

AGENDA
LAKEWOOD CITY COUNCIL
JOINT STUDY SESSION
WITH THE BUDGET & AUDIT BOARD
CITY OF LAKEWOOD, COLORADO
VIRTUAL MEETING
JULY 6, 2020
7:00 P.M.

To watch the Council meeting live, please use either one of the following links:

City of Lakewood Website: <https://www.Lakewood.org/CouncilVideos>
or

Lakewood Speaks: <https://lakewoodspeaks.org/>

Phone Number for Public Input: (1-669-900-9128)

Webinar ID: (986 4071 1346)

(press # after entering the webinar id then press # once more to join the meeting)

Press *9 to Request to Speak

(You will be prompted when to speak. After speaking, you can hang up)

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ITEM 1 – CALL TO ORDER

ITEM 2 – ROLL CALL

ITEM 3 – PRESENTATION/DISCUSSION – COVID-19 BUDGET IMPACT UPDATES

PUBLIC INPUT

ITEM 4 – PRESENTATION/DISCUSSION – SMALL CELL

PUBLIC INPUT

ITEM 5 – COUNCIL AGENDA ITEM REQUEST FOR CONSIDERATION –

COUNCIL REQUEST #1

COUNCIL REQUEST #2

ITEM 6 – REPORTS

ITEM 7 – ADJOURNMENT

STAFF MEMO

DATE OF STUDY SESSION: JULY 6, 2020/ AGENDA ITEM NO. 3

To: Mayor and City Council

From: Holly Björklund, Chief Financial Officer, 303-987-7601

Subject: **COVID-19 BUDGET IMPACT UPDATES**

SUMMARY STATEMENT: Staff will provide City Council with an economic update and a view of City of Lakewood financials. This item will be informational and requires no specific action by City Council.

BACKGROUND INFORMATION: The world is working to understand and adjust to the impacts of COVID-19 and the City of Lakewood is doing the same. Given the breadth of this unprecedented global health and financial crisis, staff has been working hard to analyze the specific impact on the City of Lakewood, though it remains difficult to do so with any high degree of certainty. The uncertainty regarding the length of the impact has required the city to take a cautious approach when making adjustments to expenditures. Budgetary reduction goals have been communicated internally and departments are actively working to identify ways to transform business operations.

BUDGETARY IMPACTS: There is no budget impact associated with the presentation, though it is anticipated that COVID-19 will have a significant budget impact on the city.

STAFF RECOMMENDATIONS: Staff recommends City Council provide any specific questions in advance, so thoughtful answers may be researched and responded to suitably.

ALTERNATIVES: City Council may delay or forgo this presentation.

PUBLIC OUTREACH: This item was promoted through the regular communication channels for items that come before City Council.

NEXT STEPS: Staff will continue to provide City Council and the community with regular updates about the impact of COVID-19 on the city.

ATTACHMENTS: There is no attachment to this staff memo.

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Timothy P. Cox, City Attorney

STAFF MEMO

DATE OF COUNCIL MEETING: JANUARY 13, 2020 / AGENDA ITEM NO. 11
JANUARY 27, 2020 / AGENDA ITEM NO. 12
APRIL 27, 2020 / AGENDA ITEM NO. 14
DATE OF STUDY SESSION: JULY 6, 2020 / AGENDA ITEM NO. 4

To: Mayor and City Council

From: Ben Goldstein, Deputy City, 303-987-7049

Subject: **SMALL CELL CODE AND FEE UPDATES**

This ordinance was approved on 1st Reading by a vote of 10 ayes 1 nays.

SUMMARY STATEMENT: Ordinance amending Article 10 (wireless services and communications), Title 12 (streets and sidewalks) to update the Code to reflect changes in state and federal law. Staff is asking that City Council review and vote on the attached changes.

BACKGROUND INFORMATION: The City of Lakewood has seen an increase in the number of applications for “small cell” Wireless Communication Facilities (WCFs) in the public right-of-way and staff expects the volume to increase as providers roll out the new 5G technology. 5G technology uses lower power antennas that have a shorter range but have more capacity and faster speeds. This means they require a greater density of network facilities to provide coverage.

The City of Lakewood must allow small cell poles and related equipment in the public right of way under federal and state law. The city’s regulatory authority over small cell facilities is limited to the exercise of the city’s police power to address safety and aesthetic issues, including requiring design standards to address issues such as:

- Placement does not change vehicle travel or parking.
- Placement does not block vehicle, bicycle, or pedestrian access or visibility along the right of way.
- Placement in the right of way should avoid placement directly in front of structures on adjacent properties whenever possible.
- New pole placement must be 15’ from trees, existing streetlights or utility poles.
- Height of poles must generally be consistent with local zone districts.
- Facilities must include camouflage elements to minimize visual impact.

Additionally, local and state governments have very limited legal authority under federal law to regulate radio frequency emissions from wireless facilities. Preemption of local or state regulatory authority is found in the 1996 Telecommunications Act, 47 U.S.C. § 332(c)(7)(B)(iv), which provides that:

“No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.”

In 2017, changes in State law mandates that small cells are a use by right in any zoning district, and imposed (among other things) a 90 day shot clock in which the city must act on applications. In 2018, the Federal Communications Commission (FCC) adopted new regulations which (among other things) creates legal presumptions addressing the maximum amount of fees that can be charges for licenses and permits, the parameters in which design standards can be enforced and has its own shot clocks for acting on applications. The FCC regulations say they are not intended to preempt most state law requirements, although in some respects those regulations do conflict with Colorado law.

Small Cells are commonly installed on streetlights and utility poles, although the predicted number of poles needed for 5G coverage will likely result in numerous stand-alone small cell poles as well. The city's design manual for aesthetic standards follows designs that Xcel Energy and the cell providers have worked out, and also will minimize visual impact while promoting uniformity of small cell designs within the city.

DISCUSSION: In discussions with the wireless industry, Staff and industry did not reach consensus on whether there should be a setback for roof-mounted antennas. Staff would like direction from City Council for the setback of roof-mounted antennas. Should roof mounted antennas be allowed on the roof edge (providing better coverage), or required to be setback for aesthetic reasons? See attached alternative language. Wireless industry representatives take the position that if setbacks are required on rooftops, the only way roof-mounted antennas will be feasible will be to make them significantly taller.

BUDGETARY IMPACTS: There is no significant budget impact associated with the requested code changes. However, as the volume of applications increases there could be additional employee time needed to meet the "shot clock" to process the applications. Resources will primarily come from Public Works and the fee schedule may need to be updated in the future to provide additional resources.

STAFF RECOMMENDATIONS: Staff recommends that the City Council adopt the Ordinance amending Article 10 (Wireless Services and Communications) and Title 12 (Streets and Sidewalks).

ALTERNATIVES: The City Council may adopt the ordinance, amend the ordinance before adoption or choose to leave the municipal code as-is.

PUBLIC OUTREACH: This item was promoted through the regular communication channels for items that come before City Council for consideration. The public will have an opportunity to provide feedback during the public hearing if city council approves first reading of the ordinance. Additionally, several meetings were held with the cellular industry to obtain their feedback and suggestions.

NEXT STEPS: The 1st reading is scheduled for January 13, 2020 and the public hearing is scheduled for January 27, 2020.

ATTACHMENTS:

- Ordinance O-2020-1
- Alternative roof mounted antenna language to be considered
- Redlined municipal code provisions showing the changes the proposed ordinance would create for Title 12 and Article 10

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Timothy P. Cox, City Attorney

O-2020-1

AN ORDINANCE

AMENDING LAKEWOOD MUNICIPAL CODE TITLE 12, AND ARTICLE 10 OF TITLE 17, TO REFLECT CHANGES IN STATE AND FEDERAL LAW RELATING TO WIRELESS SERVICES AND COMMUNICATIONS

WHEREAS, the City of Lakewood (the "City") is authorized to require that Wireless Communication Facilities ("WCFs") meet design standards and municipal code requirements to address issues such as ensuring placement does not change vehicle travel or block vehicle, bicycle or pedestrian access or visibility along the right-of-way, and minimizing the visual impact of the facility by using camouflaging or screening techniques;

WHEREAS, the growth in wireless services has created an increased demand for deployment of new wireless communications network facilities;

WHEREAS, the manner in which the City can exercise authority over the siting, deployment, operation and maintenance of WCFs has been limited in recent years by State and Federal statutes and by Federal Communications Commission regulations;

WHEREAS, pursuant to State law, the City must allow small cell wireless facilities in the public right-of-way, subject to the exercise of local police powers;

WHEREAS, the amendments to Articles 10 and Title 12 will permit the City to exercise its regulatory authority over the siting, deployment, operation and maintenance of WCFs consistent with State and Federal law;

WHEREAS, approval of this Ordinance on first reading is intended only to confirm that the City Council desires to comply with the Lakewood Municipal code by setting a public hearing in order to provide City Staff and the public an opportunity to present evidence and testimony regarding the proposal; and

WHEREAS, approval of this Ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies the proposal.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. The recitals set forth above are incorporated herein.

SECTION 2. Article 10 of the Lakewood Municipal Zoning Code is hereby amended as set forth in the attachment named: Article 10 Amended.

SECTION 3. Title 12 of the Lakewood Municipal Code is hereby amended as set forth in the attachment named: Title 12.

SECTION 4. This Ordinance shall take effect thirty (30) days after publication following signature.

SECTION 5. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a regular meeting of the Lakewood City Council on the 13th day of January, 2020; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 16th day of January, 2020; set for public hearing to be held on the 10th day of February, 2020; read, finally passed and adopted by the City Council on the ____ day of _____, 2020; and signed and approved by the Mayor on the ____ day of _____, 2020.

Adam Paul, Mayor

ATTEST:

Michele Millard, City Clerk

APPROVED AS TO FORM:

Timothy P. Cox, City Attorney

b. Roof-mounted WCF.

1. All roof-mounted WCFs and accessory equipment shall be fully screened from view with existing parapets or with the addition of architecturally compatible screening walls or other structures as viewed at ground level.
2. Any screen walls shall be set back from the parapet or roof edge so that visibility from the street or adjacent residential properties is minimized to the greatest extent technically feasible.
3. Roof-mounted communication facilities and accessory equipment shall not be permitted on a sloped roof, unless it can be demonstrated that it is not visible from the street or adjacent residential areas.
4. Roof-mounted communication facilities are subject to the following height regulations:
 1. Roof-mounted antenna and equipment are not subject to a maximum height when proposed on an existing structure, provided that the applicant can demonstrate that all roof-mounted antenna and accessory equipment can be located behind an existing parapet or existing screen wall that is at least as tall as the antenna and accessory equipment. Expansions to existing screen walls may be authorized by the City Manager or designee, if the applicant can demonstrate that any expansion does not result in any additional height and is in compliance with the design standards above or that the requested modification is an Eligible Facilities Request.
 2. Roof-mounted antenna and accessory equipment not meeting the standard above are subject to the maximum building height for the zoning district or applicable design standards, whichever is stricter.
 3. Roof-mounted panel antenna shall not extend more than eight (8) feet above the roof parapet.
 - d. Roof-mounted whip antenna shall not extend more than ten (10) feet above the building to which they are mounted.

Title 12 - Streets and Sidewalks

Chapter 12.04 - Working in Public Ways

12.04.010 Citation.

This chapter shall be known as the “public way permit ordinance” of the city. (Ord. 1-82-59 § 1 (part), 1982; Ord. O-75-71 § 1, 1975).

12.04.020 Definitions

For the purposes of this chapter, the following words shall have the following meanings:

“City” means the City of Lakewood, Colorado.

“Director” means the Director of Public Works of the city or his/her authorized representative.

“District” means any metropolitan, water, and/or sanitation district formed under Title 32, Article I, CRS, as amended.

“Permittee” means the holder of a valid permit.

“Person” means any person, firm, partnership, special, metropolitan or general district association; corporation; municipal department, company or organization of any kind.

“Public way” means any public street, way, place, alley, sidewalk, easement, park, square, plaza, and any city-owned right-of-way or any other public property owned or controlled by the city and dedicated to public use. Any easements dedicated solely for utility purposes shall not be governed by the provisions of this chapter.

“Specifications” means Engineering Regulations, Construction Specifications and Design Standards adopted by the city.

“Work in the public way” means, but is not limited to, construction of streets and all related appurtenances, sidewalks, driveway openings, bus shelters, bus loading pads, street lights, and traffic signal devices. It shall also mean construction, maintenance and repair of all underground structures such as pipes, conduits, ducts, tunnels, manholes, vaults, buried cable, wire, or any other similar structure located below the surface of any public way, and installation of overhead poles used for any purpose. (Ord. O-94-17 §§ 1, 2, 1994; Ord. O-~~915991-59~~ § 19, 1991; Ord. O-82-59 § 1 (part), 1982; Ord. O-71-24 § 3, 1971).

12.04.030 ~~Types of permits to work in the public way.~~

There shall be three types of permits to work in the public way:

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- A. Public Improvement Agreement Permits: permits issued as part of the public improvement agreement procedure under Chapter 14.13 of this code. Chapter 14.13 provides that any person obtaining a building permit may be required to sign a public improvement agreement, provides for inspection of those public improvements, and provides for collateral to insure the public improvements are built and are warranted for one year of satisfactory performance;
- B. Annual permits: permits granted to persons to cover all work done in the public way for a period of one year;
- C. Individual permits: permits granted to persons for one specific project in the public way. (Ord. O-94-17 § 3, 1994; Ord. O-82-59 § 1 (part), 1982; Ord. O-71-24 § 4, 1971).

12.04.040 Application for permit-

- A. It is unlawful for any person to perform work within the public way of the city without obtaining a permit from the city. Any person doing work within the public way of a state highway must obtain a permit from the state and the city. If the state inspects the work in state right-of-way, there will be no charge for the Lakewood permit. If the city inspects the work in state right-of-way, all conditions and fees pertaining to a city permit shall apply.
- B. In Lakewood, the physical construction of public improvements in new developments is the responsibility of the developer of the land. Ownership of those improvements remains with the developer of the land until acceptance by the city. Any person performing work on those improvements ~~which are~~ within a public way, but prior to acceptance by the city, shall obtain a permit from the city and permission from the owner of the improvements in the public way. The permittee shall be financially responsible to the owner of the improvements to carry out all remedial work necessary to receive acceptance by the city of those improvements. This financial obligation shall apply only to the work in the public way done by the permittee.

1. Public Improvement Agreement Permit. An applicant doing work in the public way which requires a public improvement agreement as required by Chapter 14.13 of this code shall have an approved set of plans and specifications prior to permit application. No work shall be started until the Director has approved the plans, specifications, and permit application, and issued a permit.
2. Annual Permits and Individual Permits. A separate written application for that work done under an annual or individual permit shall be submitted to the Director on a form provided by the city for each individual job. The application shall be submitted at least two days prior to the planned start of work in the public way. Permittees may be required to increase this time up to fourteen days when the work consists of more than a single spot excavation. The city may require submission of plans and specifications. No work shall be started until the Director has approved the plans and specifications and permit application, and issued a permit, except as specified in Section 12.04.180. (Ord. O-94-17 § 4, 1994; Ord. O-82-59 § 1 (part), 1981; Ord. O-71-24 § 5, 1971).

3. Underground Utilities. The type, size, location, and the number of all underground utilities shall be shown. Field verified elevations and locations are required on all development plans for existing underground utilities that have the potential to affect the proposed design or construction. It is the permittee's responsibility to verify, prior to commencing any construction, the existence and location of all existing underground utilities along its route of work.

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12.04.045 — Insurance.

Before a public way permit is issued, the applicant shall submit to the Director a certificate of insurance in an amount set by City Council resolution. The certificate of insurance shall list the City and its officers and employees as additional named insureds.

City departments, mutual water companies, persons holding a franchise in the City, any governmental agency, or any special metropolitan water and/or sanitation district shall be relieved of the obligation of submitting a certificate of insurance if the permit is signed in the name of that person and they carry insurance equal to an amount set by City Council resolution. Upon request, the agency shall submit a letter certifying such coverage or ~~selfinsurance~~self-insurance. If a person other than those named above signs the permit, a certificate of insurance shall be provided. (Ord. O-97-28 § 1, 1997; Ord. O-94-17 § 5, 1994; Ord. O-82-59 § 1 (part), 1982; Ord. O-75-71 § 4, 1975).

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12.04.060 — Performance/warranty guarantee for permits.

~~A.~~ A. Public Improvement Agreement. Procedures for guaranteeing performance and providing for warranty are specified in Chapter 14.13 and no additional performance/warranty guarantee will be required in addition to those requirements.

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~~B.~~ B. Annual Permit. Any entity doing work under an annual permit shall provide the City with ten thousand dollars cash or an irrevocable letter of credit. The irrevocable letter of credit shall run for a period of time at least one year beyond the anticipated acceptance date of any work done under the annual permit. If no refund request is received, the deposit shall be carried forward for use as the annual deposit for the following year. If a demand is made by the City on all or a portion of a ten thousand dollar performance/ warranty guarantee, no further permits shall be issued to that entity until the performance/warranty guarantee is ~~reestablished~~re-established in the amount of ten thousand dollars plus the amount of the demand made by the City.

~~C.~~ C. Individual Permit. Each permittee before being issued a permit shall provide the city, at the permittee's expense, a performance/warranty guarantee. This guarantee shall be in the form of cash or an irrevocable letter of credit.

-The guarantee shall be in an amount equal to one hundred percent of the City Engineer's estimate of the cost of restoration. The cost of restoration shall include the removal of defective material, recompaction of subgrade and base material and construction of surface improvements. The irrevocable letter of credit shall run for a period of time at least one year beyond the anticipated acceptance date of the work identified in the permit and may be returned as provided in Section 12.04.080(B)(2). Such guarantees shall be extended if requested by the City Engineer.

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-The City Engineer may waive performance/warranty guarantee requirements for any owner of a single-family residence desiring to repair their driveway or sidewalk provided the owner performs the work personally and upon satisfactory evidence to the City Engineer that the applicant is competent to perform the work.

12.04.060

-D. Other Guarantees. In lieu of subsections (B) and (C) above, any City department, mutual water companies, persons holding a franchise in the City, any governmental agency, or any special metropolitan, water and/or sanitation district may provide the City with an annual letter signed by an appropriate company or district officer guaranteeing: (1) complete performance of the work acceptable to the City, and (2) the correction of any defect in the work which the City discovers and for which the City gives written notice to the permittee within one year after the date when the City initially accepts the work.

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-If the Director determines that any permittee fails to promptly perform under the conditions of this subsection (D) of this section, that permittee shall be required to post a performance/warranty guarantee meeting the requirements of subsections (B) or (C) of this section. If the Director determines that the permittee then satisfactorily complies with this chapter for a one-year period while operating under the provisions of subsections (B) or (C) of this section, the permittee shall then again be eligible to operate with the annual guarantee letter provided in subsection (D) of this section.

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-Notwithstanding anything to the contrary in this section, any contractor performing work pursuant to a contract directly with the City shall adhere to the performance payment requirements set forth in the contract documents. (Ord. O-97-28 §§ 2, 3, 1997; Ord. O-94-17 § 6, 1994; Ord. O-82-59 § 1 (part), 1982; Ord. O-71-24 § 7, 1971).

12.04.070 — Purpose of performance/warranty guarantee.

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A. A. Any guarantee made hereunder shall serve as security for the performance of work necessary to repair the public way if the permittee fails to make the necessary repairs or to complete the work under the permit.

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B. B. The permittee, by acceptance of the permit, expressly guarantees complete performance of the work acceptable to the city and guarantees all work done by him for a period of one year after the date of acceptance, and agrees upon demand to maintain and to make all necessary repairs during the one-year period. This guarantee shall include all repairs and actions needed as a result of: ~~1. Defects in workmanship;~~

1. Defects in workmanship;

2. Settling of fills or excavations;

3. Any unauthorized deviations from the approved plans and specifications;

4. Failure to barricade;

5. Failure to clean up during and after performance of the work;

6. Any other violation of this chapter.

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C. C. The one-year guarantee period shall run from acceptance of the work. If repairs are required during the one-year period, those repairs need only be guaranteed until the end of the original one-year guarantee period starting with the date of initial acceptance. It is not necessary that

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a guarantee be provided for subsequent repairs beyond the initial one-year guarantee period. (Ord. O-94-17 § 7, 1994; Ord. O-82-59 § 1 (part), 1982; Ord. O-71-24 § 8, 1971).

12.04.080 — Inspection fees and procedures.

A. At the time of permit application, all permittees shall pay for the costs of inspection. Costs of inspection shall be in accordance with the schedule of charges prepared by the Director and adopted by City Council resolution. ~~B. Inspections will occur as follows:~~

B. Inspections will occur as follows:

~~1.~~ 1. Public Improvement Agreement. Procedures for inspecting public improvements agreements shall be as specified in Chapter 14.13.

2. Annual and Individual Permits. Two inspections shall take place. First, the permittee shall notify the city immediately after completion of work operations and acceptance will be made if all work meets city and permit standards. Second, approximately thirty days prior to the expiration of the one-year guarantee, the city shall perform an inspection of the completed work. If the work is still satisfactory, the cash or letter of credit for individual permit holders shall be returned less any amounts needed to complete work not done by permittee.

~~2.~~ For annual permits, the annual deposit shall be carried forward for use as the annual deposit for the following year if no refund request is received.

-At any time prior to completion of the one-year warranty period, the city may notify the permittee of any needed repairs. Such repairs shall be completed within twenty-four hours if the defects are determined by the city to be an imminent danger to the public health, safety, and welfare. Nonemergency repairs shall be completed within thirty days after notice.

~~3.~~ 3. Random Inspections. Random inspections may be made of the permittee's work procedures, and the permittee shall correct ~~his~~its procedures if ordered to do so. Failure to do so may result in revocation of the permit. (Ord. O-94-17 § 8, 1994; Ord. O-82-59 § 1 (part), 1982; Ord. O-75-71 § 2, 1975).

12.04.090 — Time of completion.

~~A.~~ A. Public Improvement Agreement. Time of completion will be specified in the public improvement agreement signed under the provisions of Chapter 14.13 of this code.

~~B.~~ B. Annual Permits and Individual Permits. All work covered by the permit shall be completed by the date stated on the application. Unless extended for good cause, Permits shall be void if work has not commenced six months after issuance. Letters of credit or cash deposited as a performance/warranty guarantee for individual permits will be returned after voiding of the permit. (Ord. O-82-59 § 1 (part), 1982; Ord. O-75-71 § 3, 1975).

12.04.110 — Traffic control.

-When it is necessary to obstruct traffic, a detour plan shall be submitted to the Director prior to starting construction. No permit will be issued until the plan is approved by the Director. No permittee

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shall interrupt access to and from private property, block emergency vehicles, block access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing structures, or any other vital equipment unless permission is obtained from the owner of that facility. If a street closing is desired, the applicant will request the assistance and obtain the approval of the Director. It shall be the responsibility of the permittee to notify and coordinate all work in the public way with police, fire, ambulance, and transit organizations.

-When necessary for public safety, the permittee shall employ flag persons whose duties shall be to control traffic around or through the construction site. The use of flag persons may be required by the Director.

-Unless approved by the Director, the permittee shall not impede rush hour traffic on arterial or collector streets during the morning or evening rush hours. No construction shall be performed nor shall any traffic lane be closed to traffic during the hours of seven a.m. to nine a.m. or three-thirty p.m. to six p.m. without the approval of the Director.

-Traffic control devices, as defined in Part VI of the Manual on Uniform Traffic Control Devices, must be used whenever it is necessary to close a traffic lane or sidewalk. Traffic control devices are to be supplied by the permittee. If used at night, they must be reflectorized and must be illuminated or have barricade warning lights. Oil flares or kerosene lanterns are not allowed as a means of illumination.

12.04.110

-Part VI of the Manual on Uniform Traffic Control Devices shall be used as a guide for all maintenance and construction signing. The permittee shall illustrate on the permit the warning and control devices proposed for use. At the direction of the Director, such warning and control devices shall be increased, decreased, or modified. (Ord. O-94-17 § 9, 1994; Ord. ~~0820-82~~-59 § 1 (part), 1982; Ord. O-75-71 § 5, 1975).

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12.04.120 Construction standards and responsibility for all public improvements-

The permittee shall be fully responsible for the cost and actual performance of all work in the public way. The permittee shall do all work in conformance with the Engineering Regulations, Construction Specifications, and Design Standards adopted by the city. These standards shall apply to all work in the public way. (Ord. O-82-59 § 1 (part), 1982; Ord. O-~~712471-24~~ § 13, 1971).

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12.04.130 — Protection of paved surfaces from equipment damage-

-Backhoe equipment outriggers shall be fitted with rubber pads whenever outriggers are placed on any paved surface. Tracked vehicles with grousers are not permitted on paved surface unless specific precautions are taken to protect the surface. The permittee will be responsible for any damage caused to the pavement by the operation of such equipment and, upon order of the Director, shall repair such surfaces. Failure to do so will result in the use of the applicant's performance/warranty guarantee by the city to repair any damage. (Ord. O-~~941794-17~~ § 10, 1994; Ord. O-82-59 § 1 (part), 1982; Ord. O-75-71 § 6, 1975).

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12.04.140 — Protection of property-

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-The permittee shall protect from injury any adjoining property by providing adequate support and taking other necessary measures. The permittee shall, at ~~his~~ own expense, shore up and protect all buildings, walls, fences or other property likely to be damaged during the work, and shall be responsible for all damage to public or private property resulting from failure to properly protect and carry out work in the public way. (Ord. O-82-59 § 1 (part), 1982; Ord. O-71-24 § 15, 1971).

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12.04.150 — Relocation, location responsibilities and protection of utilities.

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-Before any permittee begins excavation in any public way, he shall verify the location of existing utilities. For information, contact the Utility Notification Center of Colorado ~~and, 1-800-922-1987 or 811.~~ A permittee shall additionally make inquiries of all ditch companies, utility companies, districts, municipal departments and all other agencies that might have facilities in the area of work to determine possible conflicts.

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~~The permittee shall contact the Utility Notification Center of Colorado and request field locations of all facilities in the area at least forty eight hours in advance.~~ Field locations shall be marked prior to commencing work. The permittee shall support and protect all pipes, conduits, poles, wires, or other apparatus which may be affected by the work from damage during construction or settlement of trenches subsequent to construction. (Ord. O-94-17 § 11, 1994; Ord. O-82-59 § 1 (part), 1982; Ord. O-71-24 § 16, 1971).

12.04.160 — Noise, dust, debris, hours of work.

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-Each permittee shall conduct work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. In the performance of the work, the permittee shall take appropriate measures to reduce noise, dust, and unsightly debris. No work shall be done between the hours of ten p.m. and seven a.m., nor at any time on Sunday, except with the written permission of the Director, or in case of an emergency. (Ord. O-82-59 § 1 (part), 1982; Ord. O-71-24 § 17, 1971).

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12.04.170 Clean-up

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— 12.04.170 — Clean-up.

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-As the work progresses, all public rights-of-way and private property shall be thoroughly cleaned of all rubbish, excess dirt, rock, and other debris. All clean-up operations shall be done at the expense of the permittee. (Ord. O-82-59 § 1 (part), 1982; Ord. O-71-24 § 18, 1971).

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— 12.04.180 — Emergency work.

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-Any person maintaining facilities in the public way may proceed with repairs upon existing facilities without a permit when emergency circumstances demand that the work be done immediately. Emergency work is defined to mean any work necessary to restore water, sewer, gas, phone, electric, and cable facilities. Repairs on other facilities in the public way may also be administratively classified as emergency by the Director. The person doing the work shall apply to the Director for a permit on the first working day after such work has commenced. All emergency work will require prior telephone notification to the City Police Department of Public Safety and the appropriate fire protection district. (Ord. O-94-17 § 12, 1994; Ord. O-~~825982-59~~ § 1 (part), 1982; Ord. O-71-24 § 19, 1971)-)

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~~12.04.190~~ ~~Preservation of monuments.~~

~~The permittee shall not disturb any surface monuments or survey hubs and points found on the line of work unless approval is obtained from the Director. Any monuments, hubs, and points disturbed will be replaced by a Colorado registered land surveyor at the permittee's expense. (Ord. O-94-17 § 13, 1994; Ord. O-82-59 § 1 (part), 1982; Ord. O-71-24 § 20, 1971).~~

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~~12.04.200~~ ~~Registration to do work.~~

~~All persons doing work within the public way under this chapter shall obtain a registration if required by Chapter 14.11 of this code.~~

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~~The City Engineer may waive the registration requirements for any owner of a ~~singlefamily~~single-family residence desiring to repair their driveway or sidewalk provided the owner performs the work personally and upon satisfactory evidence to the City Engineer that the applicant is competent to perform the work. (Ord. O-2011-11 § 1, 2011; Ord. O-82-59 § 1 (part), 1982; Ord. O-71-24 § 21, 1971).~~

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~~12.04.210~~ ~~Boring.~~

~~Boring or other methods to prevent cutting of the pavement will be required upon request of the Director. It is the city's intent to require boring only when necessary on arterial and major and minor collector streets with high volumes of traffic and/or high accident potential. (Ord. O-94-17 § 14, 1994; Ord. O-82-59 § 1 (part), 1982; Ord. O-71-56 § 1, 1971; Ord. O-~~7124~~71-24 § 22, 1971).~~

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~~12.04.220~~ ~~Suspension or revocation of permits and stop work orders.~~

~~A. Any permit may be revoked or suspended by the Director, after notice to the permittee for:~~

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- ~~1.~~ 1. Violation of any condition of the permit or of any provision of this chapter;
- ~~2.~~ 2. Violation of any provision of any other ordinance of the city or state law relating to the work;
- ~~3.~~ 3. Existence of any condition or performance of any act which does constitute or cause a condition endangering life or damage to property.

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~~12.04.220~~

~~B. B.~~ A suspension or revocation by the Director, and a stop work order, shall take effect immediately upon notice to the person performing the work in the public way.

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~~C. C.~~ A stop work order may be issued by the Director to any person or persons doing or causing any work to be done in the public way without a permit, or in violation of any provision of this chapter, or any other ordinance of the city.

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~~D.~~ D. Any suspension or revocation or stop work order may be appealed by the permittee to the Director by filing a written notice of appeal within ten days of the action. (Ord. O-94-17 § 15, 1994; Ord. O-82-59 § 1 (part), 1982; Ord. O-71-24 § 23, 1971).

12.04.230 — Appeals procedure.

-Any decision rendered by the Director may be appealed within thirty days by the permittee to the Board of Appeals in accordance with the rules and procedures established by that body. (Ord. O-82-59 § 1 (part), 1982; Ord. O-71-24 § 24, 1971).

12.04.240 — Penalty.

-If any person, firm or corporation, including but not limited to the officers and agents of a corporation responsible for its actions or inaction, and the partners of a partnership, firm or joint venture, shall violate or cause the violation of any of the provisions of this chapter, they shall be guilty of a separate offense for each and every day or portion thereof during which a violation is committed, continues or is permitted, and upon conviction of any such violation such person, firm or corporation, including but not limited to such partners, officers or agents, shall be subject to the penalties set forth in Subsection 1.16.020A. (Ord. O-96-44 § 13, 1996; Ord. O-94-17 § 16, 1994; Ord. O-84-87 § 7, 1984; Ord. O-82-59 § 1 (part), 1982; Ord. O-~~71-24~~71-24 § 25, 1971).

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12.08.010

Chapter 12.08 - Major Street Plan and Master Plan

MAJOR STREET PLAN AND MASTER PLAN¹

Sections:

~~12.08.010 Major street plan adopted.~~

~~12.08.020 Master plan Acceptance and approval.~~

~~12.08.030 Master plan certification and filing.~~

~~12.08.010 Major street plan adopted.~~

The major street plan adopted by Resolution No. 70-95 includes a single map bearing the legend "Major Street Plan, City of Lakewood, Colorado" as certified to the City Council by the Lakewood Planning Commission. (Ord. O-94-17 § 17, 1994; Res. 70-95 § 1, 1970).

~~12.08.020 Master plan Acceptance and approval.~~

The master plan for the development of the city, with accompanying maps, charts and descriptive matter, which master plan is entitled and known as the Lakewood Comprehensive Plan shall be as adopted and from time to time amended by the Lakewood Planning Commission and approved by the City Council. (Ord. O-94-17 § 18, 1994; Res. 75-68 § 1, 1975).

~~12.08.030 Master plan certification and filing.~~

The Mayor and City Clerk are authorized and directed to indicate the acceptance and approval of the Lakewood Comprehensive Plan mentioned in Section 12.08.020 by affixing their signatures to a certification of this acceptance and approval on the Lakewood Comprehensive Plan; and the City Clerk is authorized and directed to file a certified copy of the Lakewood Comprehensive Plan with the Clerk and Recorder of Jefferson County. (Ord. ~~094O-94~~-17 § 19, 1994; Res. 75-68 § 2, 1975).

12.12.010

Chapter 12.12 - Street Improvement Policy

STREET IMPROVEMENT POLICY

¹ Prior resolution history for Sections 12.08.020 and 12.08.030: Resolution No. 70-95 §§ 2 and 3.

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Sections:

~~12.12.010 City street system-Classification.~~

~~12.12.020 Type of improvements required for city's street system.~~

~~12.12.030 Cost responsibility for improvements to the city's street system.~~

~~12.12.010 City street system Classification.~~

~~A. A. Functional Classifications. City streets shall be placed in five functional classifications: local streets, minor collector streets, major collector streets, arterial streets, and major regional arterial streets.~~

~~B. B. Major Street Plan Classifications. Local streets, minor collector streets, major collector streets and arterial streets not specifically shown on the major street plan of Lakewood, must be platted and developed as determined by the city.~~

~~C. C. References in existing planned developments (PD's) and official development plans (ODP's) to street designations such as "freeways" and "major streets" will be reviewed by the Director of the Department of Planning, Permits and Public Works as said streets are to be planned or constructed and the Director of the Department of Planning, Permits and Public Works will determine which new street designation standards will be applied. The determination of the Director of the Department of Planning, Permits and Public Works may be appealed by the affected property owner to the Planning Commission within ten days of said determination and the Planning Commission's decision on the street design designation shall be final.~~

~~D. D. All state highways in Lakewood, except freeways, are designated as a part of the city street system for determining cost responsibilities in Section 12.12.030. (Ord. O-94-17 §§ 2022-20-22, 1994; Ord. O-91-59 § 6 (part), 1991; Ord. O-85-63 § 1, 1985).~~

~~12.12.020 Type of improvements required for city's street system.~~

~~Adequate and consistent design guidelines, based on engineering and planning standards, must be applied in developing the city's street system. All street improvements will therefore be in accordance with the city Engineering Regulations, Construction Specifications, and Design Standards as amended, the subdivision ordinance and the zoning ordinance.~~

~~In those instances where, in the opinion of the City Engineer, the rigid application of such guidelines would result in excessive right-of-way costs, relocation problems, and/or other extreme difficulties, a lesser standard may be approved by the City Engineer. (Ord. O-94-17 § 23, 1994; Ord. O-85-63 § 2, 1985).~~

~~12.12.030 Cost responsibility for improvements to the city's street system.~~

~~A. A. The cost responsibilities for street improvements applies the general but qualified concept that those who benefit from street and other public improvements should be most directly responsible for the cost of said improvements.~~

~~B. B. In applying this concept, the following conditions are recognized and incorporated in assigning cost responsibilities:~~

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~~4.~~ 1. Any new land development within Lakewood benefits by the existence and use of the existing street system and other public improvements in the community. Nonetheless, while the existing street system and other existing public improvements benefit all new land development, no specific monetary charges are made to new land developments for use of the existing street system and other existing public improvements.

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~~12.12.030~~

~~2.~~ 2. Benefits derived from arterial and major regional arterial streets adjacent to and within a new land development accrue both to the general public and to the owner of a new land development.

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~~3.~~ 3. Benefits derived from major collector streets, minor collector streets and local streets are direct and accrue primarily to the owner of a new land development. -C. Cost responsibilities for new streets are as follows:

Classification	Right-of-Way	Streets	Sidewalk/Bikeways
Major regional arterial streets	Property owner	Shared	Property owner
Arterial streets	Property owner	Shared	Property owner
Collector streets (major and minor)	Property owner	Property owner	Property owner
Local streets	Property owner	Property owner	Property owner

-Cost sharing on major regional arterial and arterial streets shall be done in the following manner: the property owner shall pay the cost of the street except for those costs paid for by the city. The property owner shall be responsible for all street improvements defined in Section 14.13.020 of the municipal code including roadway base and pavement thicknesses up to an EDLA (equivalent daily loaded axle) of thirty or the EDLA required for all traffic generated by the land development whichever is greater. The city will pay for any roadway base and pavement thicknesses in excess of the portion paid by the property owner.

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~~D.~~ D. Rebuild of Existing Street Facilities. The city shall have the authority to require improvements on existing streets made necessary by the development of a parcel. The procedures for such improvements shall be as defined in Chapter 14.13 of the city code or the subdivision and zoning ordinances, whichever provides the higher standard. These improvements shall include but not be limited to: Those rights-of-way, easements, access rights, and physical improvements which, upon formal acceptance by the city, shall become the responsibility of the city for ownership and/or maintenance and repair, unless otherwise provided, and shall include, but not by way of limitation, the following: curb and gutter, asphalt pavement, concrete pavement, streets of all types, survey

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monuments, pavement striping, sidewalks, pedestrian/bike paths, traffic signals, street lights, street signs, highways, freeways, rights-of-way, easements, access rights, construction plans, medians, bridges, acceleration and deceleration lanes, culverts, storm drainage facilities including necessary structures, channels, water lines, sanitary sewer lines, and all other improvements, which upon acceptance by the city are intended to be for the use of and enjoyment of the public.

~~E.~~ E. Peripheral Streets. A peripheral street is one which borders a development, with one fraction of the street right-of-way on the property owner's land and the remaining street ~~rightofright-~~of-way on the adjacent property owner's land. A street which is located on right-of-way entirely within a single property owner's land is not a peripheral street and will be paid for by the property owner with the exception of major regional arterial or arterial streets cost sharing which is as specified in subsection C of this section.

~~12.12.030~~

1. New Peripheral Streets. If the City Engineer determines that a new local or collector peripheral street is to be constructed, the property owner shall build and pay for one-half of the street plus five feet of additional pavement, but not less than 17 feet of pavement.

If the City Engineer determines that a new major regional arterial or arterial peripheral street is to be constructed, the property owner shall build and pay for one-half of the street.

~~4.~~ Cost sharing for the additional thickness requirement of a major regional arterial or arterial street shall be as specified in subsection C of this section.

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~~2.~~ 2. Existing Non-Standard Peripheral Street. Where a peripheral street exists but does not meet current City standards, adjacent property owners shall build and pay for one-half of the street plus five feet of additional pavement for a local or collector street as determined by the City Engineer, but not less than 17 feet of pavement.

-If the City Engineer determines that an existing non-standard street is to be constructed to major regional arterial or arterial street standards, the adjacent property owner shall build and pay for one-half of the street.

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-Cost sharing for additional thickness requirements of a major regional arterial or arterial street shall be as specified in subsection C of this section. (Ord. O-98-38 § 5, 1998; Ord. ~~0940-94-17~~ 0940-94-17 §§ 24-27, 1994; Ord. O-86-114 § 1, 1986; Ord. O-85-63 § 3, 1985).

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~~12.17.010~~

~~12.17.010 Purpose.~~

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~~12.17.010 Purpose.~~

-The purpose of this ordinance is to prevent injury to persons and property, to prevent traffic delays, and to avoid interference with the traffic flow in the public right-of-way. Delay or distraction may interfere with the safe operation of motor vehicles. Delay and distractions are caused by vendors standing near public streets, near intersections, and near traffic lights to contact drivers or passengers in cars that are passing or that are stopped temporarily due to traffic lights or other reasons. (Ord. O-97-74 § 1, 1997).

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~~12.17.020 Revocable permit.~~

~~A.~~ A. No person shall occupy the public right-of-way for the purpose of selling services or articles of merchandise without first obtaining a revocable permit.

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~~B.~~ B. This ordinance shall not apply to vendors of materials whose primary purpose is the dissemination of information such as newspapers or religious, political or ideological material. (Ord. O-97-74 § 1, 1997).

~~12.17.030 Permit fee.~~

-A permit application form shall be obtained from the Department of Finance. Processing of the permit will entail a non-refundable fee of \$100.00. The permit may be renewed by the permittee for three (3) consecutive years for use at the location granted on the permit. The renewal fee shall be \$25.00. Any future increase or decrease in said fees shall be by the adoption of a resolution by City Council. (Ord. O-97-74 § 1, 1997).

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~~12.17.040~~

~~12.17.040 Sales tax deposit.~~

-A City sales tax deposit in the amount of \$50.00 shall be paid by the permittee at the time of receiving a permit. Said deposit will be applied toward the permittee's first sales tax return. Any additional sales tax shall be paid by the permittee on or before the due date for sales tax pursuant to Chapter 3.01 of the Lakewood Municipal Code. If the tax due is less than the amount paid for the deposit, a refund of the difference shall be paid to the permittee. Said deposits are for a period of one (1) year. (Ord. O-97-74 § 1, 1997).

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12.17.050 — Location

The Director of the Department of Finance or the Director's designee shall approve or deny the location of the permit. The City shall provide a map to the permittee designating the general location of the public right-of-way and the permittee's location thereon. In determining whether a particular location for sidewalk vendors is compatible with the public interest in the use of a public right-of-way, all or some of the following may be considered to determine whether the proposed location should be approved or denied. ~~A. The width of sidewalk.~~

A. The width of sidewalk.

~~B. B.~~ The proximity of existing street furniture including, but not limited to, sign posts, lamp posts, parking meters, bus shelters, benches, telephone booths, planters, newsstands and newspaper vending devices.

~~C. C.~~ The presence of bus stops, truck loading zones, taxi stands or hotel zones.

~~D. D.~~ The volume of street and pedestrian traffic, the rate of speed of traffic, and the ability to safely exit the traffic lane.

~~E. E.~~ The location of other vendors in the immediately adjacent area.

~~F. F.~~ The accident history of the location.

~~G. G.~~ Other conditions which affect the public health, safety and welfare. (Ord. O-97-74 § 1, 1997).

12.17.060 — Time

~~A. A.~~ Permits shall be issued for a period of one (1) year and may be renewed by the permittee for three (3) consecutive years. Once a permit has been issued and remains in effect for a location, no other person may be issued a permit for the same location. Any change of ownership of the business or change of location shall require a new application and permit, with payment of fees therefor, as provided here and above.

~~B. B.~~ Any location which is vacated or abandoned by the permittee shall be accessible to other permittees under the provisions of this ordinance. A location is deemed abandoned by the permittee if the location is vacated for 30 consecutive days. (Ord. O-97-74 § 1, 1997).

12.17.070 — One location

Each permit shall be valid for not more than one location. The permit is valid only when used at the location designated on the permit. (Ord. O-97-74 § 1, 1997).

12.17.080 — Requirements

The permittee shall observe the following requirements:

~~A. A.~~ Permittee shall not place any carts, tables, display structures or similar devices in the public right-of-way.

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~~B.~~ B. Permittee shall provide a four-foot minimum unobstructed area to allow access as required by the Americans with Disabilities Act.

~~C.~~ C. Permittee shall cause the public right-of-way permit and a sales tax license (if applicable) to be visible at all times.

~~12.17.080~~

~~D.~~ D. Permittee shall not block any street signs.

~~E.~~ E. Permittee shall not sell to people in cars in traffic lanes.

~~F.~~ F. Permittee shall not sell on a median. (Ord. O-97-74 § 1, 1997).

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~~12.17.090 Insurance requirements.~~

-Before any permit is issued, the applicant shall furnish to the City a Certificate of Insurance, with the City named as an additional insured, from a firm with corporate surety, authorized to do business in the State of Colorado, for public liability and property damage in the amount established by the City of not less than the following:

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-For death or injury to any one person and including property damage, one hundred fifty thousand dollars (\$150,000.00)

-Total liability in any one accident, six hundred thousand dollars (\$600,000.00). (Ord. O-~~977497-74~~ § 1, 1997).

~~12.17.100 Indemnification.~~

-The applicant shall be required to sign an indemnity agreement, on a form furnished by the City, which releases and discharges the City, its employees, agents and assigns from any liability and from any and all claims, demands, damages, actions, causes of action, or suits of any kind or nature whatsoever as related to occupying the public right-of-way. (Ord. O-97-74 § 1, 1997).

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~~12.17.110 Lottery.~~

-In the event there is more than one application for a specific location, the City shall conduct a lottery drawing. The City Manager or his designee shall adopt such rules and regulations as may be required to administer said lottery and to administer other provisions of this Ordinance. (Ord. O-97-74 § 1, 1997).

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~~12.17.120 Sanctions and appeal.~~

~~A.~~ A. Nothing in this chapter shall be construed to limit the City's authority to require cessation of occupying the public right-of-way prior to the expiration of a permit. The City is not under any requirement to renew a permit. Permits may be revoked for cause including, but not limited to, trespass, failure to pay sales taxes, abandonment of location, drunkenness or disorderly conduct, failure to comply with the provisions of this ordinance or other City ordinances, or the existence of

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conditions that are harmful to the public health, safety and welfare. Additionally, a permit may be revoked if, in the discretion of the Finance Director, the location has become unsafe based on the criteria set forth in Section 12.17.050.

~~B.~~ B. Permittee may appeal a notice of revocation or a denial of issuance of a permit. Said appeal must be filed with the Finance Director within ten (10) business days after mailing of the notice of revocation or the denial of issuance of a permit. The Finance Director shall notify the permittee in writing of the time and place fixed by him for such appeal hearing. After such hearing, the hearing officer shall make an order in the matter and shall furnish a copy of such order to the permittee. Every decision of the hearing officer shall be in writing, and notice thereof shall be mailed to the permittee within thirty (30) days after such hearing. All such decisions are final.

~~C.~~ C. Nothing in the chapter, shall prohibit the City from enforcing the provisions of this ordinance in the Lakewood Municipal Court or the Jefferson County District Court.

12.17.120

~~D.~~ In addition to enforcement by any authorized personnel, this ordinance may be enforced by the Director of Community Planning & Development or his designee. (Ord. O-~~977497-74~~ § 1, 1997).

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12.17.130 — Prior locations.

All prior locations authorized to vendors to occupy the public right of way for the purpose of conducting retail sales are hereby rescinded and revoked. No rights shall accrue to vendors based upon any previous authorization by the City to occupy the public right-of-way, and no prior authorization or approval by the City to occupy the public right-of-way shall allow for the grandfathering of a vendor's location. The City reaffirms its absolute right to regulate activities in the public right-of-way through its police powers. (Ord. O-97-74 § 1, 1997).

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12.17.140 — Parades.

The provisions of the ordinance shall not apply at those locations which are adjacent to public streets which are officially and temporarily closed to through traffic for parades and other celebrations. Nothing herein shall relieve a vendor from obtaining a sales tax license. (Ord. O-97-74 § 1, 1997).

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12.17.150 — Penalty.

The penalty for a violation of any provision of this chapter shall be as set forth in Section 1.16.020-~~f~~ (Ord. O-2017-16 § 10, 2017; Ord. O-97-74 § 1, 1997).

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12.18.010 Purpose-

-The purpose of this chapter is to prevent dangers to persons and property, to prevent delays, and to avoid interference with the traffic flow. Roadways that have center medians often are designed to deal with specific traffic flow problems and any delay or distraction may interfere with traffic planning. Persons standing near intersections and near traffic lights to contact drivers or passengers in cars that are passing or that are stopped temporarily due to traffic lights can cause safety problems and traffic delays. (Ord. O-2001-20 § 1, 2001).

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12.18.020 Prohibitions-

~~A.~~ A. It shall be unlawful for any person to solicit employment, business, contributions, or sales of any kind, or collect monies for the same, from the occupant of any vehicle traveling upon any street or highway when such solicitation or collection:

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~~1.~~ 1. Causes the person performing the activity to enter onto the traveled portion of a street or highway;

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~~2.~~ 2. Involves the person performing the activity to be located upon any median area which separates traffic lanes for vehicular travel in opposite directions;

~~3.~~ 3. Causes the traffic on the traveled portion of a street or highway to be delayed or impeded; or

~~4.~~ 4. The person performing the activity is located such that vehicles cannot move into a legal parking area to safely conduct the transaction

~~B.~~ B. It shall be unlawful for any person to solicit or attempt to solicit employment, business, contributions, or sales of any kind from the occupant of any vehicle traveling upon any controlled-access highway including any entrance to or exit from such highway. (Ord. O-~~2001-20~~2001-20 § 1, 2001).

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12.18.030 Definition-

-For purposes of this section, the traveled portion of the street or highway shall mean the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purpose of vehicular traffic; or the entire width of every way declared to be a public street or highway by any law of this state. (Ord. O-2001-20 § 1, 2001).

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12.19.010

Chapter 12.19 - Regulating the Administrative Approval of Minor Right of Way

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12.19.010 Purpose-

-The purpose of this ordinance is to allow for minor right of way encroachments including but not limited to commercial type trash dumpsters, fences, and mailbox pillars to be approved

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administratively under certain limited conditions. -The approval shall be limited to those instances where the encroachment will not interfere with vehicle or pedestrian traffic or sight triangles and has been approved by all appropriate City departments. (Ord. O-2005-5 § 2, 2005).

12.19.020 — Revocable License Agreement.

~~A.~~ A. No person shall construct any improvement, such as fences or mailbox pillars, or place any object, such as commercial type trash dumpsters in the public right of way without first obtaining a Revocable License Agreement approved by the Director of Finance.

~~B.~~ B. This ordinance shall not apply to trash receptacles that are placed adjacent to the traveled lanes for removal on the scheduled date of pick-up.

~~C.~~ C. A fee for processing the Revocable License Agreement shall be set by City Council resolution from time to time.

~~D.~~ D. The revocable license agreement granted by the City is revocable at will by the City. (Ord. O-2005-5 § 2, 2005).

12.19.030 — Procedure for Approval.

~~A.~~ A. An application form shall be obtained from the Department of Finance, Property Management Section.

~~B.~~ B. The application form shall be completed and returned to Property Management for review with the applicable fee.

~~C.~~ C. Property Management shall forward copies of the application to all appropriate departments for review and comment.

~~D.~~ D. Upon approval by appropriate departments, Property Management shall prepare the Revocable License Agreement to be signed first by the applicant and final signature by the Director of Finance. (Ord. O-2005-5 § 2, 2005).

12.19.040 — Standards for Approval.

~~A.~~ A. revocable license agreement may be granted administratively only if the applicant meets the following criteria:

~~A.~~ The proposed encroachment shall not create an obstruction to vehicle, bicycle or pedestrian traffic in any way.

~~B.~~ B. The proposed encroachment shall not infringe upon any easement rights held by the City of Lakewood, other public agency or utility

~~C.~~ C. The proposed encroachment shall not obstruct the sight triangle.

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~~D~~ D. The proposed encroachment shall not create or contribute to a safety hazard.

~~E~~ E. The proposed encroachment shall meet all standards and requirements of the City of Lakewood for location and improvements. (Ord. O-2005-5 § 2, 2005).

~~12.19.050~~ ~~Indemnification.~~

~~The Revocable License Agreement shall contain an indemnity agreement which releases and discharges the City, its employees, agents and assigns from any liability and from any and all claims, demands, damages, actions, causes of action, or suits of any kind or nature whatsoever as related to encroaching upon the public right-of-way. The Licensee shall reimburse the City for defending claims brought against the City, failure to reimburse the City in a timely manner may result in a lien being placed upon the Licensee's property. (Ord. ~~020050-2005~~ 5 § 2, 2005).~~

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~~12.19.060~~ ~~Appeal of application denial.~~

~~In the event that the Director of Finance denies a revocable license agreement, an applicant shall have the right to a quasi-judicial hearing before the City Manager or his designee for the purpose of appealing the Director's administrative decision. A written request for a hearing shall be made to the City Manager or his designee within ten (10) days of the date of the mailing of the City Clerk's written findings and decision denying the license application. The hearing shall be conducted within ten (10) days of the City Manager's or his designee's receipt of the written request for a hearing unless a later date is requested by the applicant. (Ord. O-2005-5 § 2, 2005).~~

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~~12.19.070~~ ~~Termination of Revocable License Agreement.~~

~~The holder of the Revocable License Agreement may terminate the Revocable License Agreement by notifying the City in writing, complying with the terms of the Revocable License Agreement, and removing the encroachment. The City may terminate the Revocable License Agreement by notifying the holder of the Revocable License Agreement in writing. The holder of the Revocable License Agreement shall remove the encroachment pursuant to the terms of the Revocable License Agreement. (Ord. O-2005-5 § 2, 2005).~~

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~~12.20.010~~

Chapter 12.20

~~12.20.020 - Regulation of Newspaper corrals at Belmar site. Corrals~~

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~~12.20.010~~ ~~Purpose~~

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~~A. A.~~ It is the intent of this ordinance to place reasonable restrictions on the location of newspaper corrals within the Belmar Site. The Belmar Site is unique in the mixed use character of residential, commercial and office space and will consist of streetscapes, sidewalks, street lighting and other amenities which are unique in the City. The regulation of the location of newspaper corrals in the Belmar Site is essential to ensure compatibility with the unique design of the Belmar Site and to

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avoid visual blight by controlling congestion of newspaper vending machines at certain locations. The City recognizes the First Amendment rights of newspapers to distribute their publications and will not interfere with such rights. There will be both an ample number of newspaper corrals located within the Belmar Site and an ample number of alternative methods of newspaper distribution through home delivery and retail stores in the Belmar Site. This Chapter does not regulate content.

~~B.~~ B. The Belmar Site consists of the Service Areas of The Plaza Metropolitan District No. 1, The Plaza Metropolitan District No. 2, and The Plaza Metropolitan District No. 3 as legally described more specifically in an Exhibit on file in the City ~~Clerk's~~Clerk's Office as may be amended from time to time. ~~The Belmar Site is generally described as being bounded on the north by West Alameda Avenue, on the west by South Wadsworth Boulevard, on the south by Center Avenue, and on the east by Quay Street. (Ord. O 2004 11 5 1, 2004).~~

12.20.020 — Newspaper ~~corrals~~Corrals at Belmar Site-

~~A.~~ A. Newspaper corrals are permitted within the Belmar Site in the public right of way only in those locations designated by the Director of Community Planning and Development ~~(“Director”)~~ or ~~his~~ designee. These newspaper corrals are available for use by permit as provided in this Chapter for locating newspaper vending machines. ~~No person shall install or use any newspaper vending machine or similar device on or at the Belmar Site other than as described in this Chapter. -Newspaper vending machines shall be located only within a newspaper corral.~~

~~B.~~ B. Any publication that is eligible for the periodicals mailing privileges of the United States Postal Service may place its newspaper vending machine within a newspaper corral after receiving a permit from the City to do so. Only one newspaper vending machine per publication may be located in each newspaper corral installed at the Belmar Site. ~~(Ord. O2004 11 5 1, 2004).~~

12.20.030

12.20.030 — Criteria-

The Director shall use the following criteria in determining locations for newspaper corrals:

~~A.~~ A. Newspaper corrals and their locations and access shall be in compliance with the Americans with Disabilities Act.

~~B.~~ B. Newspaper corrals shall be in compliance with City regulations relating to traffic and pedestrian safety.

~~C.~~ C. Newspaper corrals shall be placed in those locations, among others, where the public is invited to congregate, such as public plazas, park entrances and public transportation stops. ~~D. There shall be a minimum of seven (7) newspaper corrals located within the Belmar Site. (Ord. O 2004 11 5 1, 2004).~~

~~D.~~ D. There shall be a minimum of seven (7) newspaper corrals located within the Belmar Site.

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12.20.040 — Permit ~~required~~ Required

~~A.~~ A. Annual Permit Required.- It shall be unlawful to use, operate or maintain a newspaper vending machine without first having obtained a permit issued by the Director. -A permit shall be valid for one (1) year following the date of issuance and may be renewed in accordance with this Chapter. Permit fees, if any, shall be established, and from time to time may be changed, by resolution of the City Council.

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~~B.~~ B. Initial Permit Application.- Any person who wishes to obtain a permit to use, operate or maintain a newspaper vending machine shall submit to the Director an application in a form approved by the City which shall include, but not be limited to, identification, address, and contact information for the applicant. The applicant shall make payment of all application fees imposed for the application. Application fees, if any, shall be established, and from time to time may be changed, by resolution of the City Council.

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~~C.~~ C. Allocation. Newspaper vending machine permits are available on a first come, first served basis. Should the first come, first served system not resolve allocation questions, the Director shall select publications by random drawing. ~~-(Ord. O 2004 11 § 1, 2004).~~

12.20.050 — Permittee ~~obligations.~~ Obligations

~~A.~~ A. A newspaper vending machine permittee shall maintain the newspaper vending machine face, its interior, and all mechanical workings of its individual box, including, without limitation, the window and face plate, the coin mechanism, coin tray, and lock, if any; and the inside shelves in proper working order.

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~~B.~~ B. A newspaper vending machine permit is valid for one year from date of issuance.- In addition to other causes specified in this Chapter for permit denial, revocation, or suspension, a newspaper vending machine permit expires when the machine is not in use for a period of thirty days, or if the permittee has failed to maintain the newspaper vending machine over such a period. The Director shall take no final action based on such an expiration without notice to the permittee and an opportunity for a hearing. -Upon denial of renewal of a permit, or suspension, revocation, expiration for failure to use or maintain, or expiration for failure to renew, the Director may remove the newspaper vending machine, contents of any machine, change the locks, hold any contents and money as abandoned property, and issue a new permit to someone else. ~~-(Ord. O 2004 11 § 1, 2004).~~

12.20.060 — Non-periodical newspaper vending machine boxes-

~~A.~~ The Director shall permit one newspaper vending machine box in each corral for use by purveyors of printed material which is not eligible for the periodicals mailing privileges of the United States Postal Service. -Such non-periodical newspaper vending machines shall contain only materials available free to the public.

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12.20.060

~~B.~~ In the event that there are unused periodicals newspaper vending machines spaces in any corral, the Director may make the space available as temporary non-periodical newspaper vending machines, except that temporary permits issued on this basis shall be revocable at any time that a new

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applicant for a regular newspaper vending machine receives approval of the application. ~~(Ord. O 2004 11 § 1, 2004).~~

12.20.070 — Application ~~review.~~ Review

~~A.~~ The Director shall administratively approve or deny an application for issuance or renewal of an annual permit within fourteen (14) days from the date the application is deemed complete by the City. Each application shall apply throughout the Belmar Site. The Director shall administratively deny or may administratively revoke a permit if the applicant or permittee do not qualify under the provisions of this Chapter to use a newspaper corral. Any denial or revocation shall be in writing, contain a description of the reasons for the denial, and shall be sent to the applicant by certified mail, return receipt requested, at the ~~applicant's~~ applicant's address as specified in the application. An applicant shall have thirty (30) days from the date of mailing of a denial or revocation within which to correct all cited deficiencies. ~~(Ord. O 2004 11 § 1, 2004).~~

12.20.080 — Appeals of Permit Decisions

~~A.~~ A. Appeal Hearing. -An applicant shall have the right to a quasi-judicial hearing before the City Manager or ~~his~~ designee for the purpose of appealing the Director's administrative decision(s). -A written request for a hearing shall be made to the City Manager or ~~his~~ designee within ten (10) days of the mailing date of the Director's written findings and decision denying or conditioning the permit application. -The hearing shall be conducted within fourteen (14) days of the City ~~Manager's~~ Manager's or ~~his~~ designee's receipt of the written request for a hearing unless a later date is requested by the applicant.

~~B.~~ B. Appeal of Order. -The order of the City Manager or ~~his~~ designee made pursuant to this section shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). -For purposes of any appeal to the District Court, the City ~~Manager's~~ Manager's or ~~his~~ designee's decision shall be final upon the earlier of the date of the ~~applicant's~~ applicant's receipt of the order or four (4) days following the date of mailing. ~~(Ord. O 2004 11 § 1, 2004).~~

12.20.090 — Rules and ~~regulations.~~ Regulations

—The Director may adopt reasonable rules and regulations to supplement the requirements of this Chapter. Said rules and regulations shall not be in conflict with this Chapter. ~~(Ord. O 2004 11 § 1, 2004).~~

12.20.100 — Intent-

—It is the intent of this Chapter to be interpreted liberally to ensure compliance with newspaper ~~distributors'~~ distributors' First Amendment rights. ~~(Ord. O 2004 11 § 1, 2004).~~

12.20.110 — Severability-

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—If any provision of this Chapter is held invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions of this Chapter which can be given effect without the invalid provision. (Ord. O-2004-11-~~S 4,~~ S 2004).

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Definitions from Section 13:

Accessory Equipment: any equipment serving or being used in conjunction with a WCF, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures

Alternative Tower Structure: man-made trees, clock towers, bell steeples, light poles, buildings, and similar alternative design mounting structures that are compatible with the natural setting and surrounding structures, and camouflages or conceals the presence of Antennas or Towers so as to make them architecturally compatible with the surrounding area pursuant to this title. This term also includes any Antenna or Antenna array attached to an Alternative Tower Structure. A stand-alone pole in the Right-of-Way, streetlight, or traffic signal that accommodates Small Cell Facilities is considered an Alternative Tower Structure to the extent it meets the camouflage and concealment standards of this title.

Antenna: 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.

Applicant for WCF: any person that submits an application to the City to site, install, construct, collocate, modify and/or operate a Wireless Communications Facility.

Amateur Radio Towers and Antennae: Broadcasting and receiving structures or devices used for personal pleasure or as a ~~hobby~~ hobby.

Base Station: a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The definition of Base Station does not include or encompass a Tower as defined herein or any equipment associated with a Tower. Base Station does include, without limitation:

1. Equipment associated with wireless communications services such as private broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the City under this Chapter and has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support; and

2. Radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks) that, at the time the relevant application is filed with the City under this title, has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

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Lakewood Zoning Ordinance –

The definition of Base Station does not include any structure that, at the time the relevant application is filed with the City, does not support or house equipment described in paragraphs 1 and 2 above.

Camouflage, Concealment, Or Camouflage Design Techniques: the designing of a WCF to alter its appearance in such a manner as to substantially integrate it into surrounding building designs and/or natural settings to minimize the visual impacts of the facility on the surrounding uses and ensure the facility is compatible with the environment in which it is located. A Wireless Communication Facility utilizes Camouflage Design Techniques when it (i) is integrated as an architectural feature of an existing structure such as a cupola, or (ii) is integrated in an outdoor fixture such as a utility tower, or (iii) uses a design which mimics and is consistent with the nearby natural or architectural features (such as a clock tower) or is incorporated into (including without limitation, being attached to the exterior of such facilities and painted to match it) or replaces existing permitted facilities (including without limitation, stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

Collocation: (1) mounting or installing a WCF on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing a WCF on that structure. Provided that, for purposes of Eligible Facilities Requests, "Collocation" means the mounting or installation of transmission equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Director: The person, or that person's designee, authorized by the City Manager to enforce and interpret this Zoning Ordinance.-

Eligible Facilities Request: any request for modification of an Existing Tower or Base Station that it is not a Substantial Change.

Eligible Support Structure: any Tower or Base Station as defined in this Section, provided that it is existing at the time the relevant application is filed with the City under this Section.

Existing Tower or Base Station: a constructed Tower or Base Station that was reviewed, approved, and lawfully constructed in accordance with all requirements of applicable law 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 purposes of this definition.

FCC: the Federal Communications Commission.

Hazardous Substance: any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.

Interference: physical interference and radio frequency interference.

Micro Cell Facility: a small wireless facility that is no larger than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height, and that has an exterior Antenna, if any, that is no more than eleven (11) inches in length.

Monopole: a single, freestanding pole-type structure supporting one or more Antennas.

Over the Air Receiving Device: an Antenna used to receive video programming from direct broadcast satellites, broadband radio services and television broadcast stations, but shall not include Antennas used for AM/FM radio, amateur ("ham") radio, CB radio, Digital Audio Radio Services or Antennas used as part of a hub to relay signals among multiple locations.

Owner means a person with a legal or equitable interest in ownership of real or personal property.

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Lakewood Zoning Ordinance – Adopted January 26, 2015

Permit means a permit issued and described in accordance with Laws, which is used to regulate, monitor, and control the improvement, construction, or excavation activities, or other work or activity, occurring upon or otherwise affecting Licensor's ROW, including ROW use, building, and electrical permits.

Physical Interference means where equipment, vegetation, or a structure causes reduced use of another's prior mounted equipment, or an obstruction in a necessary line-of-sign path.

Pole-Mounted Small Cell Facility: a Small Cell Facility with Antenna that are mounted and supported on an Alternative Tower Structure, which includes a Replacement Pole.

Public Right-of-Way (ROW): any public street, way, alley, sidewalk, median, parkway, or boulevard that is dedicated to public use.

Radio Antenna, Amateur: A noncommercial device that is used for transmitting and receiving electro-magnetic waves.

Radio Frequency Emissions Letter: a letter from the Applicant certifying all WCFs that are the subject of the application shall comply with federal standards for radio frequency emissions.

Radio Frequency Interference means the emission or conduction of radio frequency energy (or electronic noise) produced by electrical and electronic devices at levels that interfere with the operation of adjacent or nearby equipment.

Radio Tower, Amateur: A structure that supports an antenna.

READILY APPARENT. For purposes of determining whether a WCF is readily apparent, the phrase means that the facility, will be easily recognizable as a WCF in the discretion of the Director, viewing the facility as a whole and in the context of any adjacent improvements and landscaping from publicly accessible locations when considering the character, scale, and height of nearby and surrounding natural or architectural features. Methods of design and construction that may assist in reducing the visibility of a facility and reaching a conclusion that a facility is not readily apparent include the use of color mimicking surrounding structures and landscaping, minimizing facility size to the greatest extent feasible, integrating the facility into any adjacent or attached improvements, and positioning the facility in a manner that limits the degree to which the facility projects away from any adjacent structures or landscaping. Due to differences in site characteristics, a determination that a particular WCF will not be readily apparent at one location shall not establish a precedent for the same determination for a facility of the same or similar design or construction at a different location.

Replacement Pole: an Alternative Tower Structure that is a newly constructed and permitted traffic signal, utility pole, street light, flagpole, electric distribution, or street light pole or other similar structure of proportions and of equal height or such other height that would not constitute a Substantial Change to a pre-existing pole or structure in order to support a WCF or Small Cell Facility or Micro Cell Facility or to accommodate Collocation and replaces a pre-existing pole or structure.

Satellite Dish Antenna: A parabolic antenna intended to receive signals from orbiting satellites and other sources. Non-commercial dish antennas are defined as being less than four meters in diameter, while commercial dish antennas are usually those larger than four meters and typically used by broadcasting stations.

Setback: The minimum distance any building or structure must be separated from a specified point.

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Lakewood Zoning Ordinance –

Sign: Any structure, which requires a permanent or temporary location, that has a visual display visible from a public right-of-way and is designed to identify, announce, direct or inform.

Signal Non-Interference Letter: a letter from the Applicant certifying all WCFs that are the subject of the application shall be designed, sited, and operated in accordance with applicable federal regulations addressing radio frequency interference.

Site for Towers (other than Towers in the Right-of-Way and Eligible Support Structures): the current boundaries of the leased or owned property surrounding the Tower or Eligible Support Structure and any access or utility easements currently related to the Site. A Site, for other Alternative Tower Structures, Base Stations, Micro Cell Facilities, and Small Cell Facilities in the Right-of-Way, is further restricted to that area comprising the base of the structure and to other related Accessory Equipment already deployed on the ground.

Small Cell Facility: a Wireless Communication Facility where each Antenna is located inside an enclosure of no more than three cubic feet in volume, or, in the case of an Antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. Small cells may be attached to Alternate Tower Structures, Replacement Poles, and Base Stations. The definition of a Small Cell Facility shall also include a Micro Cell or Micro Cell Facility.

Street: A public or private thoroughfare for vehicular traffic other than an alley or driveway.

Substantial Change for Eligible Facilities Request: 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:

- (A) For Towers, other than Alternative Tower Structures or Towers in the Right-of-Way, it increases the height of the Tower by more than 10 percent (10%) or by the height of one (1) 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 ten percent (10%) or more than ten (10) feet, whichever is greater;
- (B) For Towers, other than Towers in the Right-of-Way, it involves adding an appurtenance to the body of the Tower that would protrude from the Tower more than twenty (20) feet, or more than the width of the Tower Structure at the level of the appurtenance, whichever is greater; for Eligible Support Structures, it involves adding an appurtenance to the body of the structure that would protrude from the side of the structure by more than six (6) feet;
- (C) 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;
- (D) For Towers in the Right-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 ten percent (10%) larger in height or overall volume than any other existing, individual ground cabinet associated with the structure;

Lakewood Zoning Ordinance – Adopted January 26, 2015

- (E) For any Eligible Support Structure, it entails any excavation or deployment outside the current Site;
- (F) For any Eligible Support Structure, it would defeat the concealment elements of the Eligible Support Structure. For the purposes of this subsection (vi), a change that would undermine the concealment elements of this structure will be considered to defeat the concealment elements of the structure; or
- (G) For purposes of determining whether a Substantial Change exists, changes in height are 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 are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

Support Structure: a structure designed to support Small Cell Wireless Facilities including, but not limited to, Monopoles, Alternative Tower Structures, Replacement Poles, and other freestanding self-supporting pole structures.

Toll and Tolling: to delay, suspend, or hold off on the imposition of a deadline, statute of limitations, or time limit.

Tower: any structure built for the sole or primary purpose of supporting one or more FCC-licensed or authorized Antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. The term includes self-supporting lattice towers, guyed towers or Monopole towers, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, Alternative Tower Structures and the like.

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

Wireless Communications Equipment Shelter: An unattended structure such as a small building or cabinet(s) used to house equipment for a wireless communications facility associated with either a freestanding wireless communications facility or a structure or building mounted wireless communications facility.

Wireless Communications Facility or WCF: a facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF includes an Antenna or Antennas, Base Stations, support equipment, Alternative Tower Structures, Small Cell Facilities, and Towers. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand held radios/telephones and their associated transmitting Antennas, nor does it include other facilities specifically excluded from the coverage of this title.

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Wireless Communications Provider: A public or private company providing personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services.

Wireless Communications Site: Any use of property for antennae, equipment, and equipment shelter(s) employed in the reception, switching, and/or transmission of wireless telecommunication services including, but not limited to, paging, enhanced specialized mobile radio, personal communication services, microwave link antenna, cellular telephone, and other related technologies.

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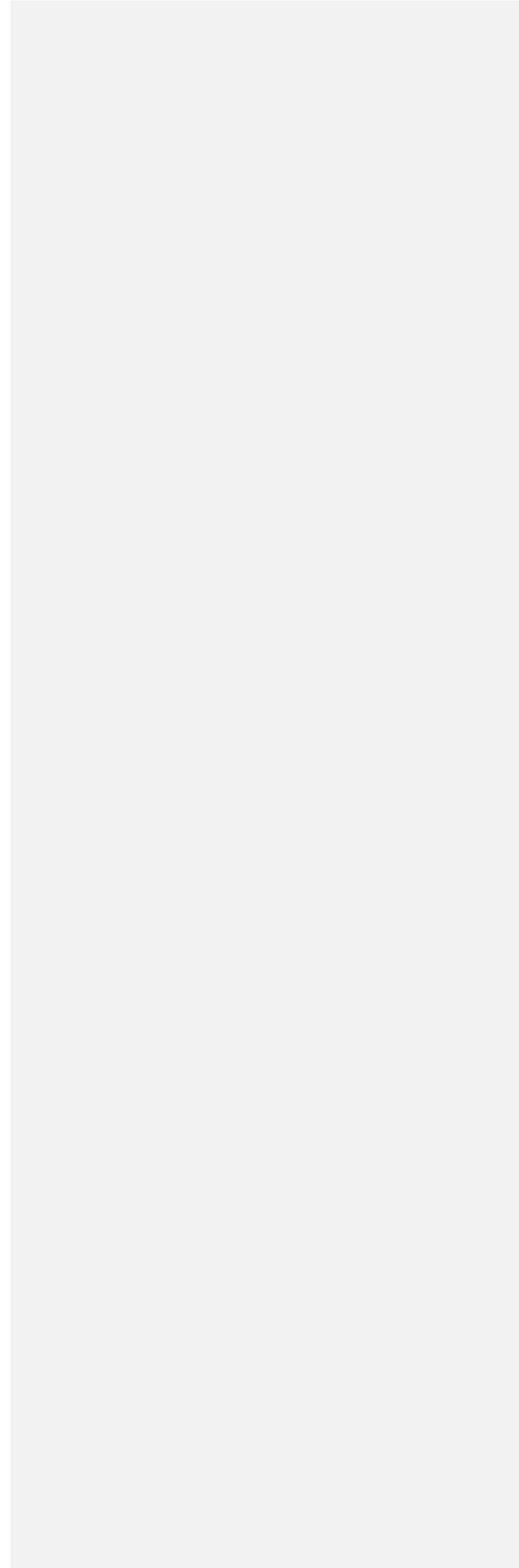
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ARTICLE 10: WIRELESS SERVICES AND COMMUNICATIONS

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17.10.1: General

17.10.1.1: Purpose and Intent

This Article is intended to ensure that residents, public safety operations and businesses in the City have reliable access to personal wireless services and state of the art communications services in a way that reasonably preserves the aesthetic character of the community and complies with Federal and State laws.

~~It is the City's intent to:~~

~~The City Council finds that these regulations are necessary -to:~~

- ~~A. Provide for the managed development and installation, maintenance modification, and removal of wireless communications infrastructure in the City with the fewest number of wireless communications facilities (WCFs) to complete a network without unreasonably discriminating against wireless communications providers of functionally equivalent services, including all of those who install, maintain, operate, and remove WCFs;~~
- ~~B. Minimize adverse visual effects of WCFs through thoughtful design and siting, including but not limited to camouflage design techniques, appropriate and effective screening, and equipment undergrounding whenever appropriate;~~
- ~~C. Encourage the location of Towers in a manner that minimizes the total number of Towers needed throughout the community;~~
- ~~D. Require the collocation of WCFs wherever reasonably feasible;~~
- ~~E. Encourage owners and users of WCFs to locate them, to the extent possible, in areas where the adverse impact to the community is minimized;~~
- ~~F. Enhance the ability of wireless communications service providers to provide such services to the community quickly, effectively, and efficiently;~~
- ~~G. Effectively manage WCFs in the Public Right of Way;~~
- ~~H. Manage amateur radio facilities and over-the-air devices in the City;~~
- ~~A.1. Ensure the City has sufficient wireless infrastructure to support public safety and emergency response communications throughout the City;~~
- ~~B. Ensure access to reliable personal wireless services throughout all areas of the City and in no event prohibit or have the effect of prohibiting the provision of personal wireless services;~~
- ~~C. Encourage the use of existing structures for the siting of facilities;~~
- ~~D. Encourage the location of new freestanding support structures in areas where any potential adverse impacts on the community will be minimized;~~

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- ~~E. Minimize the potential adverse effects of wireless service facilities through the implementation of reasonable design, landscaping and construction practices; and~~
- ~~F. Conform to federal and state laws which exempt certain facilities, receiving dishes and antennas from local regulations.~~

17.10.1.2: Applicability

A. The standards in this Article shall ~~control the design, location, alteration, installation~~ apply to all Eligible Facilities Requests and ~~maintenance~~ WCF applications for Base Stations, Alternative Tower Structures, Towers, Micro Cells, and Small Cell Facilities as defined in Section 17.13.2 and further addressed herein.

B. The Requirements set forth in this Article shall not apply to:

1. Amateur radio Antennas that are owned and operated by a federally licensed amateur radio station operator or are exclusively receive only Antennas, provided that the requirements that the height be no more than the distance from the base of all wireless service infrastructure in all zone districts. ~~No provision~~ the Antenna to the property lines is met.
2. Pre-existing WCFs. Any WCF for which a permit has been properly issued prior to the effective date of Ordinance # ~~2019 O-2020-1~~ shall not be required to meet the requirements of this Article ~~shall apply to~~ Chapter, other than the requirements of Section 17.10.3. Changes and additions to pre-existing WCFs (including trading out of Antennas for an equal number of Antennas) shall meet applicable requirements of Section 17.10.3. Notwithstanding the foregoing, any modifications qualifying as an Eligible Facilities Requests shall be evaluated under this Section.
3. Miscellaneous Antennas. Antennas used for reception of television, multi-channel video programming and radio such as Over-the-Air Receiving Device (OTARD) Antennas, television broadcast band Antennas, satellite earth station antennae and broadcast radio Antennas, provided that any requirements related to Accessory uses contained in this Code and the requirement that the height be no more than the distance from the base to the property line are met. The Director or his or her designee has the authority to approve modifications to the height restriction related to OTARD Antennas and OTARD antenna structures, if in the reasonable discretion of the City, modifications are necessary to comply with federal law.
4. A WCF installed upon the declaration of a state of emergency by the federal, state, or local government, or a written determination of serving the general health, safety, and welfare of residents by the City, or reasonable ability to obtain such written determination within 72 hours.
5. A temporary WCF installed for the purpose of providing sufficient coverage for a special event, subject to administrative approval by the City.

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~~A.6.~~ The siting of Distributed Antenna Systems (DAS) or wireless facilities located within and intended to provide wireless coverage within a structure.

~~B.~~ Any dish antenna less than 40 inches in diameter located in a residential zone district; or

~~C.~~ Any dish antenna less than 80 inches in diameter located in any other zone district.

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17.10.2: Wireless Facilities – By Zone District

Table 17.4.1 identifies where the different types of wireless facilities are permitted as primary or accessory uses, by right or with a special use permit, and where these uses are prohibited in each zone district within the City of Lakewood.

17.10.3: ~~Wireless Facility Operational~~ Standards

17.10.3.1: ~~Wireless Stealth Facilities~~

~~A.~~ Review Requirements:

~~The installation of new wireless stealth facilities on any non-single-family or two-family structure may be allowed in any zone district if reviewed and approved in accordance with the Review of Supplemental Standards procedures identified in Article 2. The Director shall exercise discretion in applying the standards outlined for all new wireless stealth facilities, where such standards are determined to be necessary to minimize the potential adverse effects of wireless service facilities. At a minimum the following standards shall apply:~~

- ~~1. The dimensions of the stealth facility must reasonably approximate the dimensions of the object they are being disguised as, and~~
- ~~2. The location of the stealth facility must be in concert with its surroundings.~~

17.10.3.2: ~~New Wireless Facilities on Existing Structures~~

~~A.~~ Review Requirements:

~~The installation of new wireless facilities on~~

~~A. Federal Requirements. All WCFs shall meet the current standards and regulations of the Federal Aviation Administration (FAA), the FCC and any other agency of the federal government with the authority to regulate WCFs. If such standards and regulations are changed, then the owners of the WCF shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency. Unless preempted by federal law, failure to meet such revised standards and regulations within 30 days of the City's determination of such failure shall constitute grounds for the removal of the WCF by the City or owner at the WCF owner's expense.~~

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- B. Permission to Use Public Right-of-Way or Public property. Prior to WCFs being sited in the ROW, the Applicant shall have an executed license agreement with the City, granting a non-exclusive license to use the Public Right-of-Way. Attachment of WCFs on an existing or replacement structures-traffic signal, street light pole, or similar structure shall require written evidence of a license, or other legal right or approval, to use such structure by its owner, and Site specific approval pursuant to 17.10.4. The Applicant shall remain the owner of, and solely responsible for any WCF installed in the ROW. Prior to, or concurrently with, seeking land use approval for a WCF on Public Property, the applicant shall execute a lease agreement with the City.
- C. Operation and Maintenance. To ensure the structural integrity of WCFs, the owner of a WCF shall ensure that it is maintained in compliance with the standards contained in applicable local building and safety codes. If upon inspection, the City concludes that a WCF fails to comply with such codes and constitutes a danger to persons or property, then, upon written notice being provided to the owner of the WCF, the owner shall have 30 days from the date of notice to bring such WCF into compliance. Upon good cause shown by the owner and meeting reasonable safety considerations, the City's Chief Building Official may extend such compliance period not to exceed 90 days from the date of said notice. If the owner fails to bring such WCF into compliance within said time period, the City may ~~be allowed~~ remove such WCF at the owner's expense.

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D. Emergency. In the event of an emergency or to protect the public health or safety, prior to the City accessing or performing any work on a facility on which a WCF Owner has installed Equipment, City may require WCF Owner to deactivate such Equipment if any of City's employees or agents must move closer to the Equipment than the FCC's recommended minimum distance. In such case, City will contact WCF Owner to request immediate deactivation.

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E. Non-Interference. The following provisions shall apply to ensure and/or avoid interference (both physical interference and Radio Frequency Interference) resulting from Licensee's installation, operation and/or maintenance of its Equipment:

- a. Radio Frequency Interference. All WCF Owners shall ensure that the Equipment will not cause Radio Frequency Interference with Wireless Communication Facilities or devices, cable television, broadcast radio or television systems, satellite broadcast systems, or City traffic, public safety or other communications signal equipment existing at the time of installation of the Equipment.
- b. Existing Uses. WCF Owners shall not interfere in any manner with the existing uses of City property including Rights-of-Way, and including sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, streetlight fixtures, cable television, and other telecommunications, utility, and municipal property without the express written approval of the Owner(s) of the affected property or properties.
- c. City Communications. WCF Owners shall not interfere in any manner with current or future City or other governmental public safety communication.
- d. Remedies. If Interference occurs and continues for a period in excess of 24 hours following notice to the interfering party via telephone, the City may require the interfering party to reduce power or cease operations of the interfering equipment until the Interference is cured.

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F. Relocation, Abandonment and Removal. After the WCF is constructed, if a WCF has not been in use for a period of three months, the owner of the WCF shall notify the City of the non-use and shall indicate whether re-use is expected within the ensuing three months. Any WCF that is contracted and is not operated for a continuous period of six months shall be considered abandoned. The City, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF shall remove the same within 30 days of receipt of written notice from the City. If such WCF is not removed within said 30 days, the City may remove it at the owner's expense and any zone district if approved permits for the WCF shall be deemed to have expired. For any public project, a WCF may be required to relocate at WCF Owner's expense.

G. Hazardous Materials. No Hazardous materials shall be permitted in association with WCFs, except those necessary for the operation of the WCF and only in accordance with all applicable laws governing such materials.

H. Collocation. No WCF Owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by the City, the owner or operator shall provide evidence explaining why Collocation is not possible at a particular facility or site.

17.10.4 Review Procedures and Requirements

A. Permit Required. No new WCF shall be constructed and no Collocation or modification to any WCF may occur except after a written request from an Applicant, reviewed and approved by the City in accordance with the this Chapter. All WCFs except Eligible Facilities Requests which are reviewed under subsection (a)(3) of this Section, shall be reviewed pursuant to the following procedures. All WCF permits shall expire and be of no further force and effect 180 days following the date of approval unless, prior to the date of expiration: (1) Construction has been diligently pursued towards completion of the project, or (2) 180-day extension of the permit has been authorized by the director upon a written request by the applicant. An extension may be granted if a review of the permit shows that no major changes in the City's development or zoning regulations or in the development pattern of the surrounding properties has occurred, as determined by the director. If a WCF permit expires, no further development of the facility may occur until a new permit application is submitted, reviewed and approved in accordance with this Code, subject to all application and processing fees.

1. Review Procedures for certain WCFs, including Base Stations, Alternative Tower Structures, Small Cell Facilities, and Alternative Tower Structures within Public Rights-of-Way. Applications for these WCF facilities shall be reviewed by the Public Works Department for conformance to this Section and using the Design Review procedures set forth in Section 17.10.5 For WCFs in the Right-of-Way that are found to have a significant visual impact (i.e. proximity to historical sites), be incompatible with the structure of surrounding area, or not meet the intent of these provisions, the City may refer the application to Planning Commission for a Special Use Permit Review of Supplemental Standards Determination.
2. Review Procedures for certain WCFs, including Towers. Towers, other than those defined or excepted in (1) above, must apply for Special Use Permit Review approval. These WCFs shall be reviewed for conformance using the procedures set forth in Section 17.10.5. All applications for Towers shall demonstrate that other alternative design options, such as using Base Stations or Alternative Tower Structures, are not viable options as determined by the City.
3. Review Procedures for Eligible Facilities Requests.
 - a. Eligible Facilities Requests shall be considered a permitted use, subject to administrative review. The City shall prepare, and from time to time revise and make publicly available, an application form which shall require submittal of information necessary for the City to consider whether an application is an Eligible

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Facilities Request. Such required information shall include, without limitation, whether the project:

- i. Constitutes a Substantial Change;
- ii. Violates a generally applicable law, regulation, or other rule codifying objective standards reasonably related to public health and safety.

The application may not require the Applicant to demonstrate a need or business case for the proposed modification or Collocation.

b. Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the Director shall review such application to determine whether the application so qualifies.

c. Timeframe for Review. Subject to the Tolling provisions of subparagraph d. below, within 60 days of the date on which an Applicant submits an application seeking approval under this Section, the City shall approve the application unless it determines that the application is not covered by this Subsection, or otherwise in non-conformance with applicable codes.

d. Tolling of the Timeframe for Review. The 60-day review period begins to run when the application is filed, and may be Tolloed only by mutual agreement of the City and the Applicant, or in cases where the Director determines that the application is incomplete:

- i. To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 30 business days of receipt of the application, specifically delineating all missing documents or information required in the application; such delineated information is limited to documents or information meeting the standard under paragraph (a)(i) above.
- ii. The timeframe for review begins running again the following business day after the applicant makes a supplemental written submission in response to the City's notice of incompleteness;
- iii. Following a supplemental submission, the City will notify the Applicant within 10 business days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is Tolloed in the case of second or subsequent notices pursuant to the procedures identified in paragraph (d.) (i.). In the case of a second or subsequent notice of incompleteness, the City may not specify missing information or documents that were

not delineated in the original notice of incompleteness.

e. Failure to Act. In the event the City fails to act on a request seeking approval for an Eligible Facilities Request under this Section within the timeframe for review (accounting for any Tolling), the request shall be deemed granted. The request becomes effective when the Applicant notifies the City in writing after the review period has expired (accounting for any Tolling) that the application has been deemed granted.

f. Interaction with Telecommunications Act Section 332(c)(7). If the City determines that the Applicant's request is not an Eligible Facilities Request as delineated in this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the City's decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the Applicant to evaluate the application under Section 332(c)(7) reviews.

4. Review Procedures for Small Cell Facilities in the Right-of-Way.

a. Small Cell Facilities in the Right-of-Way shall be considered a permitted use, subject to administrative review as set forth in Subsection A.1.

b. The City shall prepare, and from time to time revise, and make publicly available, an application form which shall require submittal of information necessary for the City to consider whether a project is eligible as a Small Cell Facility in the Right-of-Way, meeting certain criteria. The application shall not require the Applicant to demonstrate a need or business case for any proposed modification or Collocation.

c. Upon receipt of an application for a Small Cell Facility in the Right-of-Way pursuant to this Section, the Public Works Department shall review such application to determine whether the application is complete.

d. Timeframe for Review. Within 90 calendar days of the date on which an Applicant submits an application seeking approval under this Section, the City shall take action on the application unless it determines that the application is not covered by this Subsection, or otherwise in non-conformance with applicable codes.

B. Submittal Requirements.

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1. In addition to submittal requirements of Chapter 17.2, the following supplemental items are required for all WCF applications

- a. Signal Non-Interference Letter;
- b. Radio Frequency Emissions Letter;
- c. Photo simulations showing before and after conditions excluding applications for small cell facilities;
- d. Written representation that Applicant shall be responsible for paying all charges for any electricity furnished by a utility to Applicant and for charges for furnishing service to the Equipment. When the Equipment requires an electric meter as determined by the utility provider, the Applicant shall install or cause to be installed a separate electric meter on a ground mounted pedestal or on Applicant's pad mounted equipment cabinet as required by the electric provider for the operations of its Equipment;
- e. Inventory of Sites. Each applicant for a WCF shall provide to the City a narrative description and data in a format acceptable to the City showing the applicant's currently proposed WCFs within the City, and outside of the City within one half-mile of its boundaries. This provision is not intended to be a requirement that the applicant submit its business plan, proprietary information, or make commitments regarding locations of WCFs within the City.- This information will be used to assist in the City's comprehensive planning process, and -promote Collocation by identifying areas in which WCFs might be appropriately constructed for multiple users.

The City may share information regarding the location of sites and the owners or managers of such sites with other applicants applying for administrative approvals or conditional permits under this section or other organizations seeking to locate WCFs within the jurisdiction of the City, provided however, that the City, is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

- f. Abandonment and removal Affidavits shall be required from the owner of the property and from the applicant acknowledging that each is responsible for the removal of a WCF that is abandoned or is unused for a period of six (6) months.
- g. Consolidated applications. The City shall allow a wireless provider to file a multi-site permit seeking approval for up to ten (10) permits for Small Cell Facilities at a given time. Each individual site shall be processed as a separate permit in order to facilitate recording site addresses, utility company requirements, and timely inspection scheduling. The City's denial of any individual small cell facility is not a basis to deny the application as a whole or any other small cell facility incorporated within the consolidated application.

C. Decision. Any decision to approve, approve with conditions, or deny an application for a WCF, shall be in writing and supported by substantial evidence in a written record. The applicant shall receive a copy of the decision.

D. Compliance with Applicable Law. Notwithstanding the approval of an application for new WCFs or Eligible Facilities Request as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building, structural, electrical, and safety requirements as set forth in the Municipal Code and any other applicable laws or regulations. In addition, all WCF applications shall comply with the following:

1. Comply with any permits or licenses issued by a local, state, or federal agency with jurisdiction of the WCF
2. Comply with easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;
3. Be maintained in good working condition and to the standards established at the time of application approval; and
4. Remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than ten calendar days from the time of notification by the City or after discovery by the owner or operator of the Site. Notwithstanding the foregoing, any graffiti on WCFs located in the Public Rights-of-Way or on Public Property may be removed by the City at its discretion, and the owner and/or operator of the WCF shall pay all costs of such removal within 30 days after receipt of an invoice from the City.

17.10.5 Design Standards

A. Review Requirements. The requirements set forth in this Section shall apply to the location and design of all WCFs governed by this Chapter as specified below; provided, however, that the City may waive these requirements if it determines that the goals of this Chapter are better served thereby. To that end, WCFs shall be designed and located to minimize the impact on the surrounding neighborhood and to maintain the character and appearance of the City, consistent with other provisions of this Code. Notwithstanding the foregoing, the Planning Director shall have the authority to promulgate design standards for small cell facilities in the rights of way, which shall govern those types of WCFs.

1. Camouflage/Concealment. All WCFs and any Transmission Equipment shall, to the extent possible, use Camouflage Design Techniques including, but not limited to the use of materials, colors, textures, screening, undergrounding, landscaping, or other design options that will blend the WCF into the surrounding natural setting and built environment.
 - a. Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g. proximity to historic, natural, or aesthetically significant structures or areas, views, and/or community features or facilities). In such instances where WCFs are located in areas of high visibility, they shall (where possible) be designed to minimize their profile.
 - b. The camouflage design may include the use of Alternative Tower Structures should the Public Works Department determine that such

- design meets the intent of this Code and the community is better served thereby.
- c. All WCFs, such as Antennas, vaults, equipment rooms, equipment enclosures, and Tower structures shall be constructed out of non-reflective materials (visible exterior surfaces only).
2. Collocation. WCFs shall be designed and constructed to permit the facility to accommodate WCFs from at least two (2) wireless service providers on the same WCF, to the extent it is feasible in good faith based upon construction, engineering and design standards, except where such Collocation would materially compromise the design intent of the WCF, particularly visually.
3. Lights and other attachments.
- a. WCFs shall not be artificially lighted, unless required by the Federal Aviation Administration or other applicable governmental authority, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purpose. If lighting is required, the City may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding properties or environs. Lighting shall be shielded or directed to the maximum extent so as to minimize the amount of glare and light falling onto nearby properties, particularly residences.
- b. All exterior lighting within equipment yards shall be mounted on poles or on the building wall below the height of the screen wall or fence.
- c. No Tower shall have constructed on, or attached to, any additional platform, catwalk, crow's nest or like structure (other than those required by industry standards or federal regulations), except during periods of construction or repair.
- d. Signs and advertising. The use of any portion of a Tower for signs or advertising devices other than public safety warnings, certification, or other requires seals on any wireless communication device or structure is prohibited. However, the telephone numbers to contact in an emergency shall be posted on each facility.
4. Noise. Noise generated on the site must not exceed the levels permitted in the City of Lakewood Municipal Code, except that a WCF owner or operator shall be permitted to exceed such noise standards for a reasonable period of time during repairs, not to exceed two (2) hours without prior authorization from the City.
5. Landscaping Requirements.
- a. WCFs shall be sited in a manner that does not reduce the landscaped areas for the other principal uses on the parcel.
- b. WCFs, excluding Small Cell Facilities unless otherwise required by the Public Works Department, shall be landscaped with a buffer of plant materials that effectively screen the view of the WCF from Rights-of-Way and adjacent properties. Where the City has requested additional landscaping, the City may require irrigation requirements for the landscaping.

6. Screening Requirements.

- a. All equipment, not located within the Public Right-of-Way and not otherwise defined, shall be fully screened within a walled yard or placed in an enclosed building except in cases where a better design alternative exists. The yard shall be enclosed by a solid fence or wall of sufficient height to screen all miscellaneous equipment from view from the public Right-of-Way or adjacent properties and to provide security.
- b. All structures and improvements associated with the WCF shall be provided with adequate safety equipment and aesthetic treatments, including incorporating landscape screening noted in subsection 5, to be visually compatible with uses in the surrounding area.
- c. Roof-top mounted equipment shall be screened from off-site views to the extent practical by solid screen walls or the building's parapet.
- d. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible.

Article 2. B. _____

7. WCFs Adjacent to Single Family Residential Uses. WCFs shall be sited in a manner that evaluates the proximity of the facility relative to residential structures, neighborhoods, and residential zoning boundaries in order to minimize the visual impacts of WCFs on residential areas.

- a. When placed near residential property, the WCF shall be placed in close proximity to a common property line between adjoining residential properties, such that the WCF minimizes visual impacts equitably among adjacent and nearby properties.
- b. For a corner lot, the WCF may be placed adjacent to a common property line between adjoining residential properties, or on the corner formed by two intersecting streets.
- c. If these siting requirements are not feasible in good faith from a construction, engineering, or design perspective, the Applicant may submit a written statement to the Public Works Department requesting the WCF be exempt from these requirements, and offer alternative locations reasonably meeting the intent of this section.

8. Design requirements specific to various types of WCFs.

- a. Base Stations. If an antenna is installed on a structure other than a Tower or Alternative Tower Structure, such as a Base Station (including, but not limited to the antennas and accessory equipment) it shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as possible, including for example, without limitation, painting the Antennas and accessory equipment to match the structure. Additionally, any ground mounted equipment may be located in a flush-to-grade underground equipment vault if it is reasonably feasible from a construction, engineering, or design perspective.

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- b. Alternative Tower Structures, not in the Public Right-of-Way shall:
- i. Be designed and constructed to look like a building, facility, structure, or other commonplace item, such as but not limited to a tree, public art, or clocktower, typically found in the area.
 - ii. Be camouflaged/concealed consistent with other existing natural or manmade features in or near the location where the Alternative Tower Structure will be located.
 - iii. Be compatible with the surrounding area, including architecture, topography, and/or landscaped environment.
 - iv. Be the minimum size needed to obtain coverage objectives. Height or size of the proposed Alternative Tower Structure should be minimized as much as possible.
 - v. Be sited in a manner that is sensitive to the proximity of the facility to residential structures, neighborhoods, and residential zoning district boundaries.
 - vi. Take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses.

c. Towers

- i. Towers shall either maintain a galvanized steel finish, or, subject to any applicable FAA standards and City design approval processes, be painted a neutral color so as to reduce visual obtrusiveness.
- ii. Wherever possible, Towers shall locate to utilize existing landforms, vegetation, and structures to aid in screening the facility from view, or otherwise blending in with surrounding built and natural environment.
- iii. Monopole support structures shall taper from the base to the tip.
- iv. All Towers, excluding Alternative Tower Structures in the Right-of-Way, shall be enclosed by security fencing or wall and shall also be equipped with an appropriate ant-climbing device.
- v. Towers shall be subject to the height restrictions of each zoning district. Notwithstanding anything in this Chapter to the contrary, Towers are prohibited in the Right-of-Way.

d. Roof and Building Façade Mounted Antennas-WCFs:

- ~~1. i. Building façade mounted antennas shall not protrude horizontally more than 2 feet from the building wall and shall be painted or treated to match the building or structure to which the antenna is attached.~~

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~~2.i. Building façade mounted antennas shall not exceed the height of the parapet or the roofline, whichever is greater.~~

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~~3. The total of all visible building façade mounted antennas may not exceed the greater of 10 percent of the square footage of the building façade or 25 square feet per façade.~~

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C. Roof Mounted Antennas:

4.i. Roof mounted antennas and accessory equipment shall be painted or treated to match the façade of the building to which they are attached in order to minimize visibility from adjacent residential land uses and/or from public sidewalks.

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ii. Roof-mounted WCFs may be approved only where an Applicant sufficiently demonstrates that a wall mounted WCF is inadequate to provide service. By filing an application for a roof-mounted WCF, an Applicant is certifying agreement to the City's determination that the height extensions described in this subsection d are the maximum heights that will allow the WCF to be Camouflaged, and that any additional increase in height will undermine the Camouflage nature of the site.

2.—Maximum height. Roof mounted antennas and accessory equipment shall not exceed the height of the penthouse or mechanical equipment room to which the antennas are attached.

3.—Antennas not mounted on a penthouse or mechanical equipment room shall be set back at least 5 feet from the exterior wall of a building.

4.iii. The maximum height of a roof mounted antenna that is not mounted on a penthouse or mechanical equipment room is equal to the distance the antenna is set back from the exterior wall ~~up to a maximum height of 10 feet above the taller of either roofline or parapet of the building to which the antenna is attached.~~

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iv. All rooftop equipment and Antennas must be adequately screened where feasible from a technical, construction, design and engineering perspective.

v. Building façade mounted antennas shall not protrude horizontally more than 2 feet from the building wall and shall be painted or treated to match the building or structure to which the antenna is attached.

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vi. Building façade mounted antennas shall not exceed the height of the parapet or the roofline, whichever is greater.

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The total of all visible building façade mounted antennas may not exceed the greater of 10 percent of the square footage of the building façade

D. Antennas on Existing Support Structures:

1. ~~In single-family and two-family zone districts: The mounting of an additional antenna or antennas on an existing support structure, including any existing support structure that is nonconforming with regards to height, may be permitted provided that the height of the existing structure may not be increased by more than 15 percent.~~
2. ~~In non single family and two family zone districts: The mounting of an additional antenna or antennas on an existing support structure may be permitted provided that the height of the existing structure may not be increased above 60 feet without triggering the review requirements as outlined for New Freestanding Support NonStealth Structures in Section 17.10.3.2.:~~

17.10.3.3: New Freestanding Support Non-Stealth Structures

A. Review Requirements:

1. ~~New freestanding support structures of 60 feet in height or less may be allowed in any zone district other than a single-family or two-family district if reviewed and approved in accordance with the site plan procedures identified in Article 2.~~
2. ~~New freestanding support structures of more than 60 feet in height may be allowed in any zone district other than a single-family or two-family district if reviewed and approved in accordance with the special-use permit and site plan procedures identified in Article 2.~~
3. ~~New freestanding support structures of any height located on public property, right-of-way, or utility property that will support street lights, public facilities or equipment in addition to wireless facilities may be allowed in any zone district if reviewed and approved in accordance with the Site Plan procedures identified in Article 2. Examples include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, and other light structures~~
4. ~~Existing support structures including but not limited to municipal communication facilities, athletic field lights, traffic lights, and other light structures on local streets shall be limited to a maximum 15-foot height extension.~~

~~B. The maximum height for any new freestanding support structure shall be 60 feet, or the maximum building height allowed in the subject zoning district, whichever is greater.~~

~~C. When adjacent to a property that is zoned residential or contains a residential use or structure, new freestanding support structures must be setback from property at least the minimum setback required by the zone district where the structure is located or 50 percent of the support structure height, whichever is greater.~~

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~~D. New freestanding support structures shall be enclosed by security fencing 6 feet in height and shall also be equipped with an appropriate anti-climbing device; provided, however, that the City may waive such requirements, if the Director determines that the waiver will not create an increased risk to public health or safety.~~

~~E.a. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible.~~

~~F. New free-standing support structures shall be designed to accommodate a minimum number of colocations based upon their height.~~

- ~~1. Support structures between 45 feet and 100 feet in height shall support at least two telecommunications providers;~~
- ~~2. Support structures greater than 100 feet and up to 150 feet in height shall support at least three telecommunications providers; and~~
- ~~3. Support structures greater than 150 feet in height shall support at least four telecommunications providers.~~

~~G. New freestanding support structures over 60 feet in height shall not be located within 4000 feet from any existing freestanding support structure that is over 60 feet in height, unless the applicant has shown to the satisfaction of the City that colocation is impracticable and that there are no reasonably suitable alternative sites in the required geographic area which can meet the applicant's needs.~~

17.10.3.4: Other Wireless Facility Types

~~The Director may apply the standards defined for new wireless facilities on existing structures or new freestanding support structures to any wireless facility type that is not directly addressed in these regulations as appropriate to minimize the potential adverse effects of wireless service facilities.~~

~~vii. 17.10.3.5:~~

e. Related Accessory Equipment

- ~~A.i. The Excluding Small Cell Facilities in the Right-of-Way, the buildings, shelters, cabinets, and other accessory components shall be setback a minimum of 15 feet from each property line with a residential zone district or a lot containing a residential structure, or shall meet all setback requirements of the underlying zone districts, whichever results in the greater setback, and shall be grouped as closely as technically possible.~~
- ~~B.ii. Total footprint coverage area of the accessory equipment shall not exceed 500 square feet per provider, with a maximum of 1500 square feet total for three or more providers.~~
- ~~C.iii. No accessory equipment or accessory structure shall exceed 4512 feet in height.~~

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- ~~D-iv.~~ ~~Accessory equipment shall be painted a neutral color and enclosed by security fencing 6 feet in height and shall be landscaped with a buffer of plant materials that effectively screens the view of the accessory equipment from adjacent residential property and from the adjacent street; provided, however, that the City may waive such requirements, if the Director determines that the waiver will not (1) create an increased risk to public health or safety or (2) create a negative visual impact to adjacent residential property or from the adjacent street.~~ Accessory equipment, including but not limited to remote radio units, shall be located out of sight whenever possible by locating behind parapet walls or within equipment enclosures. Where such alternate locations are not available, the Accessory Equipment shall use Camouflage Design Techniques.
- ~~E-v.~~ No accessory equipment or accessory structures shall be sited in a manner that reduces the parking or landscaped areas for other principal uses on the parcel below the minimums required by the Zoning Ordinance.

A.

17.10.4: Abandonment and Removal

~~If a support structure is abandoned and remains abandoned for a period longer than 12 consecutive months, the City may require that the support structure be removed. The City shall first provide written notice to the owner of the support structure of the requirement for removal and give the owner the opportunity to take such action(s) as may be necessary to reinstate the active use of the support structure within 30 days of receipt of the written notice. If the owner of the support structure fails to reinstate the active use of the support structure within the 30-day period, the owner of the support structure shall be required to remove the same within six months.~~ Approval.

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A. –It is the intent of the City to provide for approval of WCFs administratively in cases where visual impacts are minimized, view corridors are protected, appropriate Camouflage and Concealment Design Techniques are employed to avoid adverse impacts on the surrounding area, and they are designed, maintained, and operated at all times to comply with the provisions of this Chapter and all applicable laws. Notwithstanding the approval of an application for Eligible Facilities Request as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building and safety requirements as set forth in municipal code and any other applicable regulations.

1. Special Use Permit. Any application for a WCF which does not comply with the provisions of this Chapter may seek approval of a Special Use Permit by submitting an application to Planning Commission.
2. Collocation and Separation Required. No new Towers, excepting Small Cell Facilities in the Right-of-Way, shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the City that no existing WCFs can accommodate the needs that the Applicant proposes to address with its Tower application, and sufficient separation of Towers is achieved. Evidence may consist of the following:

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- a. No existing WCFs with a suitable height are located within the geographic area required to meet the Applicant's engineering requirements;
 - b. Existing WCFs do not have sufficient structural strength to support applicant's proposed WCF;
 - c. The Applicant's proposed WCFs would cause electromagnetic interference with the existing WCFs or the existing WCF would cause interference with the Applicant's proposed WCF;
 - d. The Applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for Collocation;
 - e. Towers over 90 feet in height shall not be located within one-quarter mile from any Existing Tower that is over 90 feet in height, unless the Applicant has shown to the satisfaction of the City that there are no reasonably suitable alternative sites in the required geographic area which can meet the Applicant's needs.
3. Setbacks. The following minimum setback requirements shall apply to all WCFs except for Alternative Tower Structures in the Right-of-Way; provided however, that the City may reduce standard setback requirements if the applicant demonstrates that the goals of this Section can be met through Performance Options or through Alternative Compliance, or through a Variance process. A Tower shall meet the greater of the following minimum setbacks from all property lines:
- a. The setback for a principal building within the applicable zoning district;
or
 - b. Twenty-five percent (25%) of the facility height, including WCFs and Related Accessory Equipment; or
 - c. For sites within 100 feet of residential uses, facilities over 30 feet in height shall have a minimum setback from all adjacent residential property lines of one (1) foot for every foot in height.

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Document #1

This document is intended to be the primary document for City Council's discussion on July 6. The document contains a "clean version" of the proposed changes (initial redlines proposed by staff have been accepted). The recommended edits from members of Lakewood Broadband, and Council Member Gutwein have been included as new redlines. The document was revised on 6/29/2020 to also include edits and comments from AT&T. For a full list of requested edits from the above mentioned parties, please reference Document #5.

Definitions from Section 13:

For the purposes of this chapter, the following words, phrases, and terms shall have the meanings set forth herein. Words not defined shall be given their common and ordinary meaning.

Commented [ksf1]: Offered by "CC" – not necessary but doesn't hurt to add.

Accessory Equipment: any equipment serving or being used in conjunction with a WCF, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures including ground-based enclosures.

Commented [ksf2]: "CColo" suggested "including fences." We suggest using ground-based enclosures instead of fences, to be consistent with state law.

Alternative Tower Structure: man-made trees, clock towers, bell steeples, light poles, buildings, and similar alternative design mounting structures that are compatible with the natural setting and surrounding structures, and camouflages or conceals the presence of Antennas or Towers so as to make them architecturally compatible with the surrounding area pursuant to this title. This term also includes any Antenna or Antenna array attached to an Alternative Tower Structure. A stand-alone pole in the Right-of-Way, streetlight, or traffic signal that accommodates Small Cell Facilities is considered an Alternative Tower Structure to the extent it meets the camouflage and concealment standards of this title.

Antenna: 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.

Applicant for WCF: any person that submits an application to the City to site, install, construct, collocate, modify and/or operate a Wireless Communications Facility.

Amateur Radio Towers and Antennae: Broadcasting and receiving structures or devices used for personal pleasure or as a hobby.

Base Station: a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The definition of Base Station does not include or encompass a Tower as defined herein or any equipment associated with a Tower. Base Station does include, without limitation:

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1. Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the City under this Chapter and has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support; and

2. Radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks) that, at the time the relevant application is filed with the City under this title, has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

The definition of Base Station does not include any structure that, at the time the relevant application is filed with the City, does not support or house equipment described in paragraphs 1 and 2 above.

Camouflage, Concealment, Or Camouflage Design Techniques: the designing of a WCF to alter its appearance in such a manner as to substantially integrate it into surrounding building designs and ~~for~~ natural settings to minimize the visual impacts of the facility on the surrounding uses and ensure the facility is compatible with the environment in which it is located. A Wireless Communication Facility utilizes Camouflage Design Techniques when it (i) is integrated as an architectural feature of an existing structure such as a cupola, or (ii) is integrated in an outdoor fixture such as a utility tower, or (iii) uses a design which mimics and is consistent with the nearby natural or architectural features (such as a clock tower) or is incorporated into (including without limitation, being attached to the exterior of such facilities and painted to match it) or replaces existing permitted facilities (including without limitation, stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

Collocation: (1) mounting or installing a WCF on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing a WCF on that structure. Provided that, for purposes of Eligible Facilities Requests, “Collocation” means the mounting or installation of transmission equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Director: The person, or that person’s designee, authorized by the City Manager to enforce and interpret this Zoning Ordinance.

Eligible Facilities Request: any request for modification of an Existing Tower or Base Station that it is not a Substantial Change.

Eligible Support Structure: any Tower or Base Station as defined in this Section, provided that it is existing at the time the relevant application is filed with the City under this Section.

Existing Tower or Base Station: a constructed Tower or Base Station that was reviewed, approved, and lawfully constructed in accordance with all requirements of applicable law 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 purposes of this definition.

FCC: the Federal Communications Commission.

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Hazardous Substance: any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.

Interference: physical interference and radio frequency interference.

Micro Cell Facility: a small wireless facility that is no larger than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height, and that has an exterior Antenna, if any, that is no more than eleven (11) inches in length.

Monopole: a single, freestanding pole-type structure supporting one or more Antennas.

Over the Air Receiving Device (OTARD): an Antenna used to receive ~~video programming from~~ direct broadcast satellite services, including home satellites that are 1M or less in diameter, broadband radio services and television broadcast stations, but shall not include Antennas used for AM/FM radio, amateur (“ham”) radio, CB radio, Digital Audio Radio Services ~~or Antennas used as part of a hub to relay signals among multiple locations.~~

Commented [ksf4]: Recommended by “CColo”

Owner means a person with a legal or equitable interest in ownership of real or personal property.

Permit means a permit issued and described in accordance with Laws, which is used to regulate, monitor, and control the improvement, construction, or excavation activities, or other work or activity, occurring upon or otherwise affecting Licensor’s ROW, including ROW use, building, and electrical permits.

Commented [ksf5]: “Council” suggested deleting this, noting “Strike last part of this sentence. It is exempting (“shall not include”) relay hubs (receive AND transmitting devices). This may permit broadcasting mini towers on neighborhood homes. If you do not strike, you may be allowing mini antennas for a distributed antenna system via satellite. I.e, Satellite providers could offer customer discounts for using residential satellites as relay devices. Creates a lack of oversight. Can be addressed again at a future date.”

Physical Interference means where equipment, vegetation, or a structure causes reduced use of another’s prior mounted equipment, or an obstruction in a necessary line-of-sight path.

Pole-Mounted Small Cell Facility: a Small Cell Facility with Antenna that are mounted and supported on an Alternative Tower Structure, which includes a Replacement Pole.

In fact, we think it means just the opposite. By saying that By saying OTARD does not include hub and relay, we are saying that any such hub and relay is subject to normal permitting reqs.

Public Right-of-Way (ROW): any public street, way, alley, sidewalk, median, parkway, or boulevard that is dedicated to public use.

Radio Antenna, Amateur: A noncommercial device that is used for transmitting and receiving electro-magnetic waves.

Radio Frequency Emissions Letter: a letter from the Applicant identifying the FCC’s uncontrolled/general population maximum permitted exposure limits for each proposed WCF, identifying the RF emissions from the WCFs that are the subject of the application. The Letter shall identify, at a minimum, any measures required to comply with the FCC standards for predicted exposure levels, and details for any signage, barriers or similar mitigation that is recommended or required. The Letter shall additionally certify that all WCFs that are the subject of the application shall comply with federal standards for radio frequency emissions.

Commented [ksf6]: Not exactly what was requested from “CColo”, but close, and a bit more detailed than what was here before. This also pulls some of the proposed code language from CColo in other parts of the code. By making it part of the definition of what needs to be in the Letter, we only need to reference the provision of the Letter elsewhere in the Code.

Radio Frequency Interference means the emission or conduction of radio frequency energy (or electronic noise) produced by electrical and electronic devices at levels that interfere with the operation of adjacent or nearby equipment.

Radio Tower, Amateur: A structure that supports an antenna.

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READILY APPARENT. For purposes of determining whether a WCF is readily apparent, the phrase means that the facility, will be easily recognizable as a WCF in the discretion of the Director, viewing the facility as a whole and in the context of any adjacent improvements and landscaping from publicly accessible locations when considering the character, scale, and

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height of nearby and surrounding natural or architectural features. Methods of design and construction that may assist in reducing the visibility of a facility and reaching a conclusion that a facility is not readily apparent include the use of color mimicking surrounding structures and landscaping, minimizing facility size to the greatest extent feasible, integrating the facility into any adjacent or attached improvements, and positioning the facility in a manner that limits the degree to which the facility projects away from any adjacent structures or landscaping. Due to differences in site characteristics, a determination that a particular WCF will not be readily apparent at one location shall not establish a precedent for the same determination for a facility of the same or similar design or construction at a different location.

Replacement Pole: an Alternative Tower Structure that is a newly constructed and permitted traffic signal, utility pole, street light, flagpole, electric distribution, or street light pole or other similar structure of proportions and of equal height or such other height that would not constitute a Substantial Change to a pre-existing pole or structure in order to support a WCF or Small Cell Facility or Micro Cell Facility or to accommodate Collocation and replaces a pre-existing pole or structure.

~~Satellite Dish Antenna: A parabolic antenna intended to receive signals from orbiting satellites and other sources. Non-commercial dish antennas are defined as being less than four meters in diameter, while commercial dish antennas are usually those larger than four meters and typically used by broadcasting stations.~~

Commented [ksf7]: Term does not appear anywhere in code. Suggest deleting.

Setback: The minimum distance any building or structure must be separated from a specified point.

Sign: Any structure, which requires a permanent or temporary location, that has a visual display visible from a public right-of-way and is designed to identify, announce, direct or inform.

Signal Non-Interference Letter: a letter from the Applicant certifying all WCFs that are the subject of the application shall be designed, sited, and operated in accordance with applicable federal regulations addressing radio frequency interference.

Site for Towers (other than Towers in the Right-of-Way and Eligible Support Structures): the current boundaries of the leased or owned property surrounding the Tower or Eligible Support Structure and any access or utility easements currently related to the Site. A Site, for other Alternative Tower Structures, Base Stations, Micro Cell Facilities, and Small Cell Facilities in the Right-of-Way, is further restricted to that area comprising the base of the structure and to other related Accessory Equipment already deployed on the ground.

Small Cell Facility: a Wireless Communication Facility where each Antenna is located inside an enclosure of no more than three cubic feet in volume, or, in the case of an Antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. Small cells may be attached to Alternate Tower Structures, Replacement Poles, and Base Stations. The definition of a Small Cell Facility shall also include a Micro Cell or Micro Cell Facility.

Street: A public or private thoroughfare for vehicular traffic other than an alley or driveway.

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Substantial Change for Eligible Facilities Request: 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:

- (A) For Towers, other than Alternative Tower Structures or Towers in the Right-of-Way, it increases the height of the Tower by more than 10 percent (10%) or by the height of one (1) 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 ten percent (10%) or more than ten (10) feet, whichever is greater;
- (B) For Towers, other than Towers in the Right-of-Way, it involves adding an appurtenance to the body of the Tower that would protrude from the Tower more than twenty (20) 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 side of the structure by more than six (6) feet;
- (C) 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;
- (D) For Towers in the Right-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 ten percent (10%) larger in height or overall volume than any other existing, individual ground cabinet associated with the structure;
- (E) For any Eligible Support Structure, it entails any excavation or deployment outside the current Site;
- (F) For any Eligible Support Structure, it would defeat the concealment elements of the Eligible Support Structure. ~~For the purposes of this subsection (vi), a change that would undermine the concealment elements of this structure will be considered to defeat the concealment elements of the structure;~~ or
- (G) For purposes of determining whether a Substantial Change exists, changes in height are 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 are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

Commented [ksf8]: AT&T claimed that the reference to 6 feet at the end of this sentence was in conflict with the FCC rule, which says 20 feet. In fact the FCC rule says it is 20 feet for towers that are not in the ROW – which is exactly what we say in the first sentence here. For OTHER eligible support structures the FCC says it is 6 feet. We suggest adding the word "other" here for clarification.

Commented [ksf9]: AT&T has argued here, and in other places, that this sentence is in conflict with the FCC's 2014 rules on mandatory collocations. It is not. However, it is in conflict with the new "clarification" of the rule that the FCC adopted in June 2020, so staff proposes deleting.

Support Structure: a structure designed to support Small Cell Wireless Facilities including, but not limited to, Monopoles, Alternative Tower Structures, Replacement Poles, and other freestanding self-supporting pole structures.).

Toll and Tolling: to delay, suspend, or hold off on the imposition of a deadline, statute of limitations, or time limit.

Tower: any structure built for the sole or primary purpose of supporting one or more FCC-licensed or authorized Antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. The term includes self-supporting lattice towers, guyed towers or Monopole towers, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, Alternative Tower Structures and the like.

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

~~Wireless Communications Equipment Shelter: An unattended structure such as a small building or cabinet(s) used to house equipment for a wireless communications facility associated with either a freestanding wireless communications facility or a structure or building mounted wireless communications facility.~~

Commented [ksf10]: Delete. Term not used in code.

Wireless Communications Facility or WCF: a facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF includes an Antenna or Antennas, Base Stations, support equipment, Alternative Tower Structures, Small Cell Facilities, and Towers. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand held radios/telephones and their associated transmitting Antennas, nor does it include other facilities specifically excluded from the coverage of this title.

Wireless Communications Provider: A public or private company providing personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services.

Wireless Communications Site: Any use of property for antennae, equipment, and equipment shelter(s) employed in the reception, switching, and/or transmission of wireless telecommunication services including, but not limited to, paging, enhanced specialized mobile radio, personal communication services, microwave link antenna, cellular telephone, and other related technologies.

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ARTICLE 10: WIRELESS SERVICES AND COMMUNICATIONS

17.10.1: General

17.10.1.1: Purpose and Intent

This Article is intended to ensure that residents, public safety operations and businesses in the City have reliable access to personal wireless services and state of the art communications services in a way that ~~reasonably~~ preserves the aesthetic character ~~and value~~ of the community and complies with Federal and State laws.

Commented [ksf11]: Recommended by "CColo"

The City Council finds that these regulations are necessary to:

- A. Provide for the managed development and installation, maintenance modification, and removal of wireless communications infrastructure in the City with the fewest number of wireless communications facilities (WCFs) to complete a network without unreasonably discriminating against wireless communications providers of functionally equivalent services, including all of those who install, maintain, operate, and remove WCFs;
- B. Minimize adverse visual effects of WCFs through thoughtful design and siting, including but not limited to camouflage design techniques, appropriate and effective screening, and equipment undergrounding whenever appropriate;
- C. Encourage the location of Towers in a manner that minimizes the total number of Towers needed throughout the community;
- D. Require the collocation of WCFs wherever reasonably feasible;
- E. Encourage owners and users of WCFs to locate them, to the extent possible, in areas where the adverse impact to the community is minimized;
- F. Enhance the ability of wireless communications service providers to provide such services to the community quickly, effectively, ~~and~~ ~~efficiently,~~ ~~and safely;~~
- G. Effectively manage WCFs in the Public Right of Way;
- H. Manage amateur radio facilities and over-the-air devices in the City;
- I. Ensure the City has sufficient wireless infrastructure to support public safety and emergency response communications throughout the City;

Commented [ksf12]: Recommended by Rita.

17.10.1.2: Applicability

- A. The standards in this Article shall apply to all Eligible Facilities Requests and WCF applications for Base Stations, Alternative Tower Structures, Towers, Micro Cells, and Small Cell Facilities as defined in Section 17.13.2 and further addressed herein.
- B. The Requirements set forth in this Article shall not apply to:
 1. Amateur radio Antennas that are owned and operated by a federally licensed amateur radio station operator or are exclusively receive only Antennas, provided

that the requirements that the height be no more than the distance from the base of the Antenna to the property lines is met.

2. Pre-existing WCFs. Any WCF for which a permit has been properly issued prior to the effective date of Ordinance # O-2020-1 shall not be required to meet the requirements of this Chapter, other than the requirements of Section 17.10.3. Changes and additions to pre-existing WCFs (including trading out of Antennas for an equal number of Antennas) shall meet applicable requirements of Section 17.10.3. Notwithstanding the foregoing, any modifications qualifying as an Eligible Facilities Requests shall be evaluated under this Section.
3. Miscellaneous Antennas. Antennas used for reception of television, multi-channel video programming and radio such as Over-the-Air Receiving Device (OTARD) Antennas, television broadcast band Antennas, satellite earth station antennae and broadcast radio Antennas, provided that any requirements related to Accessory uses contained in this Code and the requirement that the height be no more than the distance from the base to the property line are met. The Director or his or her designee has the authority to approve modifications to the height restriction related to OTARD Antennas and OTARD antenna structures, if in the reasonable discretion of the City, modifications are necessary to comply with federal law.
4. A WCF installed upon the declaration of a state of emergency by the federal, state, or local government, or a written determination of serving the general health, safety, and welfare of residents by the City, or reasonable ability to obtain such written determination within 72 hours.
5. A temporary WCF installed for the purpose of providing sufficient coverage for a special event, subject to administrative approval by the City.
6. The siting of Distributed Antenna Systems (DAS) or wireless facilities located within and intended to provide wireless coverage within a structure.

17.10.2: Wireless Facilities – By Zone District

Table 17.4.1 identifies where the different types of wireless facilities are permitted as primary or accessory uses, by right or with a special use permit, and where these uses are prohibited in each zone district within the City of Lakewood.

17.10.3: Operational Standards

- A. Federal Requirements. All WCFs shall meet the current standards and regulations of the Federal Aviation Administration (FAA), the FCC and any other agency of the federal government with the authority to regulate WCFs. If such standards and regulations are changed, then the owners of the WCF shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency. Unless preempted by federal law, failure to meet such revised standards and regulations within 30 days of the City's determination of such failure shall constitute grounds for the removal of the WCF by the City or owner at the WCF owner's expense.

- B. Permission to Use Public Right-of-Way or **City-owned** Public property. Prior to WCFs being sited in the ROW, the Applicant shall have an executed license agreement with

Commented [BG13]: Council Member Gutwein proposed amendment regarding worker safety would likely be included in this section. Staff and legal counsel have concerns about applying the suggested standards to a specific business type and thus recommend this be part of a larger conversation for City Council.

Commented [ksf14]: Clarification suggested by "cc." Does not apply to public property in City owned by State or other governmental entities.

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the City, granting a non-exclusive license to use the Public Right-of-Way. Attachment of WCFs on an existing or replacement traffic signal, street light pole, or similar structure shall require written evidence of a license, or other legal right or approval, to use such structure by its owner, and Site specific approval pursuant to 17.10.4. The Applicant, ~~and if different from the Applicant, the Owner,~~ shall remain ~~the owner of, and solely~~ responsible for any WCF installed in the ROW. Prior to, or concurrently with, seeking land use approval for a WCF on City-owned Public Property, the ~~a~~Applicant shall execute a lease agreement with the City.

Commented [ksf15]: AT&T has correctly pointed out that an applicant may not be the owner of the WCF.

B.C. Operation and Maintenance. To ensure the structural integrity of WCFs, the owner of a WCF shall ensure that it is maintained in compliance with the standards contained in applicable local building and safety codes. If upon inspection, the City concludes that a WCF fails to comply with such codes and constitutes a danger to persons or property, then, upon written notice being provided to the owner of the WCF, the owner shall have 30 days from the date of notice to bring such WCF into compliance. Upon good cause shown by the owner and meeting reasonable safety considerations, the City's Chief Building Official may extend such compliance period not to exceed 90 days from the date of said notice. If the owner fails to bring such WCF into compliance within said time period, the City may remove such WCF at the owner's expense.

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~~C~~.D. Emergency. In the event of an emergency or to protect the public health or safety, prior to the City accessing or performing any work on a facility on which a WCF Owner has installed Equipment, City may require WCF Owner to deactivate such Equipment if any of City's employees or agents must move closer to the Equipment than the FCC's recommended minimum distance. In such case, City will contact WCF Owner to request immediate deactivation.

~~D~~.E. Non-Interference. The following provisions shall apply to ensure and/or avoid interference (both physical interference and Radio Frequency Interference) resulting from Licensee's installation, operation and/or maintenance of its Equipment:

- a. Radio Frequency Interference. All WCF Owners shall ensure that the Equipment will not cause Radio Frequency Interference with Wireless Communication Facilities or devices, cable television, broadcast radio or television systems, satellite broadcast systems, or City traffic, public safety or other communications signal equipment existing at the time of installation of the Equipment.
- b. Existing Uses. WCF Owners shall not interfere in any manner with the existing uses of City property including Rights-of-Way, and including sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, streetlight fixtures, cable television, and other telecommunications, utility, and municipal property without the express written approval of the Owner(s) of the affected property or properties.
- c. City Communications. WCF Owners shall not interfere in any manner with current or future City or other governmental public safety communication.
- d. Remedies. If Interference occurs and continues for a period in excess of 24 hours following notice to the interfering party via telephone, the City may require the interfering party to reduce power or cease operations of the interfering equipment until the Interference is cured.

~~E~~.F. Relocation, Abandonment and Removal. After the WCF is constructed, if a WCF has not been in use for a period of three months, the owner of the WCF shall notify the City of the non-use and shall indicate whether re-use is expected within the ensuing three months. Any WCF that is contracted and is not operated for a continuous period of six months shall be considered abandoned. The City, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF shall remove the same within 30 days of receipt of written notice from the City. If such WCF is not removed within said 30 days, the City may remove it at the owner's expense and any approved permits for the WCF shall be deemed to have expired. For any public project, a WCF may be required to relocate at WCF Owner's expense.

F.G. Hazardous Materials. No Hazardous materials shall be permitted in association with WCFs, except those necessary for the operation of the WCF and only in accordance with all applicable laws governing such materials.

H. Collocation. No WCF Owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by the City, the owner or operator shall provide evidence explaining why Collocation is not possible at a particular facility or site.

I. A WCF Owner or operator shall maintain with the City the following contact and site information and shall notify the City of any changes to such information within thirty (30) days of any change.

a. Name, physical and email address, telephone number (including emergency 24/7/365 contact), and legal status of the Owner and if different from the Owner, the operator; and

b. Any official identification numbers and FCC certifications for the WCF.

J. Unauthorized Access. All WCFs shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically, Towers and Alternative Tower Structures shall be made inaccessible to individuals and constructed in such a manner that they cannot be climbed. WCFs shall be accessible only to persons authorized to operate or service them.

Commented [ksf16]: Modified version of information recommended by "CColo"

Commented [ksf17]: "CColo" proposed a cut and paste here from a code from another state. The concept has been included, and it has been modified to be consistent with terms used in the Lakewood code.

17.10.4 Review Procedures and Requirements

A. Permit Required. No new WCF shall be constructed and no Collocation or modification to any WCF may occur except after a written request from an Applicant, reviewed and approved by the City in accordance with this Chapter. All WCFs except Eligible Facilities Requests which are reviewed under subsection (a)(3) of this Section, shall be reviewed pursuant to the following procedures. All WCF permits shall expire and be of no further force and effect 180 days following the date of approval unless, prior to the date of expiration: (1) Construction has been diligently pursued towards completion of the project, or (2) 180-day extension of the permit has been authorized by the director upon a written request by the applicant. An extension may be granted if a review of the permit shows that no major changes in the City's development or zoning regulations or in the development pattern of the surrounding properties has occurred, as determined by the director. If a WCF permit expires, no further development of the facility may occur until a new permit application is submitted, reviewed and approved in accordance with this Code, subject to all application and processing fees.

1. Review Procedures for certain WCFs, including Base Stations, Alternative Tower Structures, Small Cell Facilities, and Alternative Tower Structures within Public Rights-of-Way. Applications for these WCF facilities shall be reviewed by the Public Works Department for conformance to this Section and using the Design Review procedures set forth in Section 17.10.5 For WCFs in the Right-of-Way that are found to have a significant visual impact (i.e. proximity to historical sites), be incompatible with the structure of surrounding area, or not meet the intent of

these provisions, the City may refer the application to Planning Commission for a Special Use Permit Review Determination.

2. Review Procedures for certain WCFs, including Towers. Towers, other than those defined or excepted in (1) above, must apply for Special Use Permit Review approval. These WCFs shall be reviewed for conformance using the procedures set forth in Section 17.10.5. All applications for Towers shall demonstrate that other alternative design options, such as using Base Stations or Alternative Tower Structures, are not viable options as determined by the City.
3. Review Procedures for Eligible Facilities Requests.
 - a. Eligible Facilities Requests shall be considered a permitted use, subject to administrative review. The City shall prepare, and from time to time revise and make publicly available, an application form which shall require submittal of information necessary for the City to consider whether an application is an Eligible Facilities Request. Such required information shall include, without limitation, whether the project:
 - i. Constitutes a Substantial Change;
 - ii. Violates a generally applicable law, regulation, or other rule codifying objective standards reasonably related to public health and safety.The application may not require the Applicant to demonstrate a need or business case for the proposed modification or Collocation.
 - b. Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the Director shall review such application to determine whether the application so qualifies.
 - c. Timeframe for Review. Subject to the Tolling provisions of subparagraph d. below, within 60 days of the date on which an Applicant submits an application seeking approval under this Section, the City shall approve the application unless it determines that the application is not covered by this Subsection, or otherwise in non-conformance with applicable codes.
 - d. Tolling of the Timeframe for Review. The 60-day review period begins to run when the application is filed, and may be Tolloed only by mutual agreement of the City and the Applicant, or in cases where the Director determines that the application is incomplete:
 - i. To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 30 business days of receipt of the application, specifically delineating all missing documents or information required in the application; such delineated information is limited to documents or information meeting the standard under paragraph (a)(i) above.

- ii. The timeframe for review begins running again the following business day after the applicant makes a supplemental written submission in response to the City's notice of incompleteness;
 - iii. Following a supplemental submission, the City will notify the Applicant within 10 business days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is Tolloed in the case of second or subsequent notices pursuant to the procedures identified in paragraph (d.)(ii.). In the case of a second or subsequent notice of incompleteness, the City may not specify missing information or documents that were not delineated in the original notice of incompleteness.
 - e. Failure to Act. In the event the City fails to act on a request seeking approval for an Eligible Facilities Request under this Section within the timeframe for review (accounting for any Tolling), the request shall be deemed granted. The request becomes effective when the Applicant notifies the City in writing after the review period has expired (accounting for any Tolling) that the application has been deemed granted.
 - f. Interaction with Telecommunications Act Section 332(c)(7). If the City determines that the Applicant's request is not an Eligible Facilities Request as delineated in this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the City's decision that the application is not a covered request. To the extent such information is necessary required under the appropriate provision of the Code under which the application should be considered, the City may request additional information from the Applicant to evaluate the application under Section 332(c)(7) reviews, and the Shot Clock shall not commence until such information is provided.
4. Review Procedures for Small Cell Facilities in the Right-of-Way.
- a. Small Cell Facilities in the Right-of-Way shall be considered a permitted use, subject to administrative review as set forth in Subsection A.1.
 - b. The City shall prepare, and from time to time revise, and make publicly available, an application form which shall require submittal of information necessary for the

Commented [ksf18]: These were not requested by anyone but are a clarification/clean up added to be consistent with law.

City to consider whether a project is eligible as a Small Cell Facility in the Right-of-Way, meeting certain criteria. The application shall not require the Applicant to demonstrate a need or business case for any proposed modification or Collocation.

- c. Upon receipt of an application for a Small Cell Facility in the Right-of-Way pursuant to this Section, the Public Works Department shall review such application to determine whether the application is complete.
- d. Timeframe for Review. Within 90 calendar days of the date on which an Applicant submits an application seeking approval under this Section, the City shall take action on the application unless it determines that the application is not covered by this Subsection, or otherwise in non-conformance with applicable codes.

B. Submittal Requirements.

1. In addition to submittal requirements of Chapter 17.2, the following supplemental items are required for all WCF applications

- a. Signal Non-Interference Letter;
- b. Radio Frequency Emissions Letter; To the extent that the WCFs that are the subject of the application require FCC filings to demonstrate compliance with the National Environmental Policy Act, all such filings shall be provided to the City.
- ~~b-c.~~ Information related to need for environmental assessment; If an applicant is required to submit an environmental assessment to the FCC for the proposed site, it shall submit a copy of that environmental assessment, or alternately, it shall certify to the City in writing that the proposed site is categorically excluded per 47 C.F.R. § 1.1307.
- ~~c-d.~~ Photo simulations showing before and after conditions excluding applications for small cell facilities;
- ~~d-e.~~ Written representation that Applicant shall be responsible for paying all charges for any electricity furnished by a utility to Applicant and for charges for furnishing service to the Equipment. When the Equipment requires an electric meter as determined by the utility provider, the Applicant shall install or cause to be installed a separate electric meter on a ground mounted pedestal or on Applicant's pad mounted equipment cabinet as required by the electric provider for the operations of its Equipment;
- ~~e-f.~~ Inventory of Sites. Each applicant for a WCF shall provide to the City a narrative description and data in a format acceptable to the City showing the applicant's currently proposed WCFs within the City, and outside of the City within one half-mile of its boundaries. This provision is not intended to be a requirement that the applicant submit its business plan, proprietary information, or make commitments regarding locations of WCFs within the City. This information will be used to assist in the City's comprehensive planning process, and promote Collocation

Commented [ksf19]: Modified from what was suggested by "CColo." It was proposed that language say the City can require a study to demonstrate proof of NEPA compliance regarding RF. If NEPA is triggered, an applicant is required to make certain FCC filings. Local governments can require that an applicant provide what it is required to file with the FCC, not more.

Commented [ksf20]: Modified version of proposal from "CColo."

Commented [ksf21]: This is a variation of what was proposed by "CColo" and was already in the code draft.

by identifying areas in which WCFs might be appropriately constructed for multiple users.

The City may share information regarding the location of sites and the owners or managers of such sites with other applicants applying for administrative approvals or conditional permits under this section or other organizations seeking to locate WCFs within the jurisdiction of the City, provided however, that the City, is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

f-g. Abandonment and removal Affidavits shall be required from the owner of the property and from the applicant acknowledging that each is responsible for the removal of a WCF that is abandoned or is unused for a period of six (6) months.

g-h. Consolidated applications. The City shall allow a wireless provider to file a multi-site permit seeking approval for up to ten (10) permits for Small Cell Facilities at a given time. Each individual site shall be processed as a separate permit in order to facilitate recording site addresses, utility company requirements, and timely inspection scheduling. The City's denial of any individual small cell facility is not a basis to deny the application as a whole or any other small cell facility incorporated within the consolidated application.

- C. Decision. Any decision to approve, approve with conditions, or deny an application for a WCF, shall be in writing and supported by substantial evidence in a written record. The applicant shall receive a copy of the decision.
- D. Compliance with Applicable Law. Notwithstanding the approval of an application for new WCFs or Eligible Facilities Request as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building, structural, electrical, and safety requirements as set forth in the Municipal Code and any other applicable laws or regulations. In addition, all WCF applications shall comply with the following:
1. Comply with any permits or licenses issued by a local, state, or federal agency with jurisdiction of the WCF
 2. Comply with easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;
 3. Be maintained in good working condition and to the standards established at the time of application approval; and
 4. Remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than ten calendar days from the time of notification by the City or after discovery by the owner or operator of the Site. Notwithstanding the foregoing, any graffiti on WCFs located in the Public Rights-of-Way or on Public Property may be removed by the City at its discretion, and the owner and/or operator of the WCF shall pay all costs of such removal within 30 days after receipt of an invoice from the City.

17.10.5 Design Standards

- A. Review Requirements. The requirements set forth in this Section shall apply to the location and design of all WCFs governed by this Chapter as specified below; provided, however, that the City may waive these requirements if it determines that the goals of this Chapter are better served thereby. To that end, WCFs shall be designed and located to minimize the impact on the surrounding neighborhood and to maintain the character and appearance of the City, consistent with other provisions of this Code. Notwithstanding the foregoing, the Planning Director shall have the authority to promulgate design standards for small cell facilities in the rights of way, which shall govern those types of WCFs. The design standards in this section and any design standards promulgated pursuant hereto, shall be employed to avoid or minimize the intangible harm of unsightly deployments or deployments that are not in character with the surrounding area. Design standards shall be applicable to both newly constructed WCFs, to the extent not inconsistent with state law, permitted but not yet constructed WCFs, as well as legal non-conforming WCFs when such sites are sought to be modified.
1. Camouflage/Concealment. All WCFs and any Transmission Equipment shall, to the extent possible, use Camouflage Design Techniques including, but not limited to the use of materials, colors, textures, screening, undergrounding, landscaping, or other design options that will blend the WCF into the surrounding natural setting and built environment.
 - a. Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g. proximity to historic, natural, or aesthetically significant structures or areas, views, and/or community features or facilities). In such instances where WCFs are located in areas of high visibility, they shall (where possible) be designed to minimize their profile.
 - b. The camouflage design may include the use of Alternative Tower Structures should the Public Works Department determine that such design meets the intent of this Code and the community is better served thereby.
 - c. All WCFs, such as Antennas, vaults, equipment rooms, equipment enclosures, and Tower structures shall be constructed out of non-reflective materials (visible exterior surfaces only).
 2. Collocation. WCFs shall be designed and constructed to permit the facility to accommodate WCFs from at least two (2) wireless service providers on the same WCF, to the extent it is feasible in good faith based upon construction, engineering and design standards, except where such Collocation would materially compromise the design intent of the WCF, particularly visually.
 3. Lights and other attachments.
 - a. WCFs shall not be artificially lighted, unless required by the Federal Aviation Administration or other applicable governmental authority, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purpose. If lighting is required, the City may review the

Commented [ksf22]: Similar to as proposed by "CColo" but modified to be more consistent with existing code provisions and Colorado law.

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available lighting alternatives and approve the design that would cause the least disturbance to the surrounding properties or environs. Lighting shall be shielded or directed to the maximum extent so as to minimize the amount of glare and light falling onto nearby properties, particularly residences.

- b. All exterior lighting within equipment yards shall be mounted on poles or on the building wall below the height of the screen wall or fence.
 - c. No Tower shall have constructed on, or attached to, any additional platform, catwalk, crow's nest or like structure (other than those required by industry standards or federal regulations), except during periods of construction or repair.
 - d. Signs and advertising. The use of any portion of a Tower for signs or advertising devices other than public safety warnings, certification, or other requires seals on any wireless communication device or structure is prohibited. However, the telephone numbers to contact in an emergency shall be posted on each facility.
4. Noise. Noise generated on the site must not exceed the levels permitted in the City of Lakewood Municipal Code, except that a WCF owner or operator shall be permitted to exceed such noise standards for a reasonable period of time during repairs, not to exceed two (2) hours without prior authorization from the City.
5. Landscaping Requirements.
- a. WCFs shall be sited in a manner that does not reduce the landscaped areas for the other principal uses on the parcel.
 - b. WCFs, excluding Small Cell Facilities unless otherwise required by the Public Works Department, shall be landscaped with a buffer of plant materials that effectively screen the view of the WCF from Rights-of-Way and adjacent properties. Where the City has requested additional landscaping, the City may require irrigation requirements for the landscaping.
 - b-c. To the extent possible, heritage trees and traditional landscaping designs should be preserved in the Rights-of-Way. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible.
6. Screening Requirements.
- a. All equipment, not located within the Public Right-of-Way and not otherwise defined, shall be fully screened within a walled yard or placed in an enclosed building except in cases where a better design alternative exists. The yard shall be enclosed by a solid fence or wall of sufficient height to screen all miscellaneous equipment from view from the public Right-of-Way or adjacent properties and to provide security.
 - b. All structures and improvements associated with the WCF shall be provided with adequate safety equipment and aesthetic treatments, including incorporating landscape screening noted in subsection

Commented [ksf23]: Proposed by "CColo." I believe we discussed adding something like this, either in the code or in the Design Standards. The exact wording and where this goes should be determined by City staff dealing with these issues.

- 5, to be visually compatible with uses in the surrounding area.
 - c. Roof-top mounted equipment shall be screened from off-site views to the extent practical by solid screen walls or the building's parapet.
 - d. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible.
7. WCFs Adjacent to Single Family Residential Uses. WCFs shall be sited in a manner that evaluates the proximity of the facility relative to residential structures, neighborhoods, and residential zoning boundaries in order to minimize the visual impacts of WCFs on residential areas.
- a. When placed near residential property, the WCF shall be placed in close proximity to a common property line between adjoining residential properties, such that the WCF minimizes visual impacts equitably among adjacent and nearby properties.
 - b. For a corner lot, the WCF may be placed adjacent to a common property line between adjoining residential properties, or on the corner formed by two intersecting streets.
 - c. If these siting requirements are not feasible in good faith from a construction, engineering, or design perspective, the Applicant may submit a written statement to the Public Works Department requesting the WCF be exempt from these requirements, and offer alternative locations reasonably meeting the intent of this section.
8. Design requirements specific to various types of WCFs.
- a. Base Stations. If an antenna is installed on a structure other than a Tower or Alternative Tower Structure, such as a Base Station (including, but not limited to the antennas and accessory equipment) it shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as possible, including for example, without limitation, painting the Antennas and accessory equipment to match the structure. Additionally, any ground mounted equipment may be located in a flush-to-grade underground equipment vault if it is reasonably feasible from a construction, engineering, or design perspective.
 - b. Alternative Tower Structures, not in the Public Right-of-Way shall;
 - i. Be designed and constructed to look like a building, facility, structure, or other commonplace item, such as but not limited to a tree, public art, or clocktower, typically found in the area.
 - ii. Be camouflaged/concealed consistent with other existing natural or manmade features in or near the location where the Alternative Tower Structure will be located.
 - iii. Be compatible with the surrounding area, including architecture, topography, natural vegetation, and/or landscaped environment.

Commented [ksf24]: Proposed by "CColo"

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- iv. Be the minimum size needed to obtain coverage objectives. Height or size of the proposed Alternative Tower Structure should be minimized as much as possible.
- v. Be sited in a manner that is sensitive to the proximity of the facility to residential structures, neighborhoods, and residential zoning district boundaries.
- vi. Take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses.

c. Towers

- i. Towers shall either maintain a galvanized steel finish, or, subject to any applicable FAA standards and City design approval processes, be painted a neutral color so as to reduce visual obtrusiveness.
- ii. Wherever possible, Towers shall locate to utilize existing landforms, vegetation, and structures to aid in screening the facility from view, or otherwise blending in with surrounding built and natural environment.
- iii. Monopole support structures shall taper from the base to the tip.
- iv. All Towers, excluding Alternative Tower Structures in the Right-of-Way, shall be enclosed by security fencing or wall and shall also be equipped with an appropriate ant-climbing device.
- v. Towers shall be subject to the height restrictions of each zoning district. Notwithstanding anything in this Chapter to the contrary, Towers are prohibited in the Right-of-Way.

d. Roof and Building Façade Mounted WCFs:

- i. Roof mounted antennas and accessory equipment shall be painted or treated to match the façade of the building to which they are attached in order to minimize visibility from adjacent residential land uses and/or from public sidewalks.
- ii. Roof-mounted WCFs may be approved only where an Applicant sufficiently demonstrates that a wall mounted WCF is inadequate to provide service. By filing an application for a roof-mounted WCF, an Applicant is certifying agreement to the City's determination that the height extensions described in this subsection d are the maximum heights that will allow the WCF to be Camouflaged, and that any additional increase in height will undermine the Camouflage nature of the site.
- iii. Maximum height. Roof mounted antennas and accessory equipment shall not exceed the height of the penthouse or mechanical equipment room to which the antennas are attached. Antennas not mounted on a penthouse or mechanical equipment room shall be set back at least 5 feet from the exterior wall of a

building. The maximum height of a roof mounted antenna that is not mounted on a penthouse or mechanical equipment room is equal to the distance the antenna is set back from the exterior wall.

- iv. All rooftop equipment and Antennas must be adequately screened where feasible from a technical, construction, design and engineering perspective.
- v. Building façade mounted antennas shall not protrude horizontally more than 2 feet from the building wall and shall be painted or treated to match the building or structure to which the antenna is attached.
- vi. Building façade mounted antennas shall not exceed the height of the parapet or the roofline, whichever is greater.
- vii. The total of all visible building façade mounted antennas may not exceed the greater of 10 percent of the square footage of the building façade.

e. Related Accessory Equipment

- i. Excluding Small Cell Facilities in the Right-of-Way, the buildings, shelters, cabinets, and other accessory components shall be setback a minimum of 15 feet from each property line with a residential zone district or a lot containing a residential structure, or shall meet all setback requirements of the underlying zone districts, whichever results in the greater setback, and shall be grouped as closely as technically possible.
- ii. Total footprint coverage area of the accessory equipment shall not exceed 500 square feet per provider, with a maximum of 1500 square feet total for three or more providers.
- iii. No accessory equipment or accessory structure shall exceed 12 feet in height.
- iv. Accessory equipment, including but not limited to remote radio units, shall be located out of sight whenever possible by locating behind parapet walls or within equipment enclosures. Where such alternate locations are not available, the Accessory Equipment shall use Camouflage Design Techniques.
- v. No accessory equipment or accessory structures shall be sited in a manner that reduces the parking or landscaped areas for other principal uses on the parcel below the minimums required by the Zoning Ordinance.

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- A. It is the intent of the City to provide for approval of WCFs administratively in cases where visual impacts are minimized, view corridors are protected, appropriate Camouflage and Concealment Design Techniques are employed to avoid adverse impacts on the surrounding area, and they are designed, maintained, and operated at all times to comply with the provisions of this Chapter and all applicable laws. Notwithstanding the approval of an application for Eligible Facilities Request as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building and safety requirements as set forth in municipal code and any other applicable regulations.
1. Special Use Permit. Any application for a WCF which does not comply with the provisions of this Chapter may seek approval of a Special Use Permit by submitting an application to Planning Commission.
 2. Collocation and Separation Required. No new Towers, excepting Small Cell Facilities in the Right-of-Way, shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the City that no existing WCFs can accommodate the needs that the Applicant proposes to address with its Tower application, and sufficient separation of Towers is achieved. Evidence may consist of the following:
 - a. No existing WCFs with a suitable height are located within the geographic area required to meet the Applicant's engineering requirements;
 - b. Existing WCFs do not have sufficient structural strength to support applicant's proposed WCF;
 - c. The Applicant's proposed WCFs would cause electromagnetic interference with the existing WCFs or the existing WCF would cause interference with the Applicant's proposed WCF;
 - d. The Applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for Collocation;
 - e. Towers over 90 feet in height shall not be located within one-quarter mile from any Existing Tower that is over 90 feet in height, unless the Applicant has shown to the satisfaction of the City that there are no reasonably suitable alternative sites in the required geographic area which can meet the Applicant's needs.
 3. Setbacks. The following minimum setback requirements shall apply to all WCFs except for Alternative Tower Structures in the Right-of-Way; provided however, that the City may reduce standard setback requirements if the applicant demonstrates that the goals of this Section can be met through Performance Options or through Alternative Compliance, or through a Variance process. A Tower shall meet the greater of the following minimum setbacks from all property lines;
 - a. The setback for a principal building within the applicable zoning district; or
 - b. Twenty-five percent (25%) of the facility height, including WCFs and Related Accessory Equipment; or
 - c. For sites within 100 feet of residential uses, facilities over 30 feet in height shall have a minimum setback from all adjacent residential property lines of one (1) foot for every foot in height.

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Document #2

This document contains the edits submitted by Lakewood Broadband.

Definitions from Section 13:

For the purposes of this chapter, the following words, phrases, and terms shall have the meanings set forth herein. Words not defined shall be given their common and ordinary meaning.

Accessory Equipment: any equipment serving or being used in conjunction with a WCF, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures including fences.

Alternative Tower Structure: man-made trees, clock towers, bell steeples, light poles, buildings, traffic signals, and similar alternative design mounting structures that are compatible with the natural setting and surrounding structures, and camouflages or conceals the presence of Antennas or Towers so as to make them architecturally compatible with the surrounding area pursuant to this title, including height limits as set forth in this title. This term also includes any Antenna or Antenna array attached to an Alternative Tower Structure. A stand-alone pole, including a replacement pole, in the Right-of-Way, streetlight, or traffic signal that accommodates Small Cell Facilities is considered an Alternative Tower Structure to the extent it meets the camouflage and concealment standards of this title.

Antenna: 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, all 5g, 4g, 4g LTE, and any higher gigahertz frequency antennas, 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.

Applicant for WCF: any person that submits an application to the City to site, install, construct, collocate, modify and/or operate a Wireless Communications Facility.

Amateur Radio Towers and Antennae: Broadcasting and receiving structures or devices used for personal pleasure or as a ~~hobby~~ hobby.

Base Station: a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The definition of Base Station does not include or encompass a Tower as defined herein or any equipment associated with a Tower. Base Station does include, without limitation:

1. Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the City under this Chapter and has been reviewed and approved under the applicable zoning or siting process, ~~or under another State or local regulatory review~~

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Lakewood Zoning Ordinance –

process, even if the structure was not built for the sole or primary purpose of providing such support; and

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2. Radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks) that, at the time the relevant application is filed with the City under this title, has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

The definition of Base Station does not include any structure that, at the time the relevant application is filed with the City, does not support or house equipment described in paragraphs 1 and 2 above.

Camouflage, Concealment, Or Camouflage Design Techniques: the designing of a WCF to alter its appearance in such a manner as to substantially integrate it into surrounding building designs and/or natural settings to minimize the visual impacts of the facility on the surrounding uses and ensure the facility is compatible with the environment in which it is located. A Wireless Communication Facility utilizes Camouflage Design Techniques when it (i) is integrated as an architectural feature of an existing structure such as a cupola, or (ii) is integrated in an outdoor fixture such as a utility tower, or (iii) uses a design which mimics and is consistent with the nearby natural or architectural features (such as a clock tower) or is incorporated into (including without limitation, being attached to the exterior of such facilities and painted to match it) or replaces existing permitted facilities (including without limitation, stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

Collocation:- (1) mounting or installing a WCF on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing a WCF on that structure. Provided that, for purposes of Eligible Facilities Requests, “Collocation” means the mounting or installation of transmission equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. Co-location shall also include the location of communication facilities with other existing structures, including but not limited to water tanks, light standards, power poles, and other utility facilities and structures.

Director: The person, or that person’s designee, authorized by the City Manager to enforce and interpret this Zoning Ordinance..

Eligible Facilities Request: any request for modification of an Existing Tower or Base Station that it is not a Substantial Change, or that does not substantially change the physical dimensions of such tower or base station involving 1) collocation of new transmission equipment, 2) removal of transmission equipment, or 3) replacement of transmission equipment.

Eligible Support Structure: any Tower or Base Station as defined in this Section, provided that it is existing at the time the relevant application is filed with the City under this Section.

Evidence of Need: Evidence of Need: A coverage gap that exists when a remote user of those services is unable to either connect with the land-based national telephone network, or to maintain a connection capable of supporting a reasonably uninterrupted communication. When a coverage gap exists customers cannot receive and send signals, and when customers pass through a coverage gap their calls are disconnected.

Commented [Secondpas2]: Definition verbatim from US District Court Case, Omni Point Holdings 2008, US District. Lexis 111741, at *3 Evidence of Need An important definition to include as now referenced in several sections of Article’s operation.

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Existing Tower or Base Station: a constructed Tower or Base Station that was reviewed, approved, and lawfully constructed in accordance with all requirements of applicable law 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 purposes of this definition.

FCC: the Federal Communications Commission.

Hazardous Substance: any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.

Interference: physical interference and radio frequency interference.

Micro Cell Facility or microcell: a small wireless facility that is no larger than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve(12) inches in height, and that has an exterior Antenna, if any, that is no more than eleven (11) inches in length.

Monopole: a single, freestanding pole-type structure supporting one or more Antennas.

Over the Air Receiving Device (OTARD): an Antenna used to receive ~~video programming from direct broadcast satellites~~ direct broadcast satellite service, including home satellites that are 1M or less in diameter, broadband radio services and television broadcast stations, but shall not include Antennas used for AM/FM radio, amateur (“ham”) radio, CB radio, Digital Audio Radio Services or Antennas used as part of a hub to relay signals among multiple locations.

Owner means a person with a legal or equitable interest in ownership of real or personal property.

Permit means a permit issued and described in accordance with Laws, which is used to regulate, monitor, and control the improvement, construction, or excavation activities, or other work or activity, occurring upon or otherwise affecting Licensor’s ROW, including ROW use, building, and electrical permits.

Physical Interference means where equipment, vegetation, or a structure causes reduced use of another’s prior mounted equipment, or an obstruction in a necessary line-of-sign path.

Pole-Mounted Small Cell Facility: a Small Cell Facility with Antenna that are mounted and supported on an Alternative Tower Structure, which includes a Replacement Pole.

Public Right-of-Way (ROW): any public street, way, alley, sidewalk, median, parkway, or boulevard that is dedicated to public use.

Radio Antenna, Amateur: A noncommercial device that is used for transmitting and receiving electro-magnetic waves.

~~Radio Frequency Emissions Letter~~ Radio Frequency Radiation (RFR) Study: a report ~~letter~~ from the Applicant providing emissions measurements detailed within this Article and certifying all WCFs that are the subject of the application are in compliance ~~shall comply~~ with federal standards for radio frequency emissions.

Radio Frequency Interference means the emission or conduction of radio frequency energy (or electronic noise) produced by electrical and electronic devices at levels that interfere with the operation of adjacent or nearby equipment.

Radio Tower, Amateur: A structure that supports an antenna.

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Commented [CC5]: Strike last part of this sentence. It is exempting ("shall not include") relay hubs (receive AND transmitting devices). This may permit broadcasting mini towers on neighborhood homes. If you do not strike, you may be allowing mini antennas for a distributed antenna system via satellite. I.e, Satellite providers could offer customer discounts for using residential satellites as relay devices. Creates a lack of oversight. Can be addressed again at a future date.

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READILY APPARENT. For purposes of determining whether a WCF is readily apparent, the phrase means that the facility, will be easily recognizable as a WCF in the discretion of the Director, viewing the facility as a whole and in the context of any adjacent improvements and landscaping from publicly accessible locations when considering the character, scale, and height of nearby and surrounding natural or architectural features. Methods of design and construction that may assist in reducing the visibility of a facility and reaching a conclusion that a facility is not readily apparent include the use of color mimicking surrounding structures and landscaping, minimizing facility size to the greatest extent feasible, integrating the facility into any adjacent or attached improvements, and positioning the facility in a manner that limits the degree to which the facility projects away from any adjacent structures or landscaping. Due to differences in site characteristics, a determination that a particular WCF will not be readily apparent at one location shall not establish a precedent for the same determination for a facility of the same or similar design or construction at a different location.

Replacement Pole: an Alternative Tower Structure that is a newly constructed and permitted traffic signal, utility pole, street light, flagpole, electric distribution, or street light pole or other similar structure of proportions and of equal height or such other height that would not constitute a Substantial Change to a pre-existing pole or structure in order to support a WCF or Small Cell Facility or Micro Cell Facility or to accommodate Collocation and replaces a pre-existing pole or structure.

Satellite Dish Antenna: A parabolic antenna intended to receive signals from orbiting satellites and other sources. Non-commercial dish antennas are defined as being less than four meters in diameter, while commercial dish antennas are usually those larger than four meters and typically used by broadcasting stations.

Setback: The minimum distance any building or structure must be separated from a specified point.

Sign: Any structure, which requires a permanent or temporary location, that has a visual display visible from a public right-of-way and is designed to identify, announce, direct or inform.

Signal Non-Interference Letter: a letter from the Applicant certifying all WCFs that are the subject of the application shall be designed, sited, and operated in accordance with applicable federal regulations addressing radio frequency interference.

Site for Towers (other than Towers in the Right-of-Way and Eligible Support Structures): the current boundaries of the leased or owned property surrounding the Tower or Eligible Support Structure and any access or utility easements currently related to the Site. A Site, for other Alternative Tower Structures, Base Stations, Micro Cell Facilities, and Small Cell Facilities in the Right-of-Way, is further restricted to that area comprising the base of the structure and to other related Accessory Equipment already deployed on the ground.

Small Cell Facility: a Wireless Communication Facility where each Antenna is located inside an enclosure of no more than three cubic feet in volume, or, in the case of an Antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated and accessory equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. Small cells may be attached to Alternate Tower

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Structures, Replacement Poles, and Base Stations. The definition of a Small Cell Facility shall also include a Micro Cell or Micro Cell Facility, as well as equipment for densifying technology.

Street: A public or private thoroughfare for vehicular traffic other than an alley or driveway.

Substantial Change for Eligible Facilities Request: 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:

(A) For Towers, other than Alternative Tower Structures or Towers in the Right-of-Way, it increases the height of the Tower by more than 10 percent (10%) or by the height of one (1) additional Antenna array, with separation from the nearest existing Antenna not to exceed twenty feet, whichever is ~~greater~~ ~~lesser~~; for other Eligible Support Structures, it increases the height of the structure by more than ten percent (10%) or more than ten (10) feet, whichever is ~~lesser~~ ~~greater~~.

Commented [Secondpas8]: "lesser" since we are qualifying the minimal change to constitute a substantial change.

(B) For Towers, other than Towers in the Right-of-Way, it involves adding an appurtenance to the body of the Tower that would protrude from the Tower more than ~~ten (twenty (2010) feet, or more than the width of the Tower Structure at the level of the appurtenance, whichever is greater; for Eligible Support Structures, it involves adding an appurtenance to the body of the structure that would protrude from the side of the structure by more than six (6) feet;~~

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(C) 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;

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(D) For Towers in the Right-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 ten percent (10%) larger in height or overall volume than any other existing, individual ground cabinet associated with the structure;

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(E) For any Eligible Support Structure, it entails any excavation or deployment outside the current Site;

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(F) For any Eligible Support Structure, it would defeat the concealment elements of the Eligible Support Structure. For the purposes of this subsection (vi), a change that would undermine the concealment elements of this structure will be considered to defeat the concealment elements of the structure; or

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(G) For purposes of determining whether a Substantial Change exists, changes in height are 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 are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

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Support Structure: a structure designed to support Small Cell Wireless Facilities including, but not limited to, Monopoles, Alternative Tower Structures, Replacement Poles, and other freestanding self-supporting pole structures.)

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Toll and Tolling: to delay, suspend, or hold off on the imposition of a deadline, statute of limitations, or time limit.

Tower: any structure built for the sole or primary purpose of supporting one or more FCC-licensed or authorized Antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. The term includes self-supporting lattice towers, guyed towers or Monopole towers, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, Alternative Tower Structures and the like.

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

Wireless Communications Equipment Shelter: An unattended structure such as a small building or cabinet(s) used to house equipment for a wireless communications facility associated with either a freestanding wireless communications facility or a structure or building mounted wireless communications facility.

Wireless Communications Facility or WCF: a facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF includes an Antenna or Antennas, Base Stations, support equipment, Alternative Tower Structures, Small Cell Facilities, and Towers. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand held radios/telephones and their associated transmitting Antennas, nor does it include other facilities specifically excluded from the coverage of this title.

Wireless Communications Provider: A public or private company providing personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services.

Wireless Communications Site: Any use of property for antennae, equipment, and equipment shelter(s) employed in the reception, switching, and/or transmission of wireless telecommunication services including, but not limited to, paging, enhanced specialized mobile radio, personal communication services, microwave link antenna, cellular telephone, and other related technologies.

ARTICLE 10: Wireless Services and Communications 10-1

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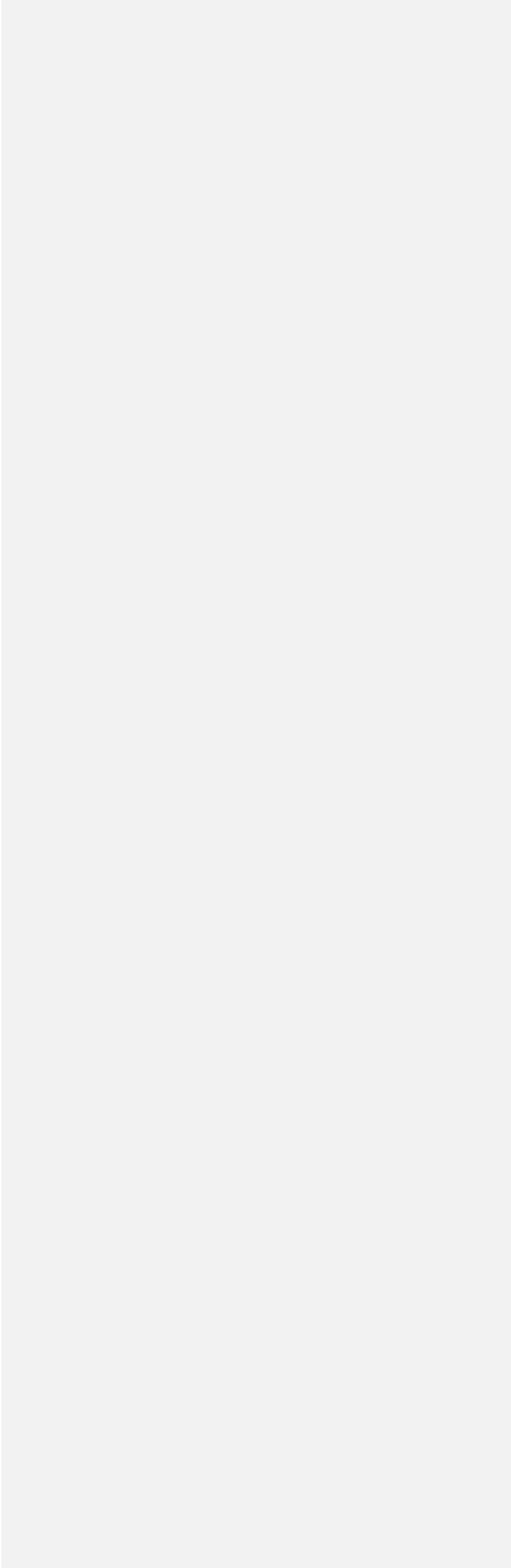
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~~Adopted January 26, 2015~~

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ARTICLE 10: WIRELESS SERVICES AND COMMUNICATIONS

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17.10.1: General

17.10.1.1: Purpose and Intent

This Article is intended to ensure that residents, public safety operations and businesses in the City have reliable access to personal wireless services and state of the art communications services in a way that reasonably preserves the aesthetic character and value of the community, and complies with Federal, ~~and State, and local laws,~~ including but not limited to the National Environmental Policy Act (NEPA), the National Building Act, and the Americans with Disabilities Act (ADA).

~~It is the City's intent to:~~

The City Council finds that these regulations are necessary to:

- A. Provide for the managed development and installation, maintenance modification, and removal of wireless communications infrastructure in the City with the fewest number of wireless communications facilities (WCFs) to complete a network without unreasonably discriminating against wireless communications providers of functionally equivalent services, including all of those who install, maintain, operate, and remove WCFs;
- B. Minimize adverse visual effects of WCFs through thoughtful design, ~~and~~ siting, and installation, including but not limited to camouflage design techniques, ~~appropriate~~ and effective screening, and equipment undergrounding whenever appropriate;
- C. Encourage the location of Towers and Wireless Communications Facilities on a building, or the joint use of new and existing ground mounted facility tower sites as a primary option so to ~~in a manner that~~ minimize the total number of Towers needed throughout the community;
- D. Require the collocation of WCFs wherever reasonably feasible;
- E. ~~Encourage~~ Require owners and users of WCFs to locate them, to the extent possible, in areas where the adverse impact to the community, including real estate, is minimized;
- F. Enhance ~~the ability of~~ wireless communications service technology providers to provide ~~such~~ services to the community quickly, effectively, and efficiently, and safely;
- G. Effectively manage WCFs in the Public Right of Way;

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- H. Manage amateur radio facilities and over-the-air devices in the City;
- A-I. Ensure the City has sufficient wireless infrastructure to support public safety and emergency response communications throughout the City;
- B. Ensure access to reliable personal wireless services throughout all areas of the City and in no event prohibit or have the effect of prohibiting the provision of personal wireless services;
- C. Encourage the use of existing structures for the siting of facilities;
- D. Encourage the location of new freestanding support structures in areas where any potential adverse impacts on the community will be minimized;
- E. Minimize the potential adverse effects of wireless service facilities through the implementation of reasonable design, landscaping and construction practices; and
- F. Conform to federal and state laws which exempt certain facilities, receiving dishes and antennas from local regulations.

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17.10.1.2: Applicability

A. The standards in this Article shall ~~control the design, location, alteration, installation~~ apply to all Eligible Facilities Requests and ~~maintenance~~ WCF applications for Base Stations, Alternative Tower Structures, Towers, Micro Cells, and Small Cell Facilities as defined in Section 17.13.2 and further addressed herein.

B. The Requirements set forth in this Article shall not apply to:

1. Amateur radio Antennas that are owned and operated by a federally licensed amateur radio station operator or are exclusively receive only Antennas, provided that the requirements that the height be no more than the distance from the base of all wireless service infrastructure in all zone districts. No provision the Antenna to the property lines is met.

4-2. Pre-existing WCFs. Any WCF for which a permit has been properly issued prior to the effective date of the latest revision of this Article of the City of Lakewood Zoning Code shall be required to become compliant under this Article within 5 years, or at a point in time as negotiated by the City and facilities owner.

~~Pre-existing WCFs. Any WCF for which a permit has been properly issued prior to the effective date of Ordinance # 2019O-2020-1 shall not be required to meet the requirements of this Article shall apply to: Chapter, other than the requirements of Section 17.10.3. Changes and additions to pre-existing WCFs (including trading out of Antennas for an equal number of Antennas) shall meet~~

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~~applicable requirements of Section 17.10.3. Notwithstanding the foregoing, any modifications qualifying as an Eligible Facilities Requests shall be evaluated under this Section.~~

3. ~~Miscellaneous Antennas. Antennas used for reception of television, multi-channel video programming and/or radio such as Over-the-Air Receiving Device (OTARD) Antennas, television broadcast band Antennas, satellite earth station antennae and broadcast radio Antennas, provided that any requirements related to Accessory uses contained in this Code and the requirement that the height be no more than the distance from the base to the property line are met. The Director or his or her designee has the authority to approve modifications to the height restriction related to OTARD Antennas and OTARD antenna structures, if in the reasonable discretion of the City, modifications are necessary to comply with federal law.~~

4. ~~A temporary WCF installed upon the declaration of a state of emergency by the federal, state, or local government, and upon or a written determination that such temporary WCF is specifically serving an emergent need of the general health, safety, and welfare of residents by need of the City, subject to approval by the City Council. Such WCF shall be subject to this Article immediately upon lifting the respective state of emergency.~~

~~or reasonable ability to obtain such written determination within 72 hours.~~

5. ~~A temporary WCF installed for the purpose of providing sufficient coverage for a special event, subject to administrative approval by the City.~~

~~A. The siting of Distributed Antenna Systems (DAS) or wireless facilities located within and intended to provide wireless coverage within a structure.~~

~~B. Any dish antenna less than 40 inches in diameter located in a residential zone district; or~~

~~C. Any dish antenna less than 80 inches in diameter located in any other zone district.~~

17.10.2: Wireless Facilities – By Zone District

Table 17.4.1 identifies where the different types of wireless facilities are permitted as primary or accessory uses, by right or with a special use permit, and where these uses are prohibited in each zone district within the City of Lakewood.

17.10.3: Wireless Facility Operational Standards

17.10.3.1: Wireless Stealth Facilities

A. Review Requirements:

~~The installation of new wireless stealth facilities on any non-single-family or two-family structure may be allowed in any zone district if reviewed and approved in accordance with the Review of Supplemental Standards procedures identified in Article 2. The Director shall exercise discretion in applying the standards outlined for all new wireless~~

Commented [CC11]: Strike, understand the clause here but the community wants all WCFs to be up to date and compliant with City standards and best practices at some point in time. Obviously as can feasibly be done by stakeholders. This timeline can be flexible and negotiated as referenced above.

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~~stealth facilities, where such standards are determined to be necessary to minimize the potential adverse effects of wireless service facilities. At a minimum the following standards shall apply:~~

- ~~1. The dimensions of the stealth facility must reasonably approximate the dimensions of the object they are being disguised as, and~~
- ~~2. The location of the stealth facility must be in concert with its surroundings.~~

17.10.3.2: New Wireless Facilities on Existing Structures

A. ~~Review Requirements:~~

~~The installation of new wireless facilities on~~

~~A. Federal Requirements. All WCFs shall meet the current standards and regulations of the Federal Aviation Administration (FAA), the FCC and any other agency of the federal government with the authority to regulate WCFs. If such standards and regulations are changed, then the owners of the WCF shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency. Unless preempted by federal law, failure to meet such revised standards and regulations within 30 days of the City's determination of such failure shall constitute grounds for the removal of the WCF by the City or owner at the WCF owner's expense.~~

~~B. Permission to Use Public Right-of-Way or City-owned Public property. Prior to WCFs being sited in the ROW, the Applicant shall have an executed license agreement with the City, granting a non-exclusive license to use the Public Right-of-Way. Attachment of WCFs on an existing or replacement structures-traffic signal, street light pole, or similar structure shall require written evidence of a license, or other legal right or approval, to use such structure by its owner, and Site specific approval pursuant to 17.10.4. The Applicant shall remain the owner of, and solely responsible for any WCF installed in the ROW. Prior to, or concurrently with, seeking land use approval for a WCF on Public Property, the Applicant shall execute a lease agreement with the City.~~

~~C. Operation and Maintenance. To ensure the structural integrity of WCFs, the owner of a WCF shall ensure that it is maintained in compliance with the standards contained in applicable local building and safety codes. If upon inspection, the City concludes that a WCF fails to comply with such codes and constitutes a danger to persons or property, then, upon written notice being provided to the owner of the WCF, the owner shall have 30 days from the date of notice to bring such WCF into compliance by providing to the City an independent, third-party engineering certification paid for by the Applicant, that such Towers meet all building and safety codes of the City of Lakewood. The Applicant shall fully cooperate in arranging access for the inspection and may participate in the inspection. Upon good cause shown by the owner and meeting reasonable safety considerations, the City's Chief Building Official Director may extend such compliance period not to exceed 90 days from the date of said notice. If the owner fails to bring such WCF into compliance within said time period, the City may be allowed remove such WCF at the owner's expense.~~

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Commented [CC15]: There is no definition of City Chief Building official in ordinance and all other administrative approvals go through Director (see definitions)

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Lakewood Zoning Ordinance – Adopted January 26, 2015

- a. Each wireless communication facility which contains trees, foliage or other landscaping elements, whether or not used as screening, shall be maintained in good condition at all times in accordance with the approved landscape plan, and the owner or operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping as promptly as reasonably possible. Amendments or modifications to the landscape plan shall be submitted for approval to the Director.
- b. Certification must be provided upon request by the City that the proposed facility will at all times comply with all applicable requirements and standards pertaining to electromagnetic and/or radio frequency radiation.

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Lakewood Zoning Ordinance – Adopted January 26, 2015

D. Emergency. In the event of an emergency or to protect the public health or safety, prior to the City accessing or performing any work on a facility on which a WCF Owner has installed Equipment, City may require WCF Owner to deactivate such Equipment if any of City's employees or agents must move closer to the Equipment than the FCC's recommended minimum distance. In such case, City will contact WCF Owner to request immediate deactivation.

Commented [ksf16]: The "Emergency" and "Non-Interference" sections would ordinarily go in the MLA or ROW use agreement, and are included here because there are not in the current agreements that Lakewood is using.

E. Non-Interference. The following provisions shall apply to ensure and/or avoid interference (both physical interference and Radio Frequency Interference) resulting from Licensee's installation, operation and/or maintenance of its Equipment:

a. Radio Frequency Interference. All WCF Owners shall ensure that the Equipment will not cause Radio Frequency Interference with Wireless Communication Facilities or devices, cable television, broadcast radio or television systems, satellite broadcast systems, or City traffic, public safety or other communications signal equipment existing at the time of installation of the Equipment.

b. Existing Uses. WCF Owners shall not interfere in any manner with the existing uses of City property including Rights-of-Way, and including sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, streetlight fixtures, cable television, and other telecommunications, utility, and municipal property without the express written approval of the Owner(s) of the affected property or properties.

c. City Communications. WCF Owners shall not interfere in any manner with current or future City or other governmental public safety communication.

d. Remedies. If Interference occurs and continues for a period in excess of 24 hours following notice to the interfering party via telephone, the City may require the interfering party to reduce power or cease operations of the interfering equipment until the Interference is cured.

F. Relocation, Abandonment and Removal. After the WCF is constructed, if a WCF has not been in use for a period of three months, the owner of the WCF shall notify the City of the non-use and shall indicate whether re-use is expected within the ensuing three months. Any WCF that is contracted and is not operated for a continuous period of six months shall be considered abandoned. The City, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF shall remove the same within 30 days of receipt of written notice from the City. If such WCF is not removed within said 30 days, the City may remove it at the owner's expense and any zone district if approved permits for the WCF shall be deemed to have expired. For any public project, a WCF may be required to relocate at WCF Owner's expense.

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Lakewood Zoning Ordinance – Adopted January 26, 2015

- G. Hazardous Materials. No Hazardous materials shall be permitted in association with WCFs, except those necessary for the operation of the WCF and only in accordance with all applicable laws governing such materials.
- H. Collocation. No WCF Owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility, sign, structure, or location. Upon request by the City, the owner or operator shall provide evidence explaining why Collocation is not possible at a particular facility or site.
- I. Site Safety from Unauthorized Access. All wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically, all antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.
- J. Authority to Inspect Facilities. In order to verify that the holder of a special use permit or other approval for wireless telecommunications facilities and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, and building codes, laws, ordinances and regulations and other applicable requirements, the City may designate persons to conduct an inspection on its behalf of all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site.
- K. The owner or operator of any wireless communications facility shall maintain with the City, at all times, current contact and site information. Applicant shall notify City of any changes to the information submitted within thirty days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:
- a. Identity, including name, address, and telephone number, and legal status of the owner of the facility including official identification numbers and FCC certification, and, if different from the owner, the identity and legal status of the person or entity responsible for operating the facility;
 - b. Name, address and telephone number of a local contact person for emergencies;
 - c. Type of service provided;
 - d. Identification signs, including emergency phone numbers of the utility provider, shall be posted at all communication facility sites.
- L. Each owner or operator of a wireless communications facility shall routinely and regularly, no less than annually, inspect each site to ensure compliance with the standards as set forth in this section.

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17.10.4 Review Procedures and Requirements

A. Permit Required.

No new WCF shall be constructed and no Collocation or modification to any WCF may occur except after a written request from an Applicant, reviewed and approved by the City in accordance with ~~the~~ this Chapter. All WCFsS except Eligible Facilities Requests which are reviewed under subsection (a)(3) of this Section, shall be reviewed pursuant to the following procedures. All WCF permits shall expire and be of no further force and effect 180 days following the date of approval unless, prior to the date of expiration: (1) Construction has been diligently pursued towards completion of the project, or (2) 180-day extension of the permit has been authorized by the director upon a written request by the Applicant. An extension may be granted if a review of the permit shows that no major changes in the City's development or zoning regulations or in the development pattern of the surrounding properties has occurred, as determined by the director. If a WCF permit expires, no further development of the facility may occur until a new permit application is submitted, reviewed and approved in accordance with this Code, subject to all application and processing fees.

B. Bond Required.

Prior to issuance of any permit, the Applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the City a bond, or other form of security acceptable to the City Attorney as to type of security, and the form and manner of execution, in the amount as determined by the Department of Public Works for construction of a tower facility or a co-location on an existing tower or other structure, and with such sureties as are deemed sufficient by the City Attorney to assure the faithful performance of the terms and conditions of this chapter and conditions of any special use permit, including payment of costs of future demolition of an abandoned tower or other facilities. The full amount of the bond or security shall remain in full force and effect while the facility is in existence and until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit or other approval.

C. Insurance Required.

1. Except as provided in or an supplemented by any franchise agreement or license, a telecommunications carrier shall secure and maintain public liability, property insurance, and umbrella coverage in at least the following amounts:
 - a. Public liability: \$2,000,000 per/person/per occurrence,
 - b. Property damage: \$2,000,000 per any one claim,
 - c. Umbrella liability: \$5,000,000.
2. The public and personal liability and property damage insurance policy shall specifically include the City, its employees, agents, and members of the City Council as additional insureds.
3. The public and personal liability and property damage insurance policies shall be issued by an agent or representative of an insurance company licensed to do

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Lakewood Zoning Ordinance – Adopted January 26, 2015

business in the State and which has one of the three highest or best ratings from the Alfred M. Best Company.

4. The public liability and property damage insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least 30 days written notice in advance of the cancellation of the policy.
5. Renewal of replacement policies or certificates shall be delivered to the City as least 15 days before expiration of the insurance which such policies are to renew or be replaced.
6. Before a telecommunications system provides telecommunications service to subscribers, the telecommunications carrier shall deliver the policies or certificates representing the insurance to the City as required herein.
7. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.
8. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the telecommunications license or franchise. The policy may not be canceled nor the intention not to renew be stated until 90 days receipt by the City, by registered mail, or a written notice addressed to the City Engineer of such intent to cancel or not to renew. Within 60 days after receipt by the City of said notice, the grantee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this section.
9. Grantee shall provide the City with evidence of insurance for each of the coverage's described above at least 10 days prior to construction and/or occupancy of any site subject to this chapter.

D. Emissions Requirements.

1. Per Submittal Requirements within this Article, any new facility application or request involving a substantial change to an existing facility will be required to provide a statement of Radio Frequency Radiation Study (RFR) confirming current assessed Radio Frequency (RF) exposure limits if such new WCF or substantial change to an existing WCF increases Radio Frequency from its own facility, or increases Radio Frequency in combination with other facilities.
2. The City reserves the right to require an annual Radio Frequency report to be provided to the Department of Public Works upon request for any facilities subject to the National Environmental Policy Act (NEPA).
3. The City and/or its assigned agents reserve the right to measure, at random, the radio frequency emissions of any facility and to review or revoke any permit under this Article if a wireless cell facility demonstrably increases signal output above the Uncontrolled/General Population Maximum Permissible Exposure (MPE) limits imposed by the FCC (47 CFR Sec. 2.1).
4. Any operational or technological changes to an approved WCF that affects the facility's radio frequency emissions shall be reported promptly to the City.

E. Review Procedures for certain all WCFs, including Base Stations, Alternative Tower Structures, Small Cell Facilities, and Alternative Tower Structures within Public Rights-of-Way. Applications for these WCF facilities shall be reviewed by the Public Works

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Department for conformance to this Section and using the Design Review procedures set forth in Section 17.10.5 For WCFs in the Right-of-Way that are found to have a significant visual impact (i.e. proximity to historical sites), be incompatible with the structure of surrounding area, or not meet the intent of these provisions, the City may refer the application to Planning Commission for a Special Use Permit of Supplemental Standards Determination.

F. –Review Procedures for WCFs, including Towers. Towers, other than those defined or excepted in (E) above, must apply for Special Use Permit Review approval. These WCFs shall be reviewed for conformance using the procedures set forth in Section 17.10.5. All applications for Towers shall demonstrate that other alternative design options, such as using Base Stations or Alternative Tower Structures, are not viable options as determined by the City.

G. Review Procedures for Eligible Facilities Requests.

1. Eligible Facilities Requests shall be considered a permitted use, subject to administrative review. The City shall prepare, and from time to time revise and make publicly available, an application form which shall require submittal of information necessary for the City to consider whether an application is an Eligible Facilities Request. Such required information shall include, without limitation, whether the project:

- a. Constitutes a Substantial Change;
- b. Violates a generally applicable law, regulation, or other rule codifying objective standards reasonably related to public health and safety.

i. Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the Director shall review such application to determine whether the application so qualifies for an Eligible Facilities Request. Timeframe for Review. Subject to the Tolling provisions of subparagraph d. below, within 60 days of the date on which an Applicant submits an application seeking approval under this Section, the City shall approve the application unless it determines that the application is not covered by this Subsection, or otherwise in non-conformance with applicable codes.

2. Review Procedures for certain WCFs, including Towers. Towers other than those defined or excepted in (1) above, must apply for Special Use Permit Review approval. These WCFs shall be reviewed for conformance using the procedures set forth in Section 17.10.5. All applications for Towers shall demonstrate that other alternative design options, such as using Base Stations or Alternative Tower Structures, are not viable options as determined by the City.

Review Procedures for Eligible Facilities Requests: Eligible Facilities Requests shall be considered a permitted use, subject to administrative review. The City shall prepare, and from time to time revise and make publicly available, an application form which shall require submittal of information

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~~necessary for the City to consider whether an application is an Eligible Facilities Request. Such required information shall include, without limitation, whether the project:~~

~~Constitutes a Substantial Change;~~

~~b. Violates a generally applicable law, regulation, or other rule codifying objective standards reasonably related to public health and safety.~~

~~The application may not require the Applicant to demonstrate a need or business case for the proposed modification or Collocation.~~

~~— Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the Director shall review such application to determine whether the application so qualifies for an Eligible Facilities Request.~~

~~— Timeframe for Review. Subject to the Tolling provisions of subparagraph d. below, within 60 days of the date on which an Applicant submits an application seeking approval under this Section, the City shall approve the application unless it determines that the application is not covered by this Subsection, or otherwise in non-conformance with applicable codes.~~

~~3. Tolling of the Timeframe for Review. The 60-day review period begins to run when the application is filed, and may be Tolloed only by mutual agreement of the City and the Applicant, or in cases where the Director determines that the application is incomplete:~~

- ~~1. To toll the timeframe for incompleteness, the City must provide written notice to the Applicant within 30 business days of receipt of the application, specifically delineating all missing documents or information required in the application; such delineated information is limited to documents or information meeting the standard under paragraph (a)(i) above.~~
- ~~2. The timeframe for review begins running again the following business day after the Applicant makes a supplemental written submission in response to the City's notice of incompleteness;~~
- ~~3. Following a supplemental submission, the City will notify the Applicant within 10 business days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is Tolloed in the case of second or subsequent notices pursuant to the procedures identified in paragraph (d)(i). In the case of a second or subsequent notice of incompleteness, the City may not specify missing information or documents that were not delineated in the original notice of incompleteness.~~

~~3.~~
~~4. Failure to Act. The City shall make every effort to review any request seeking approval for an Eligible Facilities Request within the herein applicable timeline unless, working with the Applicant, a new timeframe is established. In the event the City fails to act on a request seeking approval for an Eligible Facilities Request under this Section within the timeframe for review, or the timeframe agreed upon with the Applicant (accounting for any Tolling), the request shall be~~

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deemed granted. The request becomes effective when the Applicant notifies the City in writing after the review period, including allowed extensions, has expired (accounting for any Tolling) that the application has been deemed granted.

—Interaction with Telecommunications Act Section 332(c)(7). If the City determines that the Applicant's request is not an Eligible Facilities Request as delineated in this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the City's decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the Applicant to evaluate the application under Section 332(c)(7) reviews.

5.

interaction with Telecommunications Act Section 332(c)(7). If the City determines that the Applicant's request is not an Eligible Facilities Request as delineated in this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the City's decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the Applicant to evaluate the application under Section 332(c)(7) reviews. To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 30 business days of receipt of the application, specifically delineating all missing documents or information required in the application; such delineated information is limited to documents or information meeting the standard under paragraph (c)(i) above.

—The timeframe for review begins running again the following business day after the applicant makes a supplemental written submission in response to the City's notice of incompleteness.

Following a supplemental submission, the City will notify the Applicant within 40 business days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is Tolloed in the case of second or subsequent notices pursuant to the procedures identified in paragraph (d)(i). In the case of a second or subsequent notice of incompleteness, the City may not specify missing information or documents that were not delineated in the original notice of incompleteness.

Failure to Act. The City shall make every effort to review any request seeking approval for an Eligible Facilities Request within the herein applicable timeline unless, working with the Applicant, a new timeframe is established. In the event the City fails to act on a request seeking approval for an Eligible Facilities Request under this Section within the timeframe for review, or the timeframe agreed upon with the Applicant (accounting for any Tolling), the request shall be deemed granted. The request becomes effective when the Applicant notifies the City in writing after the review period, including allowed extensions, has expired (accounting for any Tolling) that the application has been deemed granted.

—Interaction with Telecommunications Act Section 332(c)(7). If the City determines that the Applicant's request is not an Eligible Facilities Request as delineated in this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the

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~~FCC's Shot-Clock order, will begin to run from the issuance of the City's decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the Applicant to evaluate the application under Section 322(c)(7) reviews.~~

H. Review Procedures for Small Cell Facilities in the Right-of-Way.

a. ~~Small Cell Facilities in the Right-of-Way shall be considered a permitted use, subject to administrative review as set forth in Subsection A.1.~~

b. ~~The City shall prepare, and from time to time revise, and make publicly available, an application form which shall require submittal of information necessary for the City to consider whether a project is eligible as a Small Cell Facility in the Right-of-Way, meeting certain criteria.~~

~~The application shall not require the Applicant to demonstrate a need or business case for any proposed modification or Collocation.~~

c. ~~Upon receipt of an application for a Small Cell Facility in the Right-of-Way pursuant to this Section, the Public Works Department shall review such application to determine whether the application is complete.~~

d. ~~Timeframe for Review. Within 90 calendar days of the date on which an Applicant submits an application seeking approval under this Section, the City shall take action on the application unless it determines that the application is not covered by this Subsection, or otherwise in non-conformance with applicable code s.~~

I. ~~Submittal Requirements for all new WCFs, including Small Cell Facilities.~~

1. ~~In addition to submittal requirements of Chapter 17.2, the following supplemental items are required for all WCF applications:~~

a. ~~*Project Description Summary.* A brief project description for the proposed WCF, to include: 1) Number and sizes of antennas and approximate orientation, 2) copy of the respective FCC license, 3) heights of proposed facilities, 4) equipment enclosure type and size, 5) materials and colors of antennas and any equipment enclosure, 6) description of towers or other structures necessary to support the proposed facilities, 7) description of lighting, signage and landscaping proposed, and 8) other technical information regarding transmission equipment such as maximum power output and frequencies.~~

b. ~~*Signal Non-Interference Letter.* -A letter from the Applicant certifying all WCFs that are the subject of the application shall be designed, sited, and operated in accordance with applicable federal regulations addressing radio frequency interference;~~

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c. ~~Radio Frequency Emissions Letter~~ *Radio Frequency Radiation (RFR) Study*

For the sole purpose of verifying compliance with the FCC radio frequency emission standards, an emissions report shall be submitted which measures the predicted and actual levels of electromagnetic field radiation emitted by the proposed facility operating alone and in combination with radiation emitted from other existing or approved facilities that can be detected at the proposed facility site. Radiation measurements shall be based on all proposed (applications filed and pending), approved, and existing facilities operating at maximum power densities and frequencies within a minimum 1300 ft radius of the proposed facility. The RFR Study shall identify the following:

1. the existing and predicted electromagnetic field radiation in table form, specifically delineating both the General Population Exposure and Occupational Exposure
2. any measures required to comply with the FCC standards for predicted exposure levels
3. a summary of the conclusions of the report, and
4. details for any signage, barriers or similar mitigation that is recommended or required.

The RFR Study shall be prepared by a qualified third-party expert. If mitigation is required by FCC radio frequency emission standards, the details for signage, barriers or other physical improvements shall also be included on the project plans prepared for the facility. It is the responsibility of the Applicant to determine the location and power of existing facilities:

d. *Environmental Assessment*. Pursuant to NEPA, any application wishing to construct a facility that uses an FCC license must submit an environmental assessment to the FCC, or alternately, certify to the City by written statement that such facility is categorically excluded per 47 C.F.R. § 1.1307. An environmental assessment is required if the proposed construction:

1. Will be in a wilderness area or wildlife preserve (generally on federal land);
2. Might affect threatened and endangered species or their habitat (Endangered Species Act);
3. Might affect properties included or eligible for inclusion in the National Register of Historic Places or Indian religious and cultural sites;
4. Will be in a flood plain;
5. Will involve "significant changes in surface features" during construction (e.g., wetlands, water diversion, deforestation);
6. Will be taller than 450 feet and so might affect migratory birds;
7. Involves high intensity lighting in a residential area; or
8. Would cause radio frequency emission exposure in excess of FCC-established limits.

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Lakewood Zoning Ordinance – Adopted January 26, 2015

Any Applicant seeking to build a WCF that falls into any category requiring an environmental assessment and seeking not to submit an environmental assessment must obtain and provide a “findings of no significant impact” before site construction. Building without adhering to the legal requirements of 47 CFR 1.1301-1.1319 can constitute a violation of FCC rules and may subject the constructing party to potential enforcement action;

- e. *Title Report.* For any wireless facility proposed to be installed on any private property, not owned or controlled by the City, the Applicant must submit a title report, issued within 30 days prior to the date the Applicant filed the application;
- f. *Peer Review.* Prior to accepting an application as complete, the city may at its sole discretion require a peer review of the project be conducted by an independent qualified RF engineering consultant, as deemed necessary to confirm compliance with FCC radio frequency emission standards. The consultant shall be selected by the City and paid for by the project Applicant. If peer review is required, the application shall include sufficient information for the city-retained consultant to conduct such review for compliance with FCC radio frequency emission standards;
- g. *Photo simulations.* The Applicant shall provide photo simulations of the proposed facility from key public viewpoints based upon consultation with city staff. Photo-simulations shall display existing and proposed views, and include the date(s) when the base photo was taken. excluding applications for small cell facilities;
- h. *Noise Analysis.* A noise analysis for emergency generators or other noise-producing facilities;
- i. *Landscape Plan.* A landscape and irrigation plan, showing all existing and proposed improvements, location of proposed plantings and type of landscape material, for proposed ground-mounted facilities including equipment cabinets;
- j. *Elevations.* Elevations showing all sides of the proposed facility, and including the following information:
 - 1. Elevations and sections of the site displaying site topography, proposed facilities including towers, equipment shelter and existing buildings,
 - 2. Wall, roof, tower and antenna materials,
 - 3. Fencing, air conditioning units and outdoor lighting, if any,
 - 4. Rooftop or building features such as vents, chimneys and antennas, and
 - 5. Building or tower height as measured from natural grade.
- k. *Inventory of Sites.* Each Applicant for a WCF shall provide to the City a narrative description and data in a format acceptable to the City showing the

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Applicant's currently proposed WCFs within the City, and outside of the City within one half-mile of its boundaries. This provision is not intended to be a requirement that the Applicant submit its business plan, proprietary information, or make commitments regarding locations of WCFs within the City. This information will be used to assist in the City's comprehensive planning process, and promote Collocation by identifying areas in which WCFs might be appropriately constructed for multiple users. The City may share information regarding the location of sites and the owners or managers of such sites with other Applicants applying for administrative approvals or conditional permits under this section or other organizations seeking to locate WCFs within the jurisdiction of the City, provided however, that the City, is not, by sharing such information, in any way representing or warranting that such sites are available or suitable;

l. Load Certification. The owner of a proposed new tower shall provide certification with documentation (structural analysis) including calculations that the telecommunication facility tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, City, state and federal structural requirements for loads, including wind and ice loads;-----

m. Written Statement. Written representation that Applicant shall be responsible for paying all charges for any electricity furnished by a utility to Applicant and for charges for furnishing service to the Equipment. When the Equipment requires an electric meter as determined by the utility provider, the Applicant shall install or cause to be installed a separate electric meter on a ground mounted pedestal or on Applicant's pad mounted equipment cabinet as required by the electric provider for the operations of its equipment.

Equipment.

n. Abandonment and removal Affidavits. Affidavits shall be required from the owner of the property and from the Applicant acknowledging that each is responsible for the removal of a WCF that is abandoned or is unused for a period of six (6) months.

J. Consolidated applications. The City shall allow a wireless provider to file a multi-site permit seeking approval for up to ten (10) permits for Small Cell Facilities at a given time. Each individual site shall be processed as a separate permit in order to facilitate recording site addresses, utility company requirements, and timely inspection scheduling. The City's denial of any individual small cell facility is not a basis to deny the application as a whole or any other small cell facility incorporated within the consolidated application.

K. Consultants for Application Review. The City may hire a consultant and/or expert necessary to assist the City or any of its Departments in reviewing and evaluating the application for a facility, including the construction and modification of the site, once permitted, and any site inspections.

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1. An Applicant shall deposit with the City escrow funds sufficient to reimburse the City for all reasonable costs of the City's consultant in providing expert evaluation and consultation to any agency of the City in connection with the review of any application, including any expert consultation services deemed necessary by the City and in an amount to be determined by the City. The placement of the deposit with the City shall occur at such later time as the City may direct. The City will maintain a separate escrow account for all such funds. The City's consultants/experts shall invoice the City Department employing its services related to the application. In the event that the amount held in escrow by the City is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the Applicant, be promptly refunded to the Applicant.
2. Escrow Amount. The total amount of the funds needed as set forth in this section may vary with the scope and complexity of the project, the completeness of the application, and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification. When notified by the City that additional escrow is required, the Applicant may request copies of invoices paid to consultants and/or experts. If the Applicant finds errors in those invoices, the Applicant may ask the City to audit those specific items for reasonableness and may request relief therefrom.
3. Fee Cap. Notwithstanding the above, there shall be a fee cap as to the total consultant fees to be charged to the Applicant in a case, which shall be the greater of \$17,000 or 10% of the highest annual lease payment to be made by the Applicant to the owner of the property under the lease authorizing placement of the wireless telecommunications facilities at a given site. However, the fee cap shall not apply as to any fees which the City determines to be attributable to the dilatory or otherwise bad faith actions of the Applicant in providing a complete application or in proceeding with a public hearing.

L. Decision. -Any decision to approve, approve with conditions, or deny an application for a WCF, shall be in writing and supported by substantial evidence in a written record. The Applicant shall receive a copy of the decision.

1. Conditions of Approval for WCF permits. In addition to any other conditions of approval permitted under federal and state law and this Code that the Director deems appropriate or required under this Code, all WCF permits under this subsection shall include the following conditions of approval:
 - a. No Automatic Renewal. The grant or approval of a WCF permit shall not renew or extend the underlying permit term.
 - b. Compliance with Previous Approvals. The grant or approval of a WCF permit shall be subject to the conditions of approval of the underlying permit.

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- c. As-Built Plans. The Applicant shall submit to the Director an as-built set of plans and photographs depicting the entire WCF as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.
- d. Indemnification. To the fullest extent permitted by law, the Applicant and any successors and assigns, shall defend, indemnify and hold harmless [the] city, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the WCF permit and the issuance of any permit or entitlement in connection therewith. The Applicant shall pay such obligations as they are incurred by [the] city, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the city reasonably determines necessary to protect the city from exposure to fees, costs or liability with respect to such claim or lawsuit.
- e. Compliance with approved plans. The proposed project shall be built in compliance with the approved plans on file with the Department of Public Works.
- f. Violations. The WCF shall be developed, maintained, and operated in full compliance with the conditions of the WCF permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the Applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this Code, the conditions of approval for the small wireless facility permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this section shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one (1) remedy shall not cause an election precluding the use of any other remedy with respect to a violation.
- g. In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, Title 47, United States Code, section 1455, such that such statute would not mandate approval for the collocation or deployment granted or deemed granted under a WCF permit, such permit shall automatically expire twelve (12) months from the date of that opinion.
- h. The grant, deemed-grant or acceptance of a WCF permit shall not waive and shall not be construed or deemed to waive the city's standing in a court of competent jurisdiction to challenge Title 47, United States Code, section 1455 or any WCF permit issued pursuant to Title 47, United States Code, section 1455 or this Code.

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2.i. Additional Notice to Neighbors. After an application to allow the installation of a wireless facility subject to the approval of a WCF permit pursuant to this Code is complete, the Applicant shall provide property owners notice of such installation pursuant to 17.10.4, (L),(1),(i),(1) of this Article. Failure of the city to provide notice pursuant to this subsection shall not be grounds to challenge a determination provided that the notice otherwise required by law has been provided.

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1. Upon execution of any administrative decision approving or approving with conditions the application and prior to any construction, notice shall be sent by mail of the administrative approval by the Applicant to all property owners within a 1,300-ft radius of the facility, using names and addresses appearing on the latest adopted tax roll of the county. The notifying radius shall be measured from the outer boundary of the subject parcel, or for those facilities in the public right of way, from the outer boundary of the closest parcel adjacent to the subject public right of way site. Notice shall be sent no later than 15 day after such decision has been made by the City.

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2. Notice of the administrative approval shall also be made within 15 days of such decision by posting a notice in a publicly visible location on the property in question.

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M. Compliance with Applicable Law. Notwithstanding the approval of an application for new WCFs or Eligible Facilities Request as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building, structural, electrical, and safety requirements as set forth in the Municipal Code and any other applicable laws or regulations. In addition, all WCF applications shall comply with the following:

1. Comply with any permits or licenses issued by a local, state, or federal agency with jurisdiction of the WCF;

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2. Comply with easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;

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3. Be maintained in good working condition and to the standards established at the time of application approval; and

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4. All wireless communication facilities and related equipment, including lighting, fences, shields, cabinets, and poles, shall be maintained in good repair, remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, so as to minimize occurrences of dangerous conditions or visual blight, and in no instance more than ~~ten~~ 5 calendar days from the time of notification by the City or after discovery by the owner or operator of the Site. Each wireless communication facility which contains trees, foliage or other landscaping elements, whether or not used as screening, shall be maintained in good condition at all times in accordance with

the approved landscape plan, and the owner or operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping as promptly as reasonably possible. Amendments or modifications to the landscape plan shall be submitted for approval to the Director. Notwithstanding the foregoing, any graffiti on WCFs located in the Public Rights-of-Way or on Public Property may be removed by the City at its discretion, and the owner and/or operator of the WCF shall pay all costs of such removal according to the City Municipal Code guidelines as set forth by the City within 30 days and after receipt of an invoice from the City.

Any failure by the city to enforce compliance with any applicable laws shall not relieve any Applicant of its obligations under this Code, any permit issued under this Code, or all other applicable laws and regulations.

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17.10.5 Design Standards

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A. Review Requirements. The requirements set forth in this Section shall apply to the location and design of all WCFs governed by this Chapter as specified below; ~~provided, however, that the City may waive these requirements if it determines that the goals of this Chapter are better served thereby.~~ To that end, WCFs shall be designed and located to minimize the impact on the surrounding neighborhood and to maintain the character and appearance of the City, consistent with other provisions of this Code. ~~Notwithstanding the foregoing, the Planning Director shall have the authority to promulgate design standards for small cell facilities in the rights-of-way, which shall govern these types of WCFs.~~ All current design standards as outlined in this section shall be employed and directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments, and shall be applicable to both newly constructed WCFs, permitted but not yet constructed WCFs, as well as pre-existing WCFs applying for a substantial change.

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1. Camouflage/Concealment and Shrouding.

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All WCFs and any Transmission Equipment shall, to the extent possible, use Camouflage Design Techniques including, but not limited to the use of materials, colors, textures, screening, undergrounding, landscaping, or other design options that will blend the WCF into the surrounding natural setting and built environment.

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a. Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g. proximity to historic, natural, or aesthetically significant structures or areas, views, and/or community features or facilities). In such instances where WCFs are located in areas of high visibility, they shall (where possible) be designed to minimize their profile.

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b. The camouflage design may include the use of Alternative Tower Structures should the Public Works Department determine that such design meets the intent of this Code and the community is better served thereby.

c. All WCFs, such as Antennas, vaults, equipment rooms, equipment enclosures, and Tower structures shall be constructed out of non-reflective materials (visible exterior surfaces only).

2. Spacing and Collocation.

a. Collocation Standards.

i. New communication facilities shall be co-located with existing facilities and with other planned new facilities whenever feasible and aesthetically desirable. No new Towers, excepting Small Cell Facilities in the Right-of-Way, shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the City that no existing WCFs can accommodate the needs that the Applicant proposes to address with its Tower application, and sufficient separation of Towers is achieved. Evidence may consist of the following:

- i. No existing WCFs with a suitable height are located within the geographic area required to meet the Applicant's engineering requirements;
- ii. Existing WCFs do not have sufficient structural strength to support Applicant's proposed WCF;
- iii. The Applicant's proposed WCFs would cause electromagnetic interference with the existing WCFs or the existing WCF would cause interference with the Applicant's proposed WCF;
- iv. The Applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for Collocation;
- v. Towers over 90 feet in height shall not be located within one-quarter mile from any Existing Tower that is over 90 feet in height, unless the Applicant has shown to the satisfaction of the City that there are no reasonably suitable alternative sites in the required geographic area which can meet the Applicant's needs.

ii. WCFs shall be designed and constructed to permit the facility to accommodate WCFs from at least two (2) wireless service providers on the same WCF, to the extent it is feasible in good faith based upon construction, engineering and design standards, except where such Collocation would materially compromise the design intent of the WCF, particularly visually.

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Lakewood Zoning Ordinance – Adopted January 26, 2015

- iii. In order to facilitate co-location, conditions of approval for conditional use permits for new facilities shall require all service providers to cooperate in the siting of equipment and antennas to accommodate the maximum number of operators at a given site where found to be feasible and aesthetically desirable. Where feasible and aesthetically desirable, service providers are encouraged to co-locate with other facilities such as existing buildings, water tanks, light standards, and other utility structures where the co-location is found to minimize the overall visual impact.
- iv. Service providers shall exhaust all reasonable measures to co-locate their communications facilities on existing towers, existing alternative building or other structures within the City, or with or within existing ancillary support equipment facilities prior to applying for new communication facility sites. The service provider shall provide evidence to the City that the provider has contacted all other potential providers who have, or who are reasonably likely to be, installing facilities within the vicinity of the proposed facility and has offered to participate in a joint installation project on reasonable terms. Such evidence should include but is not limited to copies of written requests and responses, along with any letters of rejection, stating the reason for rejection.

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b. Spacing Standards. No new free-standing small cell facility shall be within 1,300-ft of another free-standing small cell facility on the right of way. These separation requirements do not apply to attachments made to existing alternative tower structures.

- i. Exemptions. The Public Works Department may exempt an Applicant from these separation requirements if 1) the Applicant demonstrates Evidence of Need through technical network documentation that the minimum separation requirement cannot be satisfied for technical reasons, or 2) the Director determines when considering the surrounding topography, the nature of adjacent uses and nearby properties, and the height of existing structures in the vicinity, that placement of a WCF at a distance less than 1,300-ft from another small cell facility will meet the intent of reducing visibility and visual clutter of small cell facilities o the extent possible.

3. Location Preferences. Small Cell Wireless Facilities in the public roads shall be installed in the most highly preferred locations as listed below. Locations listed in order of most preferred locations to least preferred locations with the first location listed being most desirable:

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- a. Preferred Locations —Non-Residential zone districts, excepting parks, ordered from most preferred to least preferred:

- i. Parcels in the industrial zones, then
- ii. Parcels in commercial zones;
- iii. Parcels in the mixed use zones
- iv. City owned or controlled parcels or public facilities, excepting parks and historic City-owned properties; then
- v. Agricultural sites
- vi. Any public road within a 1,500-foot radius of a day care center or school, as defined by sections 1596.78 of the Health and Safety Code and 26054 of the Business and Professions Code, respectively.
- vii. Any public road within a 1,500-foot radius of a City, County, or State Park, open space area, or City sports field.
- viii. Any public road adjacent to mixed-use sites with residential dwellings.
- ix. Any public road right of ways located in an exclusively residential zoning district.

4. Preferred Locations —Residential Zones, Park, and Open Space Parcels. If a facility is proposed in a residential zone or adjacent to or on a parcel used for open space or park purposes, all facilities should be located according to the following preferences, ordered from most preferred to least preferred, with the first location listed being most desirable:

- 1) City owned or controlled parcels not for park or open space uses; then
- 2) Parcels that contain non-residential uses and do not contain residential or park or open space uses; then
- 3) Parcels that do not contain single-family homes, multi-family homes, or park or open space uses; then
- 4) City owned or controlled parcels; then
- 5) In the public right-of-way abutting a residential zone; then
- 6) All other parcels

a. When a lower ranked alternative is proposed, the application must include technical information demonstrating that a higher ranked option is not technically feasible in light of the provider's service objectives.

5. Lights and other attachments.

a. WCFs shall not be artificially lighted, unless required by the Federal Aviation Administration or other applicable governmental authority, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purpose. If lighting is required, the City may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding properties or environs. Lighting shall be shielded or directed to the maximum extent so as to minimize the

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Lakewood Zoning Ordinance – Adopted January 26, 2015

amount of glare and light falling onto nearby properties, particularly residences.

b. All exterior lighting within equipment yards shall be mounted on poles or on the building wall below the height of the screen wall or fence.

c. No Tower shall have constructed on, or attached to, any additional platform, catwalk, crow's nest or like structure (other than those required by industry standards or federal regulations), except during periods of construction or repair.

d. Signs and advertising. The use of any portion of a Tower for signs or advertising devices other than public safety warnings, certification, or other requires seals on any wireless communication device or structure is prohibited. However, the telephone numbers to contact in an emergency shall be posted on each facility. Wireless telecommunications facilities shall contain a sign no larger than four square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the Applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration sign as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

e. Flush-mounting of antennas shall be employed wherever feasibly possible when such mounting does not detract from adjacent views or overall aesthetics.

f. To the extent possible, accessory equipment should be placed within the pole base rather than on the outside of the pole.

g. The use of small, decorative structures as mounting locations should be limited in historic districts.

6. Noise. Noise generated on the site must not exceed the levels permitted in the City of Lakewood Municipal Code, except that a WCF owner or operator shall be permitted to exceed such noise standards for a reasonable period of time during repairs, not to exceed two (2) hours without prior authorization from the City. If "Plainly Audible" noise nuisance complaints are received by the City, a site noise compliance, evaluation and mitigation report shall be submitted to the City within 30 days by Owner or Operator of WCF. Owner or Operator of WCF, at Owners

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expense, must make every effort to mitigate and return WCF into compliance within a reasonable time frame, not to exceed 90 days.
If noise nuisance complaints are received by the City, a site noise report shall be submitted to the City within 30 days.

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7. Landscaping Requirements.

a. WCFs shall be sited in a manner that does not reduce the landscaped areas for the other principal uses on the parcel.

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b. WCFs, excluding Small Cell Facilities mounted on existing structures with existing surrounding landscaping, unless otherwise required by the Public Works Department, shall be landscaped with a buffer of plant materials that effectively screen the view of the WCF from Rights-of-Way and adjacent properties. Where the City has requested additional landscaping, the City may require irrigation requirements for the landscaping.

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c. Critical Root Zone: To the extent possible, heritage trees and traditional landscaping designs should be preserved in the Public Right of Way. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible.

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8. Screening Requirements.

a. All equipment, not located within the Public Right-of-Way and not otherwise defined, shall be fully screened within a walled yard or placed in an enclosed building except in cases where a better design alternative exists. The yard shall be enclosed by a solid fence or wall of sufficient height to screen all miscellaneous equipment from view from the public Right-of-Way or adjacent properties and to provide security. Screening should not unnecessarily inhibit view from adjacent properties.

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b. All structures and improvements associated with the WCF shall be provided with adequate safety equipment and aesthetic treatments, including incorporating landscape screening noted in subsection 5, to be visually compatible with uses in the surrounding area.

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c. Roof-top mounted equipment shall be screened from off-site views to the extent practical by solid screen walls or the building's parapet.

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~~Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible.~~

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Article 2. B.

9. Setbacks.

a. The following minimum setback requirements shall apply to all WCFs except for Alternative Tower Structures in the Right-of-Way; provided however, that the City may reduce standard setback requirements if the

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Applicant demonstrates an Evidence of Need. Setback requirements shall be measured from the outer boundary of the subject parcel, or for those facilities in the public right of way, from the outer boundary of the closest parcel adjacent to the subject public right of way.

1. Non-Residential Zones: A Tower shall meet the greater of the following minimum setbacks from all property lines:
 - a. The setback for a principal building within the applicable zoning district; or twenty-five percent (25%) of the facility height, including WCFs and related Accessory Equipment.

2. Residential Zones and Parcels: Any WCFs adjacent to Single Family Residential Uses shall be sited in a manner that evaluates the proximity of the facility relative to residential structures. Unless Applicant demonstrates that there is no other technically feasible alternative, WCFs over 30 feet in height shall have a minimum setback from all adjacent residential property lines of one (1) foot for every foot in height, or a minimum setback of 500-feet from any residential structure’s outer boundary, whichever is greater, unless the Applicant can prove that a shorter distance is necessary to provide service. If a shorter distance is necessary, the greatest setback distance that will accommodate service shall be employed.

- i. When placed near a residential property, the WCF shall be placed adjacent to the common side yard property line between adjoining residential properties, such that the WCF minimizes visual impacts equitably among adjacent properties.

- ii. In the case of a corner lot, –the WCF may be placed adjacent to the –common side property line between adjoining residential properties, or on the corner formed by two intersecting streets.

- iii. If these siting requirements are not reasonably feasible from a construction, engineering, or design perspective, the aApplicant may submit a written statement to the Public Works Department requesting the WCF be exempt from these requirements, and offer alternative locations reasonably meeting the intent of this section.

- iv. WCFs shall not be placed on billings used principally for residential purposes.

10. Design requirements specific to various types of WCFs.

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- a. Base Stations. If an antenna is installed on a structure other than a Tower or Alternative Tower Structure, such as a Base Station (including, but not limited to the antennas and accessory equipment) it shall be of a neutral, non-reflective color that is identical to, or closely compatible with the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as possible, including for example, without limitation, painting the Antennas and accessory equipment to match the structure. Additionally, any ground mounted equipment may be located in a flush-to-grade underground equipment vault if it is reasonably feasible from a construction, engineering, or design perspective.
- b. Alternative Tower Structures, not in the Public Right-of-Way shall:
- i. Be designed and constructed to look like a building, facility, structure, or other commonplace item, such as but not limited to a tree, public art, or clock tower, typically found in the area.
 - ii. Be camouflaged/concealed consistent with other existing natural or manmade features in or near the location where the Alternative Tower Structure will be located.
 - ~~ii~~.iii. Be compatible with the surrounding area, including architecture, topography, natural vegetation, and/or landscaped environment.
 - ~~iii~~.iv. Be the minimum size needed to obtain coverage objectives. Height or size of the proposed Alternative Tower Structure should be minimized as much as possible.
 - ~~iv~~.v. Be sited in a manner that is sensitive to the proximity of the facility to residential structures, neighborhoods, and residential zoning district boundaries.
 - vi. Take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses.
- c. Towers
- i. Towers shall either maintain a galvanized steel finish, or, subject to any applicable FAA standards and City design approval processes, be painted a neutral color so as to reduce visual obtrusiveness.
 - ii. Wherever possible, Towers shall locate to utilize existing landforms, vegetation, and structures to aid in screening the facility from view, or otherwise blending in with surrounding built and natural environment.
 - iii. Monopole support structures shall taper from the base to the tip.

iv. All Towers, excluding Alternative Tower Structures in the Right-of-Way, shall be enclosed by security fencing or wall and shall also be equipped with an appropriate ant-climbing device.

v. Towers shall be subject to the height restrictions of each zoning district. Notwithstanding anything in this Chapter to the contrary, Towers are prohibited in the Right-of-Way.

~~–Roof and Building Façade Mounted Antennas- WCFs:~~

~~1. Building façade mounted antennas shall not protrude horizontally more than 2 foot from the building wall and shall be painted or treated to match the building or structure to which the antenna is attached.~~

~~2. Building façade mounted antennas shall not exceed the height of the parapet or the roofline, whichever is greater.~~

~~d.~~

~~3. The total of all visible building façade mounted antennas may not exceed the greater of 10 percent of the square footage of the building façade or 25 square feet per façade.~~

~~C. Roof Mounted Antennas:~~

~~4.i. Roof mounted antennas and accessory equipment shall be painted or treated to match the façade of the building to which they are attached in order to minimize visibility from adjacent residential land uses and/or from public sidewalks.~~

~~v.ii. Roof- mounted WCFs may be approved only where an aApplicant sufficiently demonstrates that a wall mounted WCF is inadequate to provide service. By filing an application for a roof-mounted WCF, an aApplicant is certifying agreement to the City's determination that the height extensions described in this subsection d are the maximum heights that will allow the WCF to be Camouflaged, and that any additional increase in height will undermine the Camouflage nature of the site. Roof or building mounted facilities are not permitted on any single-family residential structures.~~

~~2.iii. Maximum height. Roof mounted antennas and accessory equipment shall not exceed the height of the penthouse or mechanical equipment room to which the antennas are attached.~~

~~3.~~

~~4. Antennas not mounted on a penthouse or mechanical equipment room shall be set back at least 5 feet from the exterior wall of a building.~~

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~~5-iv. The maximum height of a roof mounted antenna that is not mounted on a penthouse or mechanical equipment room is equal to the distance the antenna is set back from the exterior wall up to a maximum height of 10 feet above the taller of either roofline or parapet of the building to which the antenna is attached.~~

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~~vi-v. All rooftop equipment and Antennas must be adequately screened where feasible from a technical, construction, design and engineering perspective.~~

~~vi-vi. Building façade mounted antennas shall not protrude horizontally more than 2 feet from the building wall and shall be painted or treated to match the building or structure to which the antenna is attached.~~

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~~A-vii. Building façade mounted antennas shall not exceed the height of the parapet or the roofline, whichever is greater.~~

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~~viii. The total of all visible building façade mounted antennas may not exceed the greater of 10 percent of the square footage of the building façade.~~

~~ix. —~~

~~Antennas on Existing Support Structures:~~

~~In single-family and two-family zone districts: The mounting of an additional antenna or antennas on an existing support structure, including any existing support structure that is nonconforming with regards to height, may be permitted provided that the height of the existing structure may not be increased by more than 15 percent.~~

~~In non-single-family and two-family zone districts: The mounting of an additional antenna or antennas on an existing support structure may be permitted provided that the height of the existing structure may not be increased above 60 feet without triggering the review requirements as outlined for New Freestanding Support NonStealth Structures in Section 17.10.3.2.~~

~~**17.10.3.3: New Freestanding Support Non-Stealth Structures**~~

~~Review Requirements:~~

~~New freestanding support structures of 60 feet in height or less may be allowed in any zone district other than a single-family or two-family district if reviewed and approved in accordance with the site plan procedures identified in Article 2.~~

~~New freestanding support structures of more than 60 feet in height may be allowed in any zone district other than a single-family or two-family~~

~~district if reviewed and approved in accordance with the special use permit and site plan procedures identified in Article 2.~~

~~New freestanding support structures of any height located on public property, right-of-way, or utility property that will support street lights, public facilities or equipment in addition to wireless facilities may be allowed in any zone district if reviewed and approved in accordance with the Site Plan procedures identified in Article 2. Examples include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, and other light structures~~

~~Existing support structures including but not limited to municipal communication facilities, athletic field lights, traffic lights, and other light structures on local streets shall be limited to a maximum 15-foot height extension.~~

~~The maximum height for any new freestanding support structure shall be 60 feet, or the maximum building height allowed in the subject zoning district, whichever is greater.~~

~~When adjacent to a property that is zoned residential or contains a residential use or structure, new freestanding support structures must be setback from property at least the minimum setback required by the zone district where the structure is located or 50 percent of the support structure height, whichever is greater.~~

~~New freestanding support structures shall be enclosed by security fencing 6 feet in height and shall also be equipped with an appropriate anti-climbing device; provided, however, that the City may waive such requirements, if the Director determines that the waiver will not create an increased risk to public health or safety.~~

~~B. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible.~~

~~C. New free-standing support structures shall be designed to accommodate a minimum number of colocations based upon their height.~~

~~1. Support structures between 45 feet and 100 feet in height shall support at least two telecommunications providers;~~

~~2. Support structures greater than 100 feet and up to 150 feet in height shall support at least three telecommunications providers; and~~

~~3. Support structures greater than 150 feet in height shall support at least four telecommunications providers.~~

~~D. New freestanding support structures over 60 feet in height shall not be located within 1000 feet from any existing freestanding support structure that is over 60 feet in height, unless the applicant has shown to the satisfaction of the City that colocation is impracticable and that there are no reasonably suitable alternative sites in the required geographic area which can meet the applicant's needs.~~

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17.10.3.4: Other Wireless Facility Types

The Director may apply the standards defined for new wireless facilities on existing structures or new freestanding support structures to any wireless facility type that is not directly addressed in these regulations as appropriate to minimize the potential adverse effects of wireless service facilities.

17.10.3.5:

e. Related Accessory Equipment

~~*i.~~ In order of preference, ancillary support equipment and/or accessory equipment for a WCF shall be located either within a building, underground, in a rear yard or on a screened rooftop area. Ground-mounted facilities that are located within the front or side yard or public right-of way shall be underground, unless the Applicant demonstrates that undergrounding is not technologically feasible, and located so as to be screened by landscaping, in close proximity to existing above ground utilities (such as electrical tower or utility poles), light poles, trees of comparable height, water tanks, and other areas where the ground mounted facility will be designed and screened to blend with the existing natural or built surroundings.

~~A-ii.~~ Utility and Power Lines. All utilities at wireless telecommunication's facilities shall be installed underground whenever possible, as determined by the Department of Public Works, and in compliance with all laws, ordinances, rules and regulations of the City, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code, where appropriate, as well as City regulations applicable to excavations in public streets.

~~B-iii.~~ ~~The~~Excluding Small Cell Facilities in the Right-of-Way, the buildings, shelters, cabinets, and other accessory components shall be setback a minimum of 15 feet from each property line with a residential zone district or a lot containing a residential structure, or shall meet all setback requirements of the underlying zone districts, whichever results in the greater setback, and shall be grouped as closely as technically possible.

~~C-iv.~~ Total footprint coverage area of the accessory equipment shall not exceed 500 square feet per provider, with a maximum of 1500 square feet total for three or more providers.

~~D-v.~~ No accessory equipment or accessory structure shall exceed ~~45~~¹² feet in height.

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~~E.vi. Accessory equipment shall be painted a neutral color and enclosed by security fencing 6 feet in height and shall be landscaped with a buffer of plant materials that effectively screens the view of the accessory equipment from adjacent residential property and from the adjacent street; provided, however, that the City may waive such requirements, if the Director determines that the waiver will not (1) create an increased risk to public health or safety or (2) create a negative visual impact to adjacent residential property or from the adjacent street. Accessory equipment, including but not limited to remote radio units, shall be located out of sight whenever possible by locating behind parapet walls or within equipment enclosures. Where such alternate locations are not available, the Accessory Equipment shall use Camouflage Design Techniques.~~

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~~F.vii. No accessory equipment or accessory structures shall be sited in a manner that reduces the parking or landscaped areas for other principal uses on the parcel below the minimums required by the Zoning Ordinance.~~

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17.10.4: Abandonment and Removal

~~If a support structure is abandoned and remains abandoned 5 Standards for a period longer than 12 consecutive months, the City may require that the support structure be removed. The City shall first provide written notice to the owner of the support structure of the requirement for removal and give the owner the opportunity to take such action(s) as may be necessary to reinstate the active use of the support structure within 30 days of receipt of the written notice. If the owner of the support structure fails to reinstate the active use of the support structure within the 30-day period, the owner of the support structure shall be required to remove the same within six months. Approval.~~

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It is the intent of the City to provide for approval of WCFs administratively in cases where visual impacts are minimized, view corridors are protected, appropriate Camouflage and Concealment Design Techniques are employed to avoid adverse impacts on the surrounding area, and they are designed, maintained, and operated from the date of first installation and all times the WCF is thereafter operated, at all times to comply with the provisions of this Chapter and all applicable local, state and federal laws. Notwithstanding the approval of an application for Eligible Facilities Request as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building and safety requirements as set forth in municipal code and any other applicable regulations.

1. Special Use Permit. Any application for a WCF which does not comply with the provisions of this Chapter may seek approval of a Special Use Permit by submitting an application to Planning Commission.

a. All special use permit applications for a new wireless telecommunications facility shall contain a demonstration that the facility will be sited so as to minimize visual intrusion as much as possible, given the facts and circumstances involved, and will thereby have the least adverse visual effect on the environment and its character and on the residences in the area of the new wireless telecommunications facility.

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b. Fifteen days prior to any Planning Commission hearing on a Special Use Permit for any WCF, notice shall be sent by the Applicant by mail of the location, time, and place of such hearing to all property owners within a 1,300-ft radius of the facility, using names and addresses appearing on the latest adopted tax roll of the county. The notifying radius shall be measured from the outer boundary of the subject parcel, or for those facilities in the public right of way, from the outer boundary of the closest parcel adjacent to the subject public right of way site.

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c. Notice of the Planning Commission hearing for Special Use Permit shall also be made by posting a notice in a publicly visible location on the property in question at minimum fifteen days prior to such hearing.

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Collocation and Separation Required. No new Towers, excepting Small Cell Facilities in the Right-of-Way, shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the City that no existing WCFs can accommodate the needs that the Applicant proposes to address with its Tower application, and sufficient separation of Towers is achieved. Evidence may consist of the following:

- No existing WCFs with a suitable height are located within the geographic area required to meet the Applicant's engineering requirements;
- Existing WCFs do not have sufficient structural strength to support applicant's proposed WCF;
- The Applicant's proposed WCFs would cause electromagnetic interference with the existing WCFs or the existing WCF would cause interference with the Applicant's proposed WCF;
- The Applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for Collocation;
- Towers over 90 feet in height shall not be located within one quarter mile from any Existing Tower that is over 90 feet in height, unless the Applicant has shown to the satisfaction of the City that there are no reasonably suitable alternative sites in the required geographic area which can meet the Applicant's needs.

Setbacks. The following minimum setback requirements shall apply to all WCFs except for Alternative Tower Structures in the Right-of-Way; provided however, that the City may reduce standard setback requirements if the applicant demonstrates that the goals of this Section can be met through Performance Options or through Alternative Compliance, or through a Variance process. A Tower shall meet the greater of the following minimum setbacks from all property lines:

- The setback for a principal building within the applicable zoning district;
- or
- Twenty five percent (25%) of the facility height, including WCFs and Related Accessory Equipment; or

For sites within 100 feet of residential uses, facilities over 30 feet in height shall have a minimum setback from all adjacent residential property lines of one (1) foot for every foot in height.

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17.10.5 Penalty for Offenses.

In the event of a violation of this ordinance or any of the terms and conditions of use permit or other approval issued pursuant to this ordinance, and in addition to any other remedy available to the City at law or equity, the City may impose and collect, and the holder of the permit for wireless telecommunications facilities shall pay to the City, civil penalties in an amount as determined by the Department of Public Works, per day, until the violation or violations are abated to the satisfaction of the City.

17.10.6 City Council Review.

In January of each year City Council shall set a date within the year to review and update as needed this Article of the Lakewood Zoning Code.

17.10.7 Private Enforcement.

A. In addition to any other remedy available to the city under this Code, at law or in equity, violations of this Section 17.10 may be remedied as follows:

1. The city attorney or city prosecutor may bring a civil action to enforce this section and to obtain the remedies specified below or otherwise available in equity or at law.
2. Any person acting for the interests of himself, herself, or itself, or of its members, or of the general public (hereinafter "a private enforcer") may bring a civil action to enforce this section with the remedies specified below, if both the following requirements are met:
 - a. The action is commenced more than sixty (60) days after the private enforcer gives written notice of an alleged violation of this section to the city attorney and to the alleged violator.
 - b. No person acting on behalf of the city has commenced or is prosecuting an action regarding the violation(s) which was or were the subject of the notice on the date the private action is filed.
3. A private enforcer shall provide a copy of his, her, or its action to the city attorney within seven days of filing it.
4. Upon settlement of or entry of judgment in an action brought pursuant to paragraph (7) of this subsection, the private enforcer shall give the city attorney a notice of that settlement or judgment. No private enforcer may settle such an action unless the city attorney or the court determines the settlement to be reasonable in light of the purposes of this section. Any settlement in violation of this requirement shall be set aside upon motion of the city attorney or city prosecutor to a court of competent jurisdiction.
5. Upon proof of a violation of this section, the court shall award the following:
 - a. Appropriate injunctive relief and damages in the amount of either:
 - i. Upon proof, actual damages;
 - ii. With insufficient or no proof of damages, a minimum of five hundred dollars (\$500.00) for each violation of this section (hereinafter "statutory damages").

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Unless otherwise specified in this section, each day of a continuing violation shall constitute a separate violation. Notwithstanding any other provision of this section, no private enforcer suing on behalf of the general public shall recover statutory damages based upon a violation of this section if a previous claim brought on behalf of the general public for statutory damages and based upon the same violation has been adjudicated, whether or not the private enforcer was a party to that earlier adjudication.

- b. Restitution to the appropriate party or parties of gains obtained due to a violation of this section.
- c. Exemplary damages, where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud, malice, or a conscious disregard for public health and safety.
- d. Attorney's fees and costs reasonably incurred by a successful party in prosecuting or defending an action.

Any damages awarded in an action brought by the city attorney or city prosecutor shall be paid into the city's general fund, unless the court determines that they should be paid to a damaged third party.

- 6. Upon proof of at least one violation of this section, a private enforcer, the city prosecutor, city attorney, any peace officer or code enforcement official may obtain an injunction against further violations of this section or, as to small claims court actions, a judgment payable on condition that a further violation of this section occur within a time specified by the court.
- 7. Notwithstanding any legal or equitable bar, a private enforcer may bring an action to enforce this section solely on behalf of the general public. When a private enforcer does so, nothing about such an action shall act to preclude or bar the private enforcer from bringing a subsequent action on his, her, or its own behalf based upon the same facts.
- 8. Nothing in this section shall prohibit a private enforcer from bringing an action to enforce this section in small claims court, provided the relief sought is within the jurisdiction of that court.

17.10.8 Severability.

Should any section, subsection, paragraph, sentence, clause or phrase of this Article of the Lakewood Zoning Code or application thereof to any person or circumstance, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this chapter, or its application to any other person or circumstance, and, to this end, the provisions of this chapter are declared to be severable.

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Document #3

This document contains the edits proposed by Council Member Gutwein.

17.10.4 Review Procedures and Requirements

1.1 Worker Safety. The Company shall, on an annual basis, compile and transmit to City a report describing the safety conditions regarding workers performing installation, maintenance, following information. The information provided in this report shall not be labeled as confidential or proprietary information.

(a) A list of all companies employing the workers performing the relevant work pursuant to this Agreement for the prior year, including the Company itself, or another company or

(b) A description of the relationship between the Company and contracted companies, including whether the Company and contracted companies have a direct contractual relationship

or whether work is subcontracted through another entity or entities, and if so, a description of such

other entity or entities;

(c) Copies of all policies and procedures maintained by the Company and contracted companies related to safety standards for the relevant work, including, but not limited to, description of safety training requirements, copies of training materials, and description of any personal protective equipment required, provided that if policies and procedures have previously been provided pursuant to this Agreement, only revisions to such policies and procedures or new

policies and procedures must be submitted after the date of original submittal;

(d) For the Company and each of the contracted companies, a description of each job title performing relevant work and a list of any certifications or licenses required of each job title;

(e) For the Company and each of the contracted companies, the total number of workers performing relevant work, disaggregated by job title, and for each job title, the number of workers

with required certifications and licenses, along with a statement of whether each worker has required experience and training;

compensation insurance to the fullest extent required by applicable federal, Colorado State and Lakewood City Law;

(g) Documentation evidencing that the Company and any contracted company performing relevant work in the prior year, and any contracted company with which the Company intends to work with in the following year, are registered to do business in Colorado and properly licensed for the work to be conducted;

(h) To the extent permitted by law and policy of relevant investigatory agency, for the Company and each contracted company the Company has worked with in the prior year, the

number and a description of any open investigations against the Company or contracted company

(i) For the Company and each contracted company performing relevant work with in the prior year, a description of whether or not workers are required to or requested to execute arbitration agreements with the contracted company or Company, and if so, a copy of the arbitration agreements;

(j) For the company and each contracted company performing relevant work in the prior year, a list of all arbitration matters involving safety issues and copies of all resolutions, including agreement.



Guillermo Lambarri
State Director of External and Legislative
Affairs for Colorado and Wyoming

AT&T
161 Inverness Drive West
Englewood, CO 80112

713.213.4043
gl7193@att.com
att.com

June 8, 2020

Mayor Adam Paul and Members of the City Council
City of Lakewood
480 South Allison Parkway
Lakewood, Colorado 80226

VIA EMAIL: CityCouncilMembers@Lakewood.org

RE: **Item No. 9 - Ordinance O-2020-1
Amending Lakewood Municipal Code Title 12, and Article 10 of Title 17, to Reflect Changes in State
and Federal Law Relating to Wireless Services and Communications**

Dear Mayor Paul and Members of the City Council:

Thank you for the opportunity to review and comment on the City draft wireless code. AT&T appreciates the opportunity to work with you to establish a draft code that will provide your City and residents with a reliable wireless communication network while also protecting the City's aesthetic values.

Skyrocketing Demand for Wireless Service

AT&T and other carriers are responding to an exponential increase in demand for wireless services as it represents the predominate communications infrastructure in the US. In fact, over 57.1% of homes in the US are wireless onlyⁱ and 61% of homes in Colorado are wireless only.ⁱⁱ Now more than ever, businesses increasingly depend on strong wireless service to carry them and their employees through the workday. Sixty-six percent (66%) of small businesses surveyed said they could not survive – or it would be a major challenge to survive – without wireless technology.ⁱⁱⁱ

And, public safety is improved by the power of mobile communications. According to the National Emergency Number Association, 80 percent or more of 911 calls are made from wireless phones and that percentage is expected to continue growing.^{iv} This is particularly important in Colorado where the majority of homes are wireless only.

Comments regarding Draft Code

AT&T respectfully requests that Lakewood consider the attached comments and suggestions regarding its draft code. Our specific concerns are detailed in our comments in the attached redline but generally include the following:

- Lack of consistency with federal law including the 2018 FCC Order 18-133^v, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. §1455(a), and the Telecommunications Act of 1996.

AT&T



- Including code requirements that are intended to apply retroactively contrary to state law.
- Burdensome reporting requirements that violate the FCC 2018 Order to the extent the frequency of such obligations are unreasonable and not disclosed in advance.
- Establishing regulations related to RF technology, RF emissions exposure limits and NEPA requirements to the extent such regulations are preempted by federal law.
- Inconsistency with state law including:
 - Requirement of cost based fees
 - Provisions that preclude a city from delegating a municipal function
- Not including a relief valve for the permitting requirements.
- Establishing potentially technically infeasible placement requirements and preferences.
- Setting technically infeasible rooftop placement criteria that forces carriers to install free standing facilities where a properly designed rooftop facility would have worked.

Conclusion

AT&T urges you to consider consistency with federal and state laws and the public interest when drafting and establishing new ordinances. Local ordinances that conflict with state and federal law will stall or deter the deployment of wireless technology.

AT&T is eager to continue to work collaboratively with you and your staff to ensure Lakewood is well positioned to meet the needs of its visitors, residents and business owners while minimizing the impact to the community.

I appreciate your consideration.

Sincerely,

Guillermo Lambarri
State Director of External and Legislative Affairs for Colorado and Wyoming

CC: Kathy Hogsdon, City of Lakewood City Manager
Benjamin B. Goldstein, Deputy City Manager
Timothy P. Cox, City Attorney

ⁱ <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201906.pdf>

ⁱⁱ https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless_state_201912-508.pdf

ⁱⁱⁱ AT&T Small Business Technology Poll, 2013, <http://about.att.com/mediakit/2013techpoll>

^{iv} "9-1-1 Statistics," National Emergency Number Association, 07/2018, <https://www.nena.org/page/911Statistics>.

^v "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order (September 26, 2018).

Definitions from Section 13:

For the purposes of this chapter, the following words, phrases, and terms shall have the meanings set forth herein. Words not defined shall be given their common and ordinary meaning.

Accessory Equipment: any equipment serving or being used in conjunction with a WCF, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures, including fences.

Alternative Tower Structure: man-made trees, clock towers, bell steeples, light poles, buildings, traffic signals, and similar alternative design mounting structures that are compatible with the natural setting and surrounding structures, and camouflages or conceals the presence of Antennas or Towers so as to make them architecturally compatible with the surrounding area pursuant to this title, including height limits as set forth in this title. This term also includes any Antenna or Antenna array attached to an Alternative Tower Structure. A stand-alone pole, including a replacement pole, in the Right-of-Way, streetlight, or traffic signal that accommodates Small Cell Facilities is considered an Alternative Tower Structure to the extent it meets the camouflage and concealment standards of this title.

Antenna: 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, all 5g, 4g, 4g LTE, and any higher gigahertz frequency antennas, 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.

Applicant for WCF: any person that submits an application to the City to site, install, construct, collocate, modify and/or operate a Wireless Communications Facility.

Amateur Radio Towers and Antennae: Broadcasting and receiving structures or devices used for personal pleasure or as a hobby..hobby.

Base Station: a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The definition of Base Station does not include or encompass a Tower as defined herein or any equipment associated with a Tower. Base Station does include, without limitation:

1. Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the City under this Chapter and has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support; and
2. Radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks) that, at the time the relevant application is filed with the City under this title, has been reviewed and approved under the applicable zoning or siting process, or under another State or local

Commented [ATT1]: The FCC has exclusive authority over technical and operational matters related to the provision of wireless services, including RF interference and emissions exposure limits. Also, it is not clear what calling out 4G and 5G adds to this definition. Those terms stand for 4th generation and 5th generation technologies and do not refer to a specific frequencies. 4G and 5G refer to technical capabilities provided through more advanced levels of technology.

Commented [ATT3]: This change renders this section inconsistent with 47 C.F.R. §1.6100(b)(7). If approved under a separate process, the facility is considered existing and so long as the other criteria are met, it would be considered an EFR. Recommend harmonizing local law with controlling federal law to avoid potential conflicts with interpretation between state and federal law. Including provisions that conflict with controlling federal law represent a risk to the City for claims related to such conflicts.

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regulatory review process, even if the structure was not built for the sole or primary
purpose of providing such support.

The definition of Base Station does not include any structure that, at the time the relevant
application is filed with the City, does not support or house equipment described in paragraphs
1 and 2 above.

Camouflage, Concealment, Or Camouflage Design Techniques: the designing of a WCF to alter
its appearance in such a manner as to substantially integrate it into surrounding building
designs and/or natural settings to minimize the visual impacts of the facility on the surrounding
uses and ensure the facility is compatible with the environment in which it is located. A Wireless
Communication Facility utilizes Camouflage Design Techniques when it (i) is integrated as an
architectural feature of an existing structure such as a cupola, or (ii) is integrated in an outdoor
fixture such as a utility tower, or (iii) uses a design which mimics and is consistent with the
nearby natural or architectural features (such as a clock tower) or is incorporated into (including
without limitation, being attached to the exterior of such facilities and painted to match it) or
replaces existing permitted facilities (including without limitation, stop signs or other traffic signs
or freestanding light standards) so that the presence of the WCF is not readily apparent.

Collocation: (1) mounting or installing a WCF on a pre-existing structure, and/or (2) modifying a
structure for the purpose of mounting or installing a WCF on that structure. Provided that, for
purposes of Eligible Facilities Requests, “Collocation” means the mounting or installation of
transmission equipment on an Eligible Support Structure for the purpose of transmitting and/or
receiving radio frequency signals for communications purposes. Co-location shall also include
the location of communication facilities with other existing structures, including but not limited to
water tanks, light standards, power poles, and other utility facilities and structures.

Director: The person, or that person’s designee, authorized by the City Manager to enforce and
interpret this Zoning Ordinance..

Eligible Facilities Request: any request for modification of an Existing Tower or Base Station
that it is not a Substantial Change, or that does not substantially change the physical
dimensions of such tower or base station involving 1) collocation of new transmission
equipment, 2) removal of transmission equipment, or 3) replacement of transmission
equipment.

Eligible Support Structure: any Tower or Base Station as defined in this Section, provided that it
is existing at the time the relevant application is filed with the City under this Section.

Evidence of Need: Evidence of Need: A coverage gap that exists when a remote user of those
services is unable to either connect with the land-based national telephone network, or to
maintain a connection capable of supporting a reasonably uninterrupted communication. When
a coverage gap exists customers cannot receive and send signals, and when customers pass
through a coverage gap their calls are disconnected.

Existing Tower or Base Station: a constructed Tower or Base Station that was reviewed,
approved, and lawfully constructed in accordance with all requirements of applicable law 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 purposes of this definition.

FCC: the Federal Communications Commission.

Hazardous Substance: any substance, chemical or waste that is identified as hazardous or toxic
in any applicable federal, state or local law or regulation, including but not limited to petroleum
products and asbestos.

Commented [ATT5]: This is not the correct
standard that applies to the showing required for
an effective prohibition. The 2018 FCC Order
that adopts the “materially inhibit” standard
applied in California Payphone Ass’n, 12 FCC
Rcd 14191 (1997).

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Interference: physical interference and radio frequency interference.

Micro Cell Facility or microcell: a small wireless facility that is no larger than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve(12) inches in height, and that has an exterior Antenna, if any, that is no more than eleven (11) inches in length.

Monopole: a single, freestanding pole-type structure supporting one or more Antennas.

Over the Air Receiving Device (OTARD): an Antenna used to receive video programming from direct broadcast satellites direct broadcast satellite service, including home satellites that are 1M or less in diameter, broadband radio services and television broadcast stations, but shall not include Antennas used for AM/FM radio, amateur ("ham") radio, CB radio, Digital Audio Radio Services or Antennas used as part of a hub to relay signals among multiple locations.

Owner means a person with a legal or equitable interest in ownership of real or personal property.

Permit means a permit issued and described in accordance with Laws, which is used to regulate, monitor, and control the improvement, construction, or excavation activities, or other work or activity, occurring upon or otherwise affecting Licensor's ROW, including ROW use, building, and electrical permits.

Physical Interference means where equipment, vegetation, or a structure causes reduced use of another's prior mounted equipment, or an obstruction in a necessary line-of-sign path.

Pole-Mounted Small Cell Facility: a Small Cell Facility with Antenna that are mounted and supported on an Alternative Tower Structure, which includes a Replacement Pole.

Public Right-of-Way (ROW): any public street, way, alley, sidewalk, median, parkway, or boulevard that is dedicated to public use.

Radio Antenna, Amateur: A noncommercial device that is used for transmitting and receiving electro-magnetic waves.

Radio Frequency Emissions Letter Radio Frequency Radiation (RFR) Study: a report letter from the Applicant providing emissions measurements detailed within this Article and certifying all WCFs that are the subject of the application are in compliance shall comply with federal standards for radio frequency emissions.

Radio Frequency Interference means the emission or conduction of radio frequency energy (or electronic noise) produced by electrical and electronic devices at levels that interfere with the operation of adjacent or nearby equipment.

Radio Tower, Amateur: A structure that supports an antenna.

READILY APPARENT. For purposes of determining whether a WCF is readily apparent, the phrase means that the facility, will be easily recognizable as a WCF in the discretion of the Director, viewing the facility as a whole and in the context of any adjacent improvements and landscaping from publicly accessible locations when considering the character, scale, and height of nearby and surrounding natural or architectural features. Methods of design and construction that may assist in reducing the visibility of a facility and reaching a conclusion that a facility is not readily apparent include the use of color mimicking surrounding structures and landscaping, minimizing facility size to the greatest extent feasible, integrating the facility into any adjacent or attached improvements, and positioning the facility in a manner that limits the degree to which the facility projects away from any adjacent structures or landscaping. Due to

Commented [ATT11]: This standard is subjective and hard to define. The FCC Order requires that aesthetic requirements are preempted to the extent they are not (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance. FCC Order at ¶186.

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differences in site characteristics, a determination that a particular WCF will not be readily apparent at one location shall not establish a precedent for the same determination for a facility of the same or similar design or construction at a different location.

Replacement Pole: an Alternative Tower Structure that is a newly constructed and permitted traffic signal, utility pole, street light, flagpole, electric distribution, or street light pole or other similar structure of proportions and of equal height or such other height that would not constitute a Substantial Change to a pre-existing pole or structure in order to support a WCF or Small Cell Facility or Micro Cell Facility or to accommodate Collocation and replaces a pre-existing pole or structure.

Satellite Dish Antenna: A parabolic antenna intended to receive signals from orbiting satellites and other sources. Non-commercial dish antennas are defined as being less than four meters in diameter, while commercial dish antennas are usually those larger than four meters and typically used by broadcasting stations.

Setback: The minimum distance any building or structure must be separated from a specified point.

Sign: Any structure, which requires a permanent or temporary location, that has a visual display visible from a public right-of-way and is designed to identify, announce, direct or inform.

Signal Non-Interference Letter: a letter from the Applicant certifying all WCFs that are the subject of the application shall be designed, sited, and operated in accordance with applicable federal regulations addressing radio frequency interference.

Site for Towers (other than Towers in the Right-of-Way and Eligible Support Structures): the current boundaries of the leased or owned property surrounding the Tower or Eligible Support Structure and any access or utility easements currently related to the Site. A Site, for other Alternative Tower Structures, Base Stations, Micro Cell Facilities, and Small Cell Facilities in the Right-of-Way, is further restricted to that area comprising the base of the structure and to other related Accessory Equipment already deployed on the ground.

Small Cell Facility: a Wireless Communication Facility where each Antenna is located inside an enclosure of no more than three cubic feet in volume, or, in the case of an Antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated and accessory equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. Small cells may be attached to Alternate Tower Structures, Replacement Poles, and Base Stations. The definition of a Small Cell Facility shall also include a Micro Cell or Micro Cell Facility, as well as equipment for densifying technology.

Street: A public or private thoroughfare for vehicular traffic other than an alley or driveway.

Substantial Change for Eligible Facilities Request: 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:

- (A) For Towers, other than Alternative Tower Structures or Towers in the Right-of-Way, it increases the height of the Tower by more than 10 percent (10%) or by the height of one (1) additional Antenna array, with separation from the nearest existing Antenna not to exceed twenty feet, whichever is greater lesser; for other Eligible

Commented [ATT12]: Definition of OTARD above states that home satellite antennas are 1m or less in diameter.

Commented [ATT14]: Changing this to "lesser" is inconsistent with 47 C.F.R. §1.6100(b)(7) which provides that a substantial change is the greater of 10% or 20 feet.

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Support Structures, it increases the height of the structure by more than ten percent (10%) or more than ten (10) feet, whichever is ~~lesser~~greater;

Commented [ATT15]: Same comment as above.

- (B) For Towers, other than Towers in the Right-of-Way, it involves adding an appurtenance to the body of the Tower that would protrude from the Tower more than ten (twenty (20) feet, or more than the width of the Tower Structure at the level of the appurtenance, whichever is greater; for Eligible Support Structures, it involves adding an appurtenance to the body of the structure that would protrude from the side of the structure by more than six (6) feet;
- (C) 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;
- (D) For Towers in the Right-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 ten percent (10%) larger in height or overall volume than any other existing, individual ground cabinet associated with the structure;
- (E) For any Eligible Support Structure, it entails any excavation or deployment outside the current Site;
- (F) For any Eligible Support Structure, it would defeat the concealment elements of the Eligible Support Structure. For the purposes of this subsection (vi), a change that would undermine the concealment elements of this structure will be considered to defeat the concealment elements of the ~~structure;~~ or
- (G) For purposes of determining whether a Substantial Change exists, changes in height are 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 are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

Commented [ATT17]: This is inconsistent with the Section 6409 and 47 C.F.R. §1.6100(b)(7) which allows for a 20 foot protrusion.

Commented [ATT18]: Deleted for consistency with federal law.

Support Structure: a structure designed to support Small Cell Wireless Facilities including, but not limited to, Monopoles, Alternative Tower Structures, Replacement Poles, and other freestanding self-supporting pole structures.)

Toll and Tolling: to delay, suspend, or hold off on the imposition of a deadline, statute of limitations, or time limit.

Tower: any structure built for the sole or primary purpose of supporting one or more FCC-licensed or authorized Antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. The term includes self-supporting lattice towers, guyed towers or Monopole towers, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, Alternative Tower Structures and the like.

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

Wireless Communications Equipment Shelter: An unattended structure such as a small building or cabinet(s) used to house equipment for a wireless communications facility associated with either a freestanding wireless communications facility or a structure or building mounted wireless communications facility.

Wireless Communications Facility or WCF: a facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF includes an Antenna or Antennas, Base Stations, support equipment, Alternative Tower Structures, Small Cell Facilities, and Towers. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand held radios/telephones and their associated transmitting Antennas, nor does it include other facilities specifically excluded from the coverage of this title.

Wireless Communications Provider: A public or private company providing personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services.

Wireless Communications Site: Any use of property for antennae, equipment, and equipment shelter(s) employed in the reception, switching, and/or transmission of wireless telecommunication services including, but not limited to, paging, enhanced specialized mobile radio, personal communication services, microwave link antenna, cellular telephone, and other related technologies.

ARTICLE 10: Wireless Services and Communications 10-1

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17.10.1.1: Purpose and Intent 10-1

17.10.1.2: Applicability 10-1

17.10.2: Wireless Facilities – By Zone District 10-1

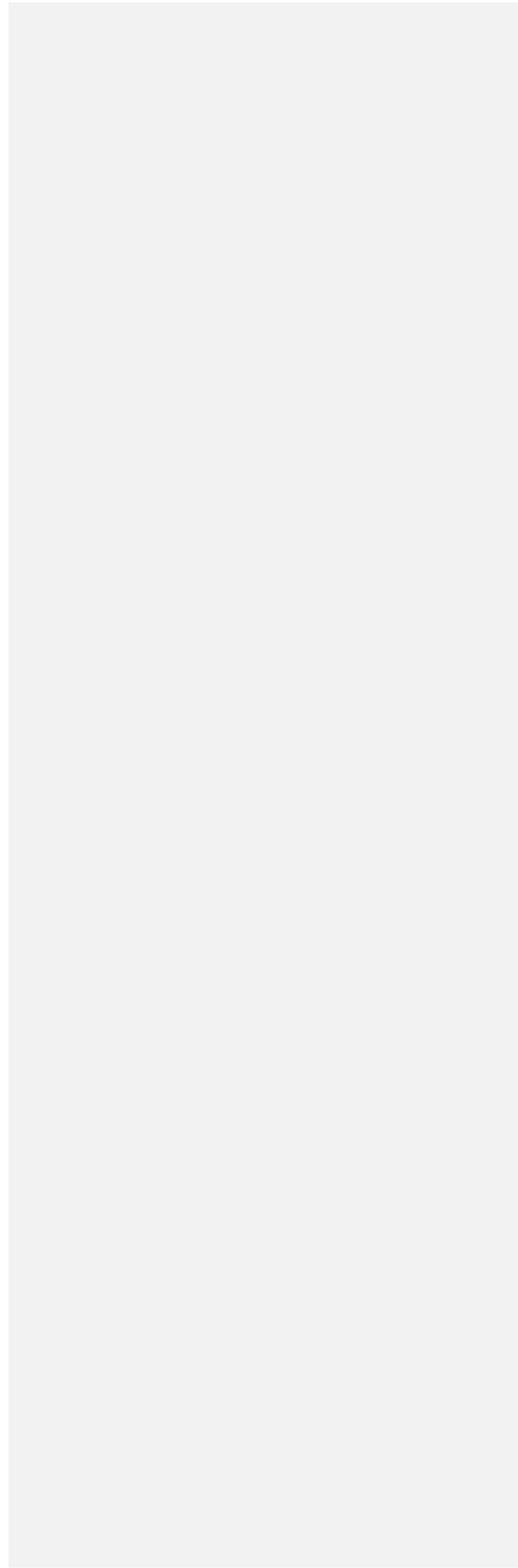
17.10.3: Wireless Facility Standards 10-2

17.10.3.1: Wireless Stealth Facilities 10-2

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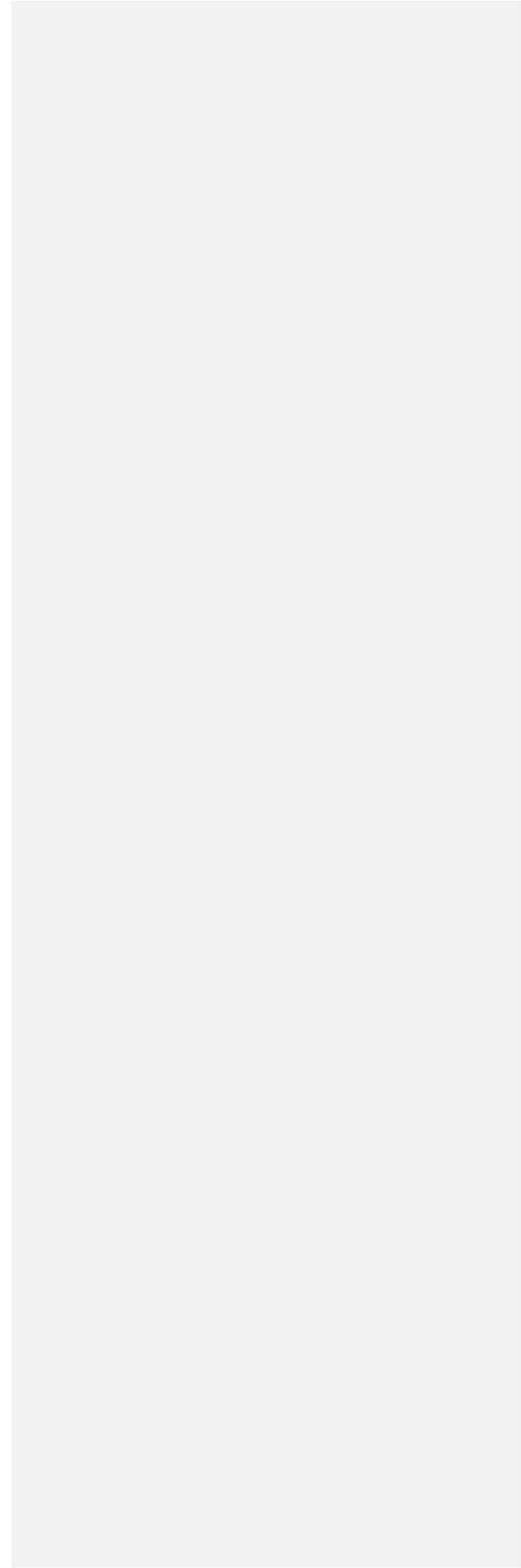
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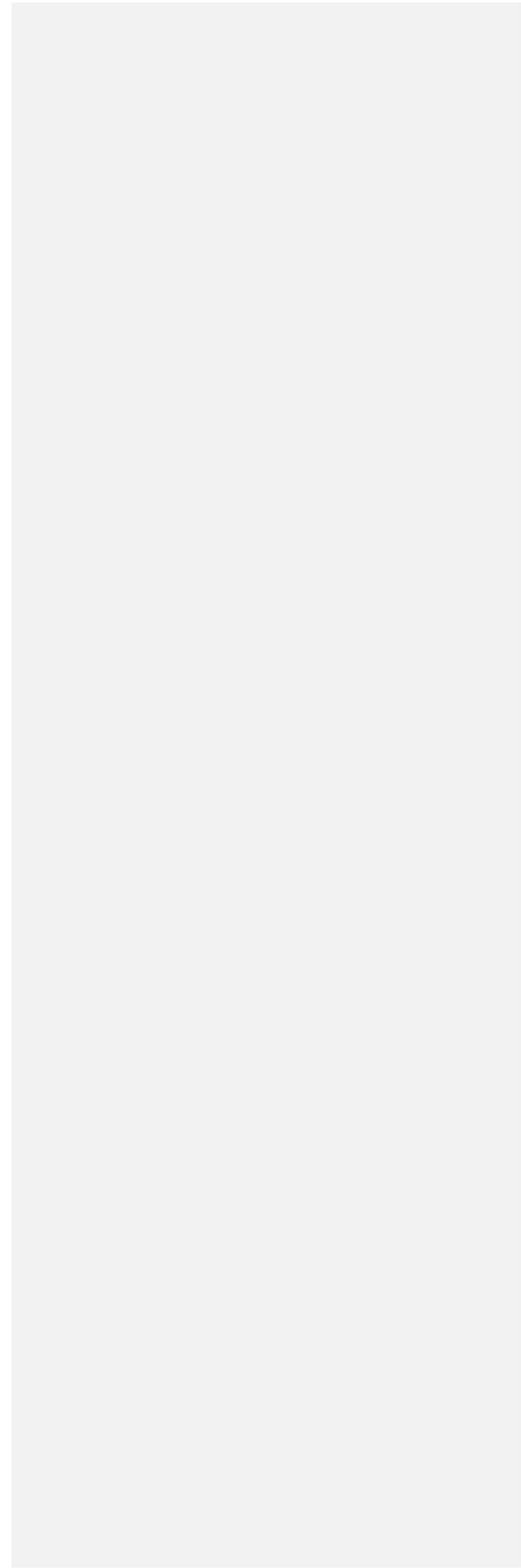


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ARTICLE 10: WIRELESS SERVICES AND COMMUNICATIONS

17.10.1: General

17.10.1.1: Purpose and Intent

This Article is intended to ensure that residents, public safety operations and businesses in the City have reliable access to personal wireless services and state of the art communications services in a way that reasonably preserves the aesthetic character and value of the community, and complies with Federal, State, and local laws, including but not limited to the National Environmental Policy Act (NEPA), the National Building Act, and the Americans with Disabilities Act (ADA).

It is the City's intent to:

The City Council finds that these regulations are necessary to:

- A. Provide for the managed development and installation, maintenance modification, and removal of wireless communications infrastructure in the City with the fewest number of wireless communications facilities (WCFs) to complete a network without unreasonably discriminating against wireless communications providers of functionally equivalent services, including all of those who install, maintain, operate, and remove WCFs;
- B. Minimize adverse visual effects of WCFs through thoughtful design, and siting, and installation, including but not limited to camouflage design techniques, appropriate and effective screening, and equipment undergrounding whenever appropriate;
- C. Encourage the location of Towers and Wireless Communications Facilities on a building, or the joint use of new and existing ground mounted facility tower sites as a primary option so to in a manner that minimizes the total number of Towers needed throughout the community;
- D. Require the collocation of WCFs wherever reasonably feasible;
- E. Encourage Require owners and users of WCFs to locate them, to the extent possible, in areas where the adverse impact to the community, including real estate, is minimized;
- F. EnhanceEnhance the ability of wireless communications service technology providers to provide such services to the community quickly, effectively, and efficiently, and safely;
- G. Effectively manage WCFs in the Public Right of Way;

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- H. Manage amateur radio facilities and over-the-air devices in the City;
- A.I. Ensure the City has sufficient wireless infrastructure to support public safety and emergency response communications throughout the City;
- B. Ensure access to reliable personal wireless services throughout all areas of the City and in no event prohibit or have the effect of prohibiting the provision of personal wireless services;
- C. Encourage the use of existing structures for the siting of facilities;
- D. Encourage the location of new freestanding support structures in areas where any potential adverse impacts on the community will be minimized;
- E. Minimize the potential adverse effects of wireless service facilities through the implementation of reasonable design, landscaping and construction practices; and
- F. Conform to federal and state laws which exempt certain facilities, receiving dishes and antennas from local regulations.

17.10.1.2: Applicability

- A. The standards in this Article shall control the design, location, alteration, installation apply to all Eligible Facilities Requests and maintenance WCF applications for Base Stations, Alternative Tower Structures, Towers, Micro Cells, and Small Cell Facilities as defined in Section 17.13.2 and further addressed herein.
- B. The Requirements set forth in this Article shall not apply to:
 - 1. Amateur radio Antennas that are owned and operated by a federally licensed amateur radio station operator or are exclusively receive only Antennas, provided that the requirements that the height be no more than the distance from the base of all wireless service infrastructure in all zone districts. No provision the Antenna to the property lines is met.
 - 1.2. Pre-existing WCFs. Any WCF for which a permit has been properly issued prior to the effective date of the latest revision of this Article of the City of Lakewood Zoning Code shall be required to become compliant under this Article within 5 years, or at a point in time as negotiated by the City and facilities owner.

Pre-existing WCFs. Any WCF for which a permit has been properly issued prior to the effective date of Ordinance # 20190-2020-1 shall not be required to meet the requirements of this Article shall apply to: Chapter, other than the requirements of Section 17.10.3. Changes and additions to pre-existing WCFs (including trading out of Antennas for an equal number of Antennas) shall meet

Commented [ATT20]: With the exception of certain safety requirements, the facility is subject to the permit and any conditions included with when issued. Regulations cannot be applied retroactively.

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applicable requirements of Section 17.10.3. Notwithstanding the foregoing, any modifications qualifying as an Eligible Facilities Requests shall be evaluated under this Section.

3. Miscellaneous Antennas. Antennas used for reception of television, multi-channel video programming and/or radio such as Over-the-Air Receiving Device (OTARD) Antennas, television broadcast band Antennas, satellite earth station antennae and broadcast radio Antennas, provided that any requirements related to Accessory uses contained in this Code and the requirement that the height be no more than the distance from the base to the property line are met.

The Director or his or her designee has the authority to approve modifications to the height restriction related to OTARD Antennas and OTARD antenna structures, if in the reasonable discretion of the City, modifications are necessary to comply with federal law.

4. A temporary WCF installed upon the declaration of a state of emergency by the federal, state, or local government, and upon or a written determination that such temporary WCF is specifically serving an emergent need of the general health, safety, and welfare of residents by need of the City, subject to approval by the City Council. Such WCF shall be subject to this Article immediately upon lifting the respective state of emergency.

or reasonable ability to obtain such written determination within 72 hours.

5. A temporary WCF installed for the purpose of providing sufficient coverage for a special event, subject to administrative approval by the City.

- A. The siting of Distributed Antenna Systems (DAS) or wireless facilities located within and intended to provide wireless coverage within a structure.

- B. Any dish antenna less than 40 inches in diameter located in a residential zone district; or
- C. Any dish antenna less than 80 inches in diameter located in any other zone district.

17.10.2: Wireless Facilities – By Zone District

Table 17.4.1 identifies where the different types of wireless facilities are permitted as primary or accessory uses, by right or with a special use permit, and where these uses are prohibited in each zone district within the City of Lakewood.

17.10.3: Wireless Facility Operational Standards

17.10.3.1: Wireless Stealth Facilities

- A. Review Requirements:

The installation of new wireless stealth facilities on any non-single-family or two-family structure may be allowed in any zone district if reviewed and approved in accordance with the Review of Supplemental Standards procedures identified in Article 2. The Director shall exercise discretion in applying the standards outlined for all new wireless

Commented [ATT22]: Requiring a temp site to be approved by City Council could delay the ability to provide or restore service during an emergency.

stealth facilities, where such standards are determined to be necessary to minimize the potential adverse effects of wireless service facilities. At a minimum the following standards shall apply:

1. The dimensions of the stealth facility must reasonably approximate the dimensions of the object they are being disguised as, and
2. The location of the stealth facility must be in concert with its surroundings.

17.10.3.2: New Wireless Facilities on Existing Structures

A. Review Requirements:

The installation of new wireless facilities on

- A. Federal Requirements. All WCFs shall meet the current standards and regulations of the Federal Aviation Administration (FAA), the FCC and any other agency of the federal government with the authority to regulate WCFs. If such standards and regulations are changed, then the owners of the WCF shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency. Unless preempted by federal law, failure to meet such revised standards and regulations within 30 days of the City's determination of such failure shall constitute grounds for the removal of the WCF by the City or owner at the WCF owner's expense.
- B. Permission to Use Public Right-of-Way or City-owned Public property. Prior to WCFs being sited in the ROW, the Applicant shall have an executed license agreement with the City, granting a non-exclusive license to use the Public Right-of-Way. Attachment of WCFs on an existing or replacement structures traffic signal, street light pole, or similar structure shall require written evidence of a license, or other legal right or approval, to use such structure by its owner, and Site specific approval pursuant to 17.10.4. The Applicant shall remain the owner of, and solely responsible for any WCF installed in the ROW. Prior to, or concurrently with, seeking land use approval for a WCF on Public Property, the Applicant shall execute a lease agreement with the City.
- C. Operation and Maintenance. To ensure the structural integrity of WCFs, the owner of a WCF shall ensure that it is maintained in compliance with the standards contained in applicable local building and safety codes. If upon inspection, the City concludes that a WCF fails to comply with such codes and constitutes a danger to persons or property, then, upon written notice being provided to the owner of the WCF, the owner shall have 30 days from the date of notice to bring such WCF into compliance by providing to the City an independent, third-party engineering certification paid for by the Applicant, that such Towers meet all building and safety codes of the City of Lakewood. The Applicant shall fully cooperate in arranging access for the inspection and may participate in the inspection. Upon good cause shown by the owner and meeting reasonable safety considerations, the City's Chief Building Official Director may extend such compliance period not to exceed 90 days from the date of said notice. If the owner fails to bring such WCF into compliance within said time period, the City may be allowed remove such WCF at the owner's expense.

Commented [ATT26]: The applicant may not remain the owner of the facility in certain instances.

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- a. Each wireless communication facility which contains trees, foliage or other landscaping elements, whether or not used as screening, shall be maintained in good condition at all times in accordance with the approved landscape plan, and the owner or operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping as promptly as reasonably possible. Amendments or modifications to the landscape plan shall be submitted for approval to the Director.
- b. Certification must be provided upon request by the City that the proposed facility will at all times comply with all applicable requirements and standards pertaining to electromagnetic and/or radio frequency radiation.

Commented [ATT28]: Multiple requests within a short time frame would be unreasonable. Recommend that this be limited to one time per year.

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- D. **Emergency.** In the event of an emergency or to protect the public health or safety, prior to the City accessing or performing any work on a facility on which a WCF Owner has installed Equipment, City may require WCF Owner to deactivate such Equipment if any of City's employees or agents must move closer to the Equipment than the FCC's recommended minimum distance. In such case, City will contact WCF Owner to request immediate deactivation.
- E. **Non-Interference.** The following provisions shall apply to ensure and/or avoid interference (both physical interference and Radio Frequency Interference) resulting from Licensee's installation, operation and/or maintenance of its Equipment:
- a. **Radio Frequency Interference.** All WCF Owners shall ensure that the Equipment will not cause Radio Frequency Interference with Wireless Communication Facilities or devices, cable television, broadcast radio or television systems, satellite broadcast systems, or City traffic, public safety or other communications signal equipment existing at the time of installation of the Equipment.
 - b. **Existing Uses.** WCF Owners shall not interfere in any manner with the existing uses of City property including Rights-of-Way, and including sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, streetlight fixtures, cable television, and other telecommunications, utility, and municipal property without the express written approval of the Owner(s) of the affected property or properties.
 - c. **City Communications.** WCF Owners shall not interfere in any manner with current or future City or other governmental public safety communication.
 - d. **Remedies.** If Interference occurs and continues for a period in excess of 24 hours following notice to the interfering party via telephone, the City may require the interfering party to reduce power or cease operations of the interfering equipment until the Interference is cured.
- F. **Relocation, Abandonment and Removal.** After the WCF is constructed, if a WCF has not been in use for a period of three months, the owner of the WCF shall notify the City of the non-use and shall indicate whether re-use is expected within the ensuing three months. Any WCF that is contracted and is not operated for a continuous period of six months shall be considered abandoned. The City, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF shall remove the same within 630 days of receipt of written notice from the City. If such WCF is not removed within said 630 days, the City may remove it at the owner's expense and any zone district if approved permits for the WCF shall be deemed to have expired. For any public project, a WCF may be required to relocate at WCF Owner's expense.

Commented [ATT30]: 30 days may not be enough time to remove the facility, especially if demo permits are required or due to inclement weather or any other unforeseen factors that might cause a delay.

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- G. Hazardous Materials. No Hazardous materials shall be permitted in association with WCFs, except those necessary for the operation of the WCF and only in accordance with all applicable laws governing such materials.
- H. Collocation. No WCF Owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility, sign, structure, or location. Upon request by the City, the owner or operator shall provide evidence explaining why Collocation is not possible at a particular facility or site.
- I. Site Safety from Unauthorized Access. All wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically, all antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.
- J. Authority to Inspect Facilities. In order to verify that the holder of a special use permit or other approval for wireless telecommunications facilities and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, and building codes, laws, ordinances and regulations and other applicable requirements, the City may designate persons to conduct an inspection on its behalf of all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site.
- K. The owner or operator of any wireless communications facility shall maintain with the City, at all times, current contact and site information. Applicant shall notify City of any changes to the information submitted within thirty days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:
 - a. Identity, including name, address, and telephone number, and legal status of the owner of the facility including official identification numbers and FCC certification, and, if different from the owner, the identity and legal status of the person or entity responsible for operating the facility;
 - b. Name, address and telephone number of a local contact person for emergencies;
 - c. Type of service provided;
 - d. Identification signs, including emergency phone numbers of the utility provider, shall be posted at all communication facility sites.
- L. Each owner or operator of a wireless communications facility shall routinely and regularly, no less than annually, inspect each site to ensure compliance with the standards as set forth in this section.

Commented [ATT31]: An inspection is already part of the permitting process. Compliance would be addressed through the code enforcement process. To the extent the intent is to authorize random inspections with no basis, this provision is burdensome and unreasonable.

17.10.4 Review Procedures and Requirements

A. Permit Required.

No new WCF shall be constructed and no Collocation or modification to any WCF may occur except after a written request from an Applicant, reviewed and approved by the City in accordance with the this Chapter. All WCFsS except Eligible Facilities Requests which are reviewed under subsection (a)(3) of this Section, shall be reviewed pursuant to the following procedures. All WCF permits shall expire and be of no further force and effect 180 days following the date of approval unless, prior to the date of expiration: (1) Construction has been diligently pursued towards completion of the project, or (2) 180-day extension of the permit has been authorized by the director upon a written request by the Aapplicant. An extension may be granted if a review of the permit shows that no major changes in the City's development or zoning regulations or in the development pattern of the surrounding properties has occurred, as determined by the director. If a WCF permit expires, no further development of the facility may occur until a new permit application is submitted, reviewed and approved in accordance with this Code, subject to all application and processing fees.

B. Bond Required.

Prior to issuance of any permit, the Applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the City a bond, or other form of security acceptable to the City Attorney as to type of security, and the form and manner of execution, in the amount as determined by the Department of Public Works for construction of a tower facility or a co-location on an existing tower or other structure, and with such sureties as are deemed sufficient by the City Attorney to assure the faithful performance of the terms and conditions of this chapter and conditions of any special use permit, including payment of costs of future demolition of an abandoned tower or other facilities. The full amount of the bond or security shall remain in full force and effect while the facility is in existence and until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit or other approval.

C. Insurance Required.

1. Except as provided in or an supplemented by any franchise agreementa Right of Way Agreement, Master License Agreement or Franchise Agreementlicense, a telecommunications carrier shall secure and maintain public liability, property insurance, and umbrella coverage in at least the following amounts:
 - a. Public liability: \$2,000,000 per/person/per occurrence
 - b. Property damage: \$2,000,000 per any one claim
 - c. Umbrella liability: \$5,000,000
2. The public and personal liability and property damage insurance policy shall specifically include the City, its employees, agents, and members of the City Council as additional insureds.
3. The public and personal liability and property damage insurance policies shall be issued by an agent or representative of an insurance company licensed to do

Commented [ATT36]: This is being reviewed currently.

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business in the State and which has one of the three highest or best ratings from the Alfred M. Best Company.

4. The public liability and property damage insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least 30 days written notice in advance of the cancellation of the policy.
5. Renewal of replacement policies or certificates shall be delivered to the City as least 15 days before expiration of the insurance which such policies are to renew or be replaced.
6. Before a telecommunications system provides telecommunications service to subscribers, the telecommunications carrier shall deliver the policies or certificates representing the insurance to the City as required herein.
7. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000
8. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the telecommunications license or franchise. The policy may not be canceled nor the intention not to renew be stated until 90 days receipt by the City, by registered mail, or a written notice addressed to the City Engineer of such intent to cancel or not to renew. Within 60 days after receipt by the City of said notice, the grantee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this section.
9. Grantee shall provide the City with evidence of insurance for each of the coverage's described above at least 10 days prior to construction and/or occupancy of any site subject to this chapter.

D. Emissions Requirements.

1. Per Submittal Requirements within this Article, any new facility application or request involving a substantial change to an existing facility will be required to provide a statement of Radio Frequency Radiation Study (RFR) confirming current assessed Radio Frequency (RF) exposure limits if such new WCF or substantial change to an existing WCF increases Radio Frequency from its own facility, or increases Radio Frequency in combination with other facilities.
2. The City reserves the right to require an annual Radio Frequency report to be provided to the Department of Public Works upon request for any facilities subject to the National Environmental Policy Act (NEPA).

The City and/or its assigned agents reserve the right to measure, at random, the radio frequency emissions of any facility and to review or revoke any permit under this Article if a wireless cell facility demonstrably increases signal output above the Uncontrolled/General Population Maximum Permissible Exposure (MPE) limits imposed by the FCC (47 CFR Sec. 2.11)

3. Any operational or technological changes to an approved WCF that affects the facility's radio frequency emissions shall be reported promptly to the City.

E. Review Procedures for certain all WCFs, including Base Stations, Alternative Tower Structures, Small Cell Facilities, and Alternative Tower Structures within Public Rights-of-Way. Applications for these WCF facilities shall be reviewed by the Public Works

Commented [ATT37]: The City's authority per the Telecom Act of 1996 is limited to the placement, construction, and modification of wireless services. The regulation of RF emissions is the exclusive authority of the FCC.

Commented [ATT38]: This provision would be preempted by federal law as it constitutes an attempt to regulated operational and technical aspects of a wireless facility which is subject to the comprehensive and exclusive jurisdiction of the FCC and federal law.

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Department for conformance to this Section and using the Design Review procedures set forth in Section 17.10.5 For WCFs in the Right-of-Way that are found to have a significant visual impact (i.e. proximity to historical sites), be incompatible with the structure of surrounding area, or not meet the intent of these provisions, the City may refer the application to Planning Commission for a Special Use Permit of Supplemental Standards Determination.

F. Review Procedures for WCFs, including Towers. Towers, other than those defined or excepted in (E) above, must apply for Special Use Permit Review approval. These WCFs shall be reviewed for conformance using the procedures set forth in Section 17.10.5. All applications for Towers shall demonstrate that other alternative design options, such as using Base Stations or Alternative Tower Structures, are not viable options as determined by the City.

G. Review Procedures for Eligible Facilities Requests.

1. Eligible Facilities Requests shall be considered a permitted use, subject to administrative review. The City shall prepare, and from time to time revise and make publicly available, an application form which shall require submittal of information necessary for the City to consider whether an application is an Eligible Facilities Request. Such required information shall include, without limitation, whether the project:

- a. Constitutes a Substantial Change;
- b. Violates a generally applicable law, regulation, or other rule codifying objective standards reasonably related to public health and safety.

i. Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the Director shall review such application to determine whether the application so qualifies for an Eligible Facilities Request. Timeframe for Review. Subject to the Tolling provisions of subparagraph d. below, within 60 days of the date on which an Applicant submits an application seeking approval under this Section, the City shall approve the application unless it determines that the application is not covered by this Subsection, or otherwise in non-conformance with applicable codes.

2. Review Procedures for certain WCFs, including Towers. Towers, other than those defined or excepted in (1) above, must apply for Special Use Permit Review approval. These WCFs shall be reviewed for conformance using the procedures set forth in Section 17.10.5. All applications for Towers shall demonstrate that other alternative design options, such as using Base Stations or Alternative Tower Structures, are not viable options as determined by the City.

Review Procedures for Eligible Facilities Requests.

Eligible Facilities Requests shall be considered a permitted use, subject to administrative review. The City shall prepare, and from time to time revise and make publicly available, an application form which shall require submittal of information

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necessary for the City to consider whether an application is an Eligible Facilities Request. Such required information shall include, without limitation, whether the project:

Constitutes a Substantial Change;

b. Violates a generally applicable law, regulation, or other rule codifying objective standards reasonably related to public health and safety.

The application may not require the Applicant to demonstrate a need or business case for the proposed modification or Collocation.

Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the Director shall review such application to determine whether the application so qualifies for an Eligible Facilities Request. .

Timeframe for Review. Subject to the Tolling provisions of subparagraph d. below, within 60 days of the date on which an Applicant submits an application seeking approval under this Section, the City shall approve the application unless it determines that the application is not covered by this Subsection, or otherwise in non-conformance with applicable codes.

3. Tolling of the Timeframe for Review. The 60-day review period begins to run when the application is filed, and may be Tolloed only by mutual agreement of the City and the Applicant, or in cases where the Director determines that the application is incomplete:
 1. To toll the timeframe for incompleteness, the City must provide written notice to the Applicant within 30 business days of receipt of the application, specifically delineating all missing documents or information required in the application; such delineated information is limited to documents or information meeting the standard under paragraph (a)(i) above.
 2. The timeframe for review begins running again the following business day after the Applicant makes a supplemental written submission in response to the City's notice of incompleteness;
 3. Following a supplemental submission, the City will notify the Applicant within 10 business days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is Tolloed in the case of second or subsequent notices pursuant to the procedures identified in paragraph (d).(i.). In the case of a second or subsequent notice of incompleteness, the City may not specify missing information or documents that were not delineated in the original notice of incompleteness.
- 3.
4. Failure to Act. The City shall make every effort to review any request seeking approval for an Eligible Facilities Request within the herein applicable timeline unless, working with the Applicant, a new timeframe is established. In the event the City fails to act on a request seeking approval for an Eligible Facilities Request under this Section within the timeframe for review, or the timeframe agreed upon with the Applicant (accounting for any Tolling), the request shall be

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deemed granted. The request becomes effective when the Applicant notifies the City in writing after the review period, including allowed extensions, has expired (accounting for any Tolling) that the application has been deemed granted.

Interaction with Telecommunications Act Section 332(c)(7). If the City determines that the Applicant's request is not an Eligible Facilities Request as delineated in this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the City's decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the Applicant to evaluate the application under Section 332(c)(7) reviews.

5.

Interaction with Telecommunications Act Section 332(c)(7). If the City determines that the Applicant's request is not an Eligible Facilities Request as delineated in this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the City's decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the Applicant to evaluate the application under Section 332(c)(7) reviews. To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 30 business days of receipt of the application, specifically delineating all missing documents or information required in the application; such delineated information is limited to documents or information meeting the standard under paragraph (a)(i) above.

The timeframe for review begins running again the following business day after the applicant makes a supplemental written submission in response to the City's notice of incompleteness;

Following a supplemental submission, the City will notify the Applicant within 10 business days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is Tolloed in the case of second or subsequent notices pursuant to the procedures identified in paragraph (d.) (i.). In the case of a second or subsequent notice of incompleteness, the City may not specify missing information or documents that were not delineated in the original notice of incompleteness.

Failure to Act. The City shall make every effort to review any request seeking approval for an Eligible Facilities Request within the herein applicable timeline unless, working with the Applicant, a new timeframe is established. In the event the City fails to act on a request seeking approval for an Eligible Facilities Request under this Section within the timeframe for review, or the timeframe agreed upon with the Applicant (accounting for any Tolling), the request shall be deemed granted. The request becomes effective when the Applicant notifies the City in writing after the review period, including allowed extensions, has expired (accounting for any Tolling) that the application has been deemed granted.

Interaction with Telecommunications Act Section 332(c)(7). If the City determines that the Applicant's request is not an Eligible Facilities Request as delineated in this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the

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FCC's Shot Clock order, will begin to run from the issuance of the City's decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the Applicant to evaluate the application under Section 332(c)(7) reviews.

- H. Review Procedures for Small Cell Facilities in the Right-of-Way.
 - a. Small Cell Facilities in the Right-of-Way shall be considered a permitted use, subject to administrative review as set forth in Subsection A.1.
 - b. The City shall prepare, and from time to time revise, and make publicly available, an application form which shall require submittal of information necessary for the City to consider whether a project is eligible as a Small Cell Facility in the Right-of-Way, meeting certain criteria.

The application shall not require the Applicant to demonstrate a need or business case for any proposed modification or Collocation.

- c. Upon receipt of an application for a Small Cell Facility in the Right-of-Way pursuant to this Section, the Public Works Department shall review such application to determine whether the application is complete.
 - d. Timeframe for Review. Within 90 calendar days of the date on which an Applicant submits an application seeking approval under this Section, the City shall take action on the application unless it determines that the application is not covered by this Subsection, or otherwise in non-conformance with applicable code.s.
- I. Submittal Requirements for all new WCFs, including Small Cell Facilities...
 - 1. In addition to submittal requirements of Chapter 17.2, the following supplemental items are required for all WCF applications:
 - a. *Project Description Summary.* A brief project description for the proposed WCF, to include: 1) Number and sizes of antennas and approximate orientation, 2) copy of the respective FCC license, 3) heights of proposed facilities, 4) equipment enclosure type and size, 5) materials and colors of antennas and any equipment enclosure, 6) description of towers or other structures necessary to support the proposed facilities, 7) description of lighting, signage and landscaping proposed, and 8) other technical information regarding transmission equipment such as maximum power output and frequencies,
 - b. *Signal Non-Interference Letter.;* A letter from the Applicant certifying all WCFs that are the subject of the application shall be designed, sited, and operated in accordance with applicable federal regulations addressing radio frequency interference;

- c. **Radio Frequency Emissions Letter *Radio Frequency Radiation (RFR) Study*.** For the sole purpose of verifying compliance with the FCC radio frequency emission standards, an emissions report shall be submitted which measures the predicted and actual levels of electromagnetic field radiation emitted by the proposed facility operating alone and in combination with radiation emitted from other existing or approved facilities that can be detected at the proposed facility site. Radiation measurements shall be based on all proposed (applications filed and pending), approved, and existing facilities operating at maximum power densities and frequencies within a minimum 1300 ft radius of the proposed facility. The RFR Study shall identify the following:
1. the existing and predicted electromagnetic field radiation in table form, specifically delineating both the General Population Exposure and Occupational Exposure
 2. any measures required to comply with the FCC standards for predicted exposure levels
 3. a summary of the conclusions of the report, and
 4. details for any signage, barriers or similar mitigation that is recommended or required.

The RFR Study shall be prepared by a qualified third-party expert. If mitigation is required by FCC radio frequency emission standards, the details for signage, barriers or other physical improvements shall also be included on the project plans prepared for the facility. It is the responsibility of the Applicant to determine the location and power of existing facilities;

Environmental Assessment. Pursuant to NEPA, any application wishing to construct a facility that uses an FCC license must submit an environmental assessment to the FCC, or alternately, certify to the City by written statement that such facility is categorically excluded per 47 C.F.R. § 1.1307. An environmental assessment is required if the proposed construction:

- Will be in a wilderness area or wildlife preserve (generally on federal land);
- Might affect threatened and endangered species or their habitat (Endangered Species Act);
- Might affect properties included or eligible for inclusion in the National Register of Historic Places or Indian religious and cultural sites;
- Will be in a flood plain;
- Will involve "significant changes in surface features" during construction (e.g., wetlands, water diversion, deforestation);
- Will be taller than 450 feet and so might affect migratory birds;
- Involves high intensity lighting in a residential area; or
- Would cause radio frequency emission exposure in excess of FCC-established limits.

Commented [ATT43]: The NEPA process is a federal review process that is independent from a local siting review. This type of regulation would also be preempted by the 2018 FCC Order to the extent it is unreasonable (as it duplicates a separate federal process) and represents the application of review criteria more burdensome than those applied to other types of infrastructure deployment. 2018 FCC Order, 18-133, ¶86.

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Any Applicant seeking to build a WCF that falls into any category requiring an environmental assessment and seeking not to submit an environmental assessment, must obtain and provide a “findings of no significant impact” before site construction. Building without adhering to the legal requirements of 47 CFR 1.1301-1.1319 can constitute a violation of FCC rules and may subject the constructing party to potential enforcement action;

- d. *Title Report.* For any wireless facility proposed to be installed on any private property, not owned or controlled by the City, the Applicant must submit a title report, issued within 30 days prior to the date the Applicant filed the application;
- e. *Peer Review.* Prior to accepting an application as complete, the city may at its sole discretion require a peer review of the project be conducted by an independent qualified RF engineering consultant, as deemed necessary to confirm compliance with FCC radio frequency emission standards. The consultant shall be selected by the City and paid for by the project Applicant. If peer review is required, the application shall include sufficient information for the city-retained consultant to conduct such review for compliance with FCC radio frequency emission standards;
- f. *Photo simulations.* The Applicant shall provide photo simulations of the proposed facility from key public viewpoints based upon consultation with city staff. Photo-simulations shall display existing and proposed views, and include the date(s) when the base photo was taken. excluding applications for small cell facilities;
- g. *Noise Analysis.* A noise analysis for emergency generators or other noise-producing facilities;
- h. *Landscape Plan.* A landscape and irrigation plan, showing all existing and proposed improvements, location of proposed plantings and type of landscape material, for proposed ground-mounted facilities including equipment cabinets;
- i. *Elevations.* Elevations showing all sides of the proposed facility, and including the following information:
 - 1. Elevations and sections of the site displaying site topography, proposed facilities including towers, equipment shelter and existing buildings,
 - 2. Wall, roof, tower and antenna materials,
 - 3. Fencing, air conditioning units and outdoor lighting, if any,
 - 4. Rooftop or building features such as vents, chimneys and antennas, and
 - 5. Building or tower height as measured from natural grade.
- j. *Inventory of Sites.* Each Applicant for a WCF shall provide to the City a narrative description and data in a format acceptable to the City showing the

Commented [ATT45]: This should be consistent with the City's current noise ordinance and limits.

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Applicant's currently proposed WCFs within the City, and outside of the City within one half-mile of its boundaries. This provision is not intended to be a requirement that the Applicant submit its business plan, proprietary information, or make commitments regarding locations of WCFs within the City. This information will be used to assist in the City's comprehensive planning process, and promote Collocation by identifying areas in which WCFs might be appropriately constructed for multiple users. The City may share information regarding the location of sites and the owners or managers of such sites with other Applicants applying for administrative approvals or conditional permits under this section or other organizations seeking to locate WCFs within the jurisdiction of the City, provided however, that the City, is not, by sharing such information, in any way representing or warranting that such sites are available or suitable;

- k. *Load Certification.* The owner of a proposed new tower shall provide certification with documentation (structural analysis) including calculations that the telecommunication facility tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, City, state and federal structural requirements for loads, including wind and ice loads;.
- l. *Written Statement.* Written representation that Applicant shall be responsible for paying all charges for any electricity furnished by a utility to Applicant and for charges for furnishing service to the Equipment. When the Equipment requires an electric meter as determined by the utility provider, the Applicant shall install or cause to be installed a separate electric meter on a ground mounted pedestal or on Applicant's pad mounted equipment cabinet as required by the electric provider for the operations of its equipment;

Equipment:

- m. *Abandonment and removal Affidavits.* Affidavits shall be required from the owner of the property and from the Applicant acknowledging that each is responsible for the removal of a WCF that is abandoned or is unused for a period of six (6) months.
- J. *Consolidated applications.* The City shall allow a wireless provider to file a multi-site permit seeking approval for up to ten (10) permits for Small Cell Facilities at a given time. Each individual site shall be processed as a separate permit in order to facilitate recording site addresses, utility company requirements, and timely inspection scheduling. The City's denial of any individual small cell facility is not a basis to deny the application as a whole or any other small cell facility incorporated within the consolidated application.
- K. *Consultants for Application Review.* The City may hire a consultant and/or expert necessary to assist the City or any of its Departments in reviewing and evaluating the application for a facility, including the construction and modification of the site, once permitted, and any site inspections.

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1. An Applicant shall deposit with the City escrow funds sufficient to reimburse the City for all reasonable costs of the City's consultant in providing expert evaluation and consultation to any agency of the City in connection with the review of any application, including any expert consultation services deemed necessary by the City and in an amount to be determined by the City. The placement of the deposit with the City shall occur at such later time as the City may direct. The City will maintain a separate escrow account for all such funds. The City's consultants/experts shall invoice the City Department employing its services related to the application. In the event that the amount held in escrow by the City is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the Applicant, be promptly refunded to the Applicant.
 2. Escrow Amount. The total amount of the funds needed as set forth in this section may vary with the scope and complexity of the project, the completeness of the application, and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification. When notified by the City that additional escrow is required, the Applicant may request copies of invoices paid to consultants and/or experts. If the Applicant finds errors in those invoices, the Applicant may ask the City to audit those specific items for reasonableness and may request relief therefrom.
 3. Fee Cap. Notwithstanding the above, there shall be a fee cap as to the total consultant fees to be charged to the Applicant in a case, which shall be the greater of \$17,000 or 10% of the highest annual lease payment to be made by the Applicant to the owner of the property under the lease authorizing placement of the wireless telecommunications facilities at a given site. However, the fee cap shall not apply as to any fees which the City determines to be attributable to the dilatory or otherwise bad faith actions of the Applicant in providing a complete application or in proceeding with a public hearing.
- L. Decision. Any decision to approve, approve with conditions, or deny an application for a WCF, shall be in writing and supported by substantial evidence in a written record. The Applicant shall receive a copy of the decision.
1. Conditions of Approval for WCF permits. In addition to any other conditions of approval permitted under federal and state law and this Code that the Director deems appropriate or required under this Code, all WCF permits under this subsection shall include the following conditions of approval:
 - a. No Automatic Renewal. The grant or approval of a WCF permit shall not renew or extend the underlying permit term.
 - b. Compliance with Previous Approvals. The grant or approval of a WCF permit shall be subject to the conditions of approval of the underlying permit.

Commented [ATT48]: Under Colorado law, fees must be cost based.

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- c. As-Built Plans. The Applicant shall submit to the Director an as-built set of plans and photographs depicting the entire WCF as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.
- d. **Indemnification.** To the fullest extent permitted by law, the Applicant and any successors and assigns, shall defend, indemnify and hold harmless [the] city, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the WCF permit and the issuance of any permit or entitlement in connection therewith. The Applicant shall pay such obligations as they are incurred by [the] city, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the city reasonably determines necessary to protect the city from exposure to fees, costs or liability with respect to such claim or lawsuit.
- e. Compliance with approved plans. The proposed project shall be built in compliance with the approved plans on file with the Department of Public Works.
- f. Violations. The WCF shall be developed, maintained, and operated in full compliance with the conditions of the WCF permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the Applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this Code, the conditions of approval for the small wireless facility permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this section shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one (1) remedy shall not cause an election precluding the use of any other remedy with respect to a violation.
- g. In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, Title 47, United States Code, section 1455, such that such statute would not mandate approval for the collocation or deployment granted or deemed granted under a WCF permit, such permit shall automatically expire twelve (12) months from the date of that opinion.
- h. The grant, deemed-grant or acceptance of a WCF permit shall not waive and shall not be construed or deemed to waive the city's standing in a court of competent jurisdiction to challenge Title 47, United States Code, section 1455 or any WCF permit issued pursuant to Title 47, United States Code, section 1455 or this Code.

Commented [ATT50]: This is being reviewed by AT&T

~~2.1.~~ Additional Notice to Neighbors. After an application to allow the installation of a wireless facility subject to the approval of a WCF permit pursuant to this Code is complete, the Applicant shall provide property owners notice of such installation pursuant to 17.10.4, (L),(1),(i),(1) of this Article. Failure of the city to provide notice pursuant to this subsection shall not be grounds to challenge a determination provided that the notice otherwise required by law has been provided.

1. Upon execution of any administrative decision approving or approving with conditions the application and prior to any construction, notice shall be sent by mail of the administrative approval by the Applicant to all property owners within a 1,300-ft radius of the facility, using names and addresses appearing on the latest adopted tax roll of the county. The notifying radius shall be measured from the outer boundary of the subject parcel, or for those facilities in the public right of way, from the outer boundary of the closest parcel adjacent to the subject public right of way site. Notice shall be sent no later than 15 day after such decision has been made by the City.
2. Notice of the administrative approval shall also be made within 15 days of such decision by posting a notice in a publicly visible location on the property in question.

M. Compliance with Applicable Law. Notwithstanding the approval of an application for new WCFs or Eligible Facilities Request as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building, structural, electrical, and safety requirements as set forth in the Municipal Code and any other applicable laws or regulations. In addition, all WCF applications shall comply with the following:

1. Comply with any permits or licenses issued by a local, state, or federal agency with jurisdiction of the WCF;
2. Comply with easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;
3. Be maintained in good working condition and to the standards established at the time of application approval; and
4. All wireless communication facilities and related equipment, including lighting, fences, shields, cabinets, and poles, shall be maintained in good repair, rRemain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, so as to minimize occurrences of dangerous conditions or visual blight, and in no instance more than ten 5 calendar days from the time of notification by the City or after discovery by the owner or operator of the Site. Each wireless communication facility which contains trees, foliage or other landscaping elements, whether or not used as screening, shall be maintained in good condition at all times in accordance with

the approved landscape plan, and the owner or operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping as promptly as reasonably possible. Amendments or modifications to the landscape plan shall be submitted for approval to the Director. Notwithstanding the foregoing, any graffiti on WCFs located in the Public Rights-of-Way or on Public Property may be removed by the City at its discretion, and the owner and/or operator of the WCF shall pay all costs of such removal according to the City Municipal Code guidelines as set forth by the City within 30 days and after receipt of an invoice from the City.

Any failure by the city to enforce compliance with any applicable laws shall not relieve any Applicant of its obligations under this Code, any permit issued under this Code, or all other applicable laws and regulations.

17.10.5 Design Standards

- A. Review Requirements. The requirements set forth in this Section shall apply to the location and design of all WCFs governed by this Chapter as specified below; provided, however, that the City may waive these requirements if it determines that the goals of this Chapter are better served thereby. To that end, WCFs shall be designed and located to minimize the impact on the surrounding neighborhood and to maintain the character and appearance of the City, consistent with other provisions of this Code. . Notwithstanding the foregoing, the Planning Director shall have the authority to promulgate design standards for small cell facilities in the rights of way, which shall govern those types of WCFs. All current design standards as outlined in this section shall be employed and directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments, and shall be applicable to both newly constructed WCFs, permitted but not yet constructed WCFs, as well as pre-existing WCFs applying for a substantial change.

Commented [ATT54]: Recommend including a relief valve for

B.

1. Camouflage/Concealment and Shrouding.

All WCFs and any Transmission Equipment shall, to the extent possible, use Camouflage Design Techniques including, but not limited to the use of materials, colors, textures, screening, undergrounding, landscaping, or other design options that will blend the WCF into the surrounding natural setting and built environment.

- a. Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g. proximity to historic, natural, or aesthetically significant structures or areas, views, and/or community features or facilities). In such instances where WCFs are located in areas of high visibility, they shall (where possible) be designed to minimize their profile.

Commented [ATT55]: Regulations cannot be applied retroactively to existing facilities. That is not permitted under Colorado law.

- b. The camouflage design may include the use of Alternative Tower Structures should the Public Works Department determine that such design meets the intent of this Code and the community is better served thereby.
- c. All WCFs, such as Antennas, vaults, equipment rooms, equipment enclosures, and Tower structures shall be constructed out of non-reflective materials (visible exterior surfaces only).

2. Spacing and Collocation.

a. Collocation Standards.

- i. New communication facilities shall be co-located with existing facilities and with other planned new facilities whenever feasible and aesthetically desirable. No new Towers, excepting Small Cell Facilities in the Right-of-Way, shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the City that no existing WCFs can accommodate the needs that the Applicant proposes to address with its Tower application, and sufficient separation of Towers is achieved. Evidence may consist of the following:
 - i. No existing WCFs with a suitable height are located within the geographic area required to meet the Applicant's engineering requirements;
 - ii. Existing WCFs do not have sufficient structural strength to support Applicant's proposed WCF;
 - iii. The Applicant's proposed WCFs would cause electromagnetic interference with the existing WCFs or the existing WCF would cause interference with the Applicant's proposed WCF;
 - iv. The Applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for Collocation;
 - v. Towers over 90 feet in height shall not be located within one-quarter mile from any Existing Tower that is over 90 feet in height, unless the Applicant has shown to the satisfaction of the City that there are no reasonably suitable alternative sites in the required geographic area which can meet the Applicant's needs.
- ii. WCFs shall be designed and constructed to permit the facility to accommodate WCFs from at least two (2) wireless service providers on the same WCF, to the extent it is feasible in good faith based upon construction, engineering and design standards, except where such Collocation would materially compromise the design intent of the WCF, particularly visually.

- iii. In order to facilitate co-location, conditions of approval for conditional use permits for new facilities shall require all service providers to cooperate in the siting of equipment and antennas to accommodate the maximum number of operators at a given site where found to be feasible and aesthetically desirable. Where feasible and aesthetically desirable, service providers are encouraged to co-locate with other facilities such as existing buildings, water tanks, light standards, and other utility structures where the co-location is found to minimize the overall visual impact.
 - iv. Service providers shall exhaust all reasonable measures to co-locate their communications facilities on existing towers, existing alternative building or other structures within the City, or with or within existing ancillary support equipment facilities prior to applying for new communication facility sites. The service provider shall provide evidence to the City that the provider has contacted all other potential providers who have, or who are reasonably likely to be, installing facilities within the vicinity of the proposed facility and has offered to participate in a joint installation project on reasonable terms. Such evidence should include but is not limited to copies of written requests and responses, along with any letters of rejection, stating the reason for rejection.
- b. Spacing Standards. No new free-standing small cell facility shall be within 1,300-ft of another free-standing small cell facility on the right of way. These separation requirements do not apply to attachments made to existing alternative tower structures.
- i. Exemptions. The Public Works Department may exempt an Applicant from these separation requirements if 1) the Applicant demonstrates Evidence of Need through technical network documentation that the minimum separation requirement cannot be satisfied for technical reasons, or 2) the Director determines when considering the surrounding topography, the nature of adjacent uses and nearby properties, and the height of existing structures in the vicinity, that placement of a WCF at a distance less than 1,300-ft from another small cell facility will meet the intent of reducing visibility and visual clutter of small cell facilities to the extent possible.
3. Location Preferences. Small Cell Wireless Facilities in the public roads shall be installed in the most highly preferred locations as listed below, Locations listed in order of most preferred locations to least preferred locations with the first location listed being most desirable:
- a. Preferred Locations —Non-Residential zone districts, excepting parks, ordered from most preferred to least preferred:

Commented [ATT58]: This is an unreasonable separation requirement that will result in an effective prohibition of service especially given the limit range of higher frequencies used on small cells.

Commented [ATT60]: Aesthetic requirements only apply to the extent technically feasible. Recommend limiting this to new poles rather than replacements to avoid establishing an effective prohibition. From a practical perspective, small cells serve the immediate area where they are located, not allowing them in an area means that area will lack service. With a limited range, you cannot install small cells in an industrial zone and have it cover a residential zone. It is understood that there is a way to overcome this in some instances, however just including the preference order assumes that in certain cases it is feasible to do this when in fact it is not feasible.

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- i. Parcels in the industrial zones, then
 - ii. Parcels in commercial zones;
 - iii. Parcels in the mixed use zones
 - iv. City owned or controlled parcels or public facilities, excepting parks and historic City-owned properties; then
 - v. Agricultural sites
 - vi. Any public road within a 1,500-foot radius of a day care center or school, as defined by sections 1596.78 of the Health and Safety Code and 26054 of the Business and Professions Code, respectively.
 - vii. Any public road within a 1,500-foot radius of a City, County, or State Park, open space area, or City sports field.
 - viii. Any public road adjacent to mixed-use sites with residential dwellings.
 - ix. Any public road right of ways located in an exclusively residential zoning district.
4. Preferred Locations —Residential Zones, Park, and Open Space Parcels. If a facility is proposed in a residential zone or adjacent to or on a parcel used for open space or park purposes, all facilities should be located according to the following preferences, ordered from most preferred to least preferred, with the first location listed being most desirable:
 - 1) City owned or controlled parcels not for park or open space uses; then
 - 2) Parcels that contain non-residential uses and do not contain residential or park or open space uses; then
 - 3) Parcels that do not contain single-family homes, multi-family homes, or park or open space uses; then
 - 4) City owned or controlled parcels; then
 - 5) In the public right-of-way abutting a residential zone; then
 - 6) All other parcels
 - a. When a lower ranked alternative is proposed, the application must include technical information demonstrating that a higher ranked option is not technically feasible in light of the provider's service objectives.
5. Lights and other attachments.
 - a. WCFs shall not be artificially lighted, unless required by the Federal Aviation Administration or other applicable governmental authority, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purpose. If lighting is required, the City may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding properties or environs. Lighting shall be shielded or directed to the maximum extent so as to minimize the

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amount of glare and light falling onto nearby properties, particularly residences.

- b. All exterior lighting within equipment yards shall be mounted on poles or on the building wall below the height of the screen wall or fence.
 - c. No Tower shall have constructed on, or attached to, any additional platform, catwalk, crow's nest or like structure (other than those required by industry standards or federal regulations), except during periods of construction or repair.
 - d. Signs and advertising. The use of any portion of a Tower for signs or advertising devices other than public safety warnings, certification, or other requires seals on any wireless communication device or structure is prohibited. However, the telephone numbers to contact in an emergency shall be posted on each facility. Wireless telecommunications facilities shall contain a sign no larger than four square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the Applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration sign as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.
 - e. Flush-mounting of antennas shall be employed wherever feasibly possible when such mounting does not detract from adjacent views or overall aesthetics.
 - f. To the extent possible, accessory equipment should be placed within the pole base rather than on the outside of the pole.
 - g. The use of small, decorative structures as mounting locations should be limited in historic districts.
6. Noise. Noise generated on the site must not exceed the levels permitted in the City of Lakewood Municipal Code, except that a WCF owner or operator shall be permitted to exceed such noise standards for a reasonable period of time during repairs, not to exceed two (2) hours without prior authorization from the City. If "Plainly Audible" noise nuisance complaints are received by the City, a site noise compliance, evaluation and mitigation report shall be submitted to the City within 30 days by Owner or Operator of WCF. Owner or Operator of WCF, at Owners

Commented [ATT61]: Signage is regulated by federal law. By enacting signage regulations that are different from federal law creates the risk that the carrier would not be able to comply with both. The City, in multiple places, is already requiring AT&T to comply with all federal laws which would include adhering to all regulations associated with RF signage requirements.

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expense, must make every effort to mitigate and return WCF into compliance within a reasonable time frame, not to exceed 90 days.
If noise nuisance complaints are received by the City, a site noise report shall be submitted to the City within 30 days.

7. Landscaping Requirements.

- a. WCFs shall be sited in a manner that does not reduce the landscaped areas for the other principal uses on the parcel.
- b. WCFs, excluding Small Cell Facilities mounted on existing structures with existing surrounding landscaping, unless otherwise required by the Public Works Department, shall be landscaped with a buffer of plant materials that effectively screen the view of the WCF from Rights-of-Way and adjacent properties. Where the City has requested additional landscaping, the City may require irrigation requirements for the landscaping.
- c. Critical Root Zone: To the extent possible, heritage trees and traditional landscaping designs should be preserved in the Public Right of Way. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible.

8. Screening Requirements.

- a. All equipment, not located within the Public Right-of-Way and not otherwise defined, shall be fully screened within a walled yard or placed in an enclosed building except in cases where a better design alternative exists. The yard shall be enclosed by a solid fence or wall of sufficient height to screen all miscellaneous equipment from view from the public Right-of-Way or adjacent properties and to provide security. Screening should not unnecessarily inhibit view from adjacent properties.
- b. All structures and improvements associated with the WCF shall be provided with adequate safety equipment and aesthetic treatments, including incorporating landscape screening noted in subsection 5, to be visually compatible with uses in the surrounding area.
- c. Roof-top mounted equipment shall be screened from off-site views to the extent practical by solid screen walls or the building's parapet. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible.

Article 2. B.

9. Setbacks.

- a. The following minimum setback requirements shall apply to all WCFs except for Alternative Tower Structures in the Right-of-Way; provided however, that the City may reduce standard setback requirements if the

Applicant demonstrates an Evidence of Need. Setback requirements shall be measured from the outer boundary of the subject parcel, or for those facilities in the public right of way, from the outer boundary of the closest parcel adjacent to the subject public right of way.

1. Non-Residential Zones: A Tower shall meet the greater of the following minimum setbacks from all property lines;
 - a. The setback for a principal building within the applicable zoning district; or twenty-five percent (25%) of the facility height, including WCFs and related Accessory Equipment.
2. Residential Zones and Parcels: Any WCFs adjacent to Single Family Residential Uses shall be sited in a manner that evaluates the proximity of the facility relative to residential structures. Unless Applicant demonstrates that there is no other technically feasible alternative, WCFs over 30 feet in height shall have a minimum setback from all adjacent residential property lines of one (1) foot for every foot in height, or a minimum setback of 500-feet from any residential structure's outer boundary, whichever is greater, unless the Applicant can prove that a shorter distance is necessary to provide service. If a shorter distance is necessary, the greatest setback distance that will accommodate service shall be employed.
 - i. When placed near a residential property, the WCF shall be placed adjacent to the common side yard property line between adjoining residential properties, such that the WCF minimizes visual impacts equitably among adjacent properties.
 - ii. In the case of a corner lot, the WCF may be placed adjacent to the common side property line between adjoining residential properties, or on the corner formed by two intersecting streets.
 - iii. If these siting requirements are not reasonably feasible from a construction, engineering, or design perspective, the Applicant may submit a written statement to the Public Works Department requesting the WCF be exempt from these requirements, and offer alternative locations reasonably meeting the intent of this section.
 - iv. WCFs shall not be placed on buildings used principally for residential purposes.

10. Design requirements specific to various types of WCFs.

- a. Base Stations. If an antenna is installed on a structure other than a Tower or Alternative Tower Structure, such as a Base Station (including, but not limited to the antennas and accessory equipment) it shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as possible, including for example, without limitation, painting the Antennas and accessory equipment to match the structure. Additionally, any ground mounted equipment may be located in a flush-to-grade underground equipment vault if it is reasonably feasible from a construction, engineering, or design perspective.
- b. Alternative Tower Structures, not in the Public Right-of-Way shall:
 - i. Be designed and constructed to look like a building, facility, structure, or other commonplace item, such as but not limited to a tree, public art, or clock tower, typically found in the area.
 - ii. Be camouflaged/concealed consistent with other existing natural or manmade features in or near the location where the Alternative Tower Structure will be located.
 - ~~ii.~~ iii. Be compatible with the surrounding area, including architecture, topography, natural vegetation, and/or landscaped environment.
 - ~~iii.~~ iv. Be the minimum size needed to obtain coverage objectives. Height or size of the proposed Alternative Tower Structure should be minimized as much as possible.
 - ~~iv.~~ v. Be sited in a manner that is sensitive to the proximity of the facility to residential structures, neighborhoods, and residential zoning district boundaries.
 - vi. Take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses.
- c. Towers
 - i. Towers shall either maintain a galvanized steel finish, or, subject to any applicable FAA standards and City design approval processes, be painted a neutral color so as to reduce visual obtrusiveness.
 - ii. Wherever possible, Towers shall locate to utilize existing landforms, vegetation, and structures to aid in screening the facility from view, or otherwise blending in with surrounding built and natural environment.
 - iii. Monopole support structures shall taper from the base to the tip.

- iv. All Towers, excluding Alternative Tower Structures in the Right-of-Way, shall be enclosed by security fencing or wall and shall also be equipped with an appropriate ant-climbing device.
- v. Towers shall be subject to the height restrictions of each zoning district. Notwithstanding anything in this Chapter to the contrary, Towers are prohibited in the Right-of-Way.

Roof and Building Façade Mounted Antennas: WCFs:

- 1. Building façade mounted antennas shall not protrude horizontally more than 2 feet from the building wall and shall be painted or treated to match the building or structure to which the antenna is attached.
- 2. Building façade mounted antennas shall not exceed the height of the parapet or the roofline, whichever is greater.
 - d.
- 3. The total of all visible building façade mounted antennas may not exceed the greater of 10 percent of the square footage of the building façade or 25 square feet per façade.

C. Roof Mounted Antennas:

- 1.i. Roof mounted antennas and accessory equipment shall be painted or treated to match the façade of the building to which they are attached in order to minimize visibility from adjacent residential land uses and/or from public sidewalks.
- ~~v.ii.~~ ii. Roof- mounted WCFs may be approved only where an aApplicant sufficiently demonstrates that a wall mounted WCF is inadequate to provide service. By filing an application for a roof-mounted WCF, an aApplicant is certifying agreement to the City's determination that the height extensions described in this subsection d are the maximum heights that will allow the WCF to be Camouflaged, and that any additional increase in height will undermine the Camouflage nature of the site. Roof or building mounted facilities are not permitted on any single-family residential structures.
- 2.iii. Maximum height. Roof mounted antennas and accessory equipment shall not exceed the height of the penthouse or mechanical equipment room to which the antennas are attached.
- 3.
- 4. Antennas not mounted on a penthouse or mechanical equipment room shall be set back at least 5 feet from the exterior wall of a building.

Commented [ATT64]: This is an attempt to stop legitimate modifications that constitute Eligible Facilities Requests as an such is an unreasonable requirement that would be subject to challenge because it is inconsistent with Section 6409.

Commented [ATT66]: This will make freestanding facilities a technical necessity. The placement standards are too restrictive. At a minimum, the height of antennas need to be increased by 2 feet for every foot they are set back from the edge of the roof. An 8' antenna will be shadowed by the roof it is placed on the center. It won't work from a technical perspective. Also, antennas in the center of the roof or setback from the edge create unusable space. There is no reason to do this unless the City wants to encourage free standing facilities over rooftop sites.

5.iv. The maximum height of a roof mounted antenna that is not mounted on a penthouse or mechanical equipment room is equal to the distance the antenna is set back from the exterior wall up to a maximum height of 10 feet above the taller of either roofline or parapet of the building to which the antenna is attached. .

~~vii-vi.~~ All rooftop equipment and Antennas must be adequately screened where feasible from a technical, construction, design and engineering perspective.

~~viii-vi.~~ Building façade mounted antennas shall not protrude horizontally more than 2 feet from the building wall and shall be painted or treated to match the building or structure to which the antenna is attached.

4.

A.vii. Building façade mounted antennas shall not exceed the height of the parapet or the roofline, whichever is greater.

viii. The total of all visible building façade mounted antennas may not exceed the greater of 10 percent of the square footage of the building façade.

ix.

Antennas on Existing Support Structures:

In single-family and two-family zone districts: The mounting of an additional antenna or antennas on an existing support structure, including any existing support structure that is nonconforming with regards to height, may be permitted provided that the height of the existing structure may not be increased by more than 15 percent.

In non-single-family and two-family zone districts: The mounting of an additional antenna or antennas on an existing support structure may be permitted provided that the height of the existing structure may not be increased above 60 feet without triggering the review requirements as outlined for New Freestanding Support NonStealth Structures in Section 17.10.3.2:.

17.10.3.3: New Freestanding Support Non-Stealth Structures

Review Requirements:

New freestanding support structures of 60 feet in height or less may be allowed in any zone district other than a single-family or two-family district if reviewed and approved in accordance with the site plan procedures identified in Article 2.

New freestanding support structures of more than 60 feet in height may be allowed in any zone district other than a single-family or two-family

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district if reviewed and approved in accordance with the special use permit and site plan procedures identified in Article 2.

New freestanding support structures of any height located on public property, right-of-way, or utility property that will support street lights, public facilities or equipment in addition to wireless facilities may be allowed in any zone district if reviewed and approved in accordance with the Site Plan procedures identified in Article 2. Examples include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, and other light structures

Existing support structures including but not limited to municipal communication facilities, athletic field lights, traffic lights, and other light structures on local streets shall be limited to a maximum 15-foot height extension.

The maximum height for any new freestanding support structure shall be 60 feet, or the maximum building height allowed in the subject zoning district, whichever is greater.

When adjacent to a property that is zoned residential or contains a residential use or structure, new freestanding support structures must be setback from property at least the minimum setback required by the zone district where the structure is located or 50 percent of the support structure height, whichever is greater.

New freestanding support structures shall be enclosed by security fencing 6 feet in height and shall also be equipped with an appropriate anti-climbing device; provided, however, that the City may waive such requirements, if the Director determines that the waiver will not create an increased risk to public health or safety.

- B. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible.
- C. New free standing support structures shall be designed to accommodate a minimum number of colocations based upon their height.
 - 1. Support structures between 45 feet and 100 feet in height shall support at least two telecommunications providers;
 - 2. Support structures greater than 100 feet and up to 150 feet in height shall support at least three telecommunications providers; and
 - 3. Support structures greater than 150 feet in height shall support at least four telecommunications providers.
- D. New freestanding support structures over 60 feet in height shall not be located within 1000 feet from any existing freestanding support structure that is over 60 feet in height, unless the applicant has shown to the satisfaction of the City that colocation is impracticable and that there are no reasonably suitable alternative sites in the required geographic area which can meet the applicant's needs.

17.10.3.4: Other Wireless Facility Types

The Director may apply the standards defined for new wireless facilities on existing structures or new freestanding support structures to any wireless facility type that is not directly addressed in these regulations as appropriate to minimize the potential adverse effects of wireless service facilities.

17.10.3.5:

e. Related Accessory Equipment

- ✕i. In order of preference, ancillary support equipment and/or accessory equipment for a WCF shall be located either within a building, underground, in a rear yard or on a screened rooftop area. Ground-mounted facilities that are located within the front or side yard or public right-of way shall be undergrounded, unless the Applicant demonstrates that undergrounding is not technologically feasible, and located so as to be screened by landscaping, in close proximity to existing above ground utilities (such as electrical tower or utility poles), light poles, trees of comparable height, water tanks, and other areas where the ground mounted facility will be designed and screened to blend with the existing natural or built surroundings .
- A.ii. Utility and Power Lines. All utilities at wireless telecommunication's facilities shall be installed underground whenever possible, as determined by the Department of Public Works, and in compliance with all laws, ordinances, rules and regulations of the City, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code, where appropriate, as well as City regulations applicable to excavations in public streets.
- B.iii. TheExcluding Small Cell Facilities in the Right-of-Way, the buildings, shelters, cabinets, and other accessory components shall be setback a minimum of 15 feet from each property line with a residential zone district or a lot containing a residential structure, or shall meet all setback requirements of the underlying zone districts, whichever results in the greater setback, and shall be grouped as closely as technically possible.
- C.iv. Total footprint coverage area of the accessory equipment shall not exceed 500 square feet per provider, with a maximum of 1500 square feet total for three or more providers.
- D.v. No accessory equipment or accessory structure shall exceed 1512 feet in height.

- E.vi. Accessory equipment shall be painted a neutral color and enclosed by security fencing 6 feet in height and shall be landscaped with a buffer of plant materials that effectively screens the view of the accessory equipment from adjacent residential property and from the adjacent street; provided, however, that the City may waive such requirements, if the Director determines that the waiver will not (1) create an increased risk to public health or safety or (2) create a negative visual impact to adjacent residential property or from the adjacent street. Accessory equipment, including but not limited to remote radio units, shall be located out of sight whenever possible by locating behind parapet walls or within equipment enclosures. Where such alternate locations are not available, the Accessory Equipment shall use Camouflage Design Techniques.
- F.vii. No accessory equipment or accessory structures shall be sited in a manner that reduces the parking or landscaped areas for other principal uses on the parcel below the minimums required by the Zoning Ordinance.

17.10.4: Abandonment and Removal

If a support structure is abandoned and remains abandoned 5 Standards for a period longer than 12 consecutive months, the City may require that the support structure be removed. The City shall first provide written notice to the owner of the support structure of the requirement for removal and give the owner the opportunity to take such action(s) as may be necessary to reinstate the active use of the support structure within 30 days of receipt of the written notice. If the owner of the support structure fails to reinstate the active use of the support structure within the 30-day period, the owner of the support structure shall be required to remove the same within six months. Approval.

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It is the intent of the City to provide for approval of WCFs administratively in cases where visual impacts are minimized, view corridors are protected, appropriate Camouflage and Concealment Design Techniques are employed to avoid adverse impacts on the surrounding area, and they are designed, maintained, and operated from the date of first installation and all times the WCF is thereafter operated, at all times to comply with the provisions of this Chapter and all applicable local, state and federal laws. Notwithstanding the approval of an application for Eligible Facilities Request as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building and safety requirements as set forth in municipal code and any other applicable regulations.

1. Special Use Permit. Any application for a WCF which does not comply with the provisions of this Chapter may seek approval of a Special Use Permit by submitting an application to Planning Commission.
 - a. All special use permit applications for a new wireless telecommunications facility shall contain a demonstration that the facility will be sited so as to minimize visual intrusion as much as possible, given the facts and circumstances involved, and will thereby have the least adverse visual effect on the environment and its character and on the residences in the area of the new wireless telecommunications facility.

- b. Fifteen days prior to any Planning Commission hearing on a Special Use Permit for any WCF, notice shall be sent by the Applicant by mail of the location, time, and place of such hearing to all property owners within a 1,300-ft radius of the facility, using names and addresses appearing on the latest adopted tax roll of the county. The notifying radius shall be measured from the outer boundary of the subject parcel, or for those facilities in the public right of way, from the outer boundary of the closest parcel adjacent to the subject public right of way site.
- c. Notice of the Planning Commission hearing for Special Use Permit shall also be made by posting a notice in a publicly visible location on the property in question at minimum fifteen days prior to such hearing.
- Collocation and Separation Required. No new Towers, excepting Small Cell Facilities in the Right-of-Way, shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the City that no existing WCFs can accommodate the needs that the Applicant proposes to address with its Tower application, and sufficient separation of Towers is achieved. Evidence may consist of the following:
- No existing WCFs with a suitable height are located within the geographic area required to meet the Applicant's engineering requirements;
 - Existing WCFs do not have sufficient structural strength to support applicant's proposed WCF;
 - The Applicant's proposed WCFs would cause electromagnetic interference with the existing WCFs or the existing WCF would cause interference with the Applicant's proposed WCF;
 - The Applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for Collocation;
 - Towers over 90 feet in height shall not be located within one-quarter mile from any Existing Tower that is over 90 feet in height, unless the Applicant has shown to the satisfaction of the City that there are no reasonably suitable alternative sites in the required geographic area which can meet the Applicant's needs.
- Setbacks. The following minimum setback requirements shall apply to all WCFs except for Alternative Tower Structures in the Right-of-Way; provided however, that the City may reduce standard setback requirements if the applicant demonstrates that the goals of this Section can be met through Performance Options or through Alternative Compliance, or through a Variance process . A Tower shall meet the greater of the following minimum setbacks from all property lines;
- The setback for a principal building within the applicable zoning district;
 - or
 - Twenty-five percent (25%) of the facility height, including WCFs and Related Accessory Equipment; or
- For sites within 100 feet of residential uses, facilities over 30 feet in height shall have a minimum setback from all adjacent residential property lines of one (1) foot for every foot in height.

17.10.5 Penalty for Offenses.

In the event of a violation of this ordinance or any of the terms and conditions of use permit or other approval issued pursuant to this ordinance, and in addition to any other remedy available to the City at law or equity, the City may impose and collect, and the holder of the permit for wireless telecommunications facilities shall pay to the City, civil penalties in an amount as determined by the Department of Public Works per day, until the violation or violations are abated to the satisfaction of the City.

17.10.6 City Council Review.

In January of each year City Council shall set a date within the year to review and update as needed this Article of the Lakewood Zoning Code.

17.10.7 Private Enforcement.

- A. In addition to any other remedy available to the city under this Code, at law or in equity, violations of this Section 17.10 may be remedied as follows:
1. The city attorney or city prosecutor may bring a civil action to enforce this section and to obtain the remedies specified below or otherwise available in equity or at law.
 2. Any person acting for the interests of himself, herself, or itself, or of its members, or of the general public (hereinafter "a private enforcer") may bring a civil action to enforce this section with the remedies specified below, if both the following requirements are met:
 - a. The action is commenced more than sixty (60) days after the private enforcer gives written notice of an alleged violation of this section to the city attorney and to the alleged violator.
 - b. No person acting on behalf of the city has commenced or is prosecuting an action regarding the violation(s) which was or were the subject of the notice on the date the private action is filed.
 3. A private enforcer shall provide a copy of his, her, or its action to the city attorney within seven days of filing it.
 4. Upon settlement of or entry of judgment in an action brought pursuant to paragraph (7) of this subsection, the private enforcer shall give the city attorney a notice of that settlement or judgment. No private enforcer may settle such an action unless the city attorney or the court determines the settlement to be reasonable in light of the purposes of this section. Any settlement in violation of this requirement shall be set aside upon motion of the city attorney or city prosecutor to a court of competent jurisdiction.
 5. Upon proof of a violation of this section, the court shall award the following:
 - a. Appropriate injunctive relief and damages in the amount of either:
 - i. Upon proof, actual damages;
 - ii. With insufficient or no proof of damages, a minimum of five hundred dollars (\$500.00) for each violation of this section (hereinafter "statutory damages").

Commented [ATT72]: This appears to delegate enforcement rights to private parties in violation of the state constitution prohibiting a City from delegating its authority in this manner.

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Unless otherwise specified in this section, each day of a continuing violation shall constitute a separate violation. Notwithstanding any other provision of this section, no private enforcer suing on behalf of the general public shall recover statutory damages based upon a violation of this section if a previous claim brought on behalf of the general public for statutory damages and based upon the same violation has been adjudicated, whether or not the private enforcer was a party to that earlier adjudication.

- b. Restitution to the appropriate party or parties of gains obtained due to a violation of this section.
- c. Exemplary damages, where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud, malice, or a conscious disregard for public health and safety.
- d. Attorney's fees and costs reasonably incurred by a successful party in prosecuting or defending an action.

Any damages awarded in an action brought by the city attorney or city prosecutor shall be paid into the city's general fund, unless the court determines that they should be paid to a damaged third party.

6. Upon proof of at least one violation of this section, a private enforcer, the city prosecutor, city attorney, any peace officer or code enforcement official may obtain an injunction against further violations of this section or, as to small claims court actions, a judgment payable on condition that a further violation of this section occur within a time specified by the court.
7. Notwithstanding any legal or equitable bar, a private enforcer may bring an action to enforce this section solely on behalf of the general public. When a private enforcer does so, nothing about such an action shall act to preclude or bar the private enforcer from bringing a subsequent action on his, her, or its own behalf based upon the same facts.
8. Nothing in this section shall prohibit a private enforcer from bringing an action to enforce this section in small claims court, provided the relief sought is within the jurisdiction of that court.

17.10.8 Severability.

Should any section, subsection, paragraph, sentence, clause or phrase of this Article of the Lakewood Zoning Code or application thereof to any person or circumstance, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this chapter, or its application to any other person or circumstance, and, to this end, the provisions of this chapter are declared to be severable.

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Document #5

This document contains the edits proposed by Lakewood Broadband, Council Member Gutwein, and AT&T.

Definitions from Section 13:

For the purposes of this chapter, the following words, phrases, and terms shall have the meanings set forth herein. Words not defined shall be given their common and ordinary meaning.

Accessory Equipment: any equipment serving or being used in conjunction with a WCF, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures including fences.

Alternative Tower Structure: man-made trees, clock towers, bell steeples, light poles, buildings, traffic signals, and similar alternative design mounting structures that are compatible with the natural setting and surrounding structures, and camouflages or conceals the presence of Antennas or Towers so as to make them architecturally compatible with the surrounding area pursuant to this title, including height limits as set forth in this title. This term also includes any Antenna or Antenna array attached to an Alternative Tower Structure. A stand-alone pole, including a replacement pole, in the Right-of-Way, streetlight, or traffic signal that accommodates Small Cell Facilities is considered an Alternative Tower Structure to the extent it meets the camouflage and concealment standards of this title.

Antenna: 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, all 5g, 4g, 4g LTE, and any higher gigahertz frequency antennas, 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.

Applicant for WCF: any person that submits an application to the City to site, install, construct, collocate, modify and/or operate a Wireless Communications Facility.

Amateur Radio Towers and Antennae: Broadcasting and receiving structures or devices used for personal pleasure or as a hobby..hobby.

Base Station: a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The definition of Base Station does not include or encompass a Tower as defined herein or any equipment associated with a Tower. Base Station does include, without limitation:

1. Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the City under this Chapter and has been reviewed and approved under the applicable zoning or siting process, ~~or under another State or local regulatory review process~~, even if the structure was not built for the sole or primary purpose of providing such support; and

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Commented [ATT1]: The FCC has exclusive authority over technical and operational matters related to the provision of wireless services, including RF interference and emissions exposure limits. Also, it is not clear what calling out 4G and 5G adds to this definition. Those terms stand for 4th generation and 5th generation technologies and do not refer to a specific frequencies. 4G and 5G refer to technical capabilities provided through more advanced levels of technology.

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Commented [ATT3]: This change renders this section inconsistent with 47 C.F.R. §1.6100(b)(7). If approved under a separate process, the facility is considered existing and so long as the other criteria are met, it would be considered an EFR. Recommend harmonizing local law with controlling federal law to avoid potential conflicts with interpretation between state and federal law. Including provisions that conflict with controlling federal law represent a risk to the City for claims related to such conflicts.

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2. Radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks) that, at the time the relevant application is filed with the City under this title, has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

The definition of Base Station does not include any structure that, at the time the relevant application is filed with the City, does not support or house equipment described in paragraphs 1 and 2 above.

Camouflage, Concealment, Or Camouflage Design Techniques: the designing of a WCF to alter its appearance in such a manner as to substantially integrate it into surrounding building designs and/or natural settings to minimize the visual impacts of the facility on the surrounding uses and ensure the facility is compatible with the environment in which it is located. A Wireless Communication Facility utilizes Camouflage Design Techniques when it (i) is integrated as an architectural feature of an existing structure such as a cupola, or (ii) is integrated in an outdoor fixture such as a utility tower, or (iii) uses a design which mimics and is consistent with the nearby natural or architectural features (such as a clock tower) or is incorporated into (including without limitation, being attached to the exterior of such facilities and painted to match it) or replaces existing permitted facilities (including without limitation, stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

Collocation:- (1) mounting or installing a WCF on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing a WCF on that structure. Provided that, for purposes of Eligible Facilities Requests, “Collocation” means the mounting or installation of transmission equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. Co-location shall also include the location of communication facilities with other existing structures, including but not limited to water tanks, light standards, power poles, and other utility facilities and structures.

Director: The person, or that person’s designee, authorized by the City Manager to enforce and interpret this Zoning Ordinance.-

Eligible Facilities Request: any request for modification of an Existing Tower or Base Station that it is not a Substantial Change, or that does not substantially change the physical dimensions of such tower or base station involving 1) collocation of new transmission equipment, 2) removal of transmission equipment, or 3) replacement of transmission equipment.

Eligible Support Structure: any Tower or Base Station as defined in this Section, provided that it is existing at the time the relevant application is filed with the City under this Section.

Evidence of Need: Evidence of Need: A coverage gap that exists when a remote user of those services is unable to either connect with the land-based national telephone network, or to maintain a connection capable of supporting a reasonably uninterrupted communication. When a coverage gap exists customers cannot receive and send signals, and when customers pass through a coverage gap their calls are disconnected.

Existing Tower or Base Station: a constructed Tower or Base Station that was reviewed, approved, and lawfully constructed in accordance with all requirements of applicable law as of

Commented [Secondpas4]: Definition verbatim from US District Court Case, Omni Point Holdings 2008, US District. Lexis 111741, at *3 Evidence of Need An important definition to include as now referenced in several sections of Article’s operation.

Commented [ATT5]: This is not the correct standard that applies to the showing required for an effective prohibition. The 2018 FCC Order that adopts the “materially inhibit” standard applied in California Payphone Ass’n, 12 FCC Rcd 14191 (1997).

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the time it was built; for example, a Tower that exists as a legal, non-conforming use and was lawfully constructed is existing for purposes of this definition.

FCC: the Federal Communications Commission.

Hazardous Substance: any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.

Interference: physical interference and radio frequency interference.

Micro Cell Facility or microcell: a small wireless facility that is no larger than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height, and that has an exterior Antenna, if any, that is no more than eleven (11) inches in length.

Monopole: a single, freestanding pole-type structure supporting one or more Antennas.

Over the Air Receiving Device (OTARD): an Antenna used to receive ~~video programming from direct broadcast satellites~~ direct broadcast satellite service, including home satellites that are 1M or less in diameter, broadband radio services and television broadcast stations, but shall not include Antennas used for AM/FM radio, amateur (“ham”) radio, CB radio, Digital Audio Radio Services ~~or Antennas used as part of a hub to relay signals among multiple locations.~~

Owner means a person with a legal or equitable interest in ownership of real or personal property.

Permit means a permit issued and described in accordance with Laws, which is used to regulate, monitor, and control the improvement, construction, or excavation activities, or other work or activity, occurring upon or otherwise affecting Licensor’s ROW, including ROW use, building, and electrical permits.

Physical Interference means where equipment, vegetation, or a structure causes reduced use of another’s prior mounted equipment, or an obstruction in a necessary line-of-sign path.

Pole-Mounted Small Cell Facility: a Small Cell Facility with Antenna that are mounted and supported on an Alternative Tower Structure, which includes a Replacement Pole.

Public Right-of-Way (ROW): any public street, way, alley, sidewalk, median, parkway, or boulevard that is dedicated to public use.

Radio Antenna, Amateur: A noncommercial device that is used for transmitting and receiving electro-magnetic waves.

Radio Frequency Emissions ~~Letter~~ Radio Frequency Radiation (RFR) Study: a report ~~letter~~ from the Applicant providing emissions measurements detailed within this Article and certifying all WCFs that are the subject of the application are in compliance shall ~~comply~~ with federal standards for radio frequency emissions.

Radio Frequency Interference means the emission or conduction of radio frequency energy (or electronic noise) produced by electrical and electronic devices at levels that interfere with the operation of adjacent or nearby equipment.

Radio Tower, Amateur: A structure that supports an antenna.

READILY APPARENT. For purposes of determining whether a WCF is readily apparent, the phrase means that the facility, will be easily recognizable as a WCF in the discretion of the Director, viewing the facility as a whole and in the context of any adjacent improvements and

Commented [GAD6]: While this isn't a term used in the ROW agreement, it is used in the code, and we do generally provide a definition in our MLA.

Commented [GAD7]: From MLA. Applies to ROW agreement, and new section on interference in Code.

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Commented [CC8]: Strike last part of this sentence. It is exempting ("shall not include") relay hubs (receive AND transmitting devices). This may permit broadcasting mini towers on neighborhood homes. If you do not strike, you may be allowing mini antennas for a distributed antenna system via satellite. I.e, Satellite providers could offer customer discounts for using residential satellites as relay devices. Creates a lack of oversight. Can be addressed again at a future date.

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Commented [GAD10]: From MLA, applies to new section on interference.

Commented [ATT11]: This standard is subjective and hard to define. The FCC Order requires that aesthetic requirements are preempted to the extent they are not (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance. FCC Order at ¶86.

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landscaping from publicly accessible locations when considering the character, scale, and height of nearby and surrounding natural or architectural features. Methods of design and construction that may assist in reducing the visibility of a facility and reaching a conclusion that a facility is not readily apparent include the use of color mimicking surrounding structures and landscaping, minimizing facility size to the greatest extent feasible, integrating the facility into any adjacent or attached improvements, and positioning the facility in a manner that limits the degree to which the facility projects away from any adjacent structures or landscaping. Due to differences in site characteristics, a determination that a particular WCF will not be readily apparent at one location shall not establish a precedent for the same determination for a facility of the same or similar design or construction at a different location.

Replacement Pole: an Alternative Tower Structure that is a newly constructed and permitted traffic signal, utility pole, street light, flagpole, electric distribution, or street light pole or other similar structure of proportions and of equal height or such other height that would not constitute a Substantial Change to a pre-existing pole or structure in order to support a WCF or Small Cell Facility or Micro Cell Facility or to accommodate Collocation and replaces a pre-existing pole or structure.

Satellite Dish Antenna: A parabolic antenna intended to receive signals from orbiting satellites and other sources. Non-commercial dish antennas are defined as being less than four meters in diameter, while commercial dish antennas are usually those larger than four meters and typically used by broadcasting stations.

Setback: The minimum distance any building or structure must be separated from a specified point.

Sign: Any structure, which requires a permanent or temporary location, that has a visual display visible from a public right-of-way and is designed to identify, announce, direct or inform.

Signal Non-Interference Letter: a letter from the Applicant certifying all WCFs that are the subject of the application shall be designed, sited, and operated in accordance with applicable federal regulations addressing radio frequency interference.

Site for Towers (other than Towers in the Right-of-Way and Eligible Support Structures): the current boundaries of the leased or owned property surrounding the Tower or Eligible Support Structure and any access or utility easements currently related to the Site. A Site, for other Alternative Tower Structures, Base Stations, Micro Cell Facilities, and Small Cell Facilities in the Right-of-Way, is further restricted to that area comprising the base of the structure and to other related Accessory Equipment already deployed on the ground.

Small Cell Facility: a Wireless Communication Facility where each Antenna is located inside an enclosure of no more than three cubic feet in volume, or, in the case of an Antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated and accessory equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. Small cells may be attached to Alternate Tower Structures, Replacement Poles, and Base Stations. The definition of a Small Cell Facility shall also include a Micro Cell or Micro Cell Facility, as well as equipment for densifying technology.

Street: A public or private thoroughfare for vehicular traffic other than an alley or driveway.

Commented [ATT12]: Definition of OTARD above states that home satellite antennas are 1m or less in diameter.

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Substantial Change for Eligible Facilities Request: 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:

- (A) For Towers, other than Alternative Tower Structures or Towers in the Right-of-Way, it increases the height of the Tower by more than 10 percent (10%) or by the height of one (1) additional Antenna array, with separation from the nearest existing Antenna not to exceed twenty feet, whichever is greater lesser; for other Eligible Support Structures, it increases the height of the structure by more than ten percent (10%) or more than ten (10) feet, whichever is lessergreater;
- (B) For Towers, other than Towers in the Right-of-Way, it involves adding an appurtenance to the body of the Tower that would protrude from the Tower more than ten (twenty (2010) feet), or more than the width of the Tower Structure at the level of the appurtenance, whichever is greater; for Eligible Support Structures, it involves adding an appurtenance to the body of the structure that would protrude from the side of the structure by more than six (6) feet;
- (C) 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;
- (D) For Towers in the Right-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 ten percent (10%) larger in height or overall volume than any other existing, individual ground cabinet associated with the structure;
- (E) For any Eligible Support Structure, it entails any excavation or deployment outside the current Site;
- (F) For any Eligible Support Structure, it would defeat the concealment elements of the Eligible Support Structure. ~~For the purposes of this subsection (vi), a change that would undermine the concealment elements of this structure will be considered to defeat the concealment elements of the structure;~~ or
- (G) For purposes of determining whether a Substantial Change exists, changes in height are 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 are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012;

Support Structure: a structure designed to support Small Cell Wireless Facilities including, but not limited to, Monopoles, Alternative Tower Structures, Replacement Poles, and other freestanding self-supporting pole structures.)

Toll and Tolling: to delay, suspend, or hold off on the imposition of a deadline, statute of limitations, or time limit.

Tower: any structure built for the sole or primary purpose of supporting one or more FCC-licensed or authorized Antennas and their associated facilities, including structures that are

Commented [Secondpas13]: "lesser" since we are qualifying the minimal change to constitute a substantial change.

Commented [ATT14]: Changing this to "lesser" is inconsistent with 47 C.F.R. §1.6100(b)(7) which provides that a substantial change is the greater of 10% or 20 feet.

Commented [ATT15]: Same comment as above.

Commented [Secondpas16]: Note this change to 10ft instead of 20. 20ft is excessive unless that need can be demonstrated.

Commented [ATT17]: This is inconsistent with the Section 6409 and 47 C.F.R. §1.6100(b)(7) which allows for a 20 foot protrusion.

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constructed for wireless communications services including, but not limited to private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. The term includes self-supporting lattice towers, guyed towers or Monopole towers, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, Alternative Tower Structures and the like.

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

Wireless Communications Equipment Shelter: An unattended structure such as a small building or cabinet(s) used to house equipment for a wireless communications facility associated with either a freestanding wireless communications facility or a structure or building mounted wireless communications facility.

Wireless Communications Facility or WCF: a facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF includes an Antenna or Antennas, Base Stations, support equipment, Alternative Tower Structures, Small Cell Facilities, and Towers. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand held radios/telephones and their associated transmitting Antennas, nor does it include other facilities specifically excluded from the coverage of this title.

Wireless Communications Provider: A public or private company providing personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services.

Wireless Communications Site: Any use of property for antennae, equipment, and equipment shelter(s) employed in the reception, switching, and/or transmission of wireless telecommunication services including, but not limited to, paging, enhanced specialized mobile radio, personal communication services, microwave link antenna, cellular telephone, and other related technologies.

ARTICLE 10: Wireless Services and Communications 10-1

17.10.1: General 10-1

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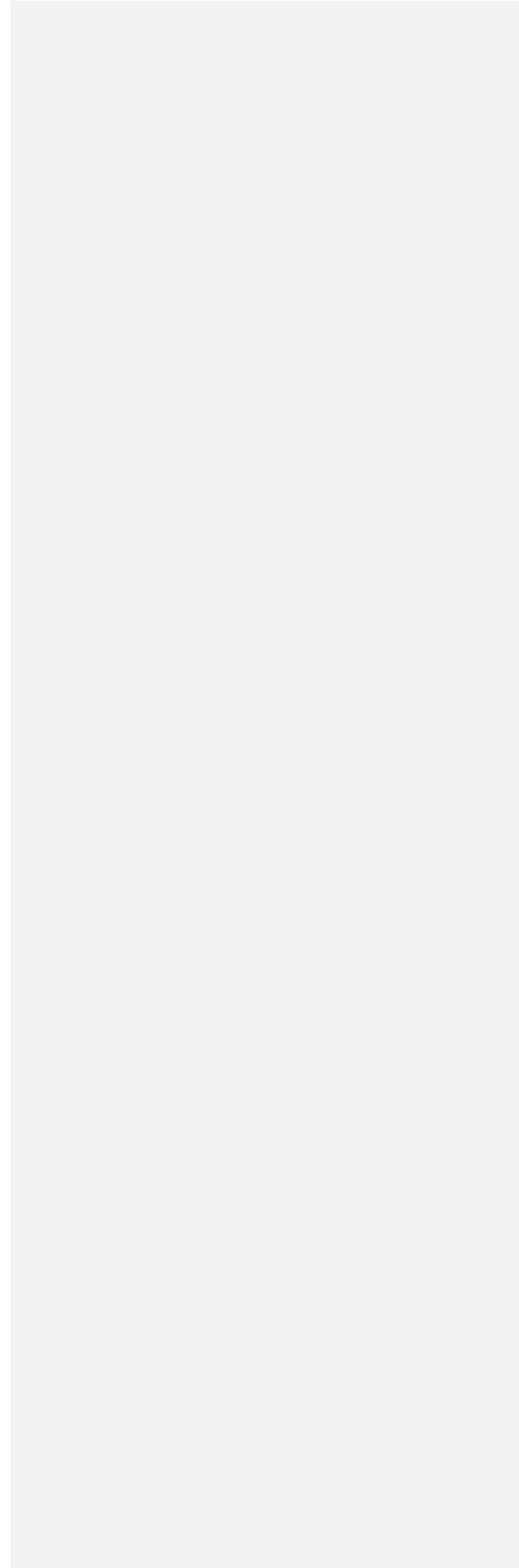
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ARTICLE 10: WIRELESS SERVICES AND COMMUNICATIONS

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17.10.1: General

17.10.1.1: Purpose and Intent

This Article is intended to ensure that residents, public safety operations and businesses in the City have reliable access to personal wireless services and state of the art communications services in a way that reasonably preserves the aesthetic character and value of the community, and complies with Federal, ~~and State, and local laws,~~ including but not limited to the National Environmental Policy Act (NEPA), the National Building Act, and the Americans with Disabilities Act (ADA).

~~It is the City's intent to:~~

The City Council finds that these regulations are necessary to:

A. Provide for the managed development and installation, maintenance modification, and removal of wireless communications infrastructure in the City with the fewest number of wireless communications facilities (WCFs) to complete a network without unreasonably discriminating against wireless communications providers of functionally equivalent services, including all of those who install, maintain, operate, and remove WCFs;

B. Minimize adverse visual effects of WCFs through thoughtful design, ~~and~~ siting, and installation, including but not limited to camouflage design techniques, appropriate and effective screening, and equipment undergrounding whenever appropriate;

C. Encourage the location of Towers and Wireless Communications Facilities on a building, or the joint use of new and existing ground mounted facility tower sites as a primary option so to ~~in a manner that~~ minimizes the total number of Towers needed throughout the community;

D. Require the collocation of WCFs wherever reasonably feasible;

E. ~~Encourage~~ Require owners and users of WCFs to locate them, to the extent possible, in areas where the adverse impact to the community, including real estate, is minimized;

F. Enhance ~~the ability of~~ wireless communications ~~service~~ technology providers to provide ~~such~~ services to the community quickly, effectively, ~~and~~ efficiently, and safely;

G. Effectively manage WCFs in the Public Right of Way;

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H. Manage amateur radio facilities and over-the-air devices in the City;

A. Ensure the City has sufficient wireless infrastructure to support public safety and emergency response communications throughout the City;

B. Ensure access to reliable personal wireless services throughout all areas of the City and in no event prohibit or have the effect of prohibiting the provision of personal wireless services;

C. Encourage the use of existing structures for the siting of facilities;

D. Encourage the location of new freestanding support structures in areas where any potential adverse impacts on the community will be minimized;

E. Minimize the potential adverse effects of wireless service facilities through the implementation of reasonable design, landscaping and construction practices; and

F. Conform to federal and state laws which exempt certain facilities, receiving dishes and antennas from local regulations.

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17.10.1.2: Applicability

A. The standards in this Article shall control the design, location, alteration, installation apply to all Eligible Facilities Requests and maintenance WCF applications for Base Stations, Alternative Tower Structures, Towers, Micro Cells, and Small Cell Facilities as defined in Section 17.13.2 and further addressed herein.

B. The Requirements set forth in this Article shall not apply to:

1. Amateur radio Antennas that are owned and operated by a federally licensed amateur radio station operator or are exclusively receive only Antennas, provided that the requirements that the height be no more than the distance from the base of all wireless service infrastructure in all zone districts. No provision the Antenna to the property lines is met.

1-2. Pre-existing WCFs. Any WCF for which a permit has been properly issued prior to the effective date of the latest revision of this Article of the City of Lakewood Zoning Code shall be required to become compliant under this Article within 5 years, or at a point in time as negotiated by the City and facilities owner.

~~Pre-existing WCFs. Any WCF for which a permit has been properly issued prior to the effective date of Ordinance # 20190-2020-1 shall not be required to meet the requirements of this Article shall apply to: Chapter, other than the requirements of Section 17.10.3. Changes and additions to pre-existing WCFs (including trading out of Antennas for an equal number of Antennas) shall meet~~

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~~applicable requirements of Section 17.10.3. Notwithstanding the foregoing, any modifications qualifying as an Eligible Facilities Requests shall be evaluated under this Section.~~

3. ~~Miscellaneous Antennas. Antennas used for reception of television, multi-channel video programming and/or radio such as Over-the-Air Receiving Device (OTARD) Antennas, television broadcast band Antennas, satellite earth station antennae and broadcast radio Antennas, provided that any requirements related to Accessory uses contained in this Code and the requirement that the height be no more than the distance from the base to the property line are met. The Director or his or her designee has the authority to approve modifications to the height restriction related to OTARD Antennas and OTARD antenna structures, if in the reasonable discretion of the City, modifications are necessary to comply with federal law.~~

4. ~~A temporary WCF installed upon the declaration of a state of emergency by the federal, state, or local government, and upon or a written determination that such temporary WCF is specifically serving an emergent need of the general health, safety, and welfare of residents by need of the City, subject to approval by the City Council. Such WCF shall be subject to this Article immediately upon lifting the respective state of emergency.~~

~~or reasonable ability to obtain such written determination within 72 hours.~~

5. ~~A temporary WCF installed for the purpose of providing sufficient coverage for a special event, subject to administrative approval by the City.~~

~~A. The siting of Distributed Antenna Systems (DAS) or wireless facilities located within and intended to provide wireless coverage within a structure.~~

~~B. Any dish antenna less than 40 inches in diameter located in a residential zone district; or~~

~~C. Any dish antenna less than 80 inches in diameter located in any other zone district.~~

17.10.2: Wireless Facilities – By Zone District

Table 17.4.1 identifies where the different types of wireless facilities are permitted as primary or accessory uses, by right or with a special use permit, and where these uses are prohibited in each zone district within the City of Lakewood.

17.10.3: Wireless Facility Operational Standards

17.10.3.1: Wireless Stealth Facilities

A. Review Requirements:

~~The installation of new wireless stealth facilities on any non-single-family or two-family structure may be allowed in any zone district if reviewed and approved in accordance with the Review of Supplemental Standards procedures identified in Article 2. The Director shall exercise discretion in applying the standards outlined for all new wireless~~

Commented [CC21]: Strike, understand the clause here but the community wants all WCFs to be up to date and compliant with City standards and best practices at some point in time. Obviously as can feasibly be done by stakeholders. This timeline can be flexible and negotiated as referenced above.

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Commented [Secondpas23]: Requiring a temp site to be approved by City Council could delay the ability to provide or restore service during an emergency.

Emergency needs to be narrowly defined. Only allowing a temporary WCF to bypass the permitting process during the state of emergency. The WCF should be required to follow the article standards after the emergency is over. The setting up of the temporary WCF should have oversight from the City Council to preserve a check and balance. The state of emergency should not be a way to bypass laws.

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stealth facilities, where such standards are determined to be necessary to minimize the potential adverse effects of wireless service facilities. At a minimum the following standards shall apply:

1. The dimensions of the stealth facility must reasonably approximate the dimensions of the object they are being disguised as, and
2. The location of the stealth facility must be in concert with its surroundings.

17.10.3.2: New Wireless Facilities on Existing Structures

A. Review Requirements:

The installation of new wireless facilities on

A. Federal Requirements. All WCFs shall meet the current standards and regulations of the Federal Aviation Administration (FAA), the FCC and any other agency of the federal government with the authority to regulate WCFs. If such standards and regulations are changed, then the owners of the WCF shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency. Unless preempted by federal law, failure to meet such revised standards and regulations within 30 days of the City's determination of such failure shall constitute grounds for the removal of the WCF by the City or owner at the WCF owner's expense.

B. Permission to Use Public Right-of-Way or ~~City-owned Public property.~~ Prior to WCFs being sited in the ROW, the Applicant shall have an executed license agreement with the City, granting a non-exclusive license to use the Public Right-of-Way. Attachment of WCFs on an existing or replacement structures-traffic signal, street light pole, or similar structure shall require written evidence of a license, or other legal right or approval, to use such structure by its owner, and Site specific approval pursuant to 17.10.4. ~~The Applicant shall remain the owner of, and solely responsible for any WCF installed in the ROW. Prior to, or concurrently with, seeking land use approval for a WCF on Public Property, the Applicant shall execute a lease agreement with the City.~~

C. Operation and Maintenance. To ensure the structural integrity of WCFs, the owner of a WCF shall ensure that it is maintained in compliance with the standards contained in applicable local building and safety codes. If upon inspection, the City concludes that a WCF fails to comply with such codes and constitutes a danger to persons or property, then, upon written notice being provided to the owner of the WCF, the owner shall have 30 days from the date of notice to bring such WCF into compliance by providing to the City an independent, third-party engineering certification paid for by the Applicant, that such Towers meet all building and safety codes of the City of Lakewood. The Applicant shall fully cooperate in arranging access for the inspection and may participate in the inspection. Upon good cause shown by the owner and meeting reasonable safety considerations, the ~~City's Chief Building Official~~ Director may extend such compliance period not to exceed 90 days from the date of said notice. If the owner fails to bring such WCF into compliance within said time period, the City may be allowed remove such WCF at the owner's expense.

Commented [Secondpas26]: Assume this only applies to city public properties?

Commented [ATT27]: The applicant may not remain the owner of the facility in certain instances.

Commented [CC28]: There is no definition of City Chief Building official in ordinance and all other administrative approvals go through Director (see definitions)

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- a. Each wireless communication facility which contains trees, foliage or other landscaping elements, whether or not used as screening, shall be maintained in good condition at all times in accordance with the approved landscape plan, and the owner or operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping as promptly as reasonably possible. Amendments or modifications to the landscape plan shall be submitted for approval to the Director.
- b. Certification must be provided upon request by the City that the proposed facility will at all times comply with all applicable requirements and standards pertaining to electromagnetic and/or radio frequency radiation.

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D. Emergency. In the event of an emergency or to protect the public health or safety, prior to the City accessing or performing any work on a facility on which a WCF Owner has installed Equipment, City may require WCF Owner to deactivate such Equipment if any of City's employees or agents must move closer to the Equipment than the FCC's recommended minimum distance. In such case, City will contact WCF Owner to request immediate deactivation.

Commented [ksf30]: The "Emergency" and "Non-Interference" sections would ordinarily go in the MLA or ROW use agreement, and are included here because there are not in the current agreements that Lakewood is using.

E. Non-Interference. The following provisions shall apply to ensure and/or avoid interference (both physical interference and Radio Frequency Interference) resulting from Licensee's installation, operation and/or maintenance of its Equipment:

- a. Radio Frequency Interference. All WCF Owners shall ensure that the Equipment will not cause Radio Frequency Interference with Wireless Communication Facilities or devices, cable television, broadcast radio or television systems, satellite broadcast systems, or City traffic, public safety or other communications signal equipment existing at the time of installation of the Equipment.
- b. Existing Uses. WCF Owners shall not interfere in any manner with the existing uses of City property including Rights-of-Way, and including sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, streetlight fixtures, cable television, and other telecommunications, utility, and municipal property without the express written approval of the Owner(s) of the affected property or properties.
- c. City Communications. WCF Owners shall not interfere in any manner with current or future City or other governmental public safety communication.
- d. Remedies. If Interference occurs and continues for a period in excess of 24 hours following notice to the interfering party via telephone, the City may require the interfering party to reduce power or cease operations of the interfering equipment until the Interference is cured.

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F. Relocation, Abandonment and Removal. After the WCF is constructed, if a WCF has not been in use for a period of three months, the owner of the WCF shall notify the City of the non-use and shall indicate whether re-use is expected within the ensuing three months. Any WCF that is contracted and is not operated for a continuous period of six months shall be considered abandoned. The City, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF shall remove the same within 60 days of receipt of written notice from the City. If such WCF is not removed within said 60 days, the City may remove it at the owner's expense and any zone district if approved permits for the WCF shall be deemed to have expired. For any public project, a WCF may be required to relocate at WCF Owner's expense.

Commented [ATT31]: 30 days may not be enough time to remove the facility, especially if demo permits are required or due to inclement weather or any other unforeseen factors that might cause a delay.

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G. Hazardous Materials. No Hazardous materials shall be permitted in association with WCFs, except those necessary for the operation of the WCF and only in accordance with all applicable laws governing such materials.

H. Collocation. No WCF Owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility, sign, structure, or location. Upon request by the City, the owner or operator shall provide evidence explaining why Collocation is not possible at a particular facility or site.

I. Site Safety from Unauthorized Access. All wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically, all antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

J. Authority to Inspect Facilities. In order to verify that the holder of a special use permit or other approval for wireless telecommunications facilities and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, and building codes, laws, ordinances and regulations and other applicable requirements, the City may designate persons to conduct an inspection on its behalf of all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site.

K. The owner or operator of any wireless communications facility shall maintain with the City, at all times, current contact and site information. Applicant shall notify City of any changes to the information submitted within thirty days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:

- a. Identity, including name, address, and telephone number, and legal status of the owner of the facility including official identification numbers and FCC certification, and, if different from the owner, the identity and legal status of the person or entity responsible for operating the facility;
- b. Name, address and telephone number of a local contact person for emergencies;
- c. Type of service provided;
- d. Identification signs, including emergency phone numbers of the utility provider, shall be posted at all communication facility sites.

L. Each owner or operator of a wireless communications facility shall routinely and regularly, no less than annually, inspect each site to ensure compliance with the standards as set forth in this section.

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17.10.4 Review Procedures and Requirements

A. Permit Required.

No new WCF shall be constructed and no Collocation or modification to any WCF may occur except after a written request from an Applicant, reviewed and approved by the City in accordance with ~~the~~ this Chapter. All WCFs ~~S~~ except Eligible Facilities Requests which are reviewed under subsection (a)(3) of this Section, shall be reviewed pursuant to the following procedures. All WCF permits shall expire and be of no further force and effect 180 days following the date of approval unless, prior to the date of expiration: (1) Construction has been diligently pursued towards completion of the project, or (2) 180-day extension of the permit has been authorized by the director upon a written request by the Applicant. An extension may be granted if a review of the permit shows that no major changes in the City's development or zoning regulations or in the development pattern of the surrounding properties has occurred, as determined by the director. If a WCF permit expires, no further development of the facility may occur until a new permit application is submitted, reviewed and approved in accordance with this Code, subject to all application and processing fees.

B. Bond Required.

Prior to issuance of any permit, the Applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the City a bond, or other form of security acceptable to the City Attorney as to type of security, and the form and manner of execution, in the amount as determined by the Department of Public Works for construction of a tower facility or a co-location on an existing tower or other structure, and with such sureties as are deemed sufficient by the City Attorney to assure the faithful performance of the terms and conditions of this chapter and conditions of any special use permit, including payment of costs of future demolition of an abandoned tower or other facilities. The full amount of the bond or security shall remain in full force and effect while the facility is in existence and until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit or other approval.

C. Insurance Required.

1. ~~Except as provided in or as supplemented by any franchise agreement a~~ Right of Way Agreement, Master License Agreement, ~~or Franchise Agreement license a~~ telecommunications carrier shall secure and maintain public liability, property insurance, and umbrella coverage in at least the following amounts:
 - a. Public liability: \$2,000,000 per/person/per occurrence
 - b. Property damage: \$2,000,000 per any one claim
 - c. Umbrella liability: \$5,000,000
2. The public and personal liability and property damage insurance policy shall specifically include the City, its employees, agents, and members of the City Council as additional insureds.
3. The public and personal liability and property damage insurance policies shall be issued by an agent or representative of an insurance company licensed to do

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business in the State and which has one of the three highest or best ratings from the Alfred M. Best Company.

4. The public liability and property damage insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least 30 days written notice in advance of the cancellation of the policy.
5. Renewal of replacement policies or certificates shall be delivered to the City as least 15 days before expiration of the insurance which such policies are to renew or be replaced.
6. Before a telecommunications system provides telecommunications service to subscribers, the telecommunications carrier shall deliver the policies or certificates representing the insurance to the City as required herein.
7. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.
8. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the telecommunications license or franchise. The policy may not be canceled nor the intention not to renew be stated until 90 days receipt by the City, by registered mail, or a written notice addressed to the City Engineer of such intent to cancel or not to renew. Within 60 days after receipt by the City of said notice, the grantee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this section.
9. Grantee shall provide the City with evidence of insurance for each of the coverage's described above at least 10 days prior to construction and/or occupancy of any site subject to this chapter.

D. Emissions Requirements.

1. Per Submittal Requirements within this Article, any new facility application or request involving a substantial change to an existing facility will be required to provide a statement of Radio Frequency Radiation Study (RFR) confirming current assessed Radio Frequency (RF) exposure limits if such new WCF or substantial change to an existing WCF increases Radio Frequency from its own facility, or increases Radio Frequency in combination with other facilities.
2. The City reserves the right to require an annual Radio Frequency report to be provided to the Department of Public Works upon request for any facilities subject to the National Environmental Policy Act (NEPA).
~~The City and/or its assigned agents reserve the right to measure, at random, the radio frequency emissions of any facility and to review or revoke any permit under this Article if a wireless cell facility demonstrably increases signal output above the Uncontrolled/General Population Maximum Permissible Exposure (MPE) limits imposed by the FCC (47 CFR Sec. 2.1).~~
3. Any operational or technological changes to an approved WCF that affects the facility's radio frequency emissions shall be reported promptly to the City.

E. Review Procedures for certain all WCFs, including Base Stations, Alternative Tower Structures, Small Cell Facilities, and Alternative Tower Structures within Public Rights-of-Way. Applications for these WCF facilities shall be reviewed by the Public Works

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Commented [ATT38]: The City's authority per the Telecom Act of 1996 is limited to the placement, construction, and modification of wireless services. The regulation of RF emissions is the exclusive authority of the FCC.

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Department for conformance to this Section and using the Design Review procedures set forth in Section 17.10.5 For WCFs in the Right-of-Way that are found to have a significant visual impact (i.e. proximity to historical sites), be incompatible with the structure of surrounding area, or not meet the intent of these provisions, the City may refer the application to Planning Commission for a Special Use Permit of Supplemental Standards Determination.

F. –Review Procedures for WCFs, including Towers. Towers, other than those defined or excepted in (E) above, must apply for Special Use Permit Review approval. These WCFs shall be reviewed for conformance using the procedures set forth in Section 17.10.5. All applications for Towers shall demonstrate that other alternative design options, such as using Base Stations or Alternative Tower Structures, are not viable options as determined by the City.

G. Review Procedures for Eligible Facilities Requests.

1. Eligible Facilities Requests shall be considered a permitted use, subject to administrative review. The City shall prepare, and from time to time revise and make publicly available, an application form which shall require submittal of information necessary for the City to consider whether an application is an Eligible Facilities Request. Such required information shall include, without limitation, whether the project:

- a. Constitutes a Substantial Change;
- b. Violates a generally applicable law, regulation, or other rule codifying objective standards reasonably related to public health and safety.

i. Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the Director shall review such application to determine whether the application so qualifies for an Eligible Facilities Request. Timeframe for Review. Subject to the Tolling provisions of subparagraph d. below, within 60 days of the date on which an Applicant submits an application seeking approval under this Section, the City shall approve the application unless it determines that the application is not covered by this Subsection, or otherwise in non-conformance with applicable codes.

2. Review Procedures for certain WCFs, including Towers. Towers, other than those defined or excepted in (1) above, must apply for Special Use Permit Review approval. These WCFs shall be reviewed for conformance using the procedures set forth in Section 17.10.5. All applications for Towers shall demonstrate that other alternative design options, such as using Base Stations or Alternative Tower Structures, are not viable options as determined by the City.

Review Procedures for Eligible Facilities Requests: Eligible Facilities Requests shall be considered a permitted use, subject to administrative review. The City shall prepare, and from time to time revise and make publicly available, an application form which shall require submittal of information

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Lakewood Zoning Ordinance – Adopted January 26, 2015

~~necessary for the City to consider whether an application is an Eligible Facilities Request. Such required information shall include, without limitation, whether the project:~~

~~Constitutes a Substantial Change:~~

~~b. Violates a generally applicable law, regulation, or other rule codifying objective standards reasonably related to public health and safety.~~

~~The application may not require the Applicant to demonstrate a need or business case for the proposed modification or Collocation.~~

~~Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the Director shall review such application to determine whether the application so qualifies for an Eligible Facilities Request.~~

~~Timeframe for Review. Subject to the Tolling provisions of subparagraph d. below, within 60 days of the date on which an Applicant submits an application seeking approval under this Section, the City shall approve the application unless it determines that the application is not covered by this Subsection, or otherwise in non-conformance with applicable codes.~~

~~3. Tolling of the Timeframe for Review. The 60-day review period begins to run when the application is filed, and may be Tolloed only by mutual agreement of the City and the Applicant, or in cases where the Director determines that the application is incomplete:~~

- ~~1. To toll the timeframe for incompleteness, the City must provide written notice to the Applicant within 30 business days of receipt of the application, specifically delineating all missing documents or information required in the application; such delineated information is limited to documents or information meeting the standard under paragraph (a)(i) above.~~
- ~~2. The timeframe for review begins running again the following business day after the Applicant makes a supplemental written submission in response to the City's notice of incompleteness;~~
- ~~3. Following a supplemental submission, the City will notify the Applicant within 10 business days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is Tolloed in the case of second or subsequent notices pursuant to the procedures identified in paragraph (d)(i). In the case of a second or subsequent notice of incompleteness, the City may not specify missing information or documents that were not delineated in the original notice of incompleteness.~~

~~4. Failure to Act. The City shall make every effort to review any request seeking approval for an Eligible Facilities Request within the herein applicable timeline unless, working with the Applicant, a new timeframe is established. In the event the City fails to act on a request seeking approval for an Eligible Facilities Request under this Section within the timeframe for review, or the timeframe agreed upon with the Applicant (accounting for any Tolling), the request shall be~~

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deemed granted. The request becomes effective when the Applicant notifies the City in writing after the review period, including allowed extensions, has expired (accounting for any Tolling) that the application has been deemed granted.

—Interaction with Telecommunications Act Section 332(c)(7). If the City determines that the Applicant’s request is not an Eligible Facilities Request as delineated in this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC’s Shot Clock order, will begin to run from the issuance of the City’s decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the Applicant to evaluate the application under Section 332(c)(7) reviews.

5.

interaction with Telecommunications Act Section 332(c)(7). If the City determines that the Applicant’s request is not an Eligible Facilities Request as delineated in this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC’s Shot Clock order, will begin to run from the issuance of the City’s decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the Applicant to evaluate the application under Section 332(c)(7) reviews. To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 30 business days of receipt of the application, specifically delineating all missing documents or information required in the application; such delineated information is limited to documents or information meeting the standard under paragraph (c)(i) above.

—The timeframe for review begins running again the following business day after the applicant makes a supplemental written submission in response to the City’s notice of incompleteness;

Following a supplemental submission, the City will notify the Applicant within 40 business days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is Tolloed in the case of second or subsequent notices pursuant to the procedures identified in paragraph (d)(i). In the case of a second or subsequent notice of incompleteness, the City may not specify missing information or documents that were not delineated in the original notice of incompleteness.

Failure to Act. The City shall make every effort to review any request seeking approval for an Eligible Facilities Request within the herein applicable timeline unless, working with the Applicant, a new timeframe is established. In the event the City fails to act on a request seeking approval for an Eligible Facilities Request under this Section within the timeframe for review, or the timeframe agreed upon with the Applicant (accounting for any Tolling), the request shall be deemed granted. The request becomes effective when the Applicant notifies the City in writing after the review period, including allowed extensions, has expired (accounting for any Tolling) that the application has been deemed granted.

—Interaction with Telecommunications Act Section 332(c)(7). If the City determines that the Applicant’s request is not an Eligible Facilities Request as delineated in this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the

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~~FCC's Shot-Clock order, will begin to run from the issuance of the City's decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the Applicant to evaluate the application under Section 332(c)(7) reviews.~~

H. Review Procedures for Small Cell Facilities in the Right-of-Way.

a. Small Cell Facilities in the Right-of-Way shall be considered a permitted use, subject to administrative review as set forth in Subsection A.1.

b. The City shall prepare, and from time to time revise, and make publicly available, an application form which shall require submittal of information necessary for the City to consider whether a project is eligible as a Small Cell Facility in the Right-of-Way, meeting certain criteria.

~~The application shall not require the Applicant to demonstrate a need or business case for any proposed modification or Collocation.~~

c. Upon receipt of an application for a Small Cell Facility in the Right-of-Way pursuant to this Section, the Public Works Department shall review such application to determine whether the application is complete.

d. Timeframe for Review. Within 90 calendar days of the date on which an Applicant submits an application seeking approval under this Section, the City shall take action on the application unless it determines that the application is not covered by this Subsection, or otherwise in non-conformance with applicable code.

I. Submittal Requirements for all new WCFs, including Small Cell Facilities.

1. In addition to submittal requirements of Chapter 17.2, the following supplemental items are required for all WCF applications:

a. ~~Project Description Summary.~~ A brief project description for the proposed WCF, to include: 1) Number and sizes of antennas and approximate orientation, 2) copy of the respective FCC license, 3) heights of proposed facilities, 4) equipment enclosure type and size, 5) materials and colors of antennas and any equipment enclosure, 6) description of towers or other structures necessary to support the proposed facilities, 7) description of lighting, signage and landscaping proposed, and 8) other technical information regarding transmission equipment such as maximum power output and frequencies.

b. ~~Signal Non-Interference Letter.~~ -A letter from the Applicant certifying all WCFs that are the subject of the application shall be designed, sited, and operated in accordance with applicable federal regulations addressing radio frequency interference;

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~~c. Radio Frequency Emissions Letter Radio Frequency Radiation (RFR) Study~~

~~For the sole purpose of verifying compliance with the FCC radio frequency emission standards, an emissions report shall be submitted which measures the predicted and actual levels of electromagnetic field radiation emitted by the proposed facility operating alone and in combination with radiation emitted from other existing or approved facilities that can be detected at the proposed facility site. Radiation measurements shall be based on all proposed (applications filed and pending), approved, and existing facilities operating at maximum power densities and frequencies within a minimum 1300 ft radius of the proposed facility. The RFR Study shall identify the following:~~

- ~~1. the existing and predicted electromagnetic field radiation in table form, specifically delineating both the General Population Exposure and Occupational Exposure~~
- ~~2. any measures required to comply with the FCC standards for predicted exposure levels~~
- ~~3. a summary of the conclusions of the report, and~~
- ~~4. details for any signage, barriers or similar mitigation that is recommended or required.~~

~~The RFR Study shall be prepared by a qualified third-party expert. If mitigation is required by FCC radio frequency emission standards, the details for signage, barriers or other physical improvements shall also be included on the project plans prepared for the facility. It is the responsibility of the Applicant to determine the location and power of existing facilities;~~

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~~Environmental Assessment. Pursuant to NEPA, any application wishing to construct a facility that uses an FCC license must submit an environmental assessment to the FCC, or alternately, certify to the City by written statement that such facility is categorically excluded per 47 C.F.R. § 1.1307. An environmental assessment is required if the proposed construction:~~

- ~~— Will be in a wilderness area or wildlife preserve (generally on federal land);~~
- ~~— Might affect threatened and endangered species or their habitat (Endangered Species Act);~~
- ~~— Might affect properties included or eligible for inclusion in the National Register of Historic Places or Indian religious and cultural sites;~~
- ~~— Will be in a flood plain;~~
- ~~— Will involve "significant changes in surface features" during construction (e.g., wetlands, water diversion, deforestation);~~
- ~~— Will be taller than 450 feet and so might affect migratory birds;~~
- ~~— Involves high intensity lighting in a residential area; or~~
- ~~— Would cause radio frequency emission exposure in excess of FCC-established limits.~~

Commented [ATT44]: The NEPA process is a federal review process that is independent from a local siting review. This type of regulation would also be preempted by the 2018 FCC Order to the extent it is unreasonable (as it duplicates a separate federal process) and represents the application of review criteria more burdensome than those applied to other types of infrastructure deployment. 2018 FCC Order, 18-133, ¶86.

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~~Any Applicant seeking to build a WCF that falls into any category requiring an environmental assessment and seeking not to submit an environmental assessment must obtain and provide a “findings of no significant impact” before site construction. Building without adhering to the legal requirements of 47 CFR 1.1301-1.1319 can constitute a violation of FCC rules and may subject the constructing party to potential enforcement action;~~

- d. Title Report. For any wireless facility proposed to be installed on any private property, not owned or controlled by the City, the Applicant must submit a title report, issued within 30 days prior to the date the Applicant filed the application;
- e. Peer Review. Prior to accepting an application as complete, the city may at its sole discretion require a peer review of the project be conducted by an independent qualified RF engineering consultant, as deemed necessary to confirm compliance with FCC radio frequency emission standards. The consultant shall be selected by the City and paid for by the project Applicant. If peer review is required, the application shall include sufficient information for the city-retained consultant to conduct such review for compliance with FCC radio frequency emission standards;
- f. Photo simulations. The Applicant shall provide photo simulations of the proposed facility from key public viewpoints based upon consultation with city staff. Photo-simulations shall display existing and proposed views, and include the date(s) when the base photo was taken. excluding applications for small cell facilities;
- g. Noise Analysis. A noise analysis for emergency generators or other noise-producing facilities;
- h. Landscape Plan. A landscape and irrigation plan, showing all existing and proposed improvements, location of proposed plantings and type of landscape material, for proposed ground-mounted facilities including equipment cabinets;
- i. Elevations. Elevations showing all sides of the proposed facility, and including the following information:
 - 1. Elevations and sections of the site displaying site topography, proposed facilities including towers, equipment shelter and existing buildings.
 - 2. Wall, roof, tower and antenna materials.
 - 3. Fencing, air conditioning units and outdoor lighting, if any.
 - 4. Rooftop or building features such as vents, chimneys and antennas, and
 - 5. Building or tower height as measured from natural grade.
- j. Inventory of Sites. Each Applicant for a WCF shall provide to the City a narrative description and data in a format acceptable to the City showing the

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Commented [ATT46]: This should be consistent with the City's current noise ordinance and limits.

Applicant's currently proposed WCFs within the City, and outside of the City within one half-mile of its boundaries. This provision is not intended to be a requirement that the Applicant submit its business plan, proprietary information, or make commitments regarding locations of WCFs within the City. This information will be used to assist in the City's comprehensive planning process, and promote Collocation by identifying areas in which WCFs might be appropriately constructed for multiple users. The City may share information regarding the location of sites and the owners or managers of such sites with other Applicants applying for administrative approvals or conditional permits under this section or other organizations seeking to locate WCFs within the jurisdiction of the City, provided however, that the City, is not, by sharing such information, in any way representing or warranting that such sites are available or suitable;

k. Load Certification. The owner of a proposed new tower shall provide certification with documentation (structural analysis) including calculations that the telecommunication facility tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, City, state and federal structural requirements for loads, including wind and ice loads; ~~-----~~

l. Written Statement. ~~Written representation that Applicant shall be responsible for paying all charges for any electricity furnished by a utility to Applicant and for charges for furnishing service to the Equipment. When the Equipment requires an electric meter as determined by the utility provider, the Applicant shall install or cause to be installed a separate electric meter on a ground mounted pedestal or on Applicant's pad mounted equipment cabinet as required by the electric provider for the operations of its equipment;~~

Equipment:

m. Abandonment and removal Affidavits. Affidavits shall be required from the owner of the property and from the ~~AA~~ applicant acknowledging that each is responsible for the removal of a WCF that is abandoned or is unused for a period of six (6) months.

J. Consolidated applications. The City shall allow a wireless provider to file a multi-site permit seeking approval for up to ten (10) permits for Small Cell Facilities at a given time. Each individual site shall be processed as a separate permit in order to facilitate recording site addresses, utility company requirements, and timely inspection scheduling. The City's denial of any individual small cell facility is not a basis to deny the application as a whole or any other small cell facility incorporated within the consolidated application.

K. Consultants for Application Review. The City may hire a consultant and/or expert necessary to assist the City or any of its Departments in reviewing and evaluating the application for a facility, including the construction and modification of the site, once permitted, and any site inspections.

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Commented [Secondpas48]: This section derived from Town of Hampstead and allows for optional employment by city of consultants to assist with application review should review become overly burdensome for the City at a future time.

1. An Applicant shall deposit with the City escrow funds sufficient to reimburse the City for all reasonable costs of the City's consultant in providing expert evaluation and consultation to any agency of the City in connection with the review of any application, including any expert consultation services deemed necessary by the City and in an amount to be determined by the City. The placement of the deposit with the City shall occur at such later time as the City may direct. The City will maintain a separate escrow account for all such funds. The City's consultants/experts shall invoice the City Department employing its services related to the application. In the event that the amount held in escrow by the City is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the Applicant, be promptly refunded to the Applicant.

Commented [ATT49]: Under Colorado law, fees must be cost based.

2. Escrow Amount. The total amount of the funds needed as set forth in this section may vary with the scope and complexity of the project, the completeness of the application, and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification. When notified by the City that additional escrow is required, the Applicant may request copies of invoices paid to consultants and/or experts. If the Applicant finds errors in those invoices, the Applicant may ask the City to audit those specific items for reasonableness and may request relief therefrom.

3. Fee Cap. Notwithstanding the above, there shall be a fee cap as to the total consultant fees to be charged to the Applicant in a case, which shall be the greater of \$17,000 or 10% of the highest annual lease payment to be made by the Applicant to the owner of the property under the lease authorizing placement of the wireless telecommunications facilities at a given site. However, the fee cap shall not apply as to any fees which the City determines to be attributable to the dilatory or otherwise bad faith actions of the Applicant in providing a complete application or in proceeding with a public hearing.

L. Decision. -Any decision to approve, approve with conditions, or deny an application for a WCF, shall be in writing and supported by substantial evidence in a written record. The Applicant shall receive a copy of the decision.

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Commented [AA50]: This provision was taken from Calabasas, California municipal code - 17.12.050(7) - Antennas/personal wireless telecommunication facilities. Note that Calabasas Ordinance refers to "Small Wireless Facility Permits" and the proposed language was modified to WCF as WCF includes all small cell facilities

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1. Conditions of Approval for WCF permits. In addition to any other conditions of approval permitted under federal and state law and this Code that the Director deems appropriate or required under this Code, all WCF permits under this subsection shall include the following conditions of approval:

a. No Automatic Renewal. The grant or approval of a WCF permit shall not renew or extend the underlying permit term.

b. Compliance with Previous Approvals. The grant or approval of a WCF permit shall be subject to the conditions of approval of the underlying permit.

- c. As-Built Plans. The Applicant shall submit to the Director an as-built set of plans and photographs depicting the entire WCF as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.
- d. Indemnification. To the fullest extent permitted by law, the Applicant and any successors and assigns, shall defend, indemnify and hold harmless [the] city, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the WCF permit and the issuance of any permit or entitlement in connection therewith. The Applicant shall pay such obligations as they are incurred by [the] city, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the city reasonably determines necessary to protect the city from exposure to fees, costs or liability with respect to such claim or lawsuit.
- e. Compliance with approved plans. The proposed project shall be built in compliance with the approved plans on file with the Department of Public Works.
- f. Violations. The WCF shall be developed, maintained, and operated in full compliance with the conditions of the WCF permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the Applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this Code, the conditions of approval for the small wireless facility permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this section shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one (1) remedy shall not cause an election precluding the use of any other remedy with respect to a violation.
- g. In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, Title 47, United States Code, section 1455, such that such statute would not mandate approval for the collocation or deployment granted or deemed granted under a WCF permit, such permit shall automatically expire twelve (12) months from the date of that opinion.
- h. The grant, deemed-grant or acceptance of a WCF permit shall not waive and shall not be construed or deemed to waive the city's standing in a court of competent jurisdiction to challenge Title 47, United States Code, section 1455 or any WCF permit issued pursuant to Title 47, United States Code, section 1455 or this Code.

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2.i. Additional Notice to Neighbors. After an application to allow the installation of a wireless facility subject to the approval of a WCF permit pursuant to this Code is complete, the Applicant shall provide property owners notice of such installation pursuant to 17.10.4, (L),(1),(i),(1) of this Article. Failure of the city to provide notice pursuant to this subsection shall not be grounds to challenge a determination provided that the notice otherwise required by law has been provided.

Commented [AA52]: Taken from Calabasas, CA Ordinance – 17.12.050(M)

1. Upon execution of any administrative decision approving or approving with conditions the application and prior to any construction, notice shall be sent by mail of the administrative approval by the Applicant to all property owners within a 1,300-ft radius of the facility, using names and addresses appearing on the latest adopted tax roll of the county. The notifying radius shall be measured from the outer boundary of the subject parcel, or for those facilities in the public right of way, from the outer boundary of the closest parcel adjacent to the subject public right of way site. Notice shall be sent no later than 15 day after such decision has been made by the City.

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2. Notice of the administrative approval shall also be made within 15 days of such decision by posting a notice in a publicly visible location on the property in question.

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M. Compliance with Applicable Law. Notwithstanding the approval of an application for new WCFs or Eligible Facilities Request as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building, structural, electrical, and safety requirements as set forth in the Municipal Code and any other applicable laws or regulations. In addition, all WCF applications shall comply with the following:

1. Comply with any permits or licenses issued by a local, state, or federal agency with jurisdiction of the WCF;

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2. Comply with easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;

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3. Be maintained in good working condition and to the standards established at the time of application approval; and

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4. All wireless communication facilities and related equipment, including lighting, fences, shields, cabinets, and poles, shall be maintained in good repair. Remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, so as to minimize occurrences of dangerous conditions or visual blight, and in no instance more than ten 5 calendar days from the time of notification by the City or after discovery by the owner or operator of the Site. Each wireless communication facility which contains trees, foliage or other landscaping elements, whether or not used as screening, shall be maintained in good condition at all times in accordance with

the approved landscape plan, and the owner or operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping as promptly as reasonably possible. Amendments or modifications to the landscape plan shall be submitted for approval to the Director. Notwithstanding the foregoing, any graffiti on WCFs located in the Public Rights-of-Way or on Public Property may be removed by the City at its discretion, and the owner and/or operator of the WCF shall pay all costs of such removal according to the City Municipal Code guidelines as set forth by the City within 30 days and after receipt of an invoice from the City.

Any failure by the city to enforce compliance with any applicable laws shall not relieve any Applicant of its obligations under this Code, any permit issued under this Code, or all other applicable laws and regulations.

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17.10.5 Design Standards

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A. Review Requirements. The requirements set forth in this Section shall apply to the location and design of all WCFs governed by this Chapter as specified below; provided, however, that the City may waive these requirements if it determines that the goals of this Chapter are better served thereby. To that end, WCFs shall be designed and located to minimize the impact on the surrounding neighborhood and to maintain the character and appearance of the City, consistent with other provisions of this Code. Notwithstanding the foregoing, the Planning Director shall have the authority to promulgate design standards for small cell facilities in the rights of way, which shall govern these types of WCFs. All current design standards as outlined in this section shall be employed and directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments, and shall be applicable to both newly constructed WCFs, permitted but not yet constructed WCFs, as well as pre-existing WCFs applying for a substantial change.

Commented [Secondpas54]: strike, overly broad authority to negate all the standards under this section including setbacks and preferred locations. If this waiver authority is truly necessary, identify it in the specific sections where it should apply, like under Shrouding.

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Commented [ATT56]: Regulations cannot be applied retroactively to existing facilities. That is not permitted under Colorado law.

B.

1. Camouflage/Concealment and Shrouding.

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All WCFs and any Transmission Equipment shall, to the extent possible, use Camouflage Design Techniques including, but not limited to the use of materials, colors, textures, screening, undergrounding, landscaping, or other design options that will blend the WCF into the surrounding natural setting and built environment.

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a. Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g. proximity to historic, natural, or aesthetically significant structures or areas, views, and/or community features or facilities). In such instances where WCFs are located in areas of high visibility, they shall (where possible) be designed to minimize their profile.

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b. The camouflage design may include the use of Alternative Tower Structures should the Public Works Department determine that such design meets the intent of this Code and the community is better served thereby.

c. All WCFs, such as Antennas, vaults, equipment rooms, equipment enclosures, and Tower structures shall be constructed out of non-reflective materials (visible exterior surfaces only).

2. Spacing and Collocation.

a. Collocation Standards.

i. New communication facilities shall be co-located with existing facilities and with other planned new facilities whenever feasible and aesthetically desirable. No new Towers, excepting Small Cell Facilities in the Right-of-Way, shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the City that no existing WCFs can accommodate the needs that the Applicant proposes to address with its Tower application, and sufficient separation of Towers is achieved. Evidence may consist of the following:

- i. No existing WCFs with a suitable height are located within the geographic area required to meet the Applicant's engineering requirements;
- ii. Existing WCFs do not have sufficient structural strength to support Applicant's proposed WCF;
- iii. The Applicant's proposed WCFs would cause electromagnetic interference with the existing WCFs or the existing WCF would cause interference with the Applicant's proposed WCF;
- iv. The Applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for Collocation;
- v. Towers over 90 feet in height shall not be located within one-quarter mile from any Existing Tower that is over 90 feet in height, unless the Applicant has shown to the satisfaction of the City that there are no reasonably suitable alternative sites in the required geographic area which can meet the Applicant's needs.

ii. WCFs shall be designed and constructed to permit the facility to accommodate WCFs from at least two (2) wireless service providers on the same WCF, to the extent it is feasible in good faith based upon construction, engineering and design standards, except where such Collocation would materially compromise the design intent of the WCF, particularly visually.

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iii. In order to facilitate co-location, conditions of approval for conditional use permits for new facilities shall require all service providers to cooperate in the siting of equipment and antennas to accommodate the maximum number of operators at a given site where found to be feasible and aesthetically desirable. Where feasible and aesthetically desirable, service providers are encouraged to co-locate with other facilities such as existing buildings, water tanks, light standards, and other utility structures where the co-location is found to minimize the overall visual impact.

iv. Service providers shall exhaust all reasonable measures to co-locate their communications facilities on existing towers, existing alternative building or other structures within the City, or with or within existing ancillary support equipment facilities prior to applying for new communication facility sites. The service provider shall provide evidence to the City that the provider has contacted all other potential providers who have, or who are reasonably likely to be, installing facilities within the vicinity of the proposed facility and has offered to participate in a joint installation project on reasonable terms. Such evidence should include but is not limited to copies of written requests and responses, along with any letters of rejection, stating the reason for rejection.

b. Spacing Standards. No new free-standing small cell facility shall be within 1,300-ft of another free-standing small cell facility on the right of way. [These] separation requirements do not apply to attachments made to existing alternative tower structures.

i. Exemptions. The Public Works Department may exempt an Applicant from these separation requirements if 1) the Applicant demonstrates Evidence of Need through technical network documentation that the minimum separation requirement cannot be satisfied for technical reasons, or 2) the Director determines when considering the surrounding topography, the nature of adjacent uses and nearby properties, and the height of existing structures in the vicinity, that placement of a WCF at a distance less than 1,300-ft from another small cell facility will meet the intent of reducing visibility and visual clutter of small cell facilities o the extent possible.

3. Location Preferences. Small Cell Wireless Facilities in the public roads shall be installed in the most highly preferred locations as listed below. Locations listed in order of most preferred locations to least preferred locations with the first location listed being most desirable:

a. Preferred Locations —Non-Residential zone districts, excepting parks, ordered from most preferred to least preferred:

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Commented [ATT59]: This is an unreasonable separation requirement that will result in an effective prohibition of service especially given the limit range of higher frequencies used on small cells.

Commented [Secondpas60]: Many cities in Colorado adopted preferred location standards. This ultimately helps with designing a masterplan for the City. PLEASE REVIEW carefully the sequence of parcels.

Commented [ATT61]: Aesthetic requirements only apply to the extent technically feasible. Recommend limiting this to new poles rather than replacements to avoid an establishing an effective prohibition. From a practical perspective, small cells serve the immediate area where they are located, not allowing them in an area means that area will lack service. With a limited range, you cannot install small cells in an industrial zone and have it cover a residential zone. It is understood that there is a way to overcome this in some instances, however just including the preference order assumes that in certain cases it is feasible to do this when in fact it is not feasible.

Lakewood Zoning Ordinance – Adopted January 26, 2015

- i. Parcels in the industrial zones, then
- ii. Parcels in commercial zones;
- iii. Parcels in the mixed use zones
- iv. City owned or controlled parcels or public facilities, excepting parks and historic City-owned properties; then
- v. Agricultural sites
- vi. Any public road within a 1,500-foot radius of a day care center or school, as defined by sections 1596.78 of the Health and Safety Code and 26054 of the Business and Professions Code, respectively.
- vii. Any public road within a 1,500-foot radius of a City, County, or State Park, open space area, or City sports field.
- viii. Any public road adjacent to mixed-use sites with residential dwellings.
- ix. Any public road right of ways located in an exclusively residential zoning district.

4. Preferred Locations —Residential Zones, Park, and Open Space Parcels. If a facility is proposed in a residential zone or adjacent to or on a parcel used for open space or park purposes, all facilities should be located according to the following preferences, ordered from most preferred to least preferred, with the first location listed being most desirable:

- 1) City owned or controlled parcels not for park or open space uses; then
- 2) Parcels that contain non-residential uses and do not contain residential or park or open space uses; then
- 3) Parcels that do not contain single-family homes, multi-family homes, or park or open space uses; then
- 4) City owned or controlled parcels; then
- 5) In the public right-of-way abutting a residential zone; then
- 6) All other parcels

a. When a lower ranked alternative is proposed, the application must include technical information demonstrating that a higher ranked option is not technically feasible in light of the provider's service objectives.

5. Lights and other attachments.

a. WCFs shall not be artificially lighted, unless required by the Federal Aviation Administration or other applicable governmental authority, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purpose. If lighting is required, the City may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding properties or environs. Lighting shall be shielded or directed to the maximum extent so as to minimize the

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amount of glare and light falling onto nearby properties, particularly residences.

b. All exterior lighting within equipment yards shall be mounted on poles or on the building wall below the height of the screen wall or fence.

c. No Tower shall have constructed on, or attached to, any additional platform, catwalk, crow's nest or like structure (other than those required by industry standards or federal regulations), except during periods of construction or repair.

d. Signs and advertising. The use of any portion of a Tower for signs or advertising devices other than public safety warnings, certification, or other requires seals on any wireless communication device or structure is prohibited. However, the telephone numbers to contact in an emergency shall be posted on each facility. Wireless telecommunications facilities shall contain a sign no larger than four square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the Applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration sign as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

e. Flush-mounting of antennas shall be employed wherever feasibly possible when such mounting does not detract from adjacent views or overall aesthetics.

f. To the extent possible, accessory equipment should be placed within the pole base rather than on the outside of the pole.

g. The use of small, decorative structures as mounting locations should be limited in historic districts.

6. Noise. Noise generated on the site must not exceed the levels permitted in the City of Lakewood Municipal Code, except that a WCF owner or operator shall be permitted to exceed such noise standards for a reasonable period of time during repairs, not to exceed two (2) hours without prior authorization from the City. If "Plainly Audible" noise nuisance complaints are received by the City, a site noise compliance, evaluation and mitigation report shall be submitted to the City within 30 days by Owner or Operator of WCF. Owner or Operator of WCF, at Owners

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Commented [ATT62]: Signage is regulated by federal law. By enacting signage regulations that are different from federal law creates the risk that the carrier would not be able to comply with both. The City, in multiple places, is already requiring AT&T to comply with all federal laws which would include adhering to all regulations associated with RF signage requirements.

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expense, must make every effort to mitigate and return WCF into compliance within a reasonable time frame, not to exceed 90 days.
If noise nuisance complaints are received by the City, a site noise report shall be submitted to the City within 30 days.

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7. Landscaping Requirements.

a. WCFs shall be sited in a manner that does not reduce the landscaped areas for the other principal uses on the parcel.

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b. WCFs, excluding Small Cell Facilities mounted on existing structures with existing surrounding landscaping, unless otherwise required by the Public Works Department, shall be landscaped with a buffer of plant materials that effectively screen the view of the WCF from Rights-of-Way and adjacent properties. Where the City has requested additional landscaping, the City may require irrigation requirements for the landscaping.

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c. Critical Root Zone: To the extent possible, heritage trees and traditional landscaping designs should be preserved in the Public Right of Way. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible.

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8. Screening Requirements.

a. All equipment, not located within the Public Right-of-Way and not otherwise defined, shall be fully screened within a walled yard or placed in an enclosed building except in cases where a better design alternative exists. The yard shall be enclosed by a solid fence or wall of sufficient height to screen all miscellaneous equipment from view from the public Right-of-Way or adjacent properties and to provide security. Screening should not unnecessarily inhibit view from adjacent properties.

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b. All structures and improvements associated with the WCF shall be provided with adequate safety equipment and aesthetic treatments, including incorporating landscape screening noted in subsection 5, to be visually compatible with uses in the surrounding area.

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c. Roof-top mounted equipment shall be screened from off-site views to the extent practical by solid screen walls or the building's parapet.

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~~Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible.~~

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Article 2. B. —

9. Setbacks.

a. The following minimum setback requirements shall apply to all WCFs except for Alternative Tower Structures in the Right-of-Way; provided however, that the City may reduce standard setback requirements if the

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Applicant demonstrates an Evidence of Need. Setback requirements shall be measured from the outer boundary of the subject parcel, or for those facilities in the public right of way, from the outer boundary of the closest parcel adjacent to the subject public right of way.

1. Non-Residential Zones: A Tower shall meet the greater of the following minimum setbacks from all property lines:
 - a. The setback for a principal building within the applicable zoning district; or twenty-five percent (25%) of the facility height, including WCFs and related Accessory Equipment.
2. Residential Zones and Parcels: Any WCFs adjacent to Single Family Residential Uses shall be sited in a manner that evaluates the proximity of the facility relative to residential structures. Unless Applicant demonstrates that there is no other technically feasible alternative, WCFs over 30 feet in height shall have a minimum setback from all adjacent residential property lines of one (1) foot for every foot in height, or a minimum setback of 500-feet from any residential structure’s outer boundary, whichever is greater, unless the Applicant can prove that a shorter distance is necessary to provide service. If a shorter distance is necessary, the greatest setback distance that will accommodate service shall be employed.
 - i. When placed near a residential property, the WCF shall be placed adjacent to the common side yard property line between adjoining residential properties, such that the WCF minimizes visual impacts equitably among adjacent properties.
 - ii. In the case of a corner lot, –the WCF may be placed adjacent to the –common side property line between adjoining residential properties, or on the corner formed by two intersecting streets.
 - iii. If these siting requirements are not reasonably feasible from a construction, engineering, or design perspective, the aApplicant may submit a written statement to the Public Works Department requesting the WCF be exempt from these requirements, and offer alternative locations reasonably meeting the intent of this section.
 - iv. WCFs shall not be placed on build#ings used principally for residential purposes.

10. Design requirements specific to various types of WCFs.

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- a. Base Stations. If an antenna is installed on a structure other than a Tower or Alternative Tower Structure, such as a Base Station (including, but not limited to the antennas and accessory equipment) it shall be of a neutral, non-reflective color that is identical to, or closely compatible with the color of the supporting structure, or uses other camouflage/~~concealment~~ design techniques so as to make the antenna and related facilities as visually unobtrusive as possible, including for example, without limitation, painting the Antennas and accessory equipment to match the structure. Additionally, any ground mounted equipment may be located in a flush-to-grade underground equipment vault if it is reasonably feasible from a construction, engineering, or design perspective.
- b. Alternative Tower Structures, not in the Public Right-of-Way shall;
 - i. Be designed and constructed to look like a building, facility, structure, or other commonplace item, such as but not limited to a tree, public art, or clock tower, typically found in the area.
 - ii. Be camouflaged/concealed consistent with other existing natural or manmade features in or near the location where the Alternative Tower Structure will be located.
 - ~~ii~~.iii. Be compatible with the surrounding area, including architecture, topography, natural vegetation, and/or landscaped environment.
 - ~~iii~~.iv. Be the minimum size needed to obtain coverage objectives. Height or size of the proposed Alternative Tower Structure should be minimized as much as possible.
 - ~~iv~~.v. Be sited in a manner that is sensitive to the proximity of the facility to residential structures, neighborhoods, and residential zoning district boundaries.
 - vi. Take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses.
- c. Towers
 - i. Towers shall either maintain a galvanized steel finish, or, subject to any applicable FAA standards and City design approval processes, be painted a neutral color so as to reduce visual obtrusiveness.
 - ii. Wherever possible, Towers shall locate to utilize existing landforms, vegetation, and structures to aid in screening the facility from view, or otherwise blending in with surrounding built and natural environment.
 - iii. Monopole support structures shall taper from the base to the tip.

iv. All Towers, excluding Alternative Tower Structures in the Right-of-Way, shall be enclosed by security fencing or wall and shall also be equipped with an appropriate ant-climbing device.

v. Towers shall be subject to the height restrictions of each zoning district. Notwithstanding anything in this Chapter to the contrary, Towers are prohibited in the Right-of-Way.

~~—Roof and Building Façade Mounted Antennas-WCFs:~~

~~1. Building façade mounted antennas shall not protrude horizontally more than 2 foot from the building wall and shall be painted or treated to match the building or structure to which the antenna is attached.~~

~~2. Building façade mounted antennas shall not exceed the height of the parapet or the roofline, whichever is greater.~~

~~d.~~

~~3. The total of all visible building façade mounted antennas may not exceed the greater of 10 percent of the square footage of the building façade or 25 square feet per façade.~~

C. Roof Mounted Antennas:

4.i. Roof mounted antennas and accessory equipment shall be painted or treated to match the façade of the building to which they are attached in order to minimize visibility from adjacent residential land uses and/or from public sidewalks.

v.ii. Roof-mounted WCFs may be approved only where an aApplicant sufficiently demonstrates that a wall mounted WCF is inadequate to provide service. By filing an application for a roof-mounted WCF, an aApplicant is certifying agreement to the City's determination that the height extensions described in this subsection d are the maximum heights that will allow the WCF to be Camouflaged, and that any additional increase in height will undermine the Camouflage nature of the site. Roof or building mounted facilities are not permitted on any single-family residential structures.

2.iii. Maximum height. Roof mounted antennas and accessory equipment shall not exceed the height of the penthouse or mechanical equipment room to which the antennas are attached.

~~3.~~

4. Antennas not mounted on a penthouse or mechanical equipment room shall be set back at least 5 feet from the exterior wall of a building.

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Commented [ATT65]: This is an attempt to stop legitimate modifications that constitute Eligible Facilities Requests as an such is an unreasonable requirement that would be subject to challenge because it is inconsistent with Section 6409.

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Commented [ATT67]: This will make freestanding facilities a technical necessity. The placement standards are too restrictive. At a minimum, the height of antennas need to be increased by 2 feet for every foot they are set back from the edge of the roof. An 8' antenna will be shadowed by the roof it is placed on the center. It won't work from a technical perspective. Also, antennas in the center of the roof or setback from the edge create unusable space. There is no reason to do this unless the City wants to encourage free standing facilities over rooftop sites.

~~5-iv. The maximum height of a roof mounted antenna that is not mounted on a penthouse or mechanical equipment room is equal to the distance the antenna is set back from the exterior wall up to a maximum height of 40 feet above the taller of either roofline or parapet of the building to which the antenna is attached.~~

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~~vi-v. All rooftop equipment and Antennas must be adequately screened where feasible from a technical, construction, design and engineering perspective.~~

~~vii-vi. Building façade mounted antennas shall not protrude horizontally more than 2 feet from the building wall and shall be painted or treated to match the building or structure to which the antenna is attached.~~

4. _____

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~~A-vii. Building façade mounted antennas shall not exceed the height of the parapet or the roofline, whichever is greater.~~

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~~viii. The total of all visible building façade mounted antennas may not exceed the greater of 10 percent of the square footage of the building façade.~~

~~ix. _____~~

Antennas on Existing Support Structures:

~~In single-family and two-family zone districts: The mounting of an additional antenna or antennas on an existing support structure, including any existing support structure that is nonconforming with regards to height, may be permitted provided that the height of the existing structure may not be increased by more than 15 percent.~~

~~In non-single-family and two-family zone districts: The mounting of an additional antenna or antennas on an existing support structure may be permitted provided that the height of the existing structure may not be increased above 60 feet without triggering the review requirements as outlined for New Freestanding Support NonStealth Structures in Section 17.10.3.2.~~

17.10.3.3: New Freestanding Support Non-Stealth Structures

Review Requirements:

~~New freestanding support structures of 60 feet in height or less may be allowed in any zone district other than a single-family or two-family district if reviewed and approved in accordance with the site plan procedures identified in Article 2.~~

~~New freestanding support structures of more than 60 feet in height may be allowed in any zone district other than a single-family or two-family~~

Lakewood Zoning Ordinance – Adopted January 26, 2015

~~district if reviewed and approved in accordance with the special use permit and site plan procedures identified in Article 2.~~

~~New freestanding support structures of any height located on public property, right-of-way, or utility property that will support street lights, public facilities or equipment in addition to wireless facilities may be allowed in any zone district if reviewed and approved in accordance with the Site Plan procedures identified in Article 2. Examples include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, and other light structures~~

~~Existing support structures including but not limited to municipal communication facilities, athletic field lights, traffic lights, and other light structures on local streets shall be limited to a maximum 15 foot height extension.~~

~~The maximum height for any new freestanding support structure shall be 60 feet, or the maximum building height allowed in the subject zoning district, whichever is greater.~~

~~When adjacent to a property that is zoned residential or contains a residential use or structure, new freestanding support structures must be setback from property at least the minimum setback required by the zone district where the structure is located or 50 percent of the support structure height, whichever is greater.~~

~~New freestanding support structures shall be enclosed by security fencing 6 feet in height and shall also be equipped with an appropriate anti-climbing device; provided, however, that the City may waive such requirements, if the Director determines that the waiver will not create an increased risk to public health or safety.~~

~~B. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible.~~

~~C. New free-standing support structures shall be designed to accommodate a minimum number of colocations based upon their height.~~

- ~~1. Support structures between 45 feet and 100 feet in height shall support at least two telecommunications providers;~~
- ~~2. Support structures greater than 100 feet and up to 150 feet in height shall support at least three telecommunications providers; and~~
- ~~3. Support structures greater than 150 feet in height shall support at least four telecommunications providers.~~

~~D. New freestanding support structures over 60 feet in height shall not be located within 1000 feet from any existing freestanding support structure that is over 60 feet in height, unless the applicant has shown to the satisfaction of the City that colocation is impracticable and that there are no reasonably suitable alternative sites in the required geographic area which can meet the applicant's needs.~~

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17.10.3.4: Other Wireless Facility Types

The Director may apply the standards defined for new wireless facilities on existing structures or new freestanding support structures to any wireless facility type that is not directly addressed in these regulations as appropriate to minimize the potential adverse effects of wireless service facilities.

17.10.3.5:

e. ~~Related~~ Accessory Equipment

~~*i.~~ In order of preference, ancillary support equipment and/or accessory equipment for a WCF shall be located either within a building, underground, in a rear yard or on a screened rooftop area. Ground-mounted facilities that are located within the front or side yard or public right-of way shall be undergrounded, unless the Applicant demonstrates that undergrounding is not technologically feasible, and located so as to be screened by landscaping, in close proximity to existing above ground utilities (such as electrical tower or utility poles), light poles, trees of comparable height, water tanks, and other areas where the ground mounted facility will be designed and screened to blend with the existing natural or built surroundings .

A-ii. Utility and Power Lines. All utilities at wireless telecommunication's facilities shall be installed underground whenever possible, as determined by the Department of Public Works, and in compliance with all laws, ordinances, rules and regulations of the City, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code, where appropriate, as well as City regulations applicable to excavations in public streets.

B-iii. ~~The~~Excluding Small Cell Facilities in the Right-of-Way, the buildings, shelters, cabinets, and other accessory components shall be setback a minimum of 15 feet from each property line with a residential zone district or a lot containing a residential structure, or shall meet all setback requirements of the underlying zone districts, whichever results in the greater setback, and shall be grouped as closely as technically possible.

C-iv. Total footprint coverage area of the accessory equipment shall not exceed 500 square feet per provider, with a maximum of 1500 square feet total for three or more providers.

D-v. No accessory equipment or accessory structure shall exceed ~~45~~¹² feet in height.

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Commented [Secondpas68]: Accessory Equipment is used in the definitions (no definition of "related")

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Commented [Secondpas69]: As adopted by City of Larkspur and appears to preserve enough flexibility for operators.

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Commented [Secondpas70]: Can this be feasibly shorter? Example, an 8ft cabinet is taller than a person and takes considerable real estate if not undergrounded.

E.vi. ~~Accessory equipment shall be painted a neutral color and enclosed by security fencing 6 feet in height and shall be landscaped with a buffer of plant materials that effectively screens the view of the accessory equipment from adjacent residential property and from the adjacent street; provided, however, that the City may waive such requirements, if the Director determines that the waiver will not (1) create an increased risk to public health or safety or (2) create a negative visual impact to adjacent residential property or from the adjacent street.~~ Accessory equipment, including but not limited to remote radio units, shall be located out of sight whenever possible by locating behind parapet walls or within equipment enclosures. Where such alternate locations are not available, the Accessory Equipment shall use Camouflage Design Techniques.

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F.vii. No accessory equipment or accessory structures shall be sited in a manner that reduces the parking or landscaped areas for other principal uses on the parcel below the minimums required by the Zoning Ordinance.

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17.10.4: Abandonment and Removal

~~If a support structure is abandoned and remains abandoned 5 Standards for a period longer than 12 consecutive months, the City may require that the support structure be removed. The City shall first provide written notice to the owner of the support structure of the requirement for removal and give the owner the opportunity to take such action(s) as may be necessary to reinstate the active use of the support structure within 30 days of receipt of the written notice. If the owner of the support structure fails to reinstate the active use of the support structure within the 30-day period, the owner of the support structure shall be required to remove the same within six months.~~ Approval.

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It is the intent of the City to provide for approval of WCFs administratively in cases where visual impacts are minimized, view corridors are protected, appropriate Camouflage and Concealment Design Techniques are employed to avoid adverse impacts on the surrounding area, and they are designed, maintained, and operated from the date of first installation and all times the WCF is thereafter operated, at all times to comply with the provisions of this Chapter and all applicable local, state and federal laws. Notwithstanding the approval of an application for Eligible Facilities Request as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building and safety requirements as set forth in municipal code and any other applicable regulations.

1. Special Use Permit. Any application for a WCF which does not comply with the provisions of this Chapter may seek approval of a Special Use Permit by submitting an application to Planning Commission.

a. All special use permit applications for a new wireless telecommunications facility shall contain a demonstration that the facility will be sited so as to minimize visual intrusion as much as possible, given the facts and circumstances involved, and will thereby have the least adverse visual effect on the environment and its character and on the residences in the area of the new wireless telecommunications facility.

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Commented [Secondpas71]: The intent of this insertion is to ensure "ongoing compliance."

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b. Fifteen days prior to any Planning Commission hearing on a Special Use Permit for any WCF, notice shall be sent by the Applicant by mail of the location, time, and place of such hearing to all property owners within a 1,300-ft radius of the facility, using names and addresses appearing on the latest adopted tax roll of the county. The notifying radius shall be measured from the outer boundary of the subject parcel, or for those facilities in the public right of way, from the outer boundary of the closest parcel adjacent to the subject public right of way site.

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c. Notice of the Planning Commission hearing for Special Use Permit shall also be made by posting a notice in a publicly visible location on the property in question at minimum fifteen days prior to such hearing.

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Collocation and Separation Required. No new Towers, excepting Small Cell Facilities in the Right-of-Way, shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the City that no existing WCFs can accommodate the needs that the Applicant proposes to address with its Tower application, and sufficient separation of Towers is achieved. Evidence may consist of the following:

- No existing WCFs with a suitable height are located within the geographic area required to meet the Applicant's engineering requirements;
- Existing WCFs do not have sufficient structural strength to support applicant's proposed WCF;
- The Applicant's proposed WCFs would cause electromagnetic interference with the existing WCFs or the existing WCF would cause interference with the Applicant's proposed WCF;
- The Applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for Collocation;
- Towers over 90 feet in height shall not be located within one quarter mile from any Existing Tower that is over 90 feet in height, unless the Applicant has shown to the satisfaction of the City that there are no reasonably suitable alternative sites in the required geographic area which can meet the Applicant's needs.

Setbacks: The following minimum setback requirements shall apply to all WCFs except for Alternative Tower Structures in the Right-of-Way; provided however, that the City may reduce standard setback requirements if the applicant demonstrates that the goals of this Section can be met through Performance Options or through Alternative Compliance, or through a Variance process. A Tower shall meet the greater of the following minimum setbacks from all property lines:

- The setback for a principal building within the applicable zoning district;
- or
- Twenty five percent (25%) of the facility height, including WCFs and Related Accessory Equipment; or

For sites within 100 feet of residential uses, facilities over 30 feet in height shall have a minimum setback from all adjacent residential property lines of one (1) foot for every foot in height.

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17.10.5 Penalty for Offenses.

In the event of a violation of this ordinance or any of the terms and conditions of use permit or other approval issued pursuant to this ordinance, and in addition to any other remedy available to the City at law or equity, the City may impose and collect, and the holder of the permit for wireless telecommunications facilities shall pay to the City, civil penalties in an amount as determined by the Department of Public Works, per day, until the violation or violations are abated to the satisfaction of the City.

17.10.6 City Council Review.

In January of each year City Council shall set a date within the year to review and update as needed this Article of the Lakewood Zoning Code.

17.10.7 Private Enforcement.

A. In addition to any other remedy available to the city under this Code, at law or in equity, violations of this Section 17.10 may be remedied as follows:

1. The city attorney or city prosecutor may bring a civil action to enforce this section and to obtain the remedies specified below or otherwise available in equity or at law.
2. Any person acting for the interests of himself, herself, or itself, or of its members, or of the general public (hereinafter "a private enforcer") may bring a civil action to enforce this section with the remedies specified below, if both the following requirements are met:
 - a. The action is commenced more than sixty (60) days after the private enforcer gives written notice of an alleged violation of this section to the city attorney and to the alleged violator.
 - b. No person acting on behalf of the city has commenced or is prosecuting an action regarding the violation(s) which was or were the subject of the notice on the date the private action is filed.
3. A private enforcer shall provide a copy of his, her, or its action to the city attorney within seven days of filing it.
4. Upon settlement of or entry of judgment in an action brought pursuant to paragraph (7) of this subsection, the private enforcer shall give the city attorney a notice of that settlement or judgment. No private enforcer may settle such an action unless the city attorney or the court determines the settlement to be reasonable in light of the purposes of this section. Any settlement in violation of this requirement shall be set aside upon motion of the city attorney or city prosecutor to a court of competent jurisdiction.
5. Upon proof of a violation of this section, the court shall award the following:
 - a. Appropriate injunctive relief and damages in the amount of either:
 - i. Upon proof, actual damages;
 - ii. With insufficient or no proof of damages, a minimum of five hundred dollars (\$500.00) for each violation of this section (hereinafter "statutory damages").

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Commented [Scondpas72]: Taken from Calabasas, CA Ordinance – 17.20.050(L)

Commented [ATT73]: This appears to delegate enforcement rights to private parties in violation of the state constitution prohibiting a City from delegating its authority in this manner.

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Unless otherwise specified in this section, each day of a continuing violation shall constitute a separate violation. Notwithstanding any other provision of this section, no private enforcer suing on behalf of the general public shall recover statutory damages based upon a violation of this section if a previous claim brought on behalf of the general public for statutory damages and based upon the same violation has been adjudicated, whether or not the private enforcer was a party to that earlier adjudication.

- b. Restitution to the appropriate party or parties of gains obtained due to a violation of this section.
- c. Exemplary damages, where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud, malice, or a conscious disregard for public health and safety.
- d. Attorney's fees and costs reasonably incurred by a successful party in prosecuting or defending an action.

Any damages awarded in an action brought by the city attorney or city prosecutor shall be paid into the city's general fund, unless the court determines that they should be paid to a damaged third party.

- 6. Upon proof of at least one violation of this section, a private enforcer, the city prosecutor, city attorney, any peace officer or code enforcement official may obtain an injunction against further violations of this section or, as to small claims court actions, a judgment payable on condition that a further violation of this section occur within a time specified by the court.
- 7. Notwithstanding any legal or equitable bar, a private enforcer may bring an action to enforce this section solely on behalf of the general public. When a private enforcer does so, nothing about such an action shall act to preclude or bar the private enforcer from bringing a subsequent action on his, her, or its own behalf based upon the same facts.
- 8. Nothing in this section shall prohibit a private enforcer from bringing an action to enforce this section in small claims court, provided the relief sought is within the jurisdiction of that court.

17.10.8 Severability.

Should any section, subsection, paragraph, sentence, clause or phrase of this Article of the Lakewood Zoning Code or application thereof to any person or circumstance, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this chapter, or its application to any other person or circumstance, and, to this end, the provisions of this chapter are declared to be severable.

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George B. McPhillips
1930-1994

June 26, 2020

VIA EMAIL

Mayor Adam Paul and Members of the City Council
City of Lakewood
480 South Allison Parkway
Lakewood, Colorado 80226

**Re: Item No. 9 - Ordinance O-2020-1
Amendment of Lakewood Municipal Code Title 12, and Article 10 of Title 17
Response to AT&T's June 8, 2020 Correspondence**

Dear Mayor Paul and Members of the City Council:

Our office represents two of your constituents, Ms. Lynn Judson and Ms. Carol Baum, who asked us to review AT&T's June 8, 2020 letter and provide a legal analysis of AT&T's comments on the City draft wireless code. It is our professional opinion that AT&T's recommendations are unsupported and contrary to both the Telecommunications Act of 1996 (hereinafter the "TCA") and clearly established principles of federal law throughout the entire United States.

Specifically, § 332(c)(7)(A) of the TCA, titled "General Authority," explicitly preserved to any State, local government or instrumentality complete regulatory authority in connection with the placement of wireless communications facilities, subject to five (5) finite constraints outlined in § 332(c)(7)(B) of the TCA. As part of these limitations, state and local governments "shall not prohibit or have the effect of prohibiting the provision of personal wireless services."¹

Despite Congress's clear language, the comments in AT&T's letter suggest that you disregard the General Authority section in the TCA and rely, instead, on the Federal Communications Commission's September 26, 2018 Interpretative Order (hereinafter the "FCC"). The FCC's Order, however, finds the effective prohibition of wireless services to mean any time a local government *inhibits additional services or improvements to existing services*.

¹ See 42 U.S.C. § 332(c)(7)(B)(i)(II).

As set forth hereinbelow, the FCC's Order—interpreting the meaning of “[having] the effect of prohibiting” language in subparagraph (B) of the TCA—lacks legislative authority to strip local governments of their power to regulate the placement of wireless facilities. Congress expressly preserved this power to the State and local governments under the TCA.

Furthermore, and on a more practical level, if the City of Lakewood applies the FCC's Order in the way suggested by AT&T, the exception in § 332(c)(7)(B)(i)(II) would affirmatively wipe out the General Authority section of the TCA, twenty-four (24) years of Federal Courts' decisions and smart planning provisions. Meanwhile, the City of Lakewood would be prevented from opposing every application submitted by wireless providers and site developers *as soon as* they allege either a *purported need for additional services or improvements*. Clearly, this lack of local power is not what Congress envisioned when promulgating the TCA, specifically its General Authority § 332(c)(7)(A).

Based on our professional expertise in this area, we earnestly urge you to disregard AT&T's suggestions and/or anything in support of the FCC's Interpretative Order.

PRELIMINARY STATEMENT

Regular executive branch agencies and independent agencies (*e.g.*, the FCC) actively participate in the rulemaking process and enact interpretations about the statutes they administer. Generally, all agencies' rules can be divided into three categories: (1) legislative or substantive rules; (2) non-legislative rules, which include *interpretations* and policy statements; and (3) organizational and procedural rules.² Among these three distinct categories, only legislative or substantive rules are legally binding and possess “force of law”—provided, however, that the agency acts under *congressionally delegated authority*.³

Therefore, the threshold issues in determining the legal significance of any agency's regulations (*e.g.*, the one the FCC promulgated on September 26, 2018) are (a) whether the rule is legislative, non-legislative or procedural in nature and (b) if the rule is legislative, “whether Congress intended to delegate to the agency the power to interpret with the “force of law” in the particular format that was used.”

The second part of this analysis cannot be accomplished without a brief discussion of the relevant history of the TCA of 1996. When Congress was contemplating the passage of the TCA in 1995, the U.S. House of Representatives initially proposed legislation that would have empowered the FCC to directly regulate the placement of wireless communications facilities.⁴ Notwithstanding this initial drafting, the U.S. House and Senate completely redrafted this language and, instead, intentionally allocated the authority to regulate the placement of wireless facilities to state and local governments, and instrumentalities.⁵

² See <https://www.fcc.gov/about-fcc/rulemaking-process>.

³ Robert A. Anthony, *Which Agency Interpretations Should Bind Citizens and the Courts*, YALE JOURNAL ON REGULATIONS, Vol. 7: 1, 1990, at 4.

⁴ See H.R. Rep. No. 104-204(I), § 107, at 94 (1995).

⁵ See H.R. Rep. No. 104-458, § 704, at 207-208 (1996) (Conf. Rep.) reprinted in 1996 U.S.C.C.A.N. 124, 222.

As adopted, 47 U.S.C.A. § 332(c)(7)(A) explicitly preserved to States, local governments, and instrumentalities complete regulatory authority in their zoning and land use laws, subject to five (5) finite constraints outlined in subparagraph (B) of the TCA. Those limitations include the following:

- (i) Local governments cannot unreasonably discriminate among providers of functionally equivalent services;⁶
- (ii) Local governments cannot prohibit or have the effect of prohibiting the provision of personal wireless services;
- (iii) Local governments must act upon any application to place, construct or modify a wireless facility within “a reasonable period of time;”⁷
- (iv) Any decision to deny an application to place, construct or modify a wireless facility shall be *in writing* and be *supported by substantial evidence* contained in a *written record*;⁸ and
- (v) Local governments cannot regulate the placement, construction, and modification of personal wireless service facilities based on the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions. TCA, § 332(c)(7)(B)

With Congress’s legislative intent and its clear statutory language in mind, it is axiomatic that the FCC’s September 26, 2018 Order is, at best, a legislative ruling under no congressionally delegated authority, and, at worse, nothing more than a non-binding interpretation that has no effect on the authority of local governments.

⁶ As interpreted by the courts, this provision allows some discrimination among providers of equivalent services. Any discrimination need only be *reasonable*. Most courts have recognized that discrimination based on traditional bases of zoning regulation, such as preserving the character of the neighborhood and avoiding aesthetic blight, are reasonable and, thus, permissible, and a mere increase in the number of wireless antennas in a given area over time can justify differential treatment of providers. *See, e.g., MetroPCS Inc. v. The City and County of San Francisco*, 400 F3d 715, 727 (2005); *AT&T Wireless PCS v. City Counsel of The City of Virginia Beach*, 155 F3d. 423 (4th Cir. 1998).

⁷ On November 18, 1999, the FCC adopted an interpretative ruling (FCC 09-99) that imposed the following time frames within which local governments must act upon siting requests for wireless towers or antenna sites: (1) ninety (90) days for the review of collocation applications, and (2) one hundred-fifty (150) days for the review of siting applications for new facilities.

⁸ This provision mandates that, when a local government renders a decision upon an application seeking approval for the installation of a wireless facility, the local government must: (a) reduce its decision to a separate writing (*i.e.*, a “written record”), and (b) base its decision upon “substantial evidence.” The written record requirement specifies that: (a) local governments issue their decisions in a writing, separate and apart from any transcript or record of the proceeding, and (b) the written decision must contain a sufficient explanation of the reasons for the denial to allow a reviewing Court to evaluate the evidence in the record supporting those reasons. *See, e.g., MetroPCS v. City and County of San Francisco*, 400 F.3d 715(2005). The decision must also be based upon “substantial evidence” that was placed into the record. Substantial evidence means “less than a preponderance but more than a scintilla of evidence” *Orange County-Poughkeepsie Ltd P’ship v. Town of Fishkill*, 84 F.Supp.3d. 274 (2015), or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Cellular Tel. Co v. Town of Oyster Bay*, 166 F3d. 490 (2d Cir. 1999). Review under this standard is essentially deferential, such that Courts may neither engage in their own fact finding nor supplant a local zoning board’s reasonable determinations. *See, e.g., American Towers, Inc. v. Wilson County*, Slip Copy 59 Communications Reg. P & F 878 (U.S.D.C. M.D. Tennessee January 2, 2014)[3:10-CV-1196].

The FCC's Order falls squarely within the category of non-legislative rules because it *affirmatively interprets* the meaning of “[having] the effect of prohibiting” in the TCA, § 332(c)(7)(B)(i)(II). Thus, the September 26, 2018 order has no “force of law” on State and local governments, as well as Federal Courts resolving disputes under subparagraph (B)(i)(II) of the TCA. In the alternative, it is beyond argument that the FCC acted without either an expressed or implied congressionally delegated authority. There is no indication, *whatsoever*, that Congress designated to the FCC any power to act. Absent such delegation, the FCC had no power to act and redefine, *sua sponte*, the legislative process of this country.

In the unlikely event that the FCC's September 26, 2018 Order is deemed both legislative and authorized pursuant to an express delegation by Congress, the FCC's interpretation is nonetheless contrary to the plain language of the TCA. The “General Authority” section of the FCA stands *only* for the proposition that “nothing in this Act shall limit or affect the authority of a State or local government or instrumentality,” subject to the five (5) limitations in subparagraph (B). See TCA, § 332(c)(7)(A).

Similarly, the FCC's *de novo* interpretation of subparagraph (B)(i)(II) purportedly takes away the judicial power of federal judges to interpret questions of law under the TCA—*i.e.*, disposing of twenty-four (24) years of precedents, including all the Circuit Courts' standards for § 332(c)(7)(B)(i)(II), and every smart planning provision enacted by local zoning authorities.

Accordingly, the FCC's September 26, 2018 interpretation should be disregarded in its entirety.

I. CONGRESS DID NOT EXPLICITLY DELEGATE INTERPRETATIVE AUTHORITY TO THE FCC AND, THUS, THE FCC'S SEPTEMBER 2018 INTERPRETATION DOES NOT POSSESS “FORCE OF LAW”

The FCC's September 26, 2018 Order is a mere, non-binding interpretation that has no legal significance since Congress did not empower the FCC with any congressionally delegated authority and, concomitantly, expressed its intent unambiguously in the TCA. See Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). “First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.” *Id.*, at 843, 844.

Here, albeit the U.S. House of Representatives' initial draft in 1995, the final version of the TCA took away the FCC's power to directly regulate the placement of wireless communications facilities. Meanwhile, the U.S. House and Senate set forth specific limitations in § 332(c)(7)(B) and addressed the precise issue at stake in subparagraph (B)(i)(II). For any issues of applicability that might arise from the language in this section, Federal Courts—and not an independent agency with limited political accountability—has the exclusive power under the U.S. Constitution and established caselaw to resolve a potential dispute, as discussed in length in Section 2 *infra*.

The FCC lacks legislative power to determine the meaning of this subparagraph and resolve issues of applicability regarding the TCA of 1996. An informal interpretation of the TCA has *no effect of law*. See, *e.g.*, Vietnam Veterans v. Secretary of Navy, 843 F.2d 528, 537-38 (D.C. Cir.

1988); National Latino Media Coalition v. FCC, 816 F.2d 785, 788 (D.C. Cir. 1987).

In the unlikely event that a court of law reaches a different conclusion, there is still no doubt that Congress has not “explicitly left a gap for the agency to fill,” thereby delegating its authority to the FCC to “elucidate a specific provision of the statute by regulation.” Chevron, at 843-844. In fact, the FCC cannot demonstrate a “gap” in the statute on the basis that § 332(c)(7)(B)(i)(II) is silent about technology—*i.e.*, in particular, “the 5G rollout.” New York district courts have plainly rejected this argument in connection with 4G LTE facilities in Crown Castle NG East LLC v. The Town of Hempstead, et al., 2018 WL 6605857, at *6 (E.D.N.Y. December 17, 2018). In that matter at bar, Judge Brown relied on the definition of “personal wireless services” articulated by the Second Circuit in Willoth and ruled:

It is beyond question and dispute that the facilities at issue—4G nodes designed to connect with cellular phones, provide precisely this facility: they allow mobile, handheld telephones to utilize the national telephone network to place and receive calls to other mobile and landline telephones. Thus, the services provided in connection with these nodes constitute “personal wireless services” as defined by the plain terms of the statute and its construction by the Second Circuit in Willoth. *Id.*

In other words:

[T]he statute, as construed by Willoth, does not distinguish between voice calls made using analog technology from those made using digital technology... The statute, the binding caselaw construing the statute and, for that matter, consumers placing or receiving phone calls, are unconcerned as to whether the communication system employs analog transmissions, digital signals, or frequency hopping, but care only that the call is successful. *Id.*, at 7 (quotation omitted).

However, given that technology has rapidly evolved in our society, and there is now a purported need to carry out “the 5G rollout” in force, the FCC reaches the bold and unsubstantiated conclusion that it has an expressed congressionally delegated authority to rewrite subparagraph (B)(i)(II) of the TCA—proposing a new test for “interpreting” the “effect of prohibiting” language within the same. This absurd notion has been rejected by Judge Spatt in Clear Wireless LLC v. Building Dep’t of the Village of Lynbrook, et al., holding:

“Under such a circumstance ***it is not up to the FCC to construe the TCA to say something it does not say***, nor up to the Court to find broadband communication encompassed by the law.” 2012 WL 826749, at *9 (E.D.N.Y. March 8, 2012) (quoting Arcadia Towers LLC v. Colerain Tp. Bd. of Zoning Appeals, No. 10-CV-585, 2011 WL 2490047, at *2 (S.D. Ohio June 21, 2011) (emphasis added)).

Accordingly, the FCC’s actions undermine the fundamental doctrine of separation of power⁹ and *stare decisis*, thwarting the constitutional balance of powers in favor of the legislative

⁹ See Gundy v. United States, 139 S.Ct. 2116, 2142 (2019) (Gorsuch, dissenting) (expressing similar concerns when independent agencies exercise “unfettered discretion” and exceed their congressionally delegated rulemaking authority, ultimately reaching the conclusion that such practice should be held unconstitutional. In his lengthy dissenting opinion, Justice Gorsuch pointed out to other instances in which the SCOTUS addressed the boundaries of separation of power because, in his words, “[t]hese cases show that when separation of powers is at stake we don’t just throw up our hands...In all these areas, we recognize that ‘abdication is not part of the constitutional design.’”).

branch without just reasoning or justification.

II. THE FCC'S ALLEGED "TECHNOLOGY GAP" IN THE TCA OF 1996 DOES NOT GIVE RISE TO AN IMPLICIT DELEGATION BY CONGRESS

It is well established that, under Chevron, the FCC's congressionally delegated authority may be implied if, *and only if*, the statutory language of the TCA is either silent or ambiguous on the point at issue (a "gap"). 467 U.S. 837 (1984). As set forth herein, the FCC's position that a "technology gap" gives its independent agency, subject to less political accountability, the power to rewrite subparagraph (B)(i)(II) is wholly meritless.

Subparagraph (B)(i)(II) of the TCA is neither glaringly silent nor ambiguous. Quite the contrary, it clearly refrains local governments from prohibiting or enacting local zoning regulations that have the effect of prohibiting the placement of wireless facilities throughout the United States. However, as customary with the vast majority of federal statutes, the statutory language leaves the judicial department the power to resolve any disputes arising from the TCA. Federal Circuits have, thus, elaborated their own tests to address potential questions of law in the application of the TCA of 1996, especially in connection with subparagraph (B)(i)(II).

Specifically, federal courts¹⁰ follow, for the most part, the standard articulated by the Second Circuit in Sprint Spectrum L.P. v. Willoth, which holds that "the Act's ban on prohibiting personal wireless services precludes denying an application for a facility that is the least intrusive means for closing a significant gap in a remote user's ability to reach a cell site that provides access to landlines." 176 F.3d 630, 643 (2d Cir. 1999).

Under the Second Circuit's standard, wireless providers or site developers could only force a local government to permit them to install a non-zoning-code compliant wireless facility if they could prove both that (1) they suffered from a significant gap in their personal wireless services, and (2) that their proposed installation was the least intrusive means of remedying that gap.¹¹

Without question, the FCC cannot plausibly sustain an argument that the language in subparagraph (B)(i)(II) is ambiguous or that its wording needs some clarifications. The statute clearly preserved to local governments the powers to regulate wireless facilities, subject to five (5) limitations.

For any challenges arising under those limitations, like the interpretation of what Congress meant by "personal wireless services" discussed *infra*, the judicial branch is constitutionally entitled to "say what the law is." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803) (Marshall, C.J.); See Japan Whaling Ass'n v. Amer. Cetacean Soc'y, 478 U.S. 221, 230 (1986)

¹⁰ Both the Third and Ninth Circuits follow, *verbatim*, the Second Circuit. Meanwhile, the First, Fourth and Seven Circuits have slight variations of the Second Circuit Court's test.

¹¹ Where a local government has denied a zoning application for the installation of a new wireless facility, and the applicant sues the local government in federal court claiming that the denial has the effect of prohibiting the provision of personal wireless services in violation of Section 332(c)(7)(B)(i)(ii) of the TCA, the applicant has the burden of proving both (a) the existence of a significant gap in service coverage, and (b) that its proposed installation is the least intrusive means of remedying that gap and/or there are no less intrusive alternative sites available. See, *e.g.*, Crown Castle NG West LLC v. Town of Hillsborough, 2018 WL 3777492, T-Mobile USA Inc. v. City of Anacortes, 572 F3d.987 (9th Cir 2009). Where an applicant cannot meet that burden, any claimed violation of the effective prohibition provision of the TCA must fail. See, *e.g.*, T-Mobile Northeast LLC v. Fairfax County Board of Supervisors, 672 F3d 259 (4th Cir. 2012).

("[I]nterpreting congressional legislation is a recurring and accepted task for the federal courts... [U]nder the Constitution, one of the Judiciary's characteristic roles is to interpret statutes, and we cannot shirk this responsibility merely because our decision may have significant political overtones").

Similarly, as expressly discussed in Section 1, supra, the FCC cannot reasonably identify a "gap" in the statute that gives rise to an express or implied delegation by Congress. The TCA is simply not silent in any of its language.

In sum, the FCC acted under no implicit delegation by Congress, and its September 26, 2018 ruling is not binding on State and local governments.

III. IN THE ALTERNATIVE, THE FCC'S INTERPRETATION FAILED TO CONFORM WITH CONGRESSIONAL INTENT AND EFFECTIVELY WIPES OUT TWENTY-FOUR (24) YEARS OF CLEARLY ESTABLISHED FEDERAL LAW AND LOCAL ZONING REGULATIONS

Even assuming, *arguendo*, that the FCC's modification of the TCA in its September 26 Order is a legislative rule pursuant to the agency's delegated authority to make a binding interpretation, the FCC's reading runs against Congressional Intent and is wholly unreasonable as a matter of public policy. Holding otherwise would allow the FCC to make a mockery of our legal system.

In the seminal case of Chevron, supra, the U.S. Supreme Court ruled that our judicial system is bound to accept an agency interpretation—acting under expressed or implied congressionally delegated authority—unless the regulation is either (a) manifestly contrary to the statute or congressional intent or (b) unreasonable, arbitrary or capricious. Remarkably, the FCC's September 26, 2018 Interpretative Order fails in both standards.

First, for all the reasons mentioned supra, the Order is manifestly contrary to the TCA's expressed language. Not only does the Order strip away the power Congress explicitly preserved to State and local governments under § 332(c)(7)(A), but it plainly contradicts Congress's clear intent.¹² Simultaneously, the FCC is radically changing the meaning of subparagraph (B)(i)(II) when Congress expressly spoke on the matter at issue.

Furthermore, the FCC's September 24, 2018 Order is unreasonable, arbitrary and capricious because it effectively wipes out twenty-four (24) years of federal precedents and smart planning provisions enacted by State and local governments under § 332(c)(7)(A).¹³

¹² See, e.g., Ragsdale v. Wolverine World Wide, Inc., 535 U.S. 81, 91 (2002). [An agency may never exercise authority inconsistent with Congressional Intent, regardless of the issue the agency is seeking to address.], See also Am. Library Ass'n v. F.C.C., 406 F.3d 689, 708 (D.C. Cir. 2005) and La. Pub Serv. Comm'n. v. FCC, 476 U.S. 355, 90 (1986)[Courts have consistently held that agencies may only act within the authority given to them by Congress. The FCC, like other federal agencies, "literally has no power to act... unless and until Congress confers power upon it."], and See Cellular Tel. Co. v. Town of Oyster Bay, 166 F.3d. 490, 495 (2d Cir. 1999) [under the powers preserved to local governments under the Telecommunications Act, aesthetics is an appropriate ground upon which a local government has the power to deny a zoning application for the installation of a wireless facility, so long as there is substantial evidence of negative aesthetic impact].

¹³ An argument can also be made that the FCC violated the National Environmental Policy Act (NEPA). Congress enacted the National Environmental Policy Act (hereinafter "NEPA") to "encourage productive and enjoyable harmony between man and his environment" and "promote efforts which will prevent or eliminate damage to the

The order states, in relevant parts:

“[a]n effective prohibition occurs where a state or local requirement materially inhibits a provider’s ability to engage in any of a variety of activities related to the provision of a covered service. *This test is met not only when filing a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service capabilities...Thus, an effective prohibition includes materially inhibiting additional services or improving existing services.*” FCC Order 18-133 Adopted September 26, 2018 (emphasis added).

In practical terms, site developers are now carrying out “the 5G rollout” in force by pursuing the installation of tens of thousands of small cells and DAS systems—anywhere they please, at virtually any height they desire. In doing so, site developers simply assert to State and local governments that *the site developer deems* such installation and the height of the same, necessary, or desirable for a wireless carrier to “improve existing services” or to “provide additional services.”

Based upon these simple assertions, site developers now try to argue that State and local governments cannot deny any applications because any such denial would constitute an effective prohibition of wireless services, which is prohibited under the TCA.¹⁴ Unquestionably, the FCC’s novel interpretation circumvents and ultimately gets rid of the Circuit Courts’ test for “the effect of prohibiting” language within subparagraph (B)(i)(II). This *modus operandi* is unconstitutional and creates confusion among State and local governments.

environment and biosphere and stimulate the health and welfare of man." United Keetoowah Band of Cherokee Indians in Oklahoma v. Fed. Commc'ns Comm'n, 933 F. 3d 728, 734 (D.C. Cir. 2019). The objective of the NEPA is to assure a safe and healthful environment. *See* 42 U.S.C. §§ 4321, 4331. NEPA review "does not dictate particular decisional outcomes, but merely prohibits uninformed—rather than unwise—agency action." *Id.*

Under 42 U.S.C. §4332, NEPA requires federal agencies to prepare detailed statements on potential environmental impacts of a proposed action that is considered a "major federal action." *See also* 47 CFR §1.1305. A "major federal action" is considered to be any action that significantly affects the quality of the human environment. *See* 42 U.S.C. §4332. *See also* 47 CFR §1.1305, which is specific to the FCC and requires that any commission action which is deemed to have a significant effect on the quality of the human environment requires an Environmental Impact Statement. At the very least an agency must prepare a preliminary Environmental Assessment to determine if there is any potential for a negative environmental effect and therefore an Environmental Impact Statement would be required. *See* 40 C.F.R. §1508.9. As explicitly set forth in 40 C.F.R. §1500.1(b) an agency must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. According to the FCC's own website "[r]esponsibility for NEPA and compliance rests with the FCC."

The FCC's most recent order eliminated NEPA review for small cells. The FCC decision to eliminate NEPA review for certain small cells was "based on the Commission's conclusion that such review was not statutorily requested and would impede the advance of 5G networks, and that its costs outweighed any benefits." United Keetoowah Band of Cherokee Indians in Oklahoma, 933 F.3d at 737. However, the FCC fails to assess any harms that could come from the densification of the use of small cells for 5g. *Id.* at 741.

Further the Court in Keetoowah notes that the FCC "does not reconcile its assertion that planned small cell densification does not warrant review because it will leave little to no environmental footprint" *Id.* at 742. Ultimately, the Court determined that the FCC's order deregulating small cells was arbitrary and capricious. *Id.*

¹⁴ *See Sprint Telephony PCS LP v. County of San Diego*, 543 F.3d 571 (2008) (The FCC and the wireless industry are now working together to invoke the recent 2018 Orders of the FCC to argue that the Ninth Circuit's standard, similar to the one articulated by the Second Circuit in Sprint Spectrum, no longer applies, and that a violation under this section occurs if a provider simply deems its new proposed installation needed to either enhance existing wireless services, or to provide new ones).

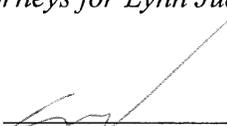
In addition, as was to be expected, residential property owners and their families across the entire country are now waking up to find unregulated wireless facilities have been installed as close as several feet to a bedroom window, kitchen window, den or any other room in their home.

Therefore, the FCC's September 26, 2018 Interpretation finds no support in our judicial and legislative system and goes as far as violating public policy.

CONCLUSION

It is our opinion that the City of Lakewood should not rely on the FCC's September 26, 2018 Interpretative Order in drafting and enacting new ordinances concerning Wireless Services and Communications.

Yours,
CAMPANELLI & ASSOCIATES, P.C.
Attorneys for Lynn Judson and Carol Baum

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Ms. Carol Baum
Mr. Guillermo Lambarri

¹⁵ Under Cal. Rules of Professional Conduct, Rule 5.5, and Cal. Rules of the Court, Rule 9.48 "*non-litigating attorneys temporarily in California to provide legal services*," an attorney who is admitted by a federal court, but is not admitted in California, can still advise a client in this jurisdiction for issues involving federal law.

STAFF MEMO

DATE OF COUNCIL MEETING: JANUARY 27, 2020 / AGENDA ITEM NO. 13

APRIL 27, 2020 / AGENDA ITEM NO. 15

DATE OF STUDY SESSION: JULY 6, 2020 / AGENDA ITEM NO. 4

To: Mayor and City Council

From: Jay Hutchison, Public Works Director, 303-987 7901

Subject: **PERMIT FEES FOR WIRELESS CARRIER OR SMALL CELL FACILITIES IN THE PUBLIC WAY**

SUMMARY STATEMENT: The attached resolution would establish certain fees for placement of wireless carrier and small cell facilities. City staff is seeking City Council's approval of the resolution establishing the fees.

BACKGROUND INFORMATION: Lakewood collects fees for work in the public way at the time the permit is issued for the work. Placing and replacing poles in the public way for wireless carrier or small cell facilities is newly allowed and there are currently no fees established for this work. Current fees cover other work associated with the installation, such as potholes for locating existing utilities, installing lines, installing electrical meters, and installing above-ground and below-ground vaults or cabinets.

The proposed fee to place a new or replacement pole for a wireless carrier or small cell facility is \$380.00 for each pole. The proposed fee to use an existing pole for a wireless or small cell facility is \$190.00 for each use.

The proposed fees approximate the city's costs to evaluate the proposed installation according to the design guidelines considered under Ordinance O-2020-1, to review plans for the installation, to review traffic control plans, to issue the permit and to inspect the installation during and after construction.

BUDGETARY IMPACTS: Permit fees collected for wireless carrier or small cell facilities will add to the total permit revenues.

STAFF RECOMMENDATIONS: Public Works recommends modifying the permit fee schedule to include the fees for wireless carrier or small cell facilities as set forth in the attached resolution.

ALTERNATIVES: The City Council can choose to not establish the fees for wireless carrier or small cell facilities or to modify the fees from those proposed; however, these types of fees are limited to no more than the estimated cost of providing the service for which the fee is charged.

PUBLIC OUTREACH: In addition to the item being promoted through the regular communication channels for an item coming before City Council, utility providers have been notified of the City Council's consideration of the proposed fees.

NEXT STEPS: If the City Council approves the resolution, the fees will be included in the published fee schedule and fees will be collected with permits issued after March 1, 2020 for wireless carrier or small cell facilities.

ATTACHMENTS: Resolution 2020-9

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Timothy P. Cox, City Attorney

2020-9

A RESOLUTION

ESTABLISHING CERTAIN FEES FOR PLACEMENT OF WIRELESS CARRIER OR SMALL CELL FACILITIES WITHIN CITY OF LAKEWOOD PUBLIC WAY

WHEREAS, Section 12.04.080 of the Lakewood Municipal Code directs the City Council to establish by resolution fees for inspections of work within the City of Lakewood public way; and

WHEREAS, the City Council desires to establish fees for placement of wireless carrier or small cell facilities within the City of Lakewood public way.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. The following fees are hereby established for placement of wireless carrier or small cell facilities in the public way, effective on March 1, 2020:

PUBLIC WAY INSPECTIONS		
	PER UNIT FEE	MINIMUM FEE
Place or replace pole for wireless carrier or small cell facility	\$380.00 each pole	\$380.00
Use of existing pole to install wireless carrier or small cell facility	\$190.00 each use	\$190.00

SECTION 2. The preceding fees shall not be refunded in whole or in part, unless the application was accepted due to an error on the part of the City staff.

INTRODUCED, READ AND ADOPTED by a vote of __ for and __ against at a regular meeting of the City Council February 10, 2020, at 7 o'clock p.m. at the Lakewood Civic Center, South Building, 480 South Allison Parkway, Lakewood, Colorado.

Adam Paul, Mayor

ATTEST:

Michele Millard, City Clerk

APPROVED AS TO FORM:

Timothy P. Cox, City Attorney

City Council Agenda Item Request for Consideration

Question	Response
First & Last Name	Mike Bieda
Email	mbieda@lakewood.org
Brief Summary Statement	Proposed amendment/addition to Resolution 2020-7; Defining “Blighted” as used in Chapter 14.27 of the Lakewood Municipal Code.
Proposed Goal/Outcome	<p>The following additions/amendments are hereby proposed:</p> <p>SECTION 5. It is not the intent of this resolution to reward property owners who have failed to reasonably care for their property by exempting their property from the application of LMC Chapter 14.27. The Lakewood City Council will not designate a property as blighted under Sections 2,3 and 4 if it determines that a property owner has failed to reasonably keep their property safe, secure, sanitary and in good condition and repair, or has otherwise failed to comply with the zoning requirements of the LMC.</p> <p>SECTION 6. In making a determination of whether a property is blighted for purposes of Chapter 14.27; and in addition to the factors listed in C.R.S. 31-25-103, the City Council shall consider the length of time a property has been vacant or deteriorated, the reasons for the vacant or deteriorated condition of the property, the condition of the neighborhoods surrounding the property and the marketability of the property.</p>

	Submitted for consideration by: Councilor Mike Bieda, Ward III
History/Background	
Attached additional files here	
Identify Financial Implications	N/A
Is this topic related to one currently in process?	No
What topic is this in relation to?	
Please review existing topics identified by City Council on the Dashboard and recommend preferred timing.	ASAP
Proposed Action/Recommendation (Study Session, Workshop, in conjunction with a related topic, other)	

From: [Mary Ruther](#)
To: [Shared-CCO-Agenda](#)
Cc: [Michele Millard](#)
Subject: FW: City Council Agenda Item Request for Consideration
Date: Monday, February 24, 2020 2:29:29 PM

This is for the March 23 Regular City Council meeting under General Business. Thanks.

City Council Agenda Item Request for Consideration

Question	Response
First & Last Name	Dana Gutwein
Email	dgutwein@lakewood.org
Brief Summary Statement	Wheelchair/Van Parking
Proposed Goal/Outcome	To update our annual zoning code for new builds (grocery stores) and encourage retrofitting for existing grocery stores to add a van accessible space.
History/Background	Currently, many stores and especially grocery stores do not have wheelchair/ van parking required. There are handicap parking places, but not specifically ones that are dedicated for wheelchairs. This is an issue for a couple reasons, but the biggest one is that wheelchair accessible vans need a fair amount of room to unload on the side, and spots just don't accommodate that.
Attached additional files here	
Identify Financial Implications	n/a
Is this topic related to one currently in process?	No
What topic is this in relation to?	
Please review existing topics identified by City Council on the Dashboard and recommend preferred timing.	This should be a "small win" and should not interfere with current agenda
Proposed Action/Recommendation (Study Session, Workshop, in conjunction with a related topic, other)	Add to annual zoning code update