively larger than twenty-eight cubic feet in volume. The following associated equipment is included in the calculation of associated equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. The structure on which antenna facilities are mounted is: 50 feet or less, no more than 10 percent taller than other adjacent structures, or not extended to a height of more than 50 feet or by more than 10 percent above its preexisting height as a result of the collation of new antenna facilities.

D. "Stealth technology" means those strategies and technological innovations designed to resemble other features in the surrounding environment to better blend or integrate the technology into an area. Strategies include, but are not limited to, hiding, masking or screening the feature or mimicking other surrounding features.

L. "Substantial Change" means a modification that substantially changes the physical dimensions of an eligible support structure, if, after the modification, the structure meets any of the following criteria:

1. For towers other than towers in the public rights-of-way it increases the height of the structure 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
2. 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;
3. 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 that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
4. It entails any excavation or deployment outside the current site
5. It would undermine the concealment elements of the eligible support structure; or

6. It does not comply with conditions associated with the siting approval of the construction modification of the eligible support structure equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs 1, 2, and 3 of this definition.
7. For purposes of determining whether a substantial change exists, changes in height are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to January 10, 2019.

ME. “Support structure” means the structure to which antenna and other necessary associated hardware is mounted. Support structures include but are not limited to the following:

1. Lattice tower. A support structure which consists of a network of crossed metal braces, forming a tower which is usually triangular or square in cross-section.
2. Monopole. A support structure which consists of a single pole sunk into the ground and/or attached to a foundation.
3. Existing non-residential structure. Existing structures as specified in LMC [16.68.030](#) to which antennas may be attached which conform to the requirements of LMC [16.68.030](#).
4. Existing utility pole.

N. “Utility Pole” means a structure designed and used primarily for the support of electrical wires, telephone wires, television cable, traffic signals, or lighting for streets, parking areas, or pedestrian paths.

OF. “Wireless Communications Facility (WCF)” means an unstaffed facility for the transmission and reception of radio or microwave signals used for commercial communications. WCFs are composed of two or more of the following components:

1. antenna
2. support structure
3. equipment enclosure

4. security barrier.

Section 8. Section 16.68.025 of the City of Lacey Municipal Code is hereby amended as follows:

16.68.025 Review process.

A. Macrocells WCFs

1. All requests to locate wireless communication facilities in Lacey shall receive site plan review approval pursuant to Section 1C.040 of the City of Lacey Development Guidelines and Public Works Standards or conditional use permit approval pursuant to Section 1C.050 of the City of Lacey Development Guidelines and Public Works Standards.

2. B.—Wireless communication facilities proposed for co-location or location on existing commercial buildings or public structures or public property shall require approval through the site plan review process of Chapter 16.84 LMC.

3.

C.—Wireless communication facilities proposed as free-standing support structures shall require conditional use permit approval pursuant to Section 1C.050 of the City of Lacey Development Guidelines and Public Works Standards.

B. Small Cell and Distributed Antenna System (DAS) WCFs

1. All requests to locate small cell wireless/DAS communication facilities in Lacey shall receive site plan review approval pursuant to Section 1C.040 of the City of Lacey Development Guidelines and Public Works Standards

2. A master permit shall be in place prior to any construction, installation, and/or placement within the City of any WCF or associated equipment.

3. All requests to locate small cell/DAS WCFs in Lacey shall meet requirements in 16.68.050 (C) and must be approved prior to installation, and/or placement within the City of any WCF or associated equipment.

4. A Right of Way (ROW) permit shall be obtained pursuant to 12.16, 12.22 and 12.28 LMC prior to any construction, installation, and/or placement within the City Rights of Way.

CD. Third party review of submittal requirements. Because of the complexity of technical data and analysis required for adequate review of proposals, a third party may be contacted for review and analysis of such applications, particularly where disputes arise regarding the capability of meeting city goals, standards or policies in siting these facilities. The third party analysis will be at the discretion of the Community Development Director and will be at the expense of the applicant. The cost of such analysis will be agreed to and paid prior to processing or any action on the permit application.

Section 9. There is hereby added to the City of Lacey Municipal Code a new Section 16.68.026 to read as follows:

16.68.026 Conditional use permit exemptions.

A. The following are exempt from the requirement of conditional use permit, and shall be considered a permitted use in all zone districts where WCFs are permitted:

1. Minor modifications of existing WCFs and attached WCFs, whether emergency or routine, so long as there is little or no change in the visual appearance. "Minor modifications" are those modifications, including the addition of antennas, to conforming wireless and attached WCFs that meet the performance standards set forth in this chapter.

2. Small cell facilities co-located in the right-of-way to the extent they meet all other applicable requirements in this chapter and Chapter 5.60 and are not in a residential zone.

3. Changes that are not "substantial changes" under the definition in this chapter

Section 10. Section 16.68.027 of the City of Lacey Municipal Code is hereby amended as follows:

16.68.027 Submittal requirements.

A. Applications for macrocells proposed under Chapter 16.66 LMC. In addition to the information requested in the conditional use application the following items shall be required for a WCF application:

1. A diagram or map showing the viewshed of the proposed facility.
2. Scaled site and elevation drawings and Pp photosimulations of the proposed facility from affected residential properties and public rights-of-way at varying distances.
3. A map showing the service area of the proposed WCF and an explanation of the need for that facility.
4. A map showing the locations and service areas of other WCF sites operated by the applicant and those that are proposed by the applicant which are close enough to impact service within the city.
5. A site/landscaping plan showing the specific placement of the WCF on the site; showing the location of existing structures, trees, and other significant site features; and indicating type and locations of plant materials used to screen WCF components and the proposed color(s) for the WCF.
6. A signed statement indicating:
 - a. The applicant agrees to allow for the potential co-location of additional WCF requirement by other providers on the applicant's structure or within the same site location; and
 - b. That the applicant agrees to remove the facility within eighteen months after that site's use is discontinued.
7. A lease agreement with the landholder or letter of authorization from the owner allowing the provider to act as an agent for the landowner in a land use application.
8. Evaluation of reasonable stealth-camouflage or concealment technology that could be proposed to lessen the visual land use impacts from the facility.
9. Justification must be provided that the structure is necessary and essential, that other methods are not possible, such as use of existing structures (other towers, buildings, etc.) or use of other technological methods such as microcell technology where systems are built as part of cable systems and no towers are needed.

B. Applications submitted under Chapter 16.84 LMC may require additional information the administrator deems necessary to properly evaluate the application. ~~In addition to information listed on the site plan review application, the following information may be required:~~

~~1. Those items listed under LMC 16.68.027(A) that the administrator deems necessary to properly evaluate the application.~~

C. Applications proposed for small cells shall submit, in addition to a Site Plan Review Supplemental Form,:

a. Scaled site and elevation drawings and photosimulations of the proposed facility from affected properties and public rights-of-way at varying distances showing colors, placements, and size of antenna and all associated components of the WCF including radios, power services, all cables, and mounts.

b. A map showing the service area of the proposed WCF

c. A map showing locations and service areas of other WCF sites operated by the applicant and those that are proposed by the applicant which are close enough to impact service within the City.

d. A site plan showing the specific placement of the WCF; showing the location of existing structures, trees, and other significant site features

e. If collocating on any structure, a structural analysis

f. A lease agreement with the landowner or letter of authorization from the owner allowing the provider to act as an agent for the landowner in a land use application, if siting a small cell on private property.

Section 11. Section 16.68.030 of the City of Lacey Municipal Code is hereby amended as follows:

16.68.030 Permitted locations.

A. Zoning and land use compatibility shall be a primary consideration in location of WCFs. Industrial, commercial and public properties and existing commercial and industrial buildings with the exception of neighborhood commercial zones shall be encouraged for such use. Residential areas shall normally

not be considered except on city property preferably in conjunction with city improvements such as water towers or public buildings.

B. WCFs may be mounted on all currently existing nonresidential buildings in nonresidential zones except as follows:

1. Any building which is an accessory structure to a residence.
2. Buildings which, due to their small size, would be dominated by the facility.

C. Building mounted WCFs must meet the following conditions and criteria:

1. A building mounted WCF may consist of the following:
 - a. Nonreflective panel antenna(s);
 - b. Whip antenna(s);
 - c. Nonreflective parabolic dish;
 - d. The number of antennas shall be reasonable to accommodate the technology and maintenance compatible with the constraints of the building and prevailing land use.
2. In addition to the overall height limitations in LMC 16.68.040, the antennas should conform to the following general height restrictions relating to the existing building provided the site plan review committee may approve any height it feels is reasonably necessary to meet the requirements of the technology that is also compatible with surrounding land uses so as not to significantly impact the aesthetic character of the area.
 - a. Fifteen feet measured to the top of a panel antenna above the roof proper of the existing building at the point of attachment.
 - b. Twenty feet measured to the tip of a whip antenna above the roof proper of the existing building at the point of attachment.
 - c. Five feet measured to the top of a parabolic dish above the roof proper of the existing building at the point of attachment.

3. Whip antennas shall be camouflaged and located to minimize views from residential structures and rights-of-way.
4. Panel and parabolic antennas shall be adequately screened from residential views and public rights-of-way in a manner that is architecturally compatible with the building on which it is located.
5. Equipment enclosures shall be located within the building in which the facility is placed or located underground if site conditions permit. Otherwise, equipment enclosures shall be screened from view by compatible wall, fences or landscaping.
6. Design review standards of Chapter [14.23](#) LMC.

D. WCFs requiring construction of a support structure may be located on the site of existing nonresidential uses in nonresidential zones except the following:

1. Areas where support structures may not be effectively screened from view by existing structures.
2. Areas where support structures cannot be adequately set back from the nearest residential use property line or the nearest vacant property zoned for residential use (usually a minimum of fifty feet), measured from the property line.

E. WCFs requiring construction of a support structure must be located on a portion of the site that is effectively isolated from view of residential areas or public rights-of-way by structures or terrain features unless they are integrated or act as an architectural element of the structure, such as a flag pole.

F. WCFs are not allowed on properties zoned for residential use except on public facilities or properties that can accommodate the use with ~~stealth camouflage or concealment~~ technology or screening designed to avoid aesthetic impacts; an example could be a water tower with a camouflaged antenna attached.

Section 12. Section 16.68.040 of the City of Lacey Municipal Code is hereby amended as follows:

16.68.040 Permitted height.

WCFs utilizing a free-standing support structure and omni-directional antennas and supporting structures shall be limited to the minimum height reasonably required to accommodate the technology. Support documentation shall be submitted justifying the requested height, which may include a technical analysis from an independent party of the city's choice. Small cell design requirements, including height limitations, are described in LMC 16.68.050C.

Section 13. Section 16.68.050 of the City of Lacey Municipal Code is hereby amended as follows:

16.68.050 Site development standards.

A. Free-standing WCFs shall conform to the following site development standards:

1. Support structures shall be set back from all residential property lines a distance equal to the height of the support structure plus the height of any antennas, and shall comply with all required setbacks of the zoning district in which it is located.
2. Support structures shall be designed and placed on the site in a manner that takes maximum advantage of existing trees, mature vegetation, and structures so as to:
 - a. Use existing site features to screen as much of the total WCF as possible from prevalent views; and/or,
 - b. Use existing site features as a background so that the total WCF blends into the background with increased sight distances.
3. Relocation of a proposed facility on the site and infill landscaping of mature plant materials consistent with landscaping of the city may be required by the city to make the best use of or to supplement existing trees and vegetation to more effectively screen the facility.
4. Support structures, panel and parabolic antennas, and any associated hardware shall be painted a nonreflective color or color scheme appropriate to the background against which the WCF would be viewed from a majority of points within its viewshed. Natural colors only may be employed and the final colors and color scheme must meet the approval of the city.
5. Equipment enclosures shall conform to the following:
 - a. Equipment enclosures will be placed underground if site conditions permit and if technically feasible.

b. Equipment enclosures shall be screened from view except as provided in LMC [16.68.050\(A\)\(5\)\(c\)](#).

c. Walk-in equipment enclosures:

(1) May not be constructed with exposed metal surfaces.

(2) May not be required to be totally screened from view provided the city finds that the walk-in equipment enclosure has been designed using materials, colors, and detailing that produces a structure which emulates the desired character of the zone in which it is located.

6. Security fencing, if used, shall conform to the following:

a. No fence shall exceed six feet in height.

b. Security fencing shall be effectively screened from view through the use of appropriate landscaping materials consistent with requirements of Chapter [16.80](#).

c. Chain-link fences shall be painted or coated with a nonreflective color.

B. The city shall consider the cumulative visual effects of WCFs mounted on existing structures and/or located on a given permitted site in determining whether additional permits can be granted so as to not adversely affect the character of the city.

C. Small Cell Wireless Communications Facilities shall conform to the following site development standards:

1. General requirements

a. All small cell WCFs in the ROW must follow City of Lacey Development Guidelines and Public Works Standards.

b. Ground mounted equipment in the rights of way is prohibited, unless such facilities are placed underground or the applicant can demonstrate that pole mounted or undergrounded equipment is technically infeasible. If ground mounted equipment is necessary, then the applicant shall submit a concealment element plan.

- c. No equipment shall be operated so as to produce noise exceeding forty-five decibels.
- d. Small cell WCFs are not permitted on traffic signal poles
- e. Replacement poles and new poles shall comply with the Americans with Disabilities Act, city construction and sidewalk clearance standards, and state and federal regulations in order to provide a clear and safe passage within the rights of way
- f. If proposed antenna and equipment attachments to utility poles cannot meet structural standards set by the City for wind velocity and weight loads, carrier is required to provide a pole replacement before attaching antenna and equipment.
- g. Applicant is required, where feasible, to place equipment on poles behind existing signs or banners already attached to poles to assist with camouflaging.
- h. Per Puget Sound Energy's requirements, all applicants must pay for their own electricity through flat-rate billing or metered use.
- i. Small cell WCF approvals shall reflect the following siting priorities:
 - i. Existing buildings
 - ii. Existing privately owned utility poles in the rights of way
 - iii. City-owned utility poles in the rights of way
 - iv. Strand mounted on cables strung between existing utility poles
 - v. Carrier-owned, new poles in the rights of way

2. Small cell WCFs attached to buildings

- a) Small cell WCFs may be mounted to the sides of a building if the antennas do not interrupt the building's architectural theme.

- b)The interruption of architectural lines or horizontal or vertical reveal is discouraged
- c)New architectural feature such as columns, pilasters, corbels, or other ornamentation that conceal antennas may be used if it complements the architecture of the existing building.
- d)Small cell WCFs shall utilize the smallest mounting brackets necessary in order to provide the smallest offset from the building
- e)Skirts or shrouds shall be utilized on the sides and bottoms of antennas in order to conceal mounting hardware, create a cleaner appearance, and minimize the visual impact of the antennas. Exposed cabling/wiring is prohibited.
- f) Small cell WCFs shall be painted and texture to match the building surfaces

3. Small cell WCFs attached to wooden poles

- a)The wooden pole at the proposed location may be replaced with a taller pole for the purpose of accommodating a small cell facility; provided, that the replacement pole shall not exceed a height that is a maximum of ten feet taller than the existing pole, unless a further height increase is required and confirmed in writing by the pole owner and that such height extension is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities.
- b)A pole extender may be used instead of replacing an existing pole, but may not increase the height of the existing pole by more than ten feet, unless a further height increase is required and confirmed in writing by the pole owner and that such height increase is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities. A “pole extender” as used herein is an object affixed between the pole and the antenna for the purpose of increasing the height of the antenna above the pole. The pole extender shall be painted to approximately match the color of the pole and shall substantially match the diameter of the pole measured at the top of the pole.

- c) Replacement wooden poles may either match the approximate color and materials of the replaced pole or shall be the standard new wooden pole used by the owner in the City.
- d) Antennas, equipment enclosures, and all ancillary equipment, boxes and conduit shall be colored or painted to match the approximate color of the surface of the wooden pole on which they are attached.
- e) Panel antennas shall be mounted as close to the surface of the wooden pole as practical.
- f) Antennas should be placed in an effort to minimize visual clutter and obtrusiveness. Multiple antennas are not permitted.
- g) A canister antenna may be mounted on top of an existing wooden pole, which may not exceed the height requirements described in 3(i) above. A canister antenna mounted on the top of a wooden pole shall not exceed sixteen inches, measure at the top of the pole and shall be colored or painted to match the pole. The canister antenna must be placed to look as if it is an extension of the pole. In the alternative, the applicant may proposed a side mounted canister antenna, so long as the inside edge of the antenna is no more than twelve inches from the surface of the wooden pole. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the wooden pole.
- h) An omni-directional antenna may be mounted on the top of an existing wooden pole, provided such an antenna is no more than four feet in height and is mounted directly on top of a pole or attached to a sleeve made to look like the exterior of the pole as close to the top of the pole as technically feasible. All cables shall be concealed within the sleeve between the bottom of the antenna and the mounting bracket.
- i) All related cables and equipment shall be flush mounted to the surface of the pole, unless a further distance is technically required and is confirmed in writing by the pole owner.

4. Small cell WCFs attached to non-wooden poles

- a) A structural analysis is required to be submitted by applicant. If antennas and equipment to be attached to an existing non-wooden pole cannot meet load or wind requirements, the applicant is required to provide a replacement pole. See (e) below.
- b) Antennas and the associated equipment enclosures shall be sited and installed in a manner which minimizes the visual impact on the streetscape wither by full concealing the antennae and associated equipment fully within the pole or through a concealment element plan which provides an equivalent or greater impact reduction. This requirement shall be applied in a manner which does not dictate the technology employed by the service provider nor unreasonably impair the technological performance of the equipment chosen by the service provider.
- c) All conduit, cables, wires, and fiber must be routed internally in the light pole. Full concealment of all conduit, cables, wires and fiber is required within mounting brackets, shrouds, canisters or sleeves if attaching to exterior antennas or equipment.
- d) An antenna on top of an existing pole may not extend more than six feet above the height of the existing pole and the diameter may not exceed sixteen inches, measure at the top of the pole, unless the applicant can demonstrate that more space is needed. The antennas shall be integrated into the pole design so that it appears as a continuation of the original pole, including colored or painted to match the pole, and shall be shrouded or screened to blend with the pole except for the canister antennas which shall not require screening. All cabling and mounting hardware/brackets from the bottom of the antenna to the top of the pole shall be fully concealed and integrated with the pole.
- e) Any replacement pole shall substantially conform to the design of the pole it is replacing or the neighboring pole design standards utilized within the contiguous right of way.
- f) The height of any replacement pole may not extend more than ten feet above the height of the existing pole or the minimum additional height necessary for adequate clearing from electrical wires, whichever is greater.

g)The diameter of a replacement pole shall comply with the City's setback and sidewalk clearance requirements, ADA requirements, and if a replacement light, then with the City's lighting requirements.

h)The use of the pole for the siting of a small cell facility shall be considered secondary to the primary function of the pole. If the primary function of a pole serving as the host site for a small cell facility becomes unnecessary, the pole shall not be retained for the sole purpose of accommodating the small cell facility and the small cell facility and all associated equipment shall be removed.

5. Small cell WCFs mounted on cables strung between existing utility poles

a) Each strand mounted facility must be less than three cubic feet in volume

b) Only one strand mounted facility is permitted per cable between any two existing poles

c) The strand mounted devices shall be placed as close as possible to the nearest utility pole, in no event more than five feet from the pole unless a greater distance is required by the pole owner for safety clearance

d) No strand mounted device shall be located in or above the portion of the roadway open to vehicular traffic

e) Carrier may not place an ancillary pole or ground mounted equipment to accommodate such strand mounted facilities, unless in case of ground mounted equipment placed in preexisting cabinets

6. New poles for small cell WCFs in the rights of way

a)New poles within the rights of way only permitted if the applicant can establish that:

i. The proposed small cell facility cannot be located on an existing utility pole or light pole, electrical transmission tower or on a site outside of the public rights of way such as a public park, public property, building, or transmission tower.

- ii. The new pole is no closer than 250 feet away radially, from another privately-owned freestanding small cell
- iii. The proposed wireless communications facility receives approval for a concealment element design, as describes in subsection 3 below;
- iv. The proposed wireless facility also complies with shoreline and SEPA, if applicable; and
 - a. No new poles shall be located in a critical area or associated buffer required by the City's Critical Areas Management ordinance, except when determined to be exempt pursuant to said ordinance.
 - b. The concealment element design shall include the design of the screening, fencing, or other concealment technology for a tower, pole or equipment structure, and all related transmission equipment of facility associated with the proposed wireless communication facility, including but not limited to fiber and power connections.
 - c. The concealment element design should seek to minimize the visual obtrusiveness of wireless communications facility installations. The proposed pole or structure should have similar designs to existing neighboring poles in the rights of way, including to the extent technically feasible similar height. Other concealment methods include, but are not limited to, integrating the installation with architectural features or building design components, utilization of coverings of concealment devices of similar material, color and texture – or the appearance thereof – as the surface against which the installation will be seen or on which it will be installed, landscape design, or other camouflage strategies appropriate for the type of installation. Applicants are required to utilize designs in which all conduit and wirelines are installed internally in the structure or otherwise integrated into the design of the structure.

- a. If the Director has already approved a concealment element design either for the applicant or another wireless communications facility along the same public right of way or for the same pole type, then the applicant shall utilize a substantially similar concealment element design, unless it can show that such concealment element design is not physically or technologically feasible, or that such deployment would undermine the generally applicable design standards.
- b. Prior to the issuance of a permit to construct a new pole or ground mounted equipment in the right of way, the applicant must obtain a site-specific agreement from the city to locate such new pole or ground mounted equipment. This requirement also applies to replacement poles that are higher than the replaced pole, and the overall height of the replacement and the proposed wireless communication facility is more than fifty feet.
- These design standards are intended to be used solely for the purpose of concealment and siting. Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirement would unreasonably impair the function of the technology chosen by the applicant, alternative forms of concealment of deployment may be permitted which provide similar or greater concealment.

Section 14. Section 16.68.060 of the City of Lacey Municipal Code is hereby amended as follows:

16.68.060 Co-location.

A. A permittee shall cooperate with other WCF providers in co-locating additional antennas on macrocell support structures and/or on existing buildings provided said proposed co-locators have received an appropriate permit for such use at said site from the city. A permittee shall exercise good faith in co-locating with other providers and sharing the permitted site, provided such shared use does not give rise to a substantial technical level impairment of the ability to provide the permitted use (i.e., a significant interference in broadcast or reception capabilities as opposed to a competitive conflict or financial burden). Such good faith shall include sharing technical information to evaluate the feasibility of co-location. In the event a dispute arises as to whether a permittee has exercised good faith in accommodating other users, the city may require a third party technical study at the expense of either or both the applicant and permittee.

B. All applicants shall demonstrate reasonable efforts in developing a co-location alternative for their proposal.

C. Failure to comply with the co-location requirements of this section may result in the denial of a permit request or revocation of an existing permit.

Section 15. There is hereby added to the City of Lacey Municipal Code a new Section 16.68.070 to read as follows:

16.68.070 Technical and Safety Requirements.

A. Construction and installation. The construction and installation of antenna support structures, antennas, attachment support structure and equipment enclosures shall be subject to the requirements of the City's Development Guidelines and Public Works Standards (with structural calculations provided by the applicant's Washington-licensed engineer), including the City's electrical code, and all applicable and most current standards published by the Electronics Industries Association/Telecommunications Industries Association (EIA/TIA). For structural components in particular, analysis per the most current TIA-222 is required.

B. WCF equipment enclosures. WCF enclosures shall be kept locked at all times and shall be clearly labeled as to the owner, operator, or a person to be contacted in the event of an emergency

C. Sidewalks. WCFs shall not obstruct an existing public sidewalk or trail or area of public right of way or easement reserved for a future public sidewalk or trail

D. Street lanes. WCFs shall not obstruct a traffic lane, parking lane or bicycle lane and shall not create a traffic or sight distance impairment

Section 16. Section 16.68.080 of the City of Lacey Municipal Code is hereby amended as follows:

16.68.080 Radio frequency standards.

A. The applicant shall comply with federal standards for radio frequency emissions. Within six months after the issuance of its operational permit, the applicant shall submit a project implementation report which provides cumulative field measurements of radio frequency emissions of all antennas installed at the subject site and compares the results with established federal standards. Said report shall be subject to review and approval of the city for consistency with federal standards. If on review,

the city finds that the WCF does not meet federal standards, the city may revoke or modify this ~~conditional use permits~~.

B. The applicant shall ensure that the WCF will not cause localized interference with the reception of area television or radio broadcasts. If on review the city finds that the WCF interferes with such reception, and if such interference is not cured within sixty days, the city may revoke or modify this permit.

Section 17. There is hereby added to the City of Lacey Municipal Code a new Section 16.68.111 to read as follows:

16.68.111 Exempt Installations

The following items are exempt from the provisions of this chapter

- A. Antennas designed to receive video programming from direct broadcast satellites (DBS)
- B. Antennas designed to receive video programming from multi-channel, multi-point distributions distribution service (MMDS). MMDS is a wireless video service technology that is transmitted terrestrially rather than via satellite
- C. Antennas designed to receive video programming from television broadcast stations
- D. Industrial processing equipment and scientific or medical equipment using frequencies regulated by the FCC
- E. Antennas and related equipment no more than three feet in height that are being stored, shipped or displayed for sale
- F. Radar systems for military and civilian communication and navigation
- G. Licensed amateur (ham) radio stations
- H. Satellite dish antennas less than two meters in diameter, including direct home satellite services, when used as a secondary use of the property
- I. Routine maintenance or repair of a personal wireless service facility and related equipment (excluding structural work or changes in height or dimensions of antennas, tower, or buildings); provided, that compliance with the standards of this title are maintained

- J. Government-owned wireless communications facilities, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the City designee; except that such facilities must comply with all federal and state requirements. No wireless communications facility shall be exempt from the provisions of this chapter beyond the duration of the state of emergency
- K. Temporary, commercial wireless communications facilities, upon the declaration of a state of emergency by federal, state, or local government, or determination of public necessity by the City requirements. Said wireless communications facilities may be exempt from the provisions of this chapter up to three months after the duration of the state of emergency.
- L. Routine maintenance and repair of existing wireless communications facilities.

Section 18. PURPOSE. The purpose of the adoption of this interim zoning ordinance is to promote and protect the public health, safety and welfare, preserve the aesthetic character of the City of Lacey, adequately address infrastructure planning, and to reasonably regulate the siting of wireless communications facilities in a manner that addresses the Telecommunications Act of 1996, the Spectrum Act, and other recently adopted FCC rules, changes in technology, local concerns and efforts to provide the public with access to wireless services for its safety, convenience and productivity, all while the Planning Commission holds a public hearing, gains public input on this issue, provides a recommendation to Council, and the Council considers the final version of the Ordinance on this subject.

Section 19. DURATION OF INTERIM ZONING ORDINANCE. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council shall hold a public hearing on this Interim Zoning Ordinance within 60 days of adoption and shall adopt findings of fact justifying this Interim Zoning Ordinance no later than immediately after that hearing. This Ordinance shall be effective until six (6) months after the effective date.

Section 20. DECLARATION OF EMERGENCY. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council as required by RCW 35A.13.190. Without an immediate interim zoning ordinance establishing standards for permitting, location and aesthetics, applications for deployment for small cells, micro cells, and distributed antenna systems could be submitted and become vested, leading to the development or use of property that is incompatible with the laws adopted by the City of Lacey. Therefore, this interim zoning Ordinance

must be imposed as an emergency measure to protect the public health, safety and welfare. This Ordinance does not affect any existing vested rights.

Section 21. EFFECTIVE DATE. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth herein, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.13.190.

Section 22. SEVERABILITY. If any section, sentence, clause or phrase of this ordinance should be held to be invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 23. CORRECTIONS. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

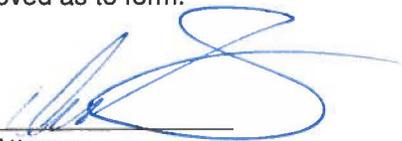
Section 24. The Summary attached hereto is hereby approved for publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, at a regularly-called meeting thereof, held this 10th day of January, 2019.

CITY COUNCIL

By: 
Mayor

Approved as to form:



City Attorney

Attest:



City Clerk

SUMMARY FOR PUBLICATION
ORDINANCE NO 1538
CITY OF LACEY

The City Council of the City of Lacey, Washington, passed on January 10, 2019, Ordinance No. 1538, entitled "AN ORDINANCE OF THE CITY OF LACEY, WASHINGTON RELATED TO INTERIM REGULATIONS FOR SMALL CELL WIRELESS COMMUNICATION FACILITIES, AMENDING SECTIONS 5.60.020, 5.60.060 – 5.60.100, 16.68.020 – 16.68.080, ADDING NEW SECTIONS 16.68.026, 16.68.070 AND 16.68.111, ALL OF THE LACEY MUNICIPAL CODE, DECLARING AN EMERGENCY AND APPROVING A SUMMARY FOR PUBLICATION.

The main points of the Ordinance are described as follows:

1. The Ordinance sets for interim regulations and amends Chapters 5.60 and 16.68 of the Lacey Municipal Code related to small cell wireless communication facilities.
2. The Ordinance sets the duration for the interim regulations.
3. The Ordinance Declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council as required by RCW 35A.13.190.
4. The Ordinance approves this Summary for Publication.

A copy of the full text of this Ordinance will be mailed without charge to any person requesting the same from the City of Lacey.

Published: January 14, 2019.