

ORDINANCE NO. 1541

CITY OF LACEY

AN ORDINANCE OF THE CITY OF LACEY, WASHINGTON MAKING FINDINGS OF FACT RELATED TO INTERIM REGULATIONS FOR SMALL CELL WIRELESS COMMUNICATION FACILITIES 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, 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; and

WHEREAS, prior to January 10, 2019, the City's current code did not specifically address small cell facilities, only macro cells and large structures; and

WHEREAS, on January 10, 2019 the Lacey City Council approved Ordinance No. 1538 by a majority plus one which Ordinance established Interim Regulations for Small Cell Wireless Facilities and Declared an Emergency; and

WHEREAS, pursuant to RCW 35A.63.220 and RCW 36.70A.390, a public hearing shall be held by the City Council within 60 days of the adoption of Ordinance 1538; and

WHEREAS, pursuant to RCW 35A.63.220 and RCW 36.70A.390 the City Council shall adopt findings of fact justifying the adoption of Ordinance 1538 no later than immediately after that public hearing; and

WHEREAS, in accordance with RCW 35A.63.220 and RCW 36.70A.390 a duly noticed public hearing was held on February 14, 2019 to receive public comment and testimony.

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

Section 1. FINDINGS OF FACT. The City Council hereby adopts the recitals expressed above as Findings of Fact in support of Ordinance No. 1538.

Section 2. 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 3. 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 4. 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 14<sup>th</sup> day of February, 2019.

CITY COUNCIL

By:   
Mayor

Approved as to form:

  
\_\_\_\_\_  
City Attorney

Attest:

  
\_\_\_\_\_  
City Clerk

SUMMARY FOR PUBLICATION  
ORDINANCE NO 1541  
CITY OF LACEY

The City Council of the City of Lacey, Washington, passed on February 14, 2019, Ordinance No. 1541, entitled "AN ORDINANCE OF THE CITY OF LACEY, WASHINGTON MAKING FINDINGS OF FACT RELATED TO INTERIM REGULATIONS FOR SMALL CELL WIRELESS COMMUNICATION FACILITIES AND APPROVING A SUMMARY FOR PUBLICATION."

The main points of the Ordinance are described as follows:

1. The Ordinance makes findings of fact in support of Ordinance No. 1538.
2. 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: February 18, 2019.