

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS

ORDINANCE NO. 25-010-00

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS, AMENDING SECTION 1, ARTICLE IV, OF ARTICLE 14.02, THE COMPOSITE ZONING ORDINANCE TO AMEND REGULATIONS GOVERNING WIRELESS COMMUNICATION FACILITIES; PROVIDING A SEVERABILITY CLAUSE, PROVIDING SAVINGS, EFFECTIVE DATE AND OPEN MEETINGS CLAUSES, AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the Planning & Zoning Commission held a public hearing on the proposed amendments to Section 14.02.001, Article 14.02, Chapter 14, Leander Code of Ordinances (the “Composite Zoning Ordinance”), and forwarded its recommendation on the amendments to the City Council; and

WHEREAS, after publishing notice of the public hearing at least fifteen (15) days prior to the date of such hearing, the City Council at a public hearing has reviewed the proposed amendments and finds that the adoption of the amendments promotes the public health, safety, and welfare;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEANDER, TEXAS, THAT:

SECTION 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact. The City Council hereby further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this ordinance are reasonable and necessary to protect the public health, safety and quality of life.

SECTION 2. Wireless Communication Facilities. Section 1, Article IV of the Composite Zoning Ordinance is hereby amended in its entirety to read as set forth in Exhibit A attached hereto and incorporated herein for all purposes.

SECTION 3. Conflicting Ordinances. Section 1, Article IV of the Composite Zoning Ordinance is amended as provided herein. All ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance as adopted herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, the terms and provisions of this ordinance shall govern.

SECTION 4. Savings Clause. All rights and remedies of the City of Leander are expressly saved as to any and all violations of the provisions of any ordinances affecting zoning within the City which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 5. Severability. Should any section or part of this ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

SECTION 6. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code and the City Charter

SECTION 7. Open Meetings. That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, Loc. Gov't. Code.

PASSED AND APPROVED on First Reading this the 16 day of January, 2025.

FINALLY PASSED AND APPROVED on this the 6 day of February, 2025.

ATTEST:

THE CITY OF LEANDER, TEXAS:

Dara Crabtree, City Secretary

Christine DeLisle, Mayor

EXHIBIT A. ZONING ORDINANCE
ART. IV, SEC. 1 WIRELESS COMMUNICATION FACILITIES

SECTION 1: Wireless Communications Facilities.

(a) Purpose and goals.

The purpose of this section is to provide reasonable standards and procedures for the development of Wireless Communications Facilities (WCFs) that will ensure that residents, public safety operations and businesses have reliable access to wireless telecommunications networks and state of the art communications services while also ensuring that this objective is achieved in a fashion that preserves the intrinsic aesthetic character of the community and is accomplished according to the City's zoning, planning, and design standards. The Telecommunications Act of 1996 preserved, with certain limitations, local government land use and zoning authority concerning the placement, construction, and modification of wireless telecommunications facilities.

This ordinance establishes parameters for siting of WCFs in order to:

- (1) Ensure access to reliable wireless communications service throughout all areas of the City;
- (2) Preserve and protect the public safety;
- (3) Preserve and protect property values;
- (4) Ensure public health, safety, and welfare;
- (5) Preserve the character and aesthetics of areas which are in close proximity to WCFs by minimizing the visual, aesthetic and safety impacts through careful design, placement and screening;
- (6) Provide development that is compatible in appearance with allowed uses of the underlying district;
- (7) Facilitate the City's permitting process to encourage fair and meaningful competition and to extend to all people in all areas of the City high-quality wireless communication services at reasonable costs to promote the public welfare; and,
- (8) Encourage the joint use and clustering of antenna sites and structures, when practical, to help limit the number of such facilities which may be required in the future to service the needs of customers and, thus, avert unnecessary proliferation of facilities on private and public property.

(b) Definitions.

For the purposes of this section of the Composite Zoning Ordinance, the following definitions apply, and the following definitions shall control in this section in the event that a term is also defined in Article 1, Section 6:

Abandon – Occurs when an owner of a Support Structure intends to permanently and completely cease all business activity associated therewith.

Accessory Equipment – Any equipment serving or being used in conjunction with a WCF or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

Administrative Approval – Permit approval that the Director of Planning or designee is authorized to grant after Administrative Review under this Section 1.

Administrative Review – Non-discretionary evaluation of an application by the Development Services Review Committee. This process is not subject to a public hearing. The procedures for Administrative Review are established in this section of the Ordinance.

Antenna – Any structure or device used to collect or radiate electromagnetic waves for the provision of services including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omnidirectional antennas, such as whips. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

Base Station – means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein or any equipment located on a tower.

Carrier on Wheels or Cell on Wheels (“COW”) – A portable self-contained WCF that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.

Collocation – The act of siting WCFs on an Existing Structure without the need to construct a new support structure and without a Substantial Increase in the size of an Existing Structure.

Concealed WCF – Any WCF that is integrated as an architectural feature of an Existing Structure or any new Support Structure designed so that the purpose of the Facility or Support Structure for providing wireless services is not readily apparent to a casual observer. A Monopalm or Monopine qualify as a Concealed WCF.

Existing Structure – Previously erected Support Structure permitted by the City for installation of a WCF or any other structure, including but not limited to, buildings and water tanks, to which Telecommunications Facilities can be attached.

Major Modifications – Additions to or improvements to existing WCFs or Support Structures that result in a Substantial Increase to the Existing Structure. Collocation of new WCFs to an existing Support Structure without Replacement of the structure shall not constitute a Major Modification.

Minor Modifications – Improvements to Existing Structures that result in some material change to the Facility or Support Structure but of a level, quality or intensity that is less than a Substantial Increase. Minor Modifications include the Replacement of the support structure with a support structure of the same size and design.

Monopalm/Monopine – A monopole designed to look like a palm or pine tree in order to blend into the surrounding landscape.

Monopole – A single, freestanding pole-type structure supporting one or more Antenna. For purposes of this Ordinance, a Monopole is not a Tower.

Ordinance – The City of Leander Zoning Ordinance.

Ordinary WCF Maintenance – Actions taken to keep WCFs in good operating condition and to keep a WCF's ground area clear of debris overgrown landscaping. Ordinary WCF maintenance includes inspections, component testing, adjustments to facility components that maintain functional capacity, aesthetic and structural integrity; for example the strengthening of a Support Structure's foundation or of the Support Structure itself, provided the strengthening does not require use of heavy ground equipment. Ordinary Maintenance includes replacing Antennas of a similar size, weight, shape and color and Accessory Equipment within an existing WCF within permitted parameters, and relocating the Antennas of approved Telecommunications Facilities to different height levels on an existing Monopole or Tower upon which they are currently located. Ordinary Maintenance does not include Minor and Major Modifications.

Replacement – Constructing a new Support Structure of proportions and of permitted height that would not constitute a Substantial Increase to a pre-existing Support Structure in order to support a WCF or to accommodate Collocation and removing the pre-existing Support Structure.

Section 1 – References to Section 1 or article, refer to *Section 1.-Wireless Communication Facilities in Chapter 14, Exhibit A.- Zoning Ordinance, Article IV. Use Standards* of the Leander Code of Ordinances.

Substantial Increase –

- (1) the mounting of the proposed antenna on an Existing Structure would increase the existing height of the Existing Structure by more than ten (10%) percent, or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty feet (20'), whichever is greater; or
- (2) the mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four (4), or more than one new equipment shelter; or
- (3) the mounting of the proposed antenna would involve adding an appurtenance to the body of the Existing Structure that would protrude from the edge of the Existing Structure more than twenty feet (20'), or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or
- (4) the mounting of the proposed antenna would involve excavation outside the current Existing Structure site, defined as the current boundaries of the leased or owned property surrounding the Existing Structure and any access or utility easements currently related to the site.

Support Structure(s) – A structure designed to support a WCF including, but not limited to, Monopoles, Towers, and other freestanding self-supporting structures.

Wireless Communication Facility (WCF) – An unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but

not limited to, cellular telephone service, PCS, and paging service. A WCF can consist of one (1) or more Antennas and Accessory Equipment or one base station.

Tower – A lattice-type structure, guyed or freestanding, which supports one or more Antennas.

(c) **Guidelines.** The regulations contained in this Section have been developed under the following general guidelines as provided in the Federal Telecommunications Act of 1996:

- (1) Cities have local authority over "placement, construction and modification" of cellular telephone facilities and other personal wireless communication service facilities.
- (2) Regulations "shall not unreasonably discriminate among providers of functionally equivalent services."
- (3) Regulations "shall not prohibit or have the effect of prohibiting the provision of personal wireless services."
- (4) "Denial shall be in writing and supported by substantial evidence."
- (5) Cities may not "regulate the placement, construction and modification of personal wireless service facilities on the basis of environmental or radio frequency emissions to the extent that such facilities comply with the Federal Communication Commission's regulations concerning such emissions."
- (6) Notwithstanding any other provision of this ordinance, wireless telecommunication towers and antennas, when permitted by federal law and the laws of the State of Texas, shall be regulated and governed by the following use regulations and requirements provided in this ordinance.

(d) **Applicability.** The placement, use or modification of any wireless communication facilities at any location within the City is subject to the provisions of this section.

(e) **Authority.** This ordinance is adopted pursuant to the general police powers of the City of Leander under state and federal law, including specifically the authority of the City under the City of Leander Charter, the Texas Constitution and the general laws of the State of Texas. This section does not apply to network nodes as defined by Texas Local Government Code Chapter 284, as amended by the City of Leander ordinance, which are proposed to be located within the right of-way.

(f) **Administrative Review and Approval Required for WCFs and Support Structures.**

- (1) WCF's and Support Structures Authorized for Administrative Review. The following telecommunication facilities may be approved to be installed after Administrative Review and Administrative Approval in the following zoning districts, provided that such facilities comply with this Ordinance:
 - a. Collocations and Minor Modifications – Any zoning district.
 - b. New Support Structures that are less than sixty feet (60') in height – Any zoning district except Residential Districts.
 - c. Concealed WCFs that are less than sixty feet (60') in height – Any Residential District.
 - d. New Support Structures up to one hundred twenty feet (120') – Any Commercial District.

- e. Concealed WCFs up to one hundred fifty feet (150') – Any zoning district other than Residential Districts.
 - f. New Support Structures up to one hundred ninety-nine feet (199') – Any Industrial District.
 - g. COWs – Any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance if the use is not otherwise exempt. If the use of the COW is either not in response to a declaration of emergency, or the use will last in excess of one hundred-twenty (120) days, Administrative Review and Administrative Approval shall also be required.
- (2) Special Use Permit. WCFs not permitted by Administrative Approval shall be permitted in any district upon granting of a Special Use Permit after conducting a public hearing in accordance with Article IV, Section 2 of this ordinance.

(g) Standards for WCFs and Support Structures Permitted by Administrative Approval.

(1) WCFs Located on Existing Structures

- a. WCFs are permitted in all zoning districts when located on any Existing Structure subject to Administrative Review and Administrative Approval conducted in accordance with the requirements of this Ordinance.
- b. Antennas and Accessory Equipment may exceed the maximum building height limitations within a zoning district, provided they do not constitute a Substantial Increase, subject to Administrative Review and Administrative Approval conducted in accordance with the requirements of this Ordinance.
- c. Minor Modifications are permitted in all zoning districts subject to Administrative Review and Administrative Approval conducted in accordance with the requirements of this Ordinance.

(2) New Support Structures

- a. The height of any proposed New Support Structure shall not exceed the minimum height necessary to meet the coverage or capacity objectives of the Facility. The setback of the structure shall be governed by the setback requirements of the underlying zoning district.
- b. A Monopole or Replacement pole that will support utility lines as well as WCFs are permitted within utility easements or rights-of-way, subject to Administrative Review and Administrative Approval conducted in accordance with requirements of this Ordinance and the following:
 - i. Permission has been granted by the property owner. See also Section 1(h)(1)(c) for additional requirements for City-owned or controlled right-of-way or easements.
 - ii. The utility easement or right-of-way shall be a minimum of one hundred feet (100') in width.
 - iii. The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are eighty feet (80') or greater in height.

- iv. The height of the Monopole or replacement pole may not exceed by more than thirty feet (30') the height of existing utility support structures.
 - v. Monopoles and the Accessory Equipment shall be set back a minimum of fifteen feet (15') from all boundaries of the easement or right-of-way.
 - vi. Single carrier Monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by Subsection (iii) above.
 - vii. Monopoles or Replacement poles that use the structure of a utility tower for support are permitted under this subsection. Such poles may extend up to twenty feet (20') above the height of the utility tower.
- c. Monopoles or Replacement poles with WCFs are allowed on public property or within public rights-of-way when the WCFs will support public facilities or equipment, subject to an Administrative Review and Administrative Approval conducted in accordance with requirements of this Ordinance. Examples of public facilities or equipment include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, streetlights, and other types of utility poles in the public right-of-way.

(3) Concealed WCFs

- a. Concealed WCFs in residential areas shall comply with the requirements below in order to qualify for Administrative Review.
 - i. Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer or passerby.
 - ii. Existing Structures utilized to support the Antennas must be authorized to be located within the underlying zone district. Such structures may include, but are not limited to, flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets, and steeples.
 - iii. Setbacks for Concealed WCFs that utilize a new Support Structure shall be governed by the setback requirements of the underlying zoning district and the requirements of Section 1 (h)(5) of this Ordinance.

(4) Collocation

- a. Street pole attached WCFs may only extend six feet (6') above the top of the existing street pole. A maximum extension of fifteen feet (15') from the top of the street pole may be permitted pursuant to standards provided in this Ordinance, if clearly demonstrated that such is necessary to avoid disturbance or disruption of service provided by any other carrier or utility.

(5) COW Facilities and Minor Modifications

- a. The use of COWs shall be permitted in any zoning district subject to Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance if the use of the COW is either not in response to a declaration or emergency by the Governor or will last in excess of one hundred-twenty (120) days.

(6) General Standards, Design Requirements, and Miscellaneous Provisions

- a. Unless otherwise specified herein, all WCFs and Support Structures permitted by Administrative Approval are subject to the applicable general standards and design requirements listed in this Ordinance.

(7) Administrative Review Process

- a. Prior to submitting a WCF Site Development Application, the applicant must first attend a pre-development meeting with city staff to help familiarize the applicant with applicable codes and regulations as well as determine if the proposed location is in compliance with the ordinance requirements and location priorities.
- b. All applications for a permit under this Section 1 shall demonstrate compliance with Article IX of the Composite Zoning Ordinance.
- c. In addition to the items listed in Article IX of the Composite Zoning Ordinance, the application shall also contain the following:
 - i. Copy of lease or license agreement from the property owner evidencing applicant's authority to pursue an application and that meet the requirements of this Section. Such submissions need not disclose financial terms. This lease /license agreement shall allow the landowner to enter into leases/license agreements with other providers and contain an acknowledgement by the landowner that the City's regulations make it the landowner's responsibility to remove the WCF and related equipment if the provider fails to remove said WCF and related equipment within ninety (90) days of its discontinued use, and further authorize the City to enforce provisions of this ordinance requiring such removal against landowner.
 - ii. Site plans detailing proposed improvements demonstrating how the improvements comply with Article IX of the Composite Zoning Ordinance. Site plans shall depict improvements related to the requirements listed in this Ordinance, including property boundaries, setbacks, topography, emergency vehicle accessibility, parking, elevation sketch, true paint samples, and dimensions of improvements.
 - iii. In the case of new WCFs the application shall include:
 - 1. A statement documenting why collocation cannot meet the applicant's requirements. Such statement may include justifications, including why collocation is either not reasonably available or technologically feasible as necessary to document the reasons why collocation is not a viable option; and
 - 2. A list of all the existing structures considered as alternatives to the proposed location and an explanation why the alternatives considered were either unavailable, or technologically or reasonably infeasible.
 - 3. Elevation drawings or before and after photographs/drawings simulating and specifying the location and height of the antennas, support structures, equipment enclosure(s) and other accessory uses, fences and signs.
 - 4. A map indicating the service area of the facility.

5. A map indicating locations and service areas of other WCF sites operated by the applicant and sites of other providers' facilities in the city and within one mile of the City's corporate limits.
 6. Photo simulations of the proposed WCF from affected residential properties and public right-of-way at varying distances;
 7. Written documentation demonstrating a good faith effort to site WCFs in accordance with this Ordinance.
 8. A description of the Support Structure or building upon which the WCF is proposed to be located, and the technical reasons for the design and configuration of the WCF.
 9. Signed and notarized statement by the applicant indicating that:
 - a) The proposed tower shall accommodate co-location of additional antennas and the applicant shall enter into leases/license agreements with other providers on a reasonable and nondiscriminatory basis on such tower;
 - b) Certification that the antenna usage shall not interfere with other adjacent or neighboring transmission or reception functions;
 - c) The applicant agrees to remove the WCF and equipment at applicant's cost within ninety (90) days after the site's use is discontinued; and
 - d) The tower complies with all EIA (Electronic Industries Association) standards and applicable federal and state laws and regulations, including FAA regulations, and the City ordinances.
 10. Signed and notarized statement by the owner, if the applicant does not own the or Support Structure will be located that landowner acknowledges that the owner will be responsible for removing the WCF and equipment at the owner's cost in the event the applicant fails to remove the WCF and equipment within ninety (90) days after the WCF and equipment's use is discontinued;
 11. The applicant shall demonstrate current FCC licensing;
 12. A complete right-of-way encroachment permit application in compliance with Ordinance 99-047-00, as amended from time to time, if the WCF is to be located within a public right-of-way.
- (8) Building Permit. A building permit is required prior to construction of a WCF in conformance with the approved WCF Site Development Plan Permit.

(h) Development Standards. All WCFs shall comply with the following standards:

- (1) Use. WCFs shall be an additional permitted use as follows:
 - a. Residential Areas. Freestanding WCFs, including lattice towers, are prohibited. WCFs attached to street poles or facades attached to nonresidential buildings or concealed WCFs are permitted subject to the provisions of this Ordinance.
 - b. Nonresidential Areas. WCFs are permitted subject to the provisions of this Ordinance.

- c. City-owned property within any district. WCFs may be installed on City-owned property or right-of-way after Administrative Review and Administrative Approval; provided that the owner of the WCF shall enter into a license agreement in a form approved by the City. A WCF may be located in an easement owned by the City only if the WCF will not interfere with the City's easement, the owner of the WCF and the City have entered into an encroachment agreement in a form approved by the City, and all other applicable requirements of this Section are met. WCF's approved under this subsection through the Administrative Review and Administrative Approval Process are subject to the following height restrictions:

- i. Property zoned to a residential district – Less than sixty feet (60')
- ii. Property zoned to a commercial district – Up to one hundred twenty feet (120')
- iii. Property zoned to an industrial district – Up to one hundred ninety-nine feet (199')
- iv. Property zoned to a district other than residential or industrial – Up to one hundred fifty feet (150')

(2) Siting and Facility Type Priorities. Locations of WCFs shall be prioritized in the following order:

- a. Co-location on an existing tower, structure or building. The applicant shall have the burden of documenting and showing that there are no feasible existing structures.
- b. Attached as a concealed WCF to an existing building or structure in a non-residential district.
- c. In areas where the existing topography, vegetation, buildings and other structures provide the greatest amount of screening;
- d. Use of City owned property;
- e. Located as a freestanding concealed WCF in a permitted non-residential district.
- f. Other nonresidential buildings or vacant non-residentially zoned land.

(3) Co-Location Requirement. Co-location is considered to be a visually unobtrusive installation method because the equipment is attached to an existing structure. No new tower shall be permitted unless the applicant demonstrates a good faith effort to co-locate on an existing facility including good faith efforts to negotiate lease rights. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed antennas may consist of any of the following:

- a. No existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements;
- b. Existing towers or structures are not sufficiently designed to meet the applicant's engineering requirements as indicated in their site development plan;
- c. Existing towers or structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment;
- d. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna; and/or

- e. The fees, costs or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for share are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
- (4) Combination with other uses. A WCF is permitted on a lot with an existing use and may occupy a leased parcel on a lot meeting the minimum lot size requirement of the zoning district in which is located. Towers and their associated equipment shall be separated from other structures on the lot by a minimum distance of ten feet (10'). A WCF is prohibited on a billboard sign.
- (5) Setbacks. The standard setbacks for each zoning district shall apply to WCFs with additional setbacks or separation as listed below.
- a. Towers shall be placed a minimum distance equal to the height of the tower away from any residential structure or property zoned for residential use. No guy wire shall be used.
 - b. WCFs shall be setback a minimum distance equal to three (3) times the height of the tower from any Toll Road, Arterial, or Collector class roadway.
 - c. In addition to the setbacks listed above, all WCFs shall comply with the building setback provisions of the zoning district in which the WCF is located.
 - d. Roof attached WCFs shall be set back from the edge of the building the height of the antenna and support system as measured from the roof membrane;
 - e. No additional setbacks are required for WCFs attached to street poles when constructed within the public right-of-way and under the requirements of subsection (j) below;
 - f. Facade Attached WCFs shall have a maximum projection of eighteen inches (18"). The location of a WCF on the wall of a legal nonconforming structure is permitted. However, the WCF shall not be located on an exterior wall in a manner that will increase the degree of nonconformity. Additional standards for antennas attached to the facade of structures are listed in this Section;
 - g. Equipment enclosure, underground vaults or above-ground structures shall comply with the setback requirements of the underlying zoning district where the WCF is located;
 - h. No freestanding WCFs or equipment enclosures shall be located between the face of a structure and a public or private street, bikeway, park or residential development, except for approved facade attached WCFs located on existing or new permitted structures in accordance with this ordinance.
- (6) Noise. Equipment located at the base of a WCF shall not generate noise in excess of 75 decibels(dB) at the property line.
- (7) Automation. A WCF shall be fully automated and unattended on a daily basis, and shall be visited only for periodic and necessary maintenance.
- (8) Maintenance and repair. All WCFs and associated equipment shall at all times be kept and maintained in good condition, order, and repair and the area surrounding WCF ground structures shall be kept free of brush and debris so that the same shall not menace or endanger the life or property of any person. Routine testing and maintenance shall be

limited to weekdays between 8:30 a.m. and 4:30 p.m. Emergency repairs shall be allowed at all times.

- (9) Removal. A WCF that is not operated for a continuous period of six months is deemed abandoned, and shall be removed within sixty (60) days of receipt of notice from the City. Each property owner and person in control of the site is responsible for removal, jointly and severally. If such facility is not removed within said sixty (60) days of notice from the City, the City may remove such facility at the expense of the property owner and person in control of the site. If there are two or more users of a single WCF, then this provision shall not become effective until all users cease operations on the facility housing the users.
- (10) Improvement and replacement. An existing WCF may be improved or replaced with a new WCF provided the improvements or replacement comply with the provisions of this Section 1.
- (11) Prohibitions. The following are prohibited or restricted within the City, as noted:
 - a. WCF interference with City and public safety communication systems and/or area television or radio broadcasts – Prohibited;
 - b. Freestanding towers within residential areas – Prohibited;
 - c. Lattice towers – Prohibited;
 - d. Guy wires – Restricted. No guy wire or other support wires shall be used in connection with such antenna, antenna array or its support structure except when used to anchor the antenna, antenna array or support structure to an existing building or ground to which such antenna, antenna array or support structure is attached.
- (12) Lease or License Agreement Required. A lease or license agreement is required to be submitted by the provider in a form acceptable to the City describing, at a minimum, the responsibilities of the landowner, service provider(s), any other lessors and lessees, all other parties, and the City applicable to any structures, operations, termination of operation, removal or replacement costs associated with the facilities, to ensure the continued safety and appearance of the structures, equipment and amenities as specified in this article.
- (13) Structural Standards. WCFs must conform to the most current revision of EIA 222 standards. The Director of Planning or designee shall have the authority to inspect the WCF at any time to ensure the structure is safe and not a danger to the public.
- (14) Architectural Compatibility.
 - a. All facilities shall be designed to minimize the visual impact to the greatest extent feasible, considering technological requirements, by means of placement, screening and camouflage, to be compatible with existing architectural elements and building materials and other site characteristics. The applicant shall use the smallest and least visible antennas possible to accomplish the owner/operator's coverage objectives.
 - b. Colors and materials for facilities shall be chosen to minimize visibility. Facilities shall be painted or textured using colors to match or blend with the primary background.
 - c. WCFs located on buildings, walls or roofs, shall blend with the existing building's architecture by painting or shielding with material that is consistent with the design features and materials of the building.

- d. Equipment enclosures on WCFs shall be designed consistent with this Section 1 or placed in underground vaults.
- (15) Screening. A masonry screening wall a minimum of six feet (6') in height shall be provided to screen as much of the support structure and the equipment enclosure as reasonably possible. The following standards shall apply to all WCFs. However, if the antenna is mounted flush with the building or on the roof, and other equipment is located inside the existing building, landscaping shall not be required. The following standards shall apply to all WCFs:
- a. Support structures and equipment enclosures shall be installed to maintain and blend with the existing landscaping on-site, including trees, foliage and shrubs, whether or not utilized for screening.
 - b. A six-foot (6') masonry screening wall shall be provided along the perimeter of the enclosure to visually screen the support structures and above ground equipment enclosures. The screening wall shall be comprised of masonry or cementitious fiber planking.
 - c. Upon completion, the owner(s)/operator(s) of the facility shall be responsible for the continued maintenance and replacement of all required landscaping and screening materials.
 - d. Fencing. Security fencing, if installed, shall be by a wrought iron or vinyl coated chain-link fence with a masonry screening wall, each not less than six feet (6') in height, consistent with the requirements of Article VI, Section 16 Fences of this ordinance.
- (16) Color/Materials. WCFs located on buildings, walls or roofs, or structures shall be painted or constructed of materials to match the color of the structure directly behind them to reduce the visibility of the WCF. To the extent any WCFs extend above the height of the vegetation immediately surrounding it, they shall be painted in a nonreflective light gray, light blue or other hue, which blends with the skyline and horizon.
- (17) Facility Lighting and Signage.
- a. Facility lighting shall be designed to meet but not exceed minimum requirements for security, safety or FAA regulations. Lighting of antennas or support structures is prohibited unless required by the FAA. In all instances the lighting shall be designed to avoid glare and minimize illumination on adjacent properties. Lighting shall also comply with all of the City's lighting regulations.
 - b. Signs shall be limited to those needed to identify the telephone number(s) to contact in an emergency, public safety warnings, certifications or other required seals. These signs shall also comply with the requirements of the City's sign regulations including appropriate permit provisions.
 - c. Advertising is prohibited anywhere on a WCF except for minimum signage required by the Federal Communications Commission (FCC) regulations.
An identification sign for each service provider responsible for the operation and maintenance of a WCF at the site, not larger than two (2) square feet, shall be posted at a location from which it can be easily read from outside the perimeter of the WCF,

and shall provide the name, address, and emergency telephone number of the responsible service provider.

(18) Parking. In addition to other off-street parking spaces required by other uses on the project site, one off-street parking space shall be provided for use by maintenance workers, excluding utility pole mounted WCFs.

(19) Access. In addition to ingress and egress requirements of the current building codes adopted by the City, access to and from WCFs and equipment shall be regulated as follows:

- a. No WCF or equipment shall be located in a required parking area or in a maneuvering or vehicle/pedestrian circulation area such that it interferes with, or in any way impairs, the intent of functionality of the original design.
- b. The WCF shall be secured from access by the general public, but access for emergency services must be ensured. Access roads shall comply with fire code standards for emergency vehicular access.

(20) WCF Specific Standards. In addition to other standards identified in this Section, street pole and facade attached WCFs shall also meet the following conditions and criteria.

- a. Facade Attached WCFs. Equipment enclosures shall be located within the structure in which the WCF is placed or located underground if site conditions permit. Otherwise, equipment enclosures shall comply with the design standards listed in paragraph (20) b.iv below.
- b. Utility Pole/Tower Attached WCFs.
 - i. Attachment. Only one (1) WCF shall be permitted on any one street pole. More than one WCF may be attached to an Electric Transmission Tower (ETT). The antenna shall be equal to or less than six feet (6') in height, including the support system, if any. Surface area of an antenna shall not exceed five hundred eighty (580) square inches. The antenna shall be either fully concealed within the street pole or camouflaged to appear to be an integrated part of the street pole. Antennas on ETTs or an antenna not flush mounted on the side of the street pole, shall be centered on the top of the street pole to which it is attached and camouflaged or disguised.
 - ii. Utility Separation. In the event that a utility located upon a street pole or an ETT requires vertical separation between its utility facilities and the antenna so attached, the antenna may be raised by a support system to accommodate the separation requirement to an elevation not exceeding an additional fifteen feet (15') above the top of the tower or the required separation, whichever is less. Any such support shall not be greater in diameter than the existing street pole and shall be designed to blend into the colors and textures of the existing street pole.
 - iii. Pole Replacement. Existing street poles may be replaced with a new street pole of the same height, dimension and appearance as the existing street pole except that a fifteen foot taller pole may be used in instances described in (j)(2) below. An antenna located upon the new street pole shall conform with the development regulations specified in this Ordinance.

iv. Equipment Enclosures.

- a) Below Ground. An underground equipment enclosure may be connected to an above-ground equipment enclosure provided that no greater than six (6) cubic feet is above ground.
 - b) Above Ground. Above-ground equipment enclosures shall not be greater than six (6) cubic feet in volume. No single dimension shall exceed three feet (3). The equipment enclosure shall be constructed so as to minimize its visual impact. A masonry screening wall a minimum of six feet (6') in height shall be installed and maintained to completely obscure the visibility of the equipment enclosure from the developed street and adjacent properties. Sight distance clearance shall be maintained for the equipment enclosure and associated landscape pursuant to the requirements of this Section and City ordinances.
- v. Horizontal Separation. For WCFs located within private or public rights-of-way, there shall be a minimum horizontal separation of three hundred feet (300') between the WCFs of a single licensed carrier and a minimum horizontal separation of one hundred feet (100') between the WCFs of any other licensed carrier.
- vi. The Commission and Council may approve an encroachment permit, after staff review of the WCF permit application. In the event the utilities located on a street pole are relocated underground, the WCF shall be relocated to another location pursuant to the requirements of this ordinance.

(j) Safety.

- (1) Federal Requirements. All WCFs shall meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the WCFs governed by this ordinance shall bring such WCFs into compliance with the revised standards and regulations within three (3) months of the effective date of the revised standards and regulations, unless a more stringent compliance schedule is maintained by the controlling federal agency. Failure to bring WCFs into compliance with such revised standards and regulations shall constitute grounds for the removal of the WCF at the owner's expense.
- (2) Antenna Support Structure Safety. The applicant shall demonstrate that the proposed antenna and support structure are safe and the surrounding areas shall not be negatively affected by support structure failure, falling ice or other debris or interference. All support structures shall be fitted with anti-climbing devices, as approved by the manufacturers.
- (3) Structural Certification. Prior to the installation of any building/roof mounted telecommunications antenna, antenna array or support structure, the City's Director of Planning or designee shall be provided with a structural engineer's certification that the structure will support and not be adversely affected by the proposed antenna and associated equipment.

(i) Facility Operation

(1) Maintenance

- a. Each permittee shall maintain its WCF in a good and safe condition, preserving the original appearance and concealment, disguise or screening elements incorporated into the design at the time of approval and in a manner which complies with all applicable federal, state and local requirements. Such maintenance shall include, but not be limited to, such items as painting, repair of equipment and maintenance landscaping. If the permittee fails to maintain the facility, the City may undertake the maintenance at the expense of the permittee or terminate the permit, at its sole option.
- b. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable City building codes and the applicable standards for towers that are published by the EIA, as amended from time to time. If, upon inspection, the City concludes that the tower fails to comply with such codes or standards and constitutes a danger to person or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days constitutes grounds for the removal of the WCF at the owner's expense.

(2) Modification

- a. New Permit. Any proposed change or addition to any WCF shall require the issuance of a new site development permit, pursuant to the requirements of this ordinance. This provision shall not apply to routine maintenance of a WCF, or to the replacement of any portion of the WCF with identical equipment on a WCF in conformance with this ordinance.
- b. Facility Upgrade. At the time of modification or upgrade of facilities, existing equipment shall be replaced with equipment of equal or greater technical capacity and reduced in size if reasonably possible so as to reduce visual impact.
- c. Existing Uses. All WCFs existing on the date of passage of this ordinance shall be allowed to continue their operation as they presently exist, subject to [Section \(h\)](#), [Section \(i\)](#), and [Section \(m\)](#). Routine maintenance shall be permitted. However, construction involving the replacement of support structure apparatus, antennas or any exterior alteration shall comply with all the requirements of this ordinance. Emergency Service WCFs may obtain a waiver from the commission and council in order to preserve the public health and safety. Waivers will be considered based on the applicable law, the cost of required modifications, and the public safety and welfare. The waiver shall be noticed pursuant to the public hearing requirements identified in [Section \(l\)\(5\)](#) including a report from the commission on said waiver request.

(3) Abandonment or Discontinuance of Use

- a. Construction or activation of a WCF shall commence within ninety (90) days of approval of the site development permit and completed within two years or the permit shall be null and void. An additional ninety (90) day extension may be granted by the City Manager, or his/her designee, due to weather conditions or other extenuating circumstances beyond the control of the applicant. Requests and approvals of extensions shall be made in writing.

- b. At such time that a licensed carrier plans to abandon or discontinue operation of a WCF, such carrier shall notify the City by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuation of operations. In the event that a licensed carrier fails to give such notice, the WCF shall be considered abandoned upon such discontinuation of operations.
- c. Upon abandonment or discontinuation of use, the carrier should physically remove the WCF within ninety (90) days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:
 - i. Removal of antennas, support structures, equipment enclosures and security barriers from the subject property.
 - ii. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
 - iii. Restoring the location of the WCF to its natural condition, except that any landscaping and grading shall remain in the after-condition. Minor modification for integration with other landscaping or site design will be permitted and approved by staff.
- d. In the event that more than one provider is using the WCF, the WCF shall not be considered abandoned until all such users cease using the structure as provided in this ordinance.
- e. Abandoned WCFs may be reutilized by a provider after a site development permit is obtained illustrating compliance with this ordinance.

(k) Exempt Communication Facilities. The requirements imposed by this Article shall not apply to antennas designed to receive video programming signals from direct broadcast satellite (DBS) services, multi-channel multipoint distribution providers (MMDS), or television broadcast stations (TVBS) provided that all of the following conditions are met:

- (1) The antenna measures thirty-nine (39") inches (one (1) meter) or less in diameter;
- (2) The antenna, if attached to a building, shall comply with section (h)(5); and the antenna is attached to a freestanding tower measuring less than twelve feet (12') in height; and,
- (3) Lightning rods, private mobile radio systems, amateur radio antennas less than fifty feet (50') in height and whip antennas less than four inches (4") in diameter and less than ten feet (10') in height are not subject to the requirements of this Article IV.

(l) Recovery and Revocation

- (1) **Recovery of City Costs.** The wireless communication providers use various methodologies and analysis tools, including geological based computer software, to determine the specific technical parameters of personal wireless services and low power mobile radio facilities, such as expected coverage area, antenna configuration, topographic constraints that affect signal paths, etc. In certain instances, there may be need for expert review by a third party of the technical data submitted by the applicant. If requested, the Council may require such technical review to be paid for by the applicant. The selection of the third party expert shall be at the City's discretion. Based on the results of the third party review, the City may require changes to the application

for the WCF that comply with the recommendations of the expert. The expert review of the technical submission shall address the following:

- (2) The accuracy and completeness of submissions;
 - a. The applicability of analysis techniques and methodologies;
 - b. The validity of conclusions reached; and
 - c. Any specific technical issues designated by the City.
- (3) Revocation or Termination of Permit. A permit issued pursuant to this section may be revoked for the following reasons:
 - a. Construction, and/or maintenance operation of a WCF at an unauthorized location;
 - b. Construction or operation of a WCF in violation of any of the terms and conditions of this ordinance or the conditions attached to the permit;
 - c. Misrepresentation or lack of candor by or on behalf of an applicant, permittee or wireless communication provider in any application or written or oral statement upon which the City substantially relies in making the decision to grant approval or amend any permit pursuant to this ordinance;
 - d. Discontinuance of the WCF as set forth in this ordinance; or
 - e. Failure to promptly cure a violation of the terms or conditions of the permit.
 - f. Failure to commence and complete the permitted work as provided in Section (j)(5).
- (4) Notice to Cure.
 - a. Notice. In the event the City believes that grounds exist for revocation of a permit, the permittee shall be given written notice, by certified mail, of the apparent violation or noncompliance, providing a short concise statement of the nature and general facts of the violation or noncompliance, and providing the permittee a reasonable period of time not exceeding thirty (30) calendar days to furnish evidence:
 - i. That corrective action has remedied the violation or noncompliance;
 - ii. That rebuts the alleged violation or noncompliance; and/or
 - iii. That [it] would be in the public interest to impose some penalty or sanction less than revocation.
- (5) Hearing. In the event that a permittee fails to provide evidence reasonably satisfactory to the City as provided in Section (l)(4) above, the City shall refer the apparent violation or noncompliance to the council.
 - a. The council shall provide the permittee notice and reasonable opportunity to be heard concerning the matter and two (2) public hearings shall be conducted, one before the commission for the purpose of receiving the Commission's recommendation, and a second before the council.
 - b. Within ten (10) calendar days of the completion of the second public hearing, the council shall issue a written decision revoking the site development permit for the WCF or imposing such lesser sanctions as may be deemed appropriate under the circumstances.

- c. In making their recommendation and decision, respectively, the Commission and Council shall apply the following factors;
 - i. Whether the misconduct was egregious;
 - ii. Whether substantial harm resulted or is likely to result without corrective action;
 - iii. Whether the violation was intentional;
 - iv. Whether there is a history of prior violations of the same or other requirements;
 - v. Whether there is a history of overall non-compliance; and
 - vi. Whether the violation was voluntarily disclosed, admitted or cured.

(m)Appeal.

Any entity that desires to erect or utilize wireless communication facilities and to present evidence that such entity would be limited by the current ordinances or regulations of the City dealing with zoning and land use may apply for plan or permit approval under this section and seek amendment or repeal of the ordinance requirement. The council shall, upon a showing that strict application of the regulations would prohibit or have the effect of prohibiting personal wireless service, as defined by federal law, modify the subject regulations, consistent with the spirit and intent of this Section, to the extent necessary to prevent the prohibition.

(n) Additional Enforcement.

In addition to any other relief provided by this Ordinance, the City may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this article and other available relief.

(o) Conflict of regulations.

This section shall not be construed, applied, interpreted nor enforced in a manner that conflicts with federal or state regulations, limitations or other applicable requirements. If any term or provision of this section conflicts with state or federal law, this section shall be construed and interpreted consistent with such law, and the state or federal law shall prevail. In the event of a conflict between this section and any other ordinance, the most restrictive standard applies.