



**CITY OF WEST COVINA**

**PLANNING COMMISSION**

**NOVEMBER 26, 2019, 7:00 PM  
REGULAR MEETING**

**CITY HALL COUNCIL CHAMBERS  
1444 W. GARVEY AVENUE SOUTH  
WEST COVINA, CALIFORNIA 91790**

**Herb Redholtz, Chair  
Sheena Heng, Vice Chair  
Don Holtz, Commissioner  
Gregory Jaquez, Commissioner  
Glenn Kennedy, Commissioner**

***Please turn off all cell phones and other electronic devices prior to entering the Council Chambers***

***AMERICANS WITH DISABILITIES ACT***

The City complies with the Americans with Disabilities Act (ADA). If you will need special assistance at Planning Commission meetings, please call (626) 939-8433 (voice) or (626) 960-4422 (TTY) from 8 to 5 Monday through Thursday. Do call at least one day prior to the meeting date to inform us of your particular needs and to determine if accommodation is possible. For sign language interpreter services at Planning Commission meetings, please request no less than four working days prior to the meeting.

***PUBLIC COMMENTS/ADDRESSING THE COMMISSION***

Any person wishing to address the Planning Commission on any matter listed on the agenda or on any other matter within their jurisdiction is asked to complete a speaker card that is provided on the speaker podium and submit the card to a Planning Department staff member.

***Please identify on the speaker card whether you are speaking on an agenda item or non-agenda item.*** Requests to speak on non-agenda items will be heard during "Oral Communications" before the Public Hearing section of the agenda. Oral Communications are limited to thirty (30) minutes. Generally, comments are limited to five minutes per speaker unless further time is granted by the Chairperson. ***The Chairperson may also, at his or her discretion, further limit the time of each speaker in order to accommodate a large number of speakers and/or to ensure that the business of the Planning Commission is effectively conducted.***

Any testimony or comments regarding a matter set for Public Hearing will be heard during the public hearing for that item.

Next Resolution No. 19-6011

## **MOMENT OF SILENT PRAYER/MEDITATION**

## **PLEDGE OF ALLEGIANCE**

## **ROLL CALL**

## **APPROVAL OF MINUTES**

1. Regular meeting, October 22, 2019

## **ORAL COMMUNICATIONS**

This is the time when any member of the public may speak to the Commission on any matter within the scope of duties assigned to the Commission relating to non-agendized or consent calendar items. Other matters included on this agenda may be addressed when that item is under consideration. For all oral communications, the chairperson may impose reasonable limitations on public comments to assure an orderly and timely meeting. The Ralph M. Brown Act limits the Planning Commission and staff's ability to respond to public comments at this meeting. Thus, your comments may be agendized for a future meeting or referred to staff. The Commission may ask questions for clarification, if desired, at this time.

By policy of the Commission, Oral Communications at this time on the agenda is limited to a total of 15 minutes. Persons who are not afforded the opportunity to speak at this time may do so under "Continuation of Oral Communications" later on the agenda.

## **PUBLIC HEARINGS**

2. **CODE AMENDMENT NO. 16-03**  
**GENERAL EXEMPTION**  
**LOCATION: City-wide**  
**REQUEST: The proposed code amendment will amend Chapter 26 (Zoning) of the West Covina Municipal Code to specify submittal requirements, review process, and standards for Wireless Telecommunication Facilities in the Public Right of Way.**
3. **CODE AMENDMENT NO. 19-02**  
**APPLICANT: CITY OF WEST COVINA**  
**LOCATION: CITYWIDE**  
**REQUEST: The proposed code amendment consist of amendments to Chapter 26 (Zoning) of the West Covina Municipal Code to revise standards in the Zoning section of the West Covina Municipal Code for Residential Agriculture and Single-Family Residential zones and to consider eliminating standards for accessory habitable structures.**

4. **CODE AMENDMENT NO. 19-03**  
**GENERAL EXEMPTION**  
**APPLICANT:** City of West Covina  
**LOCATION:** Citywide  
**REQUEST:** The proposed code amendment consists of amendments to Sections 26-312, and 26-314 to Chapter 26 (Zoning) of the West Covina Municipal Code to allow for temporary non-commercial (political) signs to be placed in parkways within the public right of way.

#### **NON-HEARING ITEMS**

5. **INITIATION OF CODE AMENDMENT NO. 19-06**  
**GENERAL EXEMPTION**  
**APPLICANT:** City of West Covina  
**LOCATION:** Citywide  
**REQUEST:** Initiate Code Amendment No. 19-06 to allow the West Covina Municipal Code to be amended to be consistent with State Law pertaining to Accessory Dwelling Units (ADU).
6. **STUDY SESSION ON SPECIFIC PLANS**

***TEN-DAY APPEAL PERIOD:*** Actions taken by the Planning Commission that are not recommendations to the City Council will become final after ten (10) calendar days unless a written appeal with the appropriate fee is lodged with the City Clerk's Office before close of business on the tenth day.

#### **COMMISSION REPORTS/COMMENTS AND MISCELLANEOUS ITEMS**

This is the time when any member of the Commission may bring a matter to the attention of the full Commission that is within the scope of duties assigned to the Commission. Any item that was considered during the Agenda is not appropriate for discussion in this section of the agenda. NO COMMISSION DISCUSSION OR ACTION CAN BE CONSIDERED AT THIS TIME. If the Commission desires to discuss an issue raised by a speaker or take an action, the Commission may vote to agendaize the matter for a future meeting.

#### **7. COMMUNITY DEVELOPMENT DIRECTOR'S REPORT:**

- a. Forthcoming - November 26, 2019

#### **8. CITY COUNCIL ACTION:**

This is an oral presentation of City Council matters and actions, which are in the Commission's area of interest

#### **ADJOURNMENT**

*City of West Covina*  
**A G E N D A**

**ITEM NO. 1.**

**DATE: November 26, 2019**

**TO:** Planning Commission  
**FROM:** Planning Division  
**SUBJECT:** Regular meeting, October 22, 2019

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**Attachments**

Planning Commission Minutes 10/22/19

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**These minutes are preliminary and are considered unofficial  
until adopted at the next Planning Commission meeting.**

**A G E N D A**

**DATE: November 12, 2019**

**MINUTES  
REGULAR MEETING OF THE PLANNING COMMISSION  
CITY OF WEST COVINA  
Tuesday, October 22, 2019**

The regular meeting of the Planning Commission was called to order at 7:00 p.m. in the West Covina Council Chambers. The Commission observed a moment of silent prayer/meditation and Commissioner Heng lead the Pledge of Allegiance.

**ROLL CALL**

Present: Heng, Holtz, Jaquez, Kennedy, Jaquez (arrived at 7:10 p.m.) and Redholtz

Absent: None

City Staff Present: Anderson, Burns, Aguilar, Barrios and de Zara

**APPROVAL OF MINUTES:**

Regular meeting, September 10, 2019

Regular meeting, September 24, 2019

The minutes were approved as submitted.

**OTHER MATTERS OR ORAL COMMUNICATIONS**

Chris Miller addressed the Commission regarding his concern for lack of funding for police officers and dangerous intersections in West Covina.

**PUBLIC HEARINGS**

1. **CONDITIONAL USE PERMIT NO. 19-10  
CATEGORICAL EXEMPTION**  
APPLICANT: Charlotte Wisneski for Leave No Paws Behind  
LOCATION: 1407 E. Amar Road  
REQUEST: The applicant is requesting a conditional use permit for the use of a veterinary hospital, Leave No Paws Behind, to be located in the "Neighborhood Commercial" (NC) zone.

The staff report was presented by Planning Intern Baltazar Barrios. During his presentation he spoke about the surrounding uses, size of the property and the building

that will house the veterinary hospital. They also spoke about the business operation plan and the intent of the hospital to care for elderly and sick dogs that are rescued from shelters. There was a short discussion by the Commission regarding the number of parking spaces to the rear of the building and ADA parking spaces.

Chairman Redholtz opened the public hearing.

**PROPONENT:**

Frank Wisneski, representing the applicant, said he will be managing the veterinary hospital. He also explained that the veterinary hospital will specialize in senior dogs which often get placed in shelters because their veterinary costs are too high. He also answered questions by the Commission regarding different aspects of caring for senior animals and the operation of the veterinary hospital.

**OPPONENTS:**

No one spoke in opposition to the project.

Chairman Redholtz closed the public hearing.

Commissioner Holtz expressed his support of the use. Chairman Redholtz commented on his concern about parking in the center for this use and suggested a six-month review. Commissioner Jaquez commented that West Covina residents should be utilizing the Inland Valley Humane Society, since they have a contract with West Covina for animal services. Chairman Redholtz also expressed his support of this use.

Motion by Holtz, seconded by Kennedy, to waive further reading and adopt Resolution No. 19-6007 approving Conditional Use Permit No. 19-10. Motion carried 5-0.

Chairman Redholtz said this action is final unless appealed to the City Council within ten (10) days.

**2. TENTATIVE PARCEL MAP NO. 82458  
CEQA EXEMPTION SECTION 15303**

**APPLICANT:** James Qui

**LOCATION:** 2211 W Merced Avenue

**REQUEST:** The project consists of a request for the approval of a tentative parcel map to subdivide a 20,009 square foot property in to two lots as follows: Parcel 1 (7,500 sq. ft.), Parcel 2 (15,509 sq. ft.). Vehicular access to Parcel 1 and Parcel 2 will be provided via West Merced Avenue. The two-lot subdivision is being requested to facility the construction of two single-family residences. The residences to be

constructed on Parcels 1 and 2 will each consist of 3,032 square foot, two story houses (including an attached 476 square foot, two-car garage.)

The staff report was presented by Assistant Planner Rene Aguilar. During his presentation Mr. Aguilar explained various aspects of the proposed subdivision and the proposed construction of two single family homes, similar in size and design. There was a short discussion by the Commission regarding the location of the proposed homes on the lots and their size and appearance.

Chairman Redholtz opened the public hearing.

**PROPONENT:**

James Qui, applicant, spoke to the Commission about the two homes and told them they would be occupied by family members. He also answered questions by the Commission regarding the number of bedrooms and bathrooms in each home, the number of occupants in each home, and the design and locations of each home on the property.

**OPPONENTS:**

Chris Miller and Angie Gillingham spoke in opposition to the project. The opponents spoke about their concerns that the homes are too large, accessory dwelling units and the subdivision of the lot to accommodate the two homes. The opponents also expressed their opinions that the homes would be offered for sale rather than occupied by family members of the current owner.

**REBUTTAL:**

Mr. Qui said both homes are similar in design and told the Commission the owner of the property didn't want the homes to be too large. He also answered questions by the Commission during his rebuttal.

Chairman Redholtz closed the public hearing.

There was a discussion by the Commission regarding the proposed design of the homes, the location and size of each home and the number of bedrooms and bathrooms in each home. Commissioners Kennedy and Jaquez stated that the homes should be reduced in size by removing the second story, making each home single-story and smaller.

Commissioner Heng expressed her opinion that it would be convenient for the property owner to have family members living in each proposed home. She also commented on

the shortage of housing in California and the necessity to build more homes to accommodate people who are coming from other areas to live in California.

Motion by Holtz, seconded by Heng, to waive further reading and adopt Resolution No. 19-6008 approving Tentative Parcel Map No, 82458. Motion carried 3-2 (Jaquez, Kennedy opposed.)

Motion by Holtz, seconded by Heng, to waive further reading and adopt Resolution No. 19-6009 approving Administrative Use Permit No. 19-33. Motion carried 3-2 (Jaquez, Kennedy opposed.)

Motion by Holtz, seconded by Heng, to waive further reading and adopt Resolution No. 19-6010 approving Administrative Use Permit No. 19-34. Motion carried 3-2 (Jaquez, Kennedy opposed.)

Chairman Redholtz said these actions are final unless appealed to the City Council within ten(10) days.

NON-HEARING ITEMS - None

#### COMMISSION REPORTS/COMMENTS AND MISCELLANEOUS ITEMS

Chairman Redholtz commented on Rebel Yell having their alcohol license revoked by the Department of Alcoholic Beverage Control.

Commissioner Jaquez requested a study session on specific plans.

Chairman Redholtz requested a study session on temporary signs standards.

Commissioner Heng requested that the City Manager find funding for the Planning Commissioners to attend the League of California Cities' Planning Commissioners Academy.

#### 5. COMMUNITY DEVELOPMENT DIRECTOR'S REPORT:

##### a. Forthcoming – November 12, 2019

Community Development Director Jeff Anderson told the Commission that the City Attorney might not be available to attend the Planning Commission meeting scheduled for November 12, 2019 so the meeting may be rescheduled for November 26, 2019.

#### 6. CITY COUNCIL ACTION:



Code Amendment No. 18-04, Sales of Beer and Wine at Service Stations was denied by the City Council at their regular meeting, October 1, 2019.

Administrative Use Permit Nos. 19-25 through 19-29, Small Wireless Facilities in the Public Right of Way, were denied by the City Council at their October 15, 2019 meeting.

Precise Plan No. 17-02, Zone Change No. 17-02 and the Precise Plan for Queen of the Valley Hospital, located at 1115 Sunset Avenue will be considered by the City Council at their November 5, 2019 regular meeting.

#### ADJOURNMENT

Chairman Redholtz adjourned the meeting at 8:24 p.m.

Respectfully submitted:

Lydia de Zara  
Senior Administrative Assistant

**ADOPTED AS SUBMITTED ON:**

**ADOPTED AS AMENDED ON:**

**PLANNING DEPARTMENT STAFF REPORT**

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**SUBJECT**

**CODE AMENDMENT NO. 16-03**

**GENERAL EXEMPTION**

**LOCATION: City-wide**

**REQUEST: The proposed code amendment will amend Chapter 26 (Zoning) of the West Covina Municipal Code to specify submittal requirements, review process, and standards for Wireless Telecommunication Facilities in the Public Right of Way.**

**BACKGROUND**

On February 16, 2016, the City Council initiated a code amendment related to wireless telecommunication facilities in the public-right-of-way (Attachment No. 2).

The Federal Telecommunications Act is intended to ensure that the public has sufficient access to telecommunication services and local governments cannot prohibit or have the effect of prohibiting the provision of personal wireless services. Cities may only regulate the location and design of Wireless Communication Facilities (WCF) based on aesthetics.

On September 27, 2018, the Federal Communications Commission (FCC) released a Declaratory Ruling and Third Report and Order (FCC Order) significantly limiting local management of Small Wireless Facilities (SWF). In summary, the FCC Order does the following:

- Defines SWFs as facilities (a) mounted on structures 50 feet or less in height (including antennas); or (b) mounted on structures no more than 10% taller than other adjacent structures; or (c) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 %, whichever is greater; AND each antenna is no more than 3 cubic feet in volume, and the total associated wireless equipment on one structure is no more than 28 cubic feet in volume.
- Limit fees local governments can charge to the actual and reasonable cost of providing service.
- Enacts shot clocks of 60 days for SWFs added to existing structures (regardless of whether the structure already supports a wireless service) and 90 days for SWFs proposing a new structure.
- Exempts from federal preemption aesthetic requirements for SWFs in the PROW unless they are (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployments; (3) objective; and (4) published in advance.

On April 4, 2019, the California Supreme Court decided T-Mobile West, LLC vs. City and County of San Francisco, validating that municipalities can regulate the aesthetics of wireless facilities in the right of way.

On April 23, 2019, the Planning Commission adopted design guidelines for small wireless facilities located in the public right-of-way (Attachment No. 3) to address the FCC Order pertaining to aesthetic requirements being reasonable, not burdensome, and published in advance.

At its May 14, 2019 and July 23, 2019 meetings, the Planning Commission held study sessions on wireless facilities in the public right-of-way. During the July 23, 2019 study session, the Planning Commission voted 3-2 to direct staff to draft an ordinance that:

- References Design Guidelines in order to allow flexibility for modifications that may be needed in the future;
- Allows administrative review by staff for all wireless facilities in compliance with Design Guidelines and Planning Commission review if not in compliance with Design Guidelines;
- Identifies a review threshold that requires wireless telecommunication facilities to be at least 250 feet from another wireless telecommunication in order to qualify for administrative review by staff;
- Requires wireless telecommunication facilities to be set back 15 to 30 feet from residential structures (depending on zoning designation).

Commissioners Heng and Holt were the dissenting votes. Commissioner Heng felt that there should be more Planning Commission discussion on the subject.

Subsequent to that discussion, Administrative Use Permit (AUP) applications were submitted for 5 small wireless facilities in the public right-of-way proposed on top of replacement street light poles in the Woodside Village area. These facilities were located off of Amar Road, east of Azusa Avenue. The Planning Commission approved the AUP applications on July 23, 2019 and an appeal was filed on August 5, 2019. On October 1, 2019 the City Council voted 3-2 to overturn the Planning Commission's decision to approve the 5 small wireless facilities and denied the AUP applications. The City Council felt that the proposed small wireless facilities were not sufficiently concealed. Council members Shewmaker and Johnson were the dissenting votes and felt that the proposals should be referred back to the Planning Commission.

While these AUPs were reviewed since the last study session, the code amendment has been drafted based only on the Planning Commission's direction provided during the study sessions.

## **DISCUSSION**

Based on Planning Commission study sessions a draft ordinance has been prepared. The proposed code amendment would add a new section to the Zoning Code. The draft ordinance provides the following changes to the West Covina Municipal Code (WCMC):

### **Division 3. - Conditional Use Permit (Section 26-247)**

- Clarifies that the existing conditional use permit findings are for projects located within all land-use zones (areas with a zoning designation).
- Cross-references findings within Section 26-685-11500 for projects located within the public right-of-way.

### **Division 16 - Wireless Telecommunication Facilities**

- Clarifies that Division 16 will not apply to wireless telecommunication facilities in the public right-of-way.
- Cross-references where the code section pertaining to wireless telecommunication facilities in the public right-of-way is located and directs readers to the newly created Division 29.

### **Division 29 - Wireless Telecommunication Facilities in the Public Right-of-Way**

- New division created.
- Identifies the Planning Director as the person responsible for administering the division.
- Requires an Administrative Review application for minor wireless telecommunication facility

permits (small wireless facilities or eligible facilities that comply with the adopted design guidelines, and are located at least 250 feet from another wireless telecommunication facility, and/or at least 250 feet from a proposed wireless telecommunication facility within the same application bundle).

- Requires a Conditional Use Permit for wireless telecommunication facilities that do not qualify for an Administrative Review (major wireless telecommunication facility permits).
- Identifies that Planning Division, Planning Commission, and/or City Council approval does not constitute an encroachment permit and/or the issuance of permits from other City divisions/departments or other government entities.
- Identifies application submittal requirements and application review procedures. Items required for submittal include: application fee, completed application, construction drawings/plans, site survey, photosimulations (360 degrees), project narrative and justifications, RF compliance report, proof of regulatory authorization, site agreement, acoustic analysis, wind load analysis, environmental data, traffic control plan, landscape plan, certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, master deployment plan (for small wireless facilities), and visual impact analysis (in cases where a CUP is required).
- Identifies design and development standards including: concealment requirements and reference to design guidelines, location (e.g. not in median, set back from residential structures), noise, landscaping, accessory equipment (undergrounding), support structures (pole mounted only), and obstructions for public safety prohibited.
- Identifies operation and maintenance standards
- Outlines procedures for permit expiration, abandonment, removal, and legal non-conforming facilities.

Noticing for the proposed code amendment public hearing was published in the San Gabriel Valley Tribune on November 15, 2019.

The proposed amendment has been drafted and the code text is attached to the resolution for your review (Attachment No. 1). If the Planning Commission chooses to recommend approval of the proposed code amendment, the City Council will hold a public hearing to consider adopting the proposed amendments.

## **ENVIRONMENTAL DETERMINATION**

The proposal is not subject to the California Environmental Quality Act (CEQA) per Section 15061(b)(3) of the CEQA Guidelines, which provides that CEQA only applies to activity that results in direct or reasonably foreseeable indirect physical change in the environment and for activity considered to be a project, respectively. The amendment to the West Covina Municipal Code would not result in a physical change in the environment because it would clarify submittal requires and create development standards for future applications for wireless telecommunication facilities in the public right-of-way.

## **STAFF RECOMMENDATIONS**

Staff recommends that the Planning Commission adopt a resolution recommending approval of Code Amendment No. 16-03 to the City Council.

**Submitted by:** Jo-Anne Burns, Planning Manager

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## **Attachments**

Attachment No. 1 - Planning Commission Resolution

Attachment No. 2 - CC Resolution No. 19-10 Initiating Code Amendment No. 16-03

Attachment No. 3 - PC Resolution No. 19-5986 Adopting Design Guidelines for Small Wireless Facilities

Attachment No. 4 - May 14, 2019 Planning Commission Study Session Report

Attachment No. 5 - May 14, 2019 Planning Commission Study Session Minutes (exerpt)

Attachment No. 6 - July 23, 2019 Planning Commission Study Session Report

Attachment No. 7 - July 23, 2019 Planning Commission Study Session Minutes (exerpt)

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**PLANNING COMMISSION  
RESOLUTION NO.**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF  
WEST COVINA, CALIFORNIA, RECOMMENDING TO THE CITY  
COUNCIL APPROVAL OF CODE AMENDMENT NO. 16-03, CODE  
AMENDMENT RELATED TO WIRELESS TELECOMMUNICATION  
FACILITIES IN THE PUBLIC RIGHT OF WAY**

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**CODE AMENDMENT NO. 16-03**

**GENERAL EXEMPTION**

**APPLICANT:** City of West Covina

**LOCATION:** Citywide

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WHEREAS, on the 16<sup>th</sup> day of February 2016, the City Council initiated a code amendment related to wireless telecommunication facilities in the public right-of-way; and

WHEREAS, the Planning Commission, did on May 14, 2019 and July 23, 2019, conduct study sessions to consider the initiated code amendment; and

WHEREAS, the Planning Commission, upon giving the required notice, did on the 26<sup>th</sup> day of November 2019, conduct a duly advertised public hearing as prescribed by law; and

WHEREAS, studies and investigations made by this Commission and on its behalf reveal the following facts:

1. The City's provisions for wireless telecommunication facilities were last updated in 2011.
2. The Municipal Code currently does not have explicit regulations pertaining specifically to wireless telecommunication facilities in the public right-of-way.
3. On September 27, 2018, the Federal Communications Commission (FCC) released a Declaratory Ruling and Third Report and Order (FCC Order) significantly limiting local management of Small Wireless Facilities (SWF).

4. On April 4, 2019, the California Supreme Court decided T-Mobile West, LLC vs. City and County of San Francisco, validating that municipalities can regulate the aesthetics of wireless facilities in the right of way.
5. It is necessary to amend the municipal code to create transparent procedures and standards regulating wireless telecommunication facilities in the public right-of-way in order to (a) preserve the public right-of-way ("PROW") in the city for the maximum benefit and use of the public, (b) to promote and protect public health and safety, community welfare, and the aesthetic quality of the city consistent with the goals, objectives and policies of the general plan, and (c) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules and regulations
6. The proposed action is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the proposed action consists of a code amendment, which does not have the potential for causing a significant effect on the environment.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Commission of the City of West Covina as follows:

**SECTION NO. 1:** The above recitals are true and correct and are incorporated herein as if set forth herein in full.

**SECTION NO. 2:** Based on the evidence presented and the findings set forth, Code Amendment No. 16-03 is hereby found to be consistent with the West Covina General Plan and the implementation thereof, and that the public necessity, convenience, general welfare, and good zoning practices require Code Amendment No. 16-03.

**SECTION NO. 3:** Based on the evidence presented and the findings set forth, the Planning Commission of the City of West Covina hereby recommends to the City Council of the City of West Covina that it approves Code Amendment No. 16-03 to amend Chapter 26 (Zoning) of the West Covina Municipal Code as shown on Exhibit "A."

**SECTION NO. 4:** The Secretary is instructed to forward a copy of this Resolution to the City Council for their attention in the manner as prescribed by law and this Resolution shall go into force and effect upon its adoption.

*[continued on next page]*

I HEREBY CERTIFY, that the foregoing Resolution was adopted by the Planning Commission of the City of West Covina, at a regular meeting held on the 26<sup>th</sup> day of November, 2019, by the following vote.

AYES:

NOES:

ABSTAIN:

ABSENT:

DATE:

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Herb Redholtz, Chairman  
Planning Commission

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Jeff Anderson, Secretary  
Planning Commission



**EXHIBIT A**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
WEST COVINA, CALIFORNIA APPROVING CODE AMENDMENT  
NO. 16-03, RELATED TO WIRELESS TELECOMMUNICATION  
FACILITIES IN THE PUBLIC RIGHT OF WAY**

**WHEREAS**, the City's provisions for wireless telecommunication facilities were last updated in 2011.; and

**WHEREAS**, the City's Municipal Code currently does not have explicit regulations pertaining specifically to wireless telecommunication facilities in the public right-of-way; and

**WHEREAS**, on the 16<sup>th</sup> day of February 2016, the City Council initiated a code amendment related to wireless telecommunication facilities in the public right-of-way; and

**WHEREAS**, the Planning Commission, did on May 14, 2019 and July 23, 2019, conduct study sessions to consider the initiated code amendment; and

**WHEREAS**, the Planning Commission, upon giving the required notice, did on the 26<sup>th</sup> day of November 2019, conduct a duly advertised public hearing as prescribed by law to make recommendations to the City Council to approve Code Amendment No. 16-03; and

**WHEREAS**, the City Council, upon giving the required notice, did on the \_\_\_\_ day of \_\_\_\_\_, conduct a duly advertised public hearing as prescribed by law on the proposed ordinance; and

**WHEREAS**, based on review of the State CEQA Guidelines, the City Council finds and determines that the proposed ordinance is statutorily exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines, which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment; and

**WHEREAS**, the City Council has duly considered all information presented to it, including written staff reports and any testimony provided at the public hearing, with all testimony received being made a part of the public record.

**WHEREFORE, THE MAYOR AND THE CITY COUNCIL OF THE CITY OF WEST COVINA HEREBY ORDAINS AS FOLLOWS:**

**SECTION NO. 1:** Section 26-247 of the West Covina Municipal Code is hereby amended to read as follows:

(a) Prior to the granting of a conditional use permit for projects located within all land-use zones it shall be found:

- (1)~~(a)~~ That the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well being of the neighborhood or community.
- (2)~~(b)~~ That such use will not, under the circumstances of the particular case, be detrimental to the health, safety, peace or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity.
- (3)~~(c)~~ That the site for the proposed use is adequate in size and is so shaped as to accommodate said use, as well as all yards, spaces, walls, fences, parking, loading, landscaping, and any other features necessary to adjust said use to the land and uses in the neighborhood and make it compatible therewith.
- (4)~~(d)~~ That the site abuts streets and highways adequate in width and improvements to carry traffic generations typical of the proposed use and that street patterns of such a nature exist as to guarantee that such generations will not be channeled through residential areas on local residential streets.
- (5)~~(e)~~ That the granting of such conditional use permit will not adversely affect the general plan of the city, or any other adopted plan of the city.

(b) Prior to the granting of a conditional use permit for projects located within the public right-of-way it shall be found that the findings required by Sec. 26-685-11500 have been met.

**SECTION NO. 2:** The Chapter 26, Article XII, Division 16 title of the West Covina Municipal Code is hereby amended to read as follows:

**DIVISION 16 – WIRELESS TELECOMMUNICATION FACILITIES WITHIN ALL LAND-USE ZONES**

**SECTION NO. 3:** Section 26-685.983 of the West Covina Municipal Code is hereby amended to read as follows:

The regulations of this division do not apply to the following:

- (1) Single ground-mounted, building-mounted, or roof-mounted receive-only AM/FM radio or television antennas, DBS dish antennas, amateur and/or citizens band radio antennas, for the sole use of the occupant of the parcel on which the antenna is located.

- (2) Wireless telecommunications facilities owned and operated by the city or other public agency when used for emergency response services, public utilities, operations, and maintenance.
- (3) This exemption does not apply to free-standing or roof-mounted satellite dish antennas greater than twenty-one (21) inches in diameter.
- (4) Wireless telecommunication facilities located in the public right-of-way, which are regulated under Article XII (Special Regulations for Unique Uses), Division 29 (Wireless Telecommunication Facilities in the Public Right-of-Way) of this chapter.

**SECTION NO. 4:** Section 26-685.984 of the West Covina Municipal Code is hereby amended to read as follows:

- (a) No wireless telecommunication facilities are permitted in residential zones except for the following:
  - (1) Wireless telecommunication facilities listed under section 26-685.983(1) and (2).
  - (2) Wireless telecommunication facilities located in the public right-of-way, which are regulated under Article XII (Special Regulations for Unique Uses), Division 29 (Wireless Telecommunication Facilities in the Public Right-of-Way) of this chapter.
  - (3) Wireless telecommunication facilities located in residential zones that are developed with permitted nonresidential uses.
  - (4) Wireless telecommunication facilities consisting of roof-mounted antennas located on multiple-family residential buildings.
- (b) Antennas with a solid or wire-mesh surface with a diameter or maximum width greater than twelve (12) feet are prohibited in residential zones.

**SECTION NO. 5:** Division 29 is hereby added to Chapter 26, Article XII of the West Covina Municipal Code to read as follows:

**DIVISION 29 – WIRELESS TELECOMMUNICATION FACILITIES IN THE PUBLIC RIGHT-OF-WAY**

**Sec. 26-685.11000. – Purpose**

This division sets forth a uniform and comprehensive set of development standards for the permitting, development, placement, design, installation, operation, and maintenance of wireless telecommunication facilities within the city's public right-of-way. The purpose of these regulations is to provide clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This division provides standards necessary (1) for the preservation of the public right-of-way ("PROW") in the city for the maximum benefit and use of the public, (2) to promote and protect public health and safety, community welfare, and the aesthetic quality

of the city consistent with the goals, objectives and policies of the general plan, and (3) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules and regulations, including those regulations of the Federal Communications Commission ("FCC") and California Public Utilities Commission ("CPUC"), and (4) to ensure that the use and enjoyment of the PROW is not inconvenienced by the use of the PROW for the placement of wireless facilities.

**Sec. 26-685.11100. - Applicability**

- (1) This division applies to the siting, construction or modification of any and all wireless telecommunications facilities proposed to be located in the public right-of-way.
- (2) Pre-Existing Facilities in the PROW. Nothing in this division shall validate any existing illegal or unpermitted wireless facilities. All existing wireless facilities shall comply with and receive an encroachment permit, when applicable, in order to be considered legal and conforming.
- (3) This division does not apply to the following:
  - (a) Amateur radio facilities;
  - (b) OTARD antennas;
  - (c) Facilities owned and operated by the city for its use or for public safety purposes;
  - (d) Any entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement, excepting that to the extent such the terms of state or federal law, or franchise agreement, are preemptive of the terms of this division, then the terms of this division shall be severable to the extent of such preemption and all remaining regulations shall remain in full force and effect. Nothing in the exemption shall apply so as to preempt the city's valid exercise of police powers that do not substantially impair franchise contract rights;
  - (e) Installation of a COW or a similar structure for a temporary period in connection with an emergency or event at the discretion of the city engineer, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.
- (4) Public Use. Except as otherwise provided by state or federal law, any use of the PROW authorized pursuant to this division will be subordinate to the city's use and use by the public.

**Sec. 26-685.11200. - Definition**

- (1) "Accessory equipment" means any and all on-site equipment, including, without limitation, back-up generators and power supply units, cabinets, coaxial and fiber optic cables, connections, equipment buildings, shelters, vaults, radio transceivers, transmitters, pedestals, splice boxes, fencing and shielding, surface location markers, meters, regular power supply units, fans, air conditioning units, cables and wiring, to which an antenna is attached in order to facilitate the provision of wireless telecommunication services.

- (2) "Antenna" means any system of wires, poles, rods, reflecting discs, or similar devices of various sizes, materials and shapes including but not limited to solid or wire-mesh dish, horn, spherical, or bar configured arrangements, used for the transmission or reception of electromagnetic signals.
- (3) "Antenna array" shall mean two or more antennas having active elements extending in one or more directions, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.
- (4) "Approval authority" means the city official responsible for reviewing applications for small cell permits and vested with the authority to approve, conditionally approve or deny such applications.
- (5) "Base station" shall have the meaning as set forth in Title 47 Code of Federal Regulations (C.F.R.) Section 1.40001(b)(1), or any successor provision. This means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network (regardless of the technological configuration, and encompassing DAS and small cells). "Base station" does not encompass a tower or any equipment associated with a tower. Base station includes, without limitation:
  - (a) 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.
  - (b) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small cells).
  - (c) Any structure other than a tower that, at the time the relevant application is filed with the city under this division, supports or houses equipment described in paragraphs 1. and 2. of this definition that 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 that support.
  - (d) "Base station" does not include any structure that, at the time the relevant application is filed under this division, does not support or house equipment described in paragraphs 1. and 2. of this definition. Other structures that do not host wireless telecommunications facilities are not "base stations."

As an illustration and not a limitation, the FCC's definition of "base station" refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles, light standards or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.
- (5) "Cellular" means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.

- (6) "City" means the City of West Covina.
- (7) "Code" means the West Covina Municipal Code.
- (8) "Collocation" means the placement of antennas, dishes, or similar devices owned or used by two (2) or more telecommunication providers on one (1) antenna support structure, building, pole, or structure.
- (9) "Concealed" or "concealment" means camouflaging techniques that integrate the transmission equipment into the surrounding natural and/or built environment such that the average, untrained observer cannot directly view the equipment but would likely recognize the existence of the wireless facility or concealment technique.
- (10) "COW" means a "cell on wheels," which is a portable, self-contained wireless telecommunications facility that can be moved to a location and set up to provide wireless telecommunication services, which facility is temporarily rolled in, or temporarily installed, at a location. Under this division, the maximum time a facility can be installed to be considered a COW is five days. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.
- (11) "Decorative pole" means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.
- (12) "Distributed antenna system" or "DAS" means a network of spatially separated antennas (nodes) connected to a common source (a hub) via a transport medium (often fiber optics) that provide wireless telecommunications service within a specific geographic area or building. DAS includes the transport medium, the hub, and any other equipment to which the DAS network or its antennas or nodes are connected to provide wireless telecommunication services.
- (13) "Eligible facilities request" means any request for modification to an existing eligible support structure that does not substantially change the physical dimensions of such structure, involving:
  - (a) Collocation of new transmission equipment;
  - (b) Removal of transmission equipment;
  - (c) Replacement of transmission equipment (replacement does not include completely replacing the underlying support structure); or
  - (d) Hardening through structural enhancement where such hardening is necessary to accomplish the eligible facilities request, but does not include replacement of the underlying support structure.

"Eligible facilities request" does not include modifications or replacements when an eligible support structure was constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. "Eligible facilities request" does include collocation facilities satisfying all the requirements for a non-discretionary collocation facility pursuant to Government Code Section 65850.6.

- (14) "Eligible support structure" means any support structure located in the PROW that is existing at the time the relevant application is filed with the city under this division.
- (15) "Existing" means a support structure, wireless telecommunications facility, or accessory equipment that has been reviewed and approved under the city's applicable zoning or permitting process, or under another applicable state or local regulatory review process, and lawfully constructed prior to the time the relevant application is filed under this division. However, a support structure, wireless telecommunications facility, or accessory equipment that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is "existing" for purposes of this division. "Existing" does not apply to any structure that (1) was illegally constructed without all proper local agency approvals, or (2) was constructed in noncompliance with such approvals. "Existing" does not apply where an existing support structure is proposed to be replaced in furtherance of the proposed wireless telecommunications facility.
- (16) "Facility(ies)" means wireless telecommunications facility(ies).
- (17) "FCC" means the Federal Communications Commission.
- (18) "FCC shot clock" means the presumptively reasonable time frame within which the city generally must act on a given wireless application, as defined by the FCC and as may be amended from time to time. The shot clock shall commence on "day zero," which is the day the WTFP application is submitted.
- (19) "Ground-mounted" means mounted to a pole, tower or other freestanding structure which is specifically constructed for the purpose of supporting an antenna or wireless telecommunications facility and placed directly on the ground at grade level.
- (20) "Lattice tower" means an open framework structure used to support one or more antennas, typically with three or four support legs.
- (21) "Located within (or in) the public right-of-way" includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the PROW.
- (22) "Ministerial permit" means any city-issued non-discretionary permit required to commence or complete any construction or other activity subject to the city's jurisdiction. Ministerial permits may include, without limitation, a building permit, construction permit, electrical permit, encroachment permit, excavation permit and/or traffic control permit.
- (23) "Modification" means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. "Modification" does not include repair, replacement or maintenance if those actions do not involve whatsoever any expansion, alteration, enlargement, intensification, reduction, or augmentation of an existing wireless telecommunications facility.
- (24) "Monopole" means a structure composed of a pole or tower used to support antennas or related equipment. A monopole includes a monopine, monopalm and similar monopoles

camouflaged to resemble faux trees or other faux objects attached on a monopole (e.g. water tower).

- (25) "Mounted" means attached or supported.
- (26) "OTARD antennas" means antennas covered by the "over-the-air reception devices" rule in 47 C.F.R. sections 1.4000 et seq. as may be amended or replaced from time to time.
- (27) "Permittee" means any person or entity granted a wireless telecommunication facilities permit (WTFP) pursuant to this division.
- (28) "Personal wireless services" shall have the same meaning as set forth in 47 United States Code Section 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.
- (29) "Planning director" means the director of community development, or his or her designee.
- (30) "Pole" means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this code.
- (31) "Public right-of-way" or "PROW" means a strip of land acquired by reservation, dedication, prescription, condemnation, or easement that allows for the passage of people and goods. The PROW includes, but is not necessarily limited to, streets, curbs, gutters, sidewalks, roadway medians, parkways, and parking strips. The PROW does not include land owned, controlled or operated by the city for uses unrelated to streets or the passage of people and goods, such as, without limitation, parks, city hall and community center lands, city yards, and lands supporting reservoirs, water towers, police or fire facilities and non-publicly accessible utilities.
- (32) "City Engineer" means the City Engineer, or his or her designee.
- (33) "Replacement" refers only to replacement of transmission equipment, wireless telecommunications facilities or eligible support structures where the replacement structure will be of like-for-like kind to resemble the appearance and dimensions of the structure or equipment replaced, including size, height, color, landscaping, materials and style.
  - (a) In the context of determining whether an application qualifies as an eligible facilities request, the term "replacement" relates only to the replacement of transmission equipment and does not include replacing the support structure on which the equipment is located.
  - (b) In the context of determining whether a SWF application qualifies as being placed upon a new eligible support structure or qualifies as a collocation, an application proposing the "replacement" of the underlying support structure qualifies as a new pole proposal.



- (34) "Radiofrequency emissions" (RF) means the electromagnetic signals transmitted and received using wireless telecommunication antennas.
- (35) "Section 6409" means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended. The Middle Class Tax Relief and Job Creation Act of 2012 is also referenced herein occasionally as the "Spectrum Act".
- (36) "Small cell" means a low-powered antenna (node) that has a range of ten meters to two kilometers. The nodes of a "small cell" may or may not be connected by fiber. "Small," for purposes of "small cell," refers to the area covered, not the size of the facility. "Small cell" includes, but is not limited to, devices generally known as microcells, picocells and femtocells.
- (37) "Small cell network" means a network of small cells.
- (38) "Substantial change" has the same meaning as "substantial change" as defined by the FCC at 47 C.F.R. 1.40001(b)(7). Notwithstanding the definition above, if an existing pole-mounted cabinet is proposed to be replaced with an underground cabinet at a facility where there are no pre-existing ground cabinets associated with the structure, such modification may be deemed a non-substantial change, in the discretion of the planning director and based upon his/her reasonable consideration of the cabinet's proximity to residential view sheds, interference to public views and/or degradation of concealment elements. If undergrounding the cabinet is technologically infeasible such that it is materially inhibitive to the project, the planning director may allow for a ground mounted cabinet. A modification or collocation results in a "substantial change" to the physical dimensions of an eligible support structure if it does any of the following:
- (a) It increases the height of the structure by more than ten percent or more than ten feet, whichever is greater;
  - (b) It involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
  - (c) It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets. However, for towers and base stations located in the public rights-of-way, 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 larger in height or overall volume than any other ground cabinets associated with the structure;
  - (d) It entails any excavation or deployment outside the current site. For purposes of this subsection, excavation outside the current site occurs where excavation more than 12 feet from the eligible support structure is proposed;
  - (e) It defeats the concealment or stealthing elements of the eligible support structure;  
or
  - (f) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure, provided however that

this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs 1. through 4. of this definition.

- (g) For all proposed collocations and modifications, a substantial change occurs when:
- (i) The proposed collocation or modification involves more than the standard number of new equipment cabinets for the technology involved, but not to exceed four equipment cabinets;
  - (ii) The proposed collocation or modification would defeat the concealment elements of the support structure; or
  - (iii) The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval that is inconsistent with the thresholds for a substantial change described in this section.

The thresholds and conditions for a "substantial change" described in this section are disjunctive such that the violation of any individual threshold or condition results in a substantial change. The height and width thresholds for a substantial change described in this section are cumulative for each individual support structure. The cumulative limit is measured from the physical dimensions of the original structure for base stations, and for all other facilities sites in the PROW from the smallest physical dimensions that existed on or after February 22, 2012, inclusive of originally approved-appurtenances and any modifications that were approved prior to that date.

(39) "Support structure" means a tower, pole, base station or other structure used to support a wireless telecommunications facility.

(40) "SWF" means a "small wireless facility" as defined by the FCC in 47 C.F.R. 1.6002(l) as may be amended, which are personal wireless services facilities that meet all the following conditions that, solely for convenience, have been set forth below:

- (a) The facility:
- (i) Is mounted on an existing or proposed structure 50 feet or less in height, including antennas, as defined in Title 47 C.F.R. Section 1.1320(d); or
  - (ii) Is mounted on an existing or proposed structure no more than ten percent taller than other adjacent structures; or
  - (iii) Does not extend an existing structure on which it is located to a height of more than 50 feet or by more than ten percent, whichever is greater;
- (b) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;
- (c) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

- (d) The facility does not require antenna structure registration under 47 C.F.R. Part 17;
- (e) The facility is not located on Tribal lands, as defined under Title 36 C.F.R. Section 800.16(x); and
- (f) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Title 47 C.F.R. Section 1.1307(b).
- (41) "Telecommunications tower" or "tower" bears the meaning ascribed to wireless towers by the FCC in 47 C.F.R. § 1.40001(b)(9), including without limitation a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.
- (42) "Transmission equipment" means 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.
- (43) "Utility pole" means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission. A telecommunications tower is not a utility pole.
- (44) "Wireless telecommunications facility" means a mechanical device, land, and/or structure that is used to transmit and/or receive electromagnetic signals, including but not limited to antennas, microwave dishes, horn, and other types of equipment for the transmission or receipt of such signals, free-standing wireless facilities, equipment buildings or cabinets, parking areas, and other accessory development. Exceptions: The term "wireless telecommunications facility" does not apply to the following:
  - (a) Government-owned and operated telecommunications facilities.
  - (b) Emergency medical care provider-owned and operated telecommunications facilities.
  - (c) Mobile services providing public information coverage of news events of a temporary nature.
  - (d) Any wireless telecommunications facilities exempted from this code by federal law or state law.
- (45) "Wireless telecommunications services" means the provision of services using a wireless telecommunications facility or a collocation facility, and shall include, but not be limited to, the following services: personal wireless services as defined in the Federal

Telecommunications Act of 1996 at 47 U.S.C. § 332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.

(46) "WTFP" means a "wireless telecommunications facility permit" required by this division, which may be categorized as either a major WTFP or a minor WTFP.

**Sec. 26-685.11300. - Wireless telecommunications facility permit (WTFP) review authority.**

(1) Administration. The planning director is responsible for administering this division. As part of the administration of this division, the director may:

- (a) Interpret the provisions of this division;
- (b) Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this division;
- (c) Collect, as a condition of the completeness of any application, any fee established by this division;
- (d) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations;
- (e) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
- (f) Require, as part of, and as a condition of completeness of any application, that an applicant for a wireless telecommunication facilities permit send notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;
- (g) Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and
- (h) Take such other steps as may be required to timely act upon applications for placement of wireless telecommunications facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

(2) Administrative review ("Minor WTFP") required.

- (a) Certain wireless telecommunication facilities, collocations, modifications, or replacements to an eligible support structure is subject to the planning director's review of an Administrative Review application, if the following criteria are met:
  - (i) The proposal is determined to be for a SWF, or an eligible facilities request; and
  - (ii) The proposal complies with the adopted Design Guidelines for Wireless Telecommunication Facilities in the PROW; and

- (iii) The location of the proposed wireless telecommunication facility is no less than 250 feet from an existing or approved wireless telecommunication facility location; and
    - (iv) The location of any proposed SWF is no less than 250 feet from the location of a proposed SWF within the same application bundle.
  - (b) In the event that the planning director determines that any minor WTFP application submitted does not meet the application criteria of this division, the director shall convert the application to a major WTFP and refer it to the planning commission for consideration at a public hearing.
- (3) Major Wireless Telecommunications Facilities Permit ("Major WTFP") required. All new wireless telecommunications facilities or replacements, collocations, or modifications to a wireless telecommunications facility that are not qualified for an Administrative Review shall require a Major WTFP subject to planning commission hearing and approval unless otherwise provided for in this division.
- (4) Other Permits Required. In addition to any permit that may be required under this division, the applicant must obtain all other required prior permits or other approvals from other city departments/divisions, or state or federal agencies. Any permit granted under this division is subject to the conditions and/or requirements of other required prior permits or other approvals from other city departments/division, state or federal agencies. Building and encroachment permits, and all city standards and requirements therefor, are applicable. The Planning Director and/or Planning Commission approval of any permits pursuant to this division does not constitute an encroachment permit, and/or other permits issued by other city departments/division to allow the physical installation of the wireless telecommunications facility.

**Sec. 26-685.11400. - Wireless telecommunications facility permit application submittal requirements.**

- (1) General. The applicant shall submit a paper copy and an electronic copy of any application, amendments, modifications, or supplements to a WTFP application, or responses to requests for information regarding a WTFP, including all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate or otherwise deploy wireless facilities within the city's jurisdictional and territorial boundaries within the PROWs, in accordance with the provisions of this section.
  - (a) The city requires a pre-application submittal meeting for a major WTFP. The city does not require a pre-application submittal meeting for a minor WTFP; however, the city strongly encourages applicants to schedule and attend a pre-application submittal conference with the approval authority for all proposed minor WTFP projects, and particularly those that involve more than five minor WTFPs.
    - (i) Pre-submittal conferences do not cause the FCC shot clock to begin and are intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or

- concerns (if applicable); coordination with other city departments/divisions responsible for application review; and application completeness issues.
- (ii) To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that city staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The approval authority shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the city for its reasonable costs to provide the services rendered in the pre-submittal conference.
- (iii) Any request for a pre-submittal conference shall be in writing and shall confirm that any drafts to be provided to the city at the pre-submittal conference will not be deemed as "submissions" triggering the start of any FCC shot clock.
- (b) All applications for WTFPs shall be initially submitted to the planning division. Each applicant shall fully and completely submit to the city a written application on a form prepared by the Planning division.
- (c) Major WTFP applications must be submitted to the planning division at a scheduled application submission appointment. City staff will endeavor to provide applicants with an appointment within five business days after receipt of a written request therefor. A WTFP application will only be reviewed upon submission of a complete application therefor. A pre-submission appointment is not required for minor WTFPs.
- (d) For SWF, applicants may submit up to five individual applications for a WTFP in a batch; provided, however, that SWF in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each site in the batch. If any application in a batch is incomplete, the entire batch shall be deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch as described in this division, the entire batch shall be deemed withdrawn. If any application in a batch fails to meet the required findings for approval, the entire batch shall be denied.
- (e) If the wireless telecommunications facility will also require the installation of fiber, cable, or coaxial cable, such cable installations shall be included within the application form and processed in conjunction with the proposal for vertical support structure(s). Applicants shall simultaneously request fiber installation or other cable installation when seeking to install antennas in the PROW. Standalone applications for the installation of fiber, cable, or coaxial cable, or accessory equipment designed to serve an antenna must include all features of the wireless telecommunications facility proposed.
- (2) Application Contents—Minor WTFPs. The content of the application form for facilities subject to a minor WTFP shall be determined by the planning director in addition to all other information reasonably deemed necessary, but at a minimum shall include the following:
- (a) The name of the applicant, its telephone number, mailing address, electronic mail address, and contact information, and if the applicant is a wireless infrastructure provider, the

name and contact information for the wireless service provider that will be using the wireless facility.

- (b) The name of the owner of the structure, if different from the applicant, and a signed and notarized owner's authorization for use of the structure.
- (c) A complete description of the proposed wireless telecommunications facility and any and all work that will be required to install or modify it, including, but not limited to, details regarding proposed excavation, if any; detailed site plans showing the location of the wireless telecommunications facility, and dimensioned drawings with specifications for each element of the wireless facility, clearly describing the site and all structures and facilities at the site before and after installation or modification; and a dimensioned map identifying and describing the distance to the nearest residential dwelling unit and any historical structure within 250 feet of the facility. Before and after 360 degree photo simulations shall be provided.
- (d) Documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the municipal code and the FCC's radio frequency emissions standards.
- (f) A copy of the lease or other agreement, if any, between the applicant and the owner of the property to which the proposed facility will be attached.
- (g) If the application is for a SWF, the application shall state as such and shall explain why the proposed facility meets the definition of a SWF.
- (h) If the application is for an eligible facilities request, the application shall state as such and must contain information sufficient to show that the application qualifies as an eligible facilities request, which information must demonstrate that the eligible support structure was not constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. This shall include copies of all applicable local permits in-effect and as-built drawings of the current site. Before and after 360 degree photo simulations shall be provided, as well as documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the municipal code and the FCC's radio frequency emissions standards.
- (i) For SWFs, the application shall also contain:

  - (i) Application Fee. The applicant shall submit the applicable SWF WTFP application fee established by city council resolution. Batched applications for Major WTFP projects must include the applicable application fee for each SWF in the batch.
  - (ii) Construction Drawings. The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings shall: (i) contain cut sheets that contain the technical

specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number, and physical dimensions; (ii) identify all structures within 250 feet from the proposed project site and indicate such structures' overall height above ground level; (iii) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.

- (iii) Site Survey. For any SWF proposed to be located within the PROW, the applicant shall submit a survey prepared, signed, and stamped by a California licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 250 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.
- (iv) Photo Simulations. The applicant shall submit site photographs and 360 degree photo simulations that show the existing location and proposed SWF in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point.
- (v) Project Narrative and Justification. The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a SWF as defined by the FCC in 47 C.F.R. 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the city to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a structure as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a SWF permit as provided in Section 12.18.060 (Review Procedure).
- (vi) RF Compliance Report. The applicant shall submit an RF exposure compliance report that certifies that the proposed SWF, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the city. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas



with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

(vii) Regulatory Authorization. The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the SWF proposed in the application.

(viii) Site Agreement. For any SWF proposed to be installed on any structure owned or controlled by the city and located within the public rights-of-way, the applicant must enter into a site agreement prepared on a form prepared by the city and approved by the city attorney that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the city's form site agreement except as may be indicated on the form itself. Any unpermitted changes to the city's form site agreement shall be deemed a basis to deem the application incomplete.

(ix) Acoustic Analysis. The applicant shall submit an acoustic analysis prepared and certified by an acoustic engineer for the proposed SWF and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the following noise regulations:

1. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 p.m. and 7:00 a.m.;
2. At no time shall equipment noise from any facility exceed an exterior noise level of 55 dBA three feet from the source of the noise if the facility is located in the public right-of-way adjacent to a business, commercial, manufacturing, utility or school zone; provided, however, that for any such facility located within 500 feet of any property zoned residential or improved with a residential use, such equipment noise shall not exceed 45 dBA three feet from the sources of the noise.
3. The acoustic analysis shall also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.

(x) Wind Load Analysis. The applicant shall submit a wind load analysis with an evaluation of high wind load capacity and shall include the impact of modification of an existing facility.

(xi) Environmental Data. A completed environmental assessment application, or in the alternative any and all documentation identifying the proposed WTPF as exempt from environmental review (under the California Environmental Quality Act, Public

Resources Code 21000—21189, the National Environmental Policy Act, 42 U.S.C. §4321 et seq., or related environmental laws). Notwithstanding any determination of environmental exemption issued by another governmental entity, the city reserves its right to exercise its rights as a responsible agency to review de novo the environmental impacts of any WTFP application.

- (xii) Traffic Control Plan. A traffic control plan when the proposed installation is on any street in a non-residential zone. The city shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g. crane).
  - (xiii) Landscape Plan. A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the SWF and its accessory equipment.
  - (xiv) CPCN. Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the PROW. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.
  - (xvi) Master Deployment Plan. A master deployment plan showing the locations of existing and proposed small wireless facilities over the next two years.
  - (j) If the applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all information on which the applicant relies on in support of that claim. Applicants are not permitted to supplement this showing if doing so would prevent the city from complying with any deadline for action on an application or FCC shot clock.
- (3) Application Contents—Major WTFPs. The application form for a major WTFP shall require the following information, in addition to all other information determined necessary by the planning director:
- (a) The name, address, and telephone number of the applicant, owner, and the operator of the proposed wireless telecommunication facility.
  - (b) If the applicant does not, or will not, own the support structure, the applicant shall provide a duly-executed letter of authorization from the owner of the structure. If the owner of the support structure is the applicant, but such owner/applicant will not directly provide wireless telecommunications services, the owner/applicant shall provide a duly-executed letter of authorization from the person(s) or entity(ies) that will provide those services.
  - (c) A full written description of the proposed wireless telecommunications facility and its purpose.
  - (d) Detailed engineering plans of the proposed wireless telecommunications facility and related report prepared by a professional engineer registered in the state documenting the following:
    - (i) Height/elevation, diameter, layout and design of the facility, including technical engineering specifications, economic and other pertinent factors governing selection

- of the proposed design, together with evidence that demonstrates that the proposed facility has been designed to be the least intrusive equipment within the particular technology available to the carrier for deployment.
- (ii) A photograph and model name and number of each piece of the facility or proposed antenna array and accessory equipment included.
  - (iii) Power output and operating frequency for the proposed antenna array (including any antennas existing as of the date of the application serving the carrier identified in the application).
  - (iv) Total anticipated capacity of the wireless telecommunications facility for the subject carrier, indicating the number and types of antennas and power and frequency ranges, which can be accommodated.
  - (v) Sufficient evidence of the structural integrity of the support structure as required by the city.
- (e) A written description identifying the geographic service area to be served by the proposed WTFP, plus geographic or propagation maps showing applicant's service area objectives.
- (f) A justification study which includes the rationale for selecting the proposed wireless telecommunication facility design, support structure and location. A detailed explanation of the applicant's coverage objectives that the proposal would serve, and how the proposed use is the least intrusive means for the applicant to cover such objectives. This shall include:
- (i) A meaningful comparative analysis that includes all factual reasons why the proposed location and design deviates from, or is the least compliant means of, or not the least intrusive location and design necessary to reasonably achieve the applicant's reasonable objectives of covering an established significant gap (as established under state and federal law).
  - (ii) The study shall include all eligible support structures and/or alternative sites evaluated for the proposed major WTFP, and why the alternatives are not reasonably available, technically feasible options that most closely conform to the local values. The alternative site analysis must include the consideration of at least two eligible support structures; or, if no eligible support facilities are analyzed as alternatives, why no eligible support facilities are reasonably available or technically feasible.
  - (iii) If a portion of the proposed facility lies within a jurisdiction other than the city's jurisdiction, the applicant must demonstrate that alternative options for locating the project fully within one jurisdiction or the other is not a viable option. Applicant must demonstrate that it has obtained all approvals from the adjacent jurisdiction for the installation of the extra-jurisdictional portion of the project.
- (g) Site plan(s) to scale, specifying and depicting the exact location of the proposed wireless telecommunications facility, location of accessory equipment in relation to the support structure, access or utility easements, existing utilities, adjacent land uses, and showing compliance with all design and safety requirements set forth in this division.

- (h) A completed environmental assessment application, or in the alternative any and all documentation identifying the proposed WTFP as exempt from environmental review (under the California Environmental Quality Act, Public Resources Code 21000-21189, the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., or related environmental laws). Notwithstanding any determination of environmental exemption issued by another governmental entity, the city reserves its right to exercise its rights as a responsible agency to review de novo the environmental impacts of any WTFP application.
- (i) An accurate visual impact analysis showing the maximum silhouette, view-shed analysis, color and finish palette and proposed screening for the wireless telecommunications facility, including scaled photo simulations from at least three different angles.
- (j) Completion of the RF emissions exposure guidelines checklist contained in Appendix A to the FCC's "Local Government Official's Guide to Transmitting Antenna RF Emission Safety" to determine whether the facility will be "categorically excluded" as that term is used by the FCC.
- (k) For a facility that is not categorically excluded under the FCC regulations for RF emissions, the applicant shall submit an RF exposure compliance report prepared and certified by an RF engineer acceptable to the city that certifies that the proposed facility, as well as any facilities that contribute to the cumulative exposure in the subject area, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radio power "ERP") for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- (l) Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the proposed wireless telecommunications facility.
- (m) A noise study prepared by a qualified acoustic engineer documenting that the level of noise to be emitted by the proposed wireless telecommunications facility will comply with this code, including Chapter 15, Article IV (Noise Regulations) of this code.
- (n) A traffic control plan. The city shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g., crane).
- (o) A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the wireless telecommunication facility.
- (p) Certification that applicant is a telephone corporation, or a statement providing the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.

- (q) Evidence that the proposed wireless facility qualifies as a personal wireless services facility.
  - (r) Address labels for use by the city in noticing all property owners and occupants of properties within 300 feet of the proposed wireless telecommunication facility and, if applicable, all public hearing information required by the municipal code for public noticing requirements.
  - (s) Any other information and/or studies reasonably determined to be necessary by the planning director(s) may be required.
- (4) Application Fees and Deposits. For all WTFPs, application fee(s) and the establishment of deposits to cover outside consultant costs shall be required to be submitted with any application, as established by city council resolution and in accordance with California Government Code Section 50030.
  - (a) Reasonable costs of city staff, consultant and attorney time (including that of the city attorney) pertaining to the review, processing, noticing and hearing procedures directly attributable to a WTFP shall be reimbursable to the city. To this end, the planning director, as applicable, may require applicants to enter a deposit reimbursement agreement, in a form approved by the city attorney, or other established deposit accounting mechanism for purposes of obtaining an applicant deposit from which the direct costs of city processing of an application may be drawn-down.
- (5) Effect of State or Federal Law on Application Process. In the event a state or federal law prohibits the collection of any information or application conditions required by this section, the planning director is authorized to omit, modify, or add to that request from the city's application form in consultation with the city attorney. Requests for waivers from any application requirement of this section shall be made in writing to the planning director. The planning director may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the city will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the WTFP sought. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored to minimize deviation from the requirements of the municipal code.
- (6) Applications Deemed Withdrawn. To promote efficient review and timely decisions, any application governed by this division will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the city on any application within 30 calendar days after the application is deemed incomplete in a written notice to the applicant. The planning director (as applicable) may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the application deemed automatically withdrawn that shows good cause to grant the extension.
- (7) Waiver of Applications Superseded by Submission of New Project. If an applicant submits a WTFP application, but substantially revises the proposed facility during the application process prior to any city hearing or decision on such application, the substantially revised application shall be deemed a new application for all processing purposes, including FCC shot clocks, and the prior submittals deemed waived and superseded by the substantially revised application. For purposes of this subparagraph, "substantially revised" means that the project as initially-proposed has been alternately proposed for a location 300 feet or more from the

original proposal or constitutes a substantial change in the dimensions or equipment that was proposed in the original WTFP application.

- (8) Rejection for Incompleteness. WTFPs will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is incomplete, it may be rejected by the planning director by notifying the applicant in writing and specifying the material omitted from the application.

**Sec. 26-685.11500. - Review procedure.**

- (1) General. Wireless telecommunications facilities shall be installed and modified in a manner that minimizes risk to public safety and utilizes installation of new support structures or equipment cabinets in the PROW only after all existing and replacement structure options have been exhausted, and where feasible, places equipment underground, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the PROW; and ensures that the city bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the PROW, or hinder the ability of the city or other government agencies to improve, modify, relocate, abandon, or vacate the PROW or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the PROW.
- (2) Collocation Encouraged. Where the facility site is capable of accommodating a collocated facility upon the same site in a manner consistent with the permit conditions for the existing facility, the owner and operator of the existing facility shall allow collocation of third-party facilities, provided the parties can mutually agree upon reasonable terms and conditions therefor.
- (3) Findings Required for Approval of a WTFP.
- (a) Minor WTFP for SWF. For minor WTFP applications proposing a SWF, the planning director or planning commission shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:
- (i) The facility qualifies as a SWF;
  - (ii) The facility is not detrimental to the public health, safety, and welfare;
  - (iii) The SWF meets applicable requirements and standards of state and federal law;
  - (vi) The facility meets applicable requirements under this division and complies with the adopted Design Guidelines.
- (b) Minor WTFP for EFR. For minor WTFP applications proposing an eligible facilities request, the planning director shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:
- (i) That the application qualifies as an eligible facilities request; and
  - (ii) That the proposed facility will comply with all generally-applicable laws.

- (c) Major WTFP. No major WTFP shall be granted unless all of the following findings are made by the applicable decision-maker:
  - (i) The proposed wireless telecommunications facility has been designed and located in compliance with all applicable provisions of this division;
  - (ii) If applicable, the applicant has demonstrated its inability to locate on an eligible support structure;
  - (iii) The applicant has provided sufficient evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise agreement with the city permitting them to use the public right-of-way;
  - (iv) If applicable, the applicant has provided sufficient evidence supporting the applicant's claim that compliance with the adopted Design Guidelines would be technically infeasible;
  - (v) The applicant has demonstrated the proposed installation is designed such that the proposed installation represents the least intrusive means possible, supported by factual evidence and a meaningful comparative analysis to show that all alternative locations and designs identified in the application review process were technically infeasible or not reasonably available.
- (4) Noticing. The provisions in this section describe the procedures for the approval process, any required notice and public hearings for a WTFP application.
  - (a) Major WTFP Applications. Any major WTFP application shall require notice and a public hearing. The public hearing notices shall be provided as set forth in Section 26-206 of the West Covina Municipal Code.
- (5) Notice of Decision. Within five days after any decision to grant, approve, deny, or conditionally grant any WTFP application, the planning director, as applicable, shall provide written notice based on substantial evidence in the written administrative record including the following:
  - (a) A general explanation of the decision, including the findings required for the decision, if any, and how those findings were supported or not supported by substantial evidence;
  - (b) A general description of the property involved;
  - (c) Information about applicable rights to appeal the decision, costs to appeal, and explanation of how that right may be exercised; and
  - (d) To be given by first class mail to the project applicant and property owner;
  - (e) Once a WTFP is approved, no changes shall be made to the approved plans without review and approval in accordance with this division.
  - (f) Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, no decision upon a WTFP shall be premised upon the environmental or health

effects of RF emissions, nor shall public comments be considered to the extent they are premised upon the environmental or health effects of RF emissions.

(6) Appeals.

- (a) An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless facility. Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, appeals of WTFP decision premised on the environmental effects of radio frequency emissions will not be considered.
- (b) WTFP Appeals. Any person claiming to be adversely affected by a decision of a major WTFP pursuant to this division may appeal such decision as provided in accordance with the appeal provisions in Section 26-212 of the West Covina Municipal Code.

**Sec. 26-685.11600 - Design and development standards.**

(1) Wireless Telecommunication Facility Design and Development Standards. Wireless telecommunication facilities in the PROW are subject to the design and development standards and conditions of approval set forth herein. All wireless telecommunication facilities shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following standards:

- (a) Concealment. All Wireless telecommunication facilities shall employ concealment, screening, undergrounding, and camouflage methods and techniques in order to ensure that the facility is visually screened and blends into the environment to prevent the facility from dominating the surrounding area, as well as to be compatible with the architectural character of the surrounding buildings or structures per the adopted Design Guidelines.
- (b) Location.
  - (i) Wireless telecommunication facilities shall not be located within the center median of any street.
  - (ii) SWFs shall not be located within ten (10) feet from any structure used for residential purposes in the PCD-1 zone.
  - (iii) SWFs shall not be located within 30 feet from any structure used for residential purposes in all other land-use zones outside of the PCD-1 zone.
  - (vi) SWFs may not encroach onto or over any private or other property outside the PROW unless on a recorded utility easement.
  - (v) Wireless telecommunication facilities shall not be located within the drip-line of any tree located on private property as set forth in Section 26-294 (Protection of trees during development activity) of this code.
  - (vi) All wireless telecommunications facilities subject to a major WTFP shall not be located in the PROW adjacent to properties used for residential purposes.



- (vii) All wireless telecommunications facilities subject to a major WTFP shall not be located in the PROW within 100 feet of designated historic buildings.
- (c) Noise. All wireless telecommunication facilities and accessory equipment shall comply with all applicable noise control standards and regulations stated in this division, including the following:

  - (i) Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 p.m. and 7:00 a.m.;
  - (ii) At no time shall equipment noise from any facility exceed an exterior noise level of 55 dBA three feet from the source of the noise if the facility is located in the public right-of-way adjacent to a business, commercial, manufacturing, utility or school zone; provided, however, that for any such facility located within 500 feet of any property zoned residential or improved with a residential use, such equipment noise shall not exceed 45 dBA three feet from the sources of the noise.
- (d) Landscaping. Wireless telecommunication facilities shall not displace any existing landscape features in the PROW unless: (1) such displaced landscaping is replaced with plants, trees or other landscape features approved by the public services director or his or her designee and (2) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscape maintenance shall be performed in accordance to the public services director, or his or her designee. To preserve existing landscaping in the PROW, all work performed in connection with wireless telecommunication facilities shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees at the site for the duration of the permit term.
- (e) No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the city.
- (f) Accessory Equipment. Not including the electric meter, all accessory equipment shall be located underground unless city staff determines that there is no room in the PROW for undergrounding or that undergrounding is not feasible. Such accessory equipment shall be enclosed with a structure and shall be fully screened and camouflaged, including the use of landscaping, architectural treatment or other acceptable alternate screening method. Required electrical meters or cabinets shall be screened and/or camouflaged per the adopted Design Guidelines.
- (g) Support Structures. Only pole-mounted antennas shall be permitted in the PROW. Mounting to all other forms of support structure in the PROW are prohibited.

  - (i) Utility Poles. Wireless telecommunication facilities proposed to be installed on an existing utility pole must install all antennas above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. The maximum height of any antenna or equipment above the pole shall not exceed five

- (5) feet. Antennas must be concealed within a shroud. All cables, wires and other connectors must be concealed within the side-arm mount or extension arm of a wood pole and within the inside of any other pole. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.
- (ii) Streetlight Poles. The maximum height of any antenna and equipment shall not exceed five (5) feet above the existing height of other streetlight pole(s) installed along the same street.
- (iii) Replacement Poles. If an applicant proposes to replace a pole that is an eligible support structure to accommodate the proposed facility, the replacement pole shall be designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials and style to the maximum extent feasible.
- (iv) New, Non-Replacement Poles. Wireless telecommunication facilities on a new, non-replacement pole must install a new streetlight pole substantially similar to the city's and/or electric utility provider's standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed 12 inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome, and shall comply with the following:
1. The new pole must function for a purpose other than placement of a wireless facility (e.g., street light, street sign poles, etc.).
  2. The design must match the dimensions and design of existing and similar types of poles and antennas in the surrounding areas.
- (h) Obstructions; Public Safety. SWF and any associated equipment or improvements shall not physically interfere with or impede access to any:
- (i) Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, incommode the public's use of the right-of-way, or cause safety hazards to pedestrians and motorists.
  - (ii) A facility shall not be located within any portion of the public right of-way interfering with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility.
  - (iii) Doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way;
- (2) Eligible Facilities Request Design and Development Standards. Approved eligible facilities requests for which the findings set forth in Section 26-685.11500 have been made are subject to the following, unless modified by the approving authority:

- (a) WTFP Subject to Conditions of Underlying Permit. Any WTFP granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit and all such conditions that were applicable to the facility prior to approval of the subject eligible facility request.
  - (b) No Permit Term Extension. The city granting, or granting by operation of law, of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the city's granting, or granting by operation of law, of an eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall have the same term as the underlying permit or other regulatory approval for the subject tower or base station.
  - (c) No Waiver of Standing. The city's granting, or granting by operation of law, of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the city to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.
- (3) Conditions of Approval. All wireless telecommunication facilities shall be subject to conditions of approval as reasonably imposed by the planning director or the approving city body, as applicable, as well as any modification of the conditions of approval deemed necessary by the planning director or approving city body.

**Sec. 26-685.11700 Operation and maintenance standards.**

All wireless telecommunications facilities must comply at all times with the following operation and maintenance standards:

- (1) The permittee shall at all times maintain compliance with all applicable federal, state, and local laws, regulations and other rules, including, without limitation, those applying to use of the PROW. The permittee shall ensure that all equipment and other improvements to be constructed and/or installed in connection with the approved WTFP are maintained in a manner that is not detrimental or injurious to the public health, safety, and general welfare and that the aesthetic appearance is continuously preserved, and substantially the same as shown in the approved plans at all times relevant to the WTFP.
- (2) Unless otherwise provided herein, all necessary repairs and restoration shall be completed by the permittee, owner, operator or any designated maintenance agent at its sole cost within 48 hours:
  - (a) After discovery of the need by the permittee, owner, operator, or any designated maintenance agent; or
  - (b) After permittee, owner, operator, or any designated maintenance agent receives notification from the city.
- (3) Insurance. The permittee shall obtain and maintain throughout the term of the permit a type and amount of insurance as specified by city's risk management. The relevant policy(ies) shall

name the city, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insured. The permittee shall use its best efforts to provide 30 days prior notice to the city engineer of the cancellation or material modification of any applicable insurance policy.

- (4) Indemnities. The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the city, its agents, officers, officials, and employees (a) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the city or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the city's approval of the permit, and (b) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the city becomes aware of any such actions or claims the city shall promptly notify the permittee and, if applicable, the private property owner and shall reasonably cooperate in the defense. The city shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the city's defense, and the property owner and/or permittee (as applicable) shall reimburse the city for any costs and expenses directly and necessarily incurred by the city in the course.
- (5) Performance Bond. Prior to issuance of a wireless encroachment permit, the permittee shall file with the city, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to 100 percent of the cost of removal of the facility as specified in the application for the WTFP or as that amount may be modified by the city engineer in the permit based on the characteristics of the installation. The permittee shall reimburse the city for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the city council. Reimbursement shall be paid when the security is posted and during each administrative review.
- (6) Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility. All facilities, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the use of the PROW, impede the flow of vehicular or pedestrian traffic, impair the primary use and purpose of poles/signs/traffic signals or other infrastructure, interfere with outdoor dining areas or emergency facilities, or otherwise obstruct the accessibility of the PROW.
- (7) Contact Information. Each permittee of a wireless telecommunications facility shall provide the city engineer with the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the

- facility ("contact information"). Contact information shall be updated within seven days of any change.
- (8) All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:
- (a) Subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems (water, sewer, storm drains, gas, oil, electrical, etc.) that result from any activities performed in connection with the installation and/or maintenance of a wireless facility in the PROW;
  - (b) General dirt and grease;
  - (c) Chipped, faded, peeling, and cracked paint;
  - (d) Rust and corrosion;
  - (e) Cracks, dents, and discoloration;
  - (f) Missing, discolored or damaged artificial foliage or other camouflage;
  - (g) Graffiti, bills, stickers, advertisements, litter and debris. All graffiti on facilities must be removed at the sole expense of the permittee within 48 hours after notification from the city;
  - (h) Broken and misshapen structural parts; and
  - (i) Any damage from any cause.
- (9) All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in neat, safe and good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the planning director and public services director.
- (10) The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.
- (11) Each facility shall be operated and maintained to comply with all conditions of approval. The permittee, when directed by the city, must perform an inspection of the facility and submit a report to the planning director and city engineer on the condition of the facility to include any identified concerns and corrective action taken. Additionally, as the city performs maintenance on city-owned infrastructure, additional maintenance concerns may be identified. These will be reported to the permittee. The city shall give the permittee 30 days to correct the identified maintenance concerns after which the city reserves the right to take any action it deems necessary, which could include revocation of the permit. The burden is on the permittee to demonstrate that it complies with the requirements herein. Prior to issuance of a permit under this division, the owner of the facility shall sign an affidavit

attesting to understanding the city's requirement for performance of annual inspections and reporting.

(12) All facilities permitted pursuant to this division shall comply with the Americans with Disabilities Act.

(13) The permittee shall be responsible for obtaining power to the facility and for the cost of electrical usage.

(14) Interference.

(a) The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the city shall be moved to accommodate a permitted activity or encroachment, unless the city determines that such movement will not adversely affect the city or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the city's structure, improvement, or property. Prior to commencement of any work pursuant to a wireless encroachment permit, the permittee shall provide the city with documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the PROW or city utility easement to be affected by permittee's facilities.

(b) The facility shall not damage or interfere in any way with city property, the city's operations or the operations of prior-existing, third party installations. The city will reasonably cooperate with the permittee and/or carrier to carry out such activities as are necessary to correct the interference.

(i) Signal Interference. The permittee shall correct any such interference within 24 hours of written notification of the interference. Upon the expiration of the 24-hour cure period and until the cause of the interference is eliminated, the permittee shall cease operation of any facility causing such interference until such interference is cured.

(ii) Physical Interference. The city shall give the permittee 30 days to correct the interference after which the city reserves the right to take any action it deems necessary, which could include revocation of the permit.

(c) The city at all times reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the sites. Such actions may temporarily interfere with the operation of the facility. The city will in all cases, other than emergencies, give the applicant 30 days written notification of such planned, non-emergency actions.

(14) RF Exposure Compliance. All facilities shall comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, the permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC Office of Engineering and Technology Bulletin 65 RF Emissions Safety Rules for General Population/Uncontrolled RF Exposure in All Sectors. For this testing, the transmitter shall be

operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.

(a) Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m. Testing is prohibited on holidays and weekends.

(15) Records. The permittee shall maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the city, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.

(16) Attorney's Fees. In the event the city determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the city, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the city should otherwise agree with permittee to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.

**Sec. 26-685.11800 No dangerous condition or obstructions allowed.**

No person shall install, use or maintain any wireless telecommunications facility that in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

**Sec. 26-685.11900 Nonexclusive grant; no possessory interests.**

(1) No permit or approval granted under this division shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the city for any purpose whatsoever. Further, no approval shall be construed as a warranty of title.

(2) No possessory interest is created by a WTFP. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, the permittee acknowledges that the city has given to the applicant notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a WTFP may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Wireless telecommunications facility operators shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest

taxes or other taxes, fees, and assessments levied against their right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by the WTFP.

- (3) The permission granted by a WTFP shall not in any event constitute an easement on or an encumbrance against the PROW. No right, title, or interest (including franchise interest) in the PROW, or any part thereof, shall vest or accrue in permittee by reason of a wireless encroachment permit or the issuance of any other permit or exercise of any privilege given thereby.

**Sec. 26-685.12000 Permit expiration; abandonment of applications.**

- (1) Permit Term. Unless Government Code Section 65964, as may be amended, authorizes the city to issue a permit with a shorter term, a permit for any wireless telecommunications facility shall be valid for a period of ten (10) years, unless pursuant to another provision of this code it lapses sooner or is revoked. At the end of ten (10) years from the date of issuance, such permit shall automatically expire.
- (2) A permittee may apply for a new permit within 180 days prior to expiration. Said application and proposal shall comply with the city's current code requirements for wireless telecommunications facilities.
- (3) Timing of Installation. The installation and construction authorized by a WTFP shall begin within one year after its approval, or it will expire without further action by the city. The installation and construction authorized by a WTFP shall conclude, including any necessary post-installation repairs and/or restoration to the PROW, within 30 days following the day construction commenced.
- (4) Commencement of Operations. The operation of the approved facility shall commence no later than 90 days after the completion of installation, or the WTFP will expire without further action by the city. The permittee shall provide the planning director and city engineer notice that operations have commenced by the same date.

**Sec. 26-685.12100 Cessation of use or abandonment.**

- (1) A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for 90 or more consecutive days unless the permittee has obtained prior written approval from the director which shall not be unreasonably denied. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.
- (2) The operator of a facility shall notify the planning director and city engineer in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the planning director and city engineer of any discontinuation of operations of 30 days or more.
- (3) Failure to inform the planning director and city engineer of cessation or discontinuation of operations of any existing facility as required by this section shall constitute a violation of any approvals and be grounds for:



- (a) Litigation;
- (b) Revocation or modification of the permit;
- (c) Acting on any bond or other assurance required by this article or conditions of approval of the permit;
- (d) Removal of the facilities by the city in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
- (e) Any other remedies permitted under this code or by law.

**Sec. 26-685.12200 Removal and restoration—Permit expiration, revocation or abandonment.**

- (1) Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the WTFP or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to the condition it was in prior to the granting of the WTFP, except for retaining the landscaping improvements and any other improvements at the discretion of the city. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the city. Expired, terminated or revoked wireless telecommunications facility equipment shall be removed from the site at no cost or expense to the city.
- (2) Failure of the permittee, owner or operator to promptly remove its facility and restore the property within ninety (90) days after expiration, earlier termination or revocation of the WTFP, or abandonment of the facility, shall be a violation of this code. Upon a showing of good cause, an extension may be granted by the city engineer where circumstances are beyond the control of the permittee after expiration. Further failure to abide by the timeline provided in this section shall be grounds for:
  - (a) Prosecution;
  - (b) Acting on any security instrument required by this division or conditions of approval of permit;
  - (c) Removal of the facilities by the city in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
  - (d) Any other remedies permitted under this code or by law.
- (3) Summary Removal. In the event any city director or city engineer determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes an immediate dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), such director or city engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within 60 days, the facility shall be treated as abandoned property.

- (4) Removal of Facilities by City. In the event the city removes a wireless telecommunications facility in accordance with nuisance abatement procedures stated in Chapter 15, Article IX (Administrative Nuisance Abatement) of this code or pursuant to the summary removal procedures of subsection (3), above, any such removal shall be without any liability to the city for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the city may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this code. Unless otherwise provided herein, the city has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the city destroys any such facility not timely removed by the permittee, owner or operator after notice, or removal by the city due to exigent circumstances.

**Sec. 26-685.12300 Effect on other ordinances.**

Compliance with the provisions of this division shall not relieve a person from complying with any other applicable provision of this code. In the event of a conflict between any provision of this division and other sections of this code, this division shall control.

**Sec. 26-685.12400 State or federal law.**

The implementation of this chapter and decisions on applications for placement of wireless telecommunications facilities in the PROW shall, at a minimum, ensure that the requirements of this division are satisfied, unless it is determined that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this division may be waived, but only to the minimum extent required to avoid the prohibition or violation.

**Sec. 26-685.12500 Legal nonconforming wireless telecommunications facilities in the right-of-way.**

- (1) Legal nonconforming wireless telecommunications facilities are those facilities that existed but did not conform to this division on the date this division became effective.
- (2) Legal nonconforming wireless telecommunications facilities shall, within ten (10) years from the date this division became effective, be brought into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this code at such time, to the extent the city can require such compliance under federal and state law.
- (3) An aggrieved person may file an appeal to the city council of any decision the planning director, city engineer, or other deciding body made pursuant to this section. In the event of an appeal alleging that the ten-year amortization period is not reasonable as applied to a particular property, the city council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond

the prescribed amortization period, and set an amortization period accordingly for the specific property.

**SECTION NO. 6:** That the City Clerk shall certify to the passage of this ordinance and shall cause the same to be published as required by law.

**SECTION NO. 7:** This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage.

**PASSED, APPROVED AND ADOPTED** this \_\_\_\_\_.

\_\_\_\_\_  
Tony Wu  
Mayor

**APPROVED AS TO FORM**

**ATTEST**

\_\_\_\_\_  
Thomas P. Duarte  
City Attorney

\_\_\_\_\_  
Carrie Gallagher, CMC  
Assistant City Clerk

I, CARRIE GALLAGHER, Assistant City Clerk, of the City of West Covina, custodian of the original records, which are public records which I maintain custody and control for the City of West Covina do hereby certify the foregoing Ordinance, being Ordinance No. \_\_\_\_ as passed by the City Council of the City of West Covina, signed by the Mayor of said Council, and attested by the Assistant City Clerk, at a regular meeting of the City Council held on the \_\_\_\_\_, and that the same was passed by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINED:

\_\_\_\_\_  
Carrie Gallagher, CMC  
Assistant City Clerk

**RESOLUTION NO. 2016-10**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, INITIATING CODE AMENDMENT NO. 16-03 RELATED TO WIRELESS TELECOMMUNICATION FACILITIES IN THE PUBLIC RIGHT OF WAY**


WHEREAS, on February 16, 2016, the City Council requested that a code amendment be initiated regarding considering standards for wireless facilities in the public right-of-way in the West Covina Municipal Code; and

WHEREAS, the studies and investigations made by the City Council and in its behalf reveal the following facts:

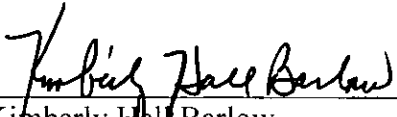
1. Currently, wireless telecommunication facilities located in the public right-of-way are reviewed on a case by case basis. The Zoning section of the Municipal Code addresses wireless telecommunication facilities on private property and government property but does not address facilities in the public right-of-way.
2. It is appropriate to consider development standards for wireless telecommunication facilities in the public right-of-way for aesthetic and safety reasons.
3. The proposed action is considered to be exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the proposed action consists of a code amendment, which does not have the potential for causing a significant effect on the environment.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of West Covina, in conformance with Section 26-153(a)(2) of the West Covina Municipal Code, does hereby initiate an application for a Code Amendment related to the wireless telecommunication facilities section of the Municipal Code.

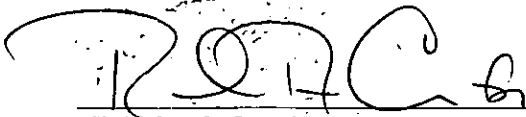
**PASSED, APPROVED AND ADOPTED** on this 16<sup>th</sup> day of February, 2016.

  
James Toma  
Mayor

**APPROVED AS TO FORM:**


  
\_\_\_\_\_  
Kimberly Hall Barlow  
City Attorney

**ATTEST:**

  
\_\_\_\_\_  
Nickolas S. Lewis  
City Clerk

I, HEREBY CERTIFY that the foregoing resolution was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof on the 16<sup>th</sup> day of February, 2016, by the following vote of City Council:

AYES: Spence, Warshaw, Wu, Toma  
NOES: Johnson  
ABSENT: None  
ABSTAIN: None

  
\_\_\_\_\_  
Nickolas S. Lewis  
City Clerk

**PLANNING COMMISSION  
R E S O L U T I O N   N O . 1 9 – 5 9 8 6**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF  
WEST COVINA, CALIFORNIA, ADOPTING DESIGN GUIDELINES  
FOR SMALL WIRELESS FACILITIES**

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**GENERAL EXEMPTION**

**APPLICANT:**           City of West Covina

**LOCATION:**            Citywide

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WHEREAS, the Planning Commission, did on the 23<sup>rd</sup> day of April 2019, adopted design guidelines for small wireless facilities; and

WHEREAS, studies and investigations made by this Commission and on its behalf reveal the following facts:

1.     The Municipal Code currently has standards for Wireless Telecommunication Facilities which were adopted in 1997.
2.     The Federal Communications Commission (FCC) has issued Order 18-133 which, among other undertakings, requires that aesthetic standards for small wireless communications facilities in the public right-of-way be 1) reasonable, 2) no more burdensome than applied to other types of infrastructure deployments, 3) objective, and 4) published in advance.
3.     It is the desire of the City of West Covina to encourage an aesthetically pleasing local environment. It is also the intent of the City to encourage the expansion of wireless technology because it provides a valuable service to residents and businesses in the city. It is the City's goal to encourage wireless providers to construct new facilities in a way that blends architecturally with the built environment
4.     The City of West Covina strives to comply with Federal and State mandates.
5.     The proposed action is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the proposed action consists of the adoption of design guidelines, which does not have the potential for causing a significant effect on the environment.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Commission of the City of West Covina as follows:

**SECTION NO. 1:** The above recitals are true and correct and are incorporated herein as if set forth herein in full.

**SECTION NO. 2:** Based on the evidence presented and the findings set forth, adoption of Design guidelines will promote compliance with Federal Communications Commission (FCC) Order 18-133 while also promoting the City's aesthetic design preferences for such facilities.

**SECTION NO. 3:** Based on the evidence presented and the findings set forth, the Planning Commission of the City of West Covina hereby adopts the Design Guidelines as set forth on Exhibit "A."

**SECTION NO. 4:** The Secretary is instructed to forward a copy of this Resolution to the City Council for their attention in the manner as prescribed by law and this Resolution shall go into force and effect upon its adoption.

I HEREBY CERTIFY, that the foregoing Resolution was adopted by the Planning Commission of the City of West Covina, at a regular meeting held on the 23<sup>th</sup> day of April, 2019, by the following vote.

AYES: Holtz, Heng, Kennedy, Redholtz

NOES: None

ABSTAIN: None

ABSENT: Jaquez

DATE: 4/23/19

  
\_\_\_\_\_  
Herb Redholtz, Chairman  
Planning Commission

  
\_\_\_\_\_  
Jeff Anderson, Secretary  
Planning Commission

**EXHIBIT A**

(See next page for the Design Guidelines)





## CITY OF WEST COVINA SMALL WIRELESS FACILITY DESIGN GUIDELINES IN THE PUBLIC RIGHT OF WAY

*Review Process – Small cells require an administrative use permit per WCMC Section 26-685.985. Staff will be recommending approval if facility complies with the following design standards.*

**Location** – Locate 100 feet away from properties used for residential purposes.

**Facility and Support Equipment** – Facilities should be proposed on existing aggregate light poles. A replacement light pole should be no more than 3 feet from the existing pole location. All facilities shall be designed, textured and colored to match the existing light pole for aesthetic consistency. The base of the pole should be a maximum of 16 inches in diameter. New and/or replacement poles shall be aggregate/marbilite, in a mix, blend, color, and shape/contour to match existing poles in the vicinity.

**Narrow Vertical Alignment** – Consider the use of shrouds and equipment enclosures that are nearly the same diameter as the pole at a ratio of approximately 1:1 for a more visually streamlined form from the street level. Avoid any tilted arrangement.

**Antenna & RRU** – Place antenna and RRUs within a shroud above the light pole. RRUs attached to the side of the pole are discouraged; but if required and with discretionary approval, it should use the smallest RRU volume possible and be placed close together with minimal distance from the pole.

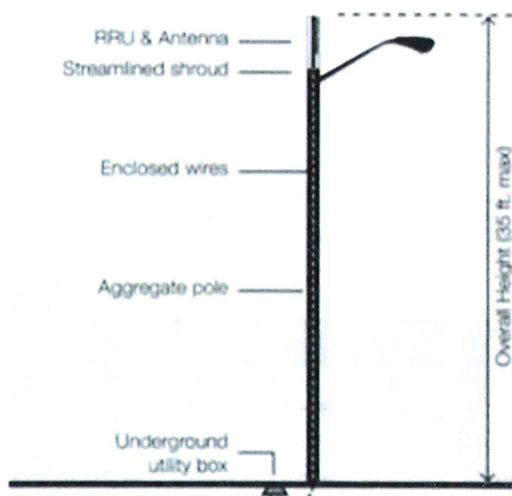
**Wires & Cables** – Wires and cables should be contained within the shroud and run inside the pole for an orderly appearance. If wiring cannot be contained within the pole, all wiring shall be contained within a conduit that is subdued or matches the adjacent surface and is UV protected.

**Signage** – Signage shall be limited to the minimum required by the government and electrical utility regulations and shall be as small and least visible as possible.

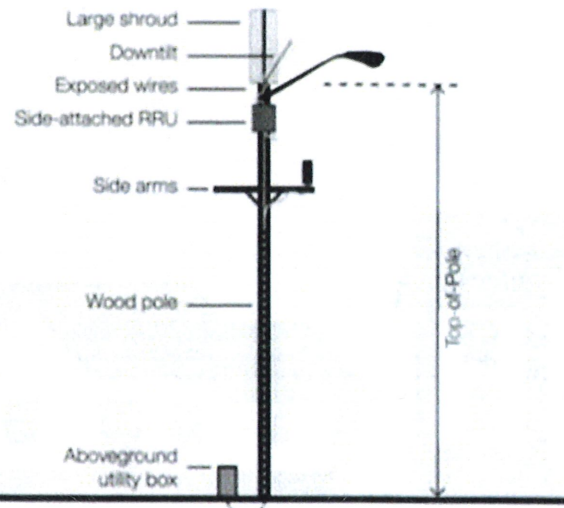
**Construction Approach (including power and metering)** - Separate freestanding meter pedestals should not be used. Metering should be wireless when possible, and underground if wireless metering is infeasible.

**Height**- Overall height of the streetlight pole, including mounted equipment, shall be similar to the surrounding poles and not exceed 35 feet in height.

### Recommend Approval



### Discretionary Review



*City of West Covina*  
**Memorandum**  
**A G E N D A**

**ITEM NO. 2.**

**DATE: May 14, 2019**

**TO:** Planning Commission

**FROM:** Planning Division

**SUBJECT: STUDY SESSION - CODE AMENDMENT 16-03  
SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT OF WAY**

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**BACKGROUND:**

On February 16, 2016, the City Council initiated a code amendment related to wireless telecommunication facilities in the public-right-of-way (Resolution No. 2016-10; Attachment No. 1).

The Federal Telecommunications Act is intended to ensure that the public has sufficient access to telecommunication services and local governments cannot prohibit or have the effect of prohibiting the provision of telecommunication services. As telecommunication technology progresses, additional federal and state laws and regulations have limited local authority over telecommunications including wireless facilities.

On September 27, 2018, the Federal Communications Commission (FCC) released a Declaratory Ruling and Third Report and Order (FCC Order) significantly limiting local management of Small Wireless Facilities (SWF) in the public right-of-way (PROW) and on private property. In summary, the FCC Order and existing federal law does the following:

- Defines SWFs as facilities (a) mounted on structures 50 feet or less in height (including antennas); or (b) mounted on structures no more than 10% taller than other adjacent structures; or (c) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 %, whichever is greater; AND each antenna is no more than 3 cubic feet in volume, and the total associated wireless equipment on one structure is no more than 28 cubic feet in volume.
- Limits local governments to charging only the actual and reasonable cost of providing service and establishes safe harbor fee amounts which will be considered reasonable even if not actual.
- Enacts shot clocks of 60 days for SWFs added to existing structures (regardless of whether the structure already supports a wireless service) and 90 days for SWFs proposing a new structure.
- Prohibits cities from imposing aesthetic requirements for SWFs in the PROW which are not (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployments; (3) objective; and (4) published in advance.

However, it must be noted that the FCC Order only applies the above requirement to applications for SWF in the PROW. If it is not a SWF, it would still be subject to an existing discretionary process.

On April 4, 2019, the California Supreme Court decision on *T-Mobile West, LLC vs. City and County of San Francisco, et. al.* was rendered, which validated a city's authority to regulate aesthetics of telecommunication facilities.

On April 23, 2019, the Planning Commission adopted design guidelines for small wireless facilities located in the public right-of-way (Resolution No. 19- 5986; Attachment No. 2) to address the FCC Order pertaining to aesthetic requirements being reasonable, not burdensome, objective, and published in

advance.

## DISCUSSION:

Chapter 26 (Zoning), Article XII (Special Regulations for Unique Uses), Division 16 (Wireless Telecommunication Facilities) of the West Covina Municipal Code (WCMC) does not explicitly address SWFs, but allows Wireless Telecommunication Facilities in general to be located in the public right of way (PROW), including residential zones. Section 26-685.985 of the WCMC requires an Administrative Use Permit (AUP) for "other forms of wireless telecommunication facilities not specifically addressed within this division which are designed to integrate with the supporting building or structure and pose minimal visual impacts similar to building and roof-mounted antenna facilities, as determined by the planning director," which can be applied to SWFs in the short-term while the City is working on a code amendment.

Wireless telecommunication providers are considered as telephone companies under their State franchise per the California Public Utilities Code Section 7901, and therefore, are entitled to use the PROW for the installation of their equipment. Although wireless telecommunication providers are entitled to use the PROW, the Public Utilities Code allow cities to condition wireless permits on (1) aesthetics, (2) location of proposed facilities due to public safety reasons (related to the use of the road), or even deny applications in appropriate limited circumstances, and (3) to exercise reasonable control over the time, place and manner of "when, where, and how telecommunications service providers gain entry to the public rights-of-way," including the need for encroachment permits.

The purpose of this study session is to obtain direction from the Planning Commission on the potential contents of the ordinance. The ordinance may encompass the following concerns:

***Aesthetics, Separation, and Undergrounding.*** The City regulates aesthetics through the Small Wireless Facility Design Guidelines that the Commission adopted on April 24, 2019. During the April 24, 2019 Planning Commission meeting, the Commission asked staff to address the separation between poles. Since the California Supreme Court Decision on *T-Mobile West, LLC vs. City and County of San Francisco, et. al.* was just recently rendered on April 4, 2019, many cities within the San Gabriel Valley are still in the process of drafting code amendments to address SWFs. Staff has contacted several cities and was informed that the standard is requiring 250 feet of separation in between poles. In addition to separation in between poles, staff has some concerns regarding the separation of SWFs from residential properties/uses. The current code prohibits free-standing wireless facilities from being located within 100 feet of surrounding single- or multi-family residences. This provision may be considered burdensome because it would effectively prevent SWFs from being installed on the PROW in residential areas. Rather than a separation requirement from the property line, the Commission may consider requiring a smaller separation from residential structures and/or line of sight provisions for new poles. The following are suggested discussion items that the Planning Commission may consider:

- *Should the code amendment be designed based on the Design Guidelines?*
  - *By reference, or codify Design Guidelines?*
  - *Would the Commission like to make any changes to the Design Guidelines?*

Staff recommends that the Planning Commission consider including the Design Guidelines in the code amendment by reference rather than codifying it in its entirety. Codifying the Design Guidelines would be beneficial in the short term because the information would be easy to find and readily available in one location (Municipal Code), but would not allow flexibility for modification that may be needed to address rapidly changing wireless laws and technology in the long term.

- *Is 250 feet of separation in between poles acceptable to the Commission?*

Staff recommends that the Planning Commission consider the 250 foot separation in between poles to be consistent with the standard that other cities are requiring.

- *How much of a separation from residential structures is acceptable to the Planning Commission?*

Staff recommends that the Planning Commission consider a separation distance between 20 - 25 feet from residential structures. This separation is consistent with front setback requirements in residential areas.

- *Would the Planning Commission like to consider adding line-of-sight provisions?*

Staff recommends that the Planning Commission consider prohibiting new poles to be installed in areas directly in front of any windows and/or doors in an attempt to address impacts on residences.

**Review/Permitting Process.** Processing SWFs in the PROW is a two part process: 1) Aesthetics - Aesthetics is reviewed by the Planning Division to confirm compliance with the published objective city standards; and 2) Safety - Safety is reviewed by the Engineering Division. The Engineering Division ensures that equipment proposed and its installation does not create unsafe traffic situations and does not block the sidewalk (i.e. ADA accessibility). The substantially shorter "shot clocks" established by the FCC Order render discretionary review by the Planning Commission and/or City Council followed by a separate Engineering review/submittal difficult (60 days for SWFs added to existing structures and 90 days for SWFs proposing new structures). The failure to meet the shot clock deadline will be presumed to violate federal law and results in most cases of the application being deemed approved. The following list are examples of processes that could be used in order to expedite the process with the shot clock limit in mind:

1. Administrative review by staff; appeals are reviewed by an independent hearing officer.
2. Administrative review by staff for SWFs added to existing structures; Planning Commission subcommittee review for appeals and/or SWFs proposed on new structures.
3. Administrative review by staff for SWFs added to existing structures; Planning Commission review for appeals and/or SWFs proposed on new structures.
4. Making wireless telecommunications providers responsible for sending public notification to owners and occupants within the notification radius prior to approval.
5. Administrative review by staff for all SWFs in compliance with the Design Guidelines; Planning Commission review if not in compliance of the Design Guidelines.

Staff is recommending Option # 5. Administrative review by staff for all SWFs in compliance with the Design Guidelines; Planning Commission review if not in compliance with the Design Guidelines.

**Permitting Conditions.** Staff will work with the City Attorney's office in identifying a list of permit conditions that will apply to wireless encroachment permits such as insurance requirements, indemnity, performance bond for removal upon abandonment, maintenance/inspection requirements, and permit time frame.

Subsequent to the study session(s), a second study session could be scheduled if necessary, or a public hearing will be scheduled before the Planning Commission. The Planning Commission will then make a recommendation and the code amendment will be presented to the City Council.

**RECOMMENDATION:**

Accept the report to support discussion regarding the initiated code amendment and provide further direction/input to staff regarding this code amendment.

**Submitted by:** Jo-Anne Burns, Planning Manager

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**Attachments**

Attachment No. 1 - City Council Resolution 2016-10

Attachment No. 2 - Planning Commission Resolution No. 19-5986

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The Commission continued their discussion regarding possible standards and conditions of approval to be considered with the code amendment. Commissioner Holtz suggested that hours of operation be added to the list of standards. The Commission also asked applicant Mohsen Karimi for his input.

Commissioner Holtz asked that he be allowed to speak regarding why he voted against the code amendment. During his remarks he said he's never encountered a problem purchasing beer and wine in West Covina since there are plenty of places where alcoholic beverages can be purchased within the city. In addition, he said this code amendment was proposed twice before and abandoned both times. Further he expressed his concern about who will police the sales of beer and wine at service station convenience stores.

Commissioner Holtz asked to be excused from the meeting at 8:38 p.m. to attend to a personal matter. Commissioner Holtz then left the Council Chambers.

There was further discussion by the Commission regarding possible standards and conditions to be added to the code amendment. Community Development Director Jeff Anderson suggested that another study session be scheduled to discuss standards and conditions.

Motion by Kennedy, seconded by Jaquez, to direct staff to draft language for Code Amendment No. 18-04. Motion carried 3-1, (Heng opposed, Holtz absent, excused.)

Staff was directed to draft a code and schedule this matter for a public hearing.

2. **STUDY SESSION – CODE AMENDMENT NO. 16-03  
SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT OF WAY**

Planning Manager Jo-Anne Burns presented the staff report. During her presentation, Ms. Burns explained that small cell wireless facilities are placed in the public right-of-way on light poles. She also reminded the Commission that they had adopted design standards to provide staff with guidelines when reviewing new applications.

Staff recommended that guidelines be adopted by reference and suggested that these types of facilities be subject to administrative review for approval. The Commission asked about the requirements from the Federal Communications Commission (FCC) and design standards for small wireless facilities.

Commissioner Heng presented various pictures of small wireless facilities to the Commission to illustrate their sizes and appearance. There was a lengthy discussion regarding the aesthetics, separation and possible undergrounding of these facilities. In addition, the Commission considered the review and permitting process and

permitting conditions. They also discussed line-of-sight provisions, separation standards and separation between poles.

Staff recommended Option No. 5 which would allow for administrative review by staff for all small cell wireless facilities within the design guidelines previously adopted by the Commission. In addition, Option No. 5 provides for Planning Commission review for facilities not in compliance with design guidelines. There was a short discussion regarding the difference between administrative review and an administrative use permit review.

There was a discussion regarding staff's recommendation and how to determine if city design guidelines would comply with FCC design guidelines. After a short discussion, it was the consensus of the Commission to schedule another study session and request the attendance of a representative of the City Attorney's office.

4. STUDY SESSION – DESIGN REVIEW SUBCOMMITTEE GUIDELINES TWO-STORY ADDITIONS

This matter was continued to the next regular meeting, May 28, 2019.

5. ROTATION OF OFFICERS

Community Development Director Jeff Anderson said the rotation of officers is scheduled to take place at the first meeting in May in the Municipal Code. He added that Chairman Redholtz had stepped in to finish the term of the last Chairman who resigned from the Commission at the end of last year.

Chairman Redholtz opened the floor for nominations for the office of Chair for the Planning Commission.

Motion by Heng, seconded by Kennedy, to elect Redholtz as Chair. Motion carried 4-0 (Holtz absent, excused.)

Chairman Redholtz opened the floor for nominations for the office of Vice Chair of the Planning Commission.

Motion by Kennedy, seconded by Jaquez, to elect Heng as Vice Chair. Motion carried 4-0 (Holtz absent, excused.)

COMMISSION REPORTS/COMMENTS AND MISCELLANEOUS ITEMS - None

*City of West Covina*  
*Memorandum*  
**A G E N D A**

**ITEM NO. 6.**

**DATE: July 23, 2019**

**TO:** Planning Commission

**FROM:** Planning Division

**SUBJECT: STUDY SESSION - CODE AMENDMENT NO. 16-03  
SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY**

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**BACKGROUND:**

On February 16, 2016, the City Council initiated a code amendment related to wireless telecommunication facilities in the public right-of-way (PROW).

The Federal Telecommunications Act is intended to ensure that the public has sufficient access to telecommunication services and local governments cannot prohibit or have the effect of prohibiting the provision of personal wireless services. Cities may only regulate the location and design of Wireless Communication Facilities (WCF) based on aesthetics or other standards unrelated to the health effects of radio frequency emissions.

On September 27, 2018, the Federal Communications Commission (FCC) released a Declaratory Ruling and Third Report and Order (FCC Order) significantly limiting local management of Small Wireless Facilities (SWF). In summary, the FCC Order does the following:

- Defines SWFs as facilities (a) mounted on structures 50 feet or less in height (including antennas); or (b) mounted on structures no more than 10% taller than other adjacent structures; or (c) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10%, whichever is greater; AND each antenna is no more than 3 cubic feet in volume, and the total associated wireless equipment on one structure is no more than 28 cubic feet in volume.
- Limit fees local governments can charge to the actual and reasonable cost of providing service.
- Enacts shot clocks of 60 days for SWFs added to existing structures (regardless of whether the structure already supports a wireless service) and 90 days for SWFs proposing a new structure.
- Exempts from federal preemption aesthetic requirements for SWFs in the PROW unless they are (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployments; (3) objective; and (4) published in advance.

On April 4, 2019, the California Supreme Court decided T-Mobile West, LLC vs. City and County of San Francisco, validating that municipalities can regulate the aesthetics of wireless facilities in the right of way.

On April 23, 2019, the Planning Commission adopted design guidelines for small wireless facilities located in the public right-of-way (Resolution No. 19-5986; Attachment No. 2) to address the FCC Order pertaining to aesthetic requirements being reasonable, not burdensome, and published in advance.

At its May 14, 2019 meeting, the Planning Commission held a study session on small wireless facilities in the public right-of-way (Code Amendment No. 16-03). During the study session the Planning Commission reached a consensus to: a) identify the Design Guidelines in the Ordinance by reference to allow flexibility for modifications that may be needed in the future, b) draft the Ordinance to require



ministerial review for all SWFs that comply with the Design Guidelines and Planning Commission review for all other facilities, and c) require new poles to be installed between properties. The Planning Commission had questions regarding the maximum distance a SWF pole could be from another pole, and the maximum distance a SWF could be from residential properties. The Planning Commission requested that a representative of the City Attorney be present during the July 23, 2019 study session.

## **DISCUSSION:**

Staff recommends against identifying a separation distance between SWF facilities since this could allow one telecommunications provider to prevent other market entrants from operating in the area. Additionally, the FCC indicated that a City cannot effectively prevent "a provider from replacing its preexisting facilities or collocating new equipment on a structure already in use." A city can, however, establish reasonable aesthetic based requirements to prevent excessive overhead clutter visible from public areas.

As an alternative, staff recommends that the Planning Commission establish a minimum distance threshold that would apply when an applicant requests to install a new SWF within a specified distance of an existing SWF. If the new SWF is placed within the minimum distance threshold, the new SWF can only be approved by the Planning Commission. Staff recommends that the review threshold be between 100 - 250 feet; the larger the minimum distance, the greater the city's legal exposure. In addition, with a larger minimum distance threshold, the more potential applications would be captured, which may place a heavy burden on City resources, and there would be a greater number of applications for Planning Commission review. Staff recommends the 250 foot minimum separation because 5G technologies require a higher band spectrum and, according to the FCC, "some millimeter wave spectrum simply cannot propagate long distances over a few thousand feet - let alone a few hundred."

Establishing a distance prohibition from residential areas may be problematic because it largely prohibits SWFs from being installed in residential areas. As an alternative, staff recommends that the Planning Commission identify a reasonable distance (e.g. 15 feet in the PCD-1 zoning district and 30 feet in all other zoning districts) from a primary residence as the threshold which trips discretionary Planning Commission review. This separation is consistent with front setback requirements in residential areas and would address potential noise concerns and prevent SWF poles from appearing to tower over a residence. Staff's intent with the concept of installing new SWFs between properties is to include that in the Design Guidelines.

After the study session, a public hearing will be scheduled before the Planning Commission. The Planning Commission could then recommend a code amendment be taken to the City Council.

## **RECOMMENDATION:**

Staff recommends that the Planning Commission review the information in the staff report and attachments and provide appropriate direction to staff regarding the code amendment.

**Submitted by:** Jo-Anne Burns, Planning Manager

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### **Attachments**

Attachment No. 1 - May 14, 2019 Planning Commission Study Session Staff Report

Attachment No. 2 - Planning Commission Resolution No. 19-5986 (Adopting Guidelines from Small Wireless Facilities)

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5. STUDY SESSION - SUBCOMMITTEE FOR DESIGN REVIEW ONE STORY GUIDELINES

This item was postponed to the next meeting.

6. STUDY SESSION - CODE AMENDMENT NO. 16-03  
SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

Planning Manager Jo-Anne Burns presented the staff report. She discussed the previous study session on the code amendment and presented information on separation between small wireless facilities and separation between residential uses and small wireless facilities.

Chairmen Redholtz asked if anyone wanted to address the Commission regarding the matter.

Robert Jystad, Government Relations Manager for Crown Castle stated that a small wireless facility separation of 250 feet was standard and that an increase in the separation could be a problem for wireless providers. He recommended focusing on design standards not separation standards.

The Commission discussed that residents expect a certain level of service from wireless providers and the balance between needs of the provider and neighborhood aesthetic.

Chairman Redholtz stated he was satisfied with the recommended separation between facilities of 250 feet and the separation of residential and small wireless facilities of 15 feet in PCD-1 and 30 feet in other residential zones. He stated he thought the Guidelines should be designed to allow to simplify and allow for more efficient review of proposals. He felt that most of the small wireless facilities should be able to be approved by staff through the Guidelines.

Motion by Redholtz, seconded by Kennedy to direct staff to prepare a draft code amendment of 250 feet between facilities and a separation between residential uses and facilities of 15 feet (PCD-1) and 30 feet (other residential uses). Commission Jaquez stated that the issue of colocation reduced his concern on the number that might be proposed over time. Commissioner Heng stated she felt that there should be additional discussion as these decisions would affect all residents. The motion carried 3-2 (Heng, Holtz)

7. STUDY SESSION - CODE AMENDMENT NO. 19-02  
R-1 Rear Setbacks/AHQ Standards

Community Development Director Jeff Anderson presented the staff report. He discussed City Council initiation and discussed potential changes to the rear yard setback, the elimination of AHQs and adding a backup standard from garages.

**PLANNING DEPARTMENT STAFF REPORT**

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**SUBJECT**

**CODE AMENDMENT NO. 19-02**

**APPLICANT: CITY OF WEST COVINA**

**LOCATION: CITYWIDE**

**REQUEST: The proposed code amendment consist of amendments to Chapter 26 (Zoning) of the West Covina Municipal Code to revise standards in the Zoning section of the West Covina Municipal Code for Residential Agriculture and Single-Family Residential zones and to consider eliminating standards for accessory habitable structures.**

**BACKGROUND**

The City Council initiated the Code Amendment on April 2, 2019, at the conclusion of Code Amendment No. 18-02 regarding City standards for accessory dwelling units (ADU). At the City Council hearing on that item there was discussion that the accessory dwelling unit standards should be consistent with standards for additions to houses. While adopting that Code Amendment the City Council did discuss that the required 25-foot setback should be evaluated as well as the current standards for accessory habitable quarters (AHQ) (formerly guest houses).

The City modified the standards for accessory habitable quarters (previously guest houses) in 2014. Accessory habitable quarters are distinct from ADUs in that they are not considered a separate unit, allow no kitchen facilities and there are no requirements per State law. Accessory habitable quarters (AHQ) require the approval of an administrative use permit (AUP), allowing for staff-level review with notification of the properties within 300 feet of the subject property. AHQs are currently allowed based on following development standards (WCMC Article VIII, 26-391.5);

- Maximum of 640 square feet.
- Require 1 covered parking space.
- 25-foot separation between second unit and primary unit.
- Comply with 25-foot rear setback.
- AHQ must be behind the primary dwelling unit.
- AHQ must be architecturally compatible with primary unit.
- No windows allowed when along a side property line if closer than 10 feet.
- While the State has revised the methods that cities can regulate ADU's, it is the cities choice about whether to allow AHQs. Since 2014, there have been four AHQs proposed, one in 2014, two in 2015, and one in 2017. Because the State has placed a focus on ADUs and required them to be approved by right, there has not been much interest in proposing AHQs.

The Planning Commission held a study session on July 23, 2019. At the conclusion of the study session, the Planning Commission gave direction to staff to draft a code amendment to establish a rear setback of 15 feet, to eliminate standards for AHQ's, and to establish backup space standards for garages.

## **DISCUSSION**

The draft code amendment has been prepared and is attached as Exhibit A to the Code Amendment Resolution (Attachment No. 1). The draft code amendment includes the three items that Planning Commission directed staff to include.

### Rear Setback

The City currently has a 25-foot rear setback for one-story and two-story structures. The Code does allow an exception to this setback for one-story structures that encroach no more than 40 percent into the rear yard (an area 25 feet by the width of the lot) that have a minimum 5-foot setback. In effect, the Code does allow structures to be built with a 5-foot rear setback that are one-story structures. It is possible that the initial concept for allowing the 5-foot setback was for non-habitable buildings, however, the Code allows all structures that are one story to be built with a 5-foot setback.

For most lots in the City, it is not likely that a room addition would be built with a 5-foot rear setback, and an addition that close to the rear property line can impact the neighboring rear yards. In addition, the recent changes to State law make it difficult to have different regulations for room additions and ADUs. In practice, many individuals proposing ADUs are proposing them as close to the rear yard as possible, which causes concerns for privacy in the neighboring rear yard. It should also be noted that State law requires cities to allow conversion of legal structures (habitable or non-habitable) into ADUs.

Based on legislative acts approved this calendar year by the state (AB 68, AB 881, SB 13, AB 587 and AB 670) there are new standards that cities in California are required to comply with. One of the standards required is allowing newly constructed ADU's with a minimum setback of as close as four (4) feet. Based on the changes required by the state, at this time, staff would recommend not modifying the rear yard setback. The original concept was to provide privacy in rear yard areas, however, the state has eliminated the City's ability to provide such protection of privacy.

As directed by the Planning Commission, staff has drafted the code amendment with a rear setback of 15 feet (Section 26-407). If the Planning Commission agrees with staff's recommendation to remove the rear setback revision, the revision should be made as part of the motion to recommend approval.

### Accessory Living Quarters

Historically, guest houses (AHQs) were a simple process (allowed by right) and second units (ADUs) were more complicated (conditional use permit). Over the last 10 years the State has required cities to amend their Codes to relax standards and processes for ADUs. Subsequently, today ADUs are allowed by right. The Code was amended to make AHQs more complicated, requiring the approval of an AUP and requiring a garage (Attachment No. 3). Based on the number of submittals last year, 15 ADUs and no AHQs, it would seem that there is currently little interest in constructing AHQs. Additionally, State law allows legal structures to be converted to ADUs so even if someone builds an AHQ, they may want to convert it to an ADU. This code amendment was initiated to consider eliminating AHQs.

The draft code amendment incorporates the deletion of the process for approval and the standards to allow for AHQ's (Section 26-391.5). The definition and references have been left in the Code as there are many guest houses that were constructed over the years and there are a few AHQ's that have been constructed. All guest houses and AHQ's were required the recordation of covenants and therefore it will be helpful to future staff to have the terms defined.

## Backup Space

Currently, the Municipal Code requires a 22-foot backup space for garages that are in the side yard and face a side street, a 25-foot backup space for garages in the front yard, and an overall minimum of 22 feet of driveway length from property lines. However, the code does not contain any regulations about the distance from garage doors to another structure to allow for vehicle access to the garage. The Planning Department currently has a policy requiring a 25-foot backup space; however, the Municipal Code does not include any standards to ensure that vehicles can access a garage. The draft code amendment includes the requirement for a 25-foot back space from the opening of the garage (Section 26-402 (i)).

## **ENVIRONMENTAL DETERMINATION**

The proposal is not subject to the California Environmental Quality Act (CEQA) per Section 15061(b)(3) of the CEQA Guidelines, which provides that CEQA only applies to activity that results in direct or reasonably foreseeable indirect physical change in the environment and for activity considered to be a project, respectively. The amendment to the West Covina Municipal Code would not result in a physical change in the environment because it would only revise development standards for properties zoned for single-family residential uses.

## **STAFF RECOMMENDATIONS**

Staff recommends that the Planning Commission adopt a resolution recommending approval of Code Amendment No. 19-02 to the City Council.

**Submitted by:** Jeff Anderson, Community Development Director

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### **Attachments**

Attachment No. 1 - Resolution

Attachment No. 2 - Planning Commission Minutes, 7/23/19

Attachment No. 3 - Planning Commission Study Session Staff Report, 7/23/19

Attachment No. 4 - City Council Initiation Resolution

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RESOLUTION NO.

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WEST COVINA CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE AN ORDINANCE TO AMEND ZONING REGULATIONS APPLICABLE TO SINGLE FAMILY AND RESIDENTIAL AGRICULTURAL ZONES REGARDING ACCESSORY HABITABLE QUARTERS (FORMERLY KNOWN AS GUEST HOUSES) AND REAR YARDS**

**Section 1. Findings.** The Planning Commission finds as follows:

- A. On April 2, 2019, the City Council initiated a code amendment to revise standards applicable to accessory habitable quarters.
- B. The Planning Commission, upon giving the required notice, did on November 25, 2019, conduct a duly advertised public hearing as prescribed by law; and

**Section 2. Resolution.** The Planning Commission recommends that the City Council conduct a public hearing, and thereafter adopt the ordinance attached hereto as Exhibit A.

**PASSED, APPROVED AND ADOPTED** on November 26, 2019 by the following roll call vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

DATE: November 26, 2019

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Don Holtz, Chairman  
Planning Commission

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Jeff Anderson, Secretary  
Community Development Director

## EXHIBIT A

### ORDINANCE NO. \_\_\_\_\_

#### **ORDINANCE TO AMEND ZONING REGULATIONS APPLICABLE TO SINGLE FAMILY AND RESIDENTIAL AGRICULTURAL ZONES REGARDING ACCESSORY HABITABLE QUARTERS (FORMERLY KNOWN AS GUEST HOUSES) AND REAR YARDS**

##### **SECTION 1. Findings.** The City Council finds as follows:

- A. Consistent with state law, the City allows accessory dwelling units to be constructed within the city.
- B. Now that accessory dwelling units are allowed by right within the city, there is limited to no need to still allow accessory habitable quarters; and
- C. Antiquated provisions of the municipal code should be removed to increase administrative efficiencies and reduce public confusion.

##### **SECTION 2. Municipal Code Amendment.** The definition of “accessory habitable quarters” in section 26-63 of the municipal code is revised as follows:

Accessory habitable quarters/guest houses. A permanently constructed habitable quarters, separate from the primary residence, and having no kitchen facilities, which is clearly subordinate or incidental to the primary residence on the same lot. The accessory habitable quarters may include only a sleeping area, living area, and bathroom within an attached or detached accessory structure and for use by guests or occupants of the primary residence. The accessory habitable quarters shall not be separately rented, leased or let (by direct or indirect compensation) or otherwise occupied separately from the primary residence. Accessory habitable quarters were historically known as guest houses. New accessory habitable quarters/guest houses are no longer allowed.

##### **SECTION 3. Municipal Code Amendment.** Municipal Code section 26-296.1100 (Definitions) is revised as follows:

Sec. 26-296.1100. - Definitions.

- (a) Large expansions shall mean the expansion of the existing total gross floor area of a single-family dwelling unit by the following minimum square footage when either the floor area of the existing dwelling unit is expanded or when the existing dwelling unit is demolished and a new dwelling unit is constructed within five (5) years and results in a total gross floor area larger than existed at the time of demolition, but not resulting in a total gross floor area which exceeds the maximum permitted for a lot:

Lot Size (sq. ft.)	Large Expansion (sq. ft.)
Under 20,000	1,250

## EXHIBIT A

20,000—24,999	1,500
25,000—29,999	2,000
30,000—34,999	2,500
35,000—39,999	3,000
40,000+	3,500

Said large expansion includes the gross square footage of the main building and/or accessory uses when attached to the main building, (including, but not limited to ~~a~~ accessory habitable quarters/guest houses, and garage), and detached garages, as set forth in subsection (d) of this section.

- (b) Maximum unit size exception shall mean an increase of the total gross square footage permitted for a unit as defined in section 26-401.5 by up to twenty-five (25) percent of the gross square footage of the main building, and/or attached accessory uses (including, but not limited to an accessory habitable quarter/guest house, or garage), and/or detached garages, as set forth in subsection (d) of this section.
- (c) Timing of additions or expansions. All additions or expansions occurring within one (1) year of the building permit final inspection approval of the previous addition or expansion shall be considered as a single expansion for the purpose of determining the large expansion calculation.
- (d) Detached garages legally constructed prior to October 21, 2004, shall be exempt from inclusion in the gross square footage calculation. Expansion of such garages after October 21, 2004, however, shall cause this exemption to be lost.

**SECTION 4. Municipal Code Amendment.** The following portions of Municipal Code section 26-391 (i.e. through and including subsections 1 and 2) are revised as follows, with all other portions of the section unamended:

Municipal Code Sec. 26-391. - Permitted uses.

No building or improvement or portion thereof in the residential agricultural zone (R-A) or the single-family residential zone (R-1) shall be erected, constructed, converted, established, altered or enlarged nor shall any lot or premises be used except for one (1) or more of the following purposes:

- (1) One single-family dwelling per lot. Any additions or accessory buildings shall maintain architectural consistency with the house regarding roof profile and pitch, materials, colors, roofing, scale, exterior treatment and details.
- (2) Accessory buildings.
  - ~~a. Accessory habitable quarters as allowed per section 26-391.5.~~
  - ~~b.~~ a. Accessory dwelling units as allowed per article XII, division 11 (26-685.30 *et seq.*).



## EXHIBIT A

b e. Nonhabitable accessory buildings or structures, including, but not limited to the following:

1. Garages;
2. Carports;
3. Workshops;
4. Storage rooms or sheds;
5. Detached patio covers;
6. Pool bathroom or detached bathroom.

All nonhabitable accessory buildings of more than one hundred twenty (120) square feet shall file a covenant defining the use of the accessory building and stating that the building shall not be converted to any other use without city approval including an accessory dwelling unit.

**SECTION 5. Municipal Code Amendment.** Section 26-391.5, “Accessory buildings, habitable” is deleted.

**SECTION 6. Municipal Code Amendment.** A new subsection (i) is added to Section 26-402, “Off-street parking” to provide as follows:

- (i) A minimum unobstructed vehicular maneuvering distance of twenty-five (25) feet measured from the opening of the garage or carport shall be provided, except as otherwise permitted in this section. Minor design modifications may be approved, due to the uniqueness of the property as determined by the Planning Director.

**SECTION 7. Municipal Code Amendment.** Section 26-407, “Permissible coverage of required yards” is revised as follows.

Sixty (60) percent of the required rear yard in R-A and R-1 zones shall remain open; and the remaining forty (40) percent of the required rear yard may be covered by single story construction with a height of no greater than fifteen (15) feet. No construction shall be permitted within ~~five (5)~~ **fifteen (15)** feet of the rear property line.

**SECTION 8. Municipal Code Amendment.** Subsection (d) of section 26-418, (“Planning Commission Subcommittee for Design”) is revised as follows:

- (d) *Review required.* No building permit shall be issued for the following types of improvements to single-family residences prior to subcommittee review:

- (1) New construction of single-family residences.
- (2) Structural additions or modifications on the front elevation of a residence.
- (3) New second-story additions to one-story residences.
- (4) New second-story additions to two-story houses.
- (5) New balconies.

## EXHIBIT A

~~(6) — Accessory habitable quarters.~~

~~(7)~~ Any modifications that is readily visible from a public right-of-way.

**SECTION 9. Municipal Code Amendment.** Subsection (a) of Section 26-749.160 (“Administrative use permit required), is revised as follows:

- (a) Prior to the construction of any improvement in the lower pad area such as habitable structures (including ~~accessory habitable quarters and~~ accessory dwelling units), nonhabitable structures that require the issuance of a building permit, swimming pools, spas, sports courts, and similar uses (whether or not a building permit is required), an administrative use permit shall be required as specified in article VI, division 5 of this chapter 26.

**SECTION 10. ENVIRONMENTAL DETERMINATION.** The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City’s environmental procedures, and is found to be exempt pursuant to CEQA Guidelines Section 15061(b)(3), as this ordinance cannot create any significant effect on the environment.

**SECTION 11. INCONSISTENCIES.** Any provision of the West Covina Municipal Code or appendices thereto inconsistent with the provisions of this ordinance, to the extent of such inconsistencies and or further, is hereby repealed or modified to the extent necessary to affect the provisions of this ordinance.

**SECTION 12. SEVERABILITY.** If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this ordinance which can be implemented without the invalid provision, clause or application; and to this end, the provisions of this ordinance are declared to be severable.

**SECTION 13. PUBLICATION.** This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in a newspaper of general circulation, printed and published in the City of West Covina or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and

[continued on next page]

## EXHIBIT A

shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

**PASSED, APPROVED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Tony Wu, Mayor

### ATTEST:

\_\_\_\_\_  
Carrie Gallagher, Assistant City Clerk

### APPROVED AS TO FORM:

\_\_\_\_\_  
Thomas Duarte, City Attorney

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES       )  
CITY OF WEST COVINA            )

I, Carrie Gallagher, Assistant City Clerk of the City of West Covina, do hereby certify that the foregoing Ordinance No. \_\_\_\_\_ was regularly introduced and placed upon its first reading at a regular meeting of the City Council on the \_\_\_\_ day of \_\_\_\_\_, 2019. That, thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the \_\_\_\_ day of \_\_\_\_\_ 2019.

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Carrie Gallagher, Assistant City Clerk

Planning Commission Minutes  
July 23, 2019

~~5. STUDY SESSION SUBCOMMITTEE FOR DESIGN REVIEW ONE STORY  
GUIDELINES~~

~~This item was postponed to the next meeting.~~

~~6. STUDY SESSION CODE AMENDMENT NO. 16-03  
SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT OF WAY~~

~~Planning Manager Jo Anne Burns presented the staff report. She discussed the previous study session on the code amendment and presented information on separation between small wireless facilities and separation between residential uses and small wireless facilities.~~

~~Chairmen Redholtz asked if anyone wanted to address the Commission regarding the matter.~~

~~Robert Jystad, Government Relations Manager for Crown Castle stated that a small wireless facility separation of 250 feet was standard and that an increase in the separation could be a problem for wireless providers. He recommended focusing on design standards not separation standards.~~

~~The Commission discussed that residents expect a certain level of service from wireless providers and the balance between needs of the provider and neighborhood aesthetic.~~

~~Chairman Redholtz stated he was satisfied with the recommended separation between facilities of 250 feet and the separation of residential and small wireless facilities of 15 feet in PCD-1 and 30 feet in other residential zones. He stated he thought the Guidelines should be designed to allow to simplify and allow for more efficient review of proposals. He felt that most of the small wireless facilities should be able to be approved by staff through the Guidelines.~~

~~Motion by Redholtz, seconded by Kennedy to direct staff to prepare a draft code amendment of 250 feet between facilities and a separation between residential uses and facilities of 15 feet (PCD-1) and 30 feet (other residential uses). Commission Jaquez stated that the issue of colocation reduced his concern on the number that might be proposed over time. Commissioner Heng stated she felt that there should be additional discussion as these decisions would affect all residents. The motion carried 3-2 (Heng, Holtz)~~

Planning Commission Minutes  
July 23, 2019

**7. STUDY SESSION - CODE AMENDMENT NO. 19-02**  
**R-1 Rear Setbacks/AHQ Standards**

Community Development Director Jeff Anderson presented the staff report. He discussed City Council initiation and discussed potential changes to the rear yard setback, the elimination of AHQs and adding a backup standard from garages.

The Commission discussed that it might make sense to have different rear yard setback requirements for larger lots. At the conclusion of the discussion the consensus was to direct staff to prepare a code amendment to eliminate AHQs, review the list of accessory buildings, and review the Area Districts and rear setback.

~~COMMISSION REPORTS/COMMENTS AND MISCELLANEOUS ITEMS~~

~~8. COMMUNITY DEVELOPMENT DIRECTOR'S REPORT:~~

~~a. Forthcoming discussed there were items scheduled for the next two meetings.~~

~~9. CITY COUNCIL ACTION:~~

~~None~~

**ADJOURNMENT**

~~Chairman Redholtz adjourned the meeting at 9:40 p.m. in memory of resident and Community Services Commissioner Phil Kaufman.~~

~~Respectfully submitted:~~

~~Jeff Anderson~~

~~Community Development Director~~

**ADOPTED AS SUBMITTED ON: August 13, 2019**

*City of West Covina*  
*Memorandum*  
**A G E N D A**

**ITEM NO. 7.**

**TO:** Planning Commission

**DATE:** **July 23, 2019**

**FROM:** Planning Division

**SUBJECT: STUDY SESSION - CODE AMENDMENT NO. 19-02  
R-1 Rear Setbacks/AHQ Standards**

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**BACKGROUND:**

The City Council initiated the Code Amendment at the conclusion of Code Amendment No. 18-02 regarding City standards for accessory dwelling units (ADU). At the City Council hearing on that item there was discussion that the accessory dwelling unit standards should be consistent with standards for additions to houses. While adopting that Code Amendment the City Council did discuss that the required 25-foot setback should be evaluated as well as the current standards for accessory habitable quarters (AHQ) (formerly guest houses).

The City modified the standards for accessory habitable quarters (previously guest houses) in 2014. Accessory habitable quarters are distinct from ADUs in that they are not considered a separate unit, allow no kitchen facilities and there are no requirements per State law. Accessory habitable quarters (AHQ) require the approval of an administrative use permit (AUP), allowing for staff-level review with notification of the properties within 300 feet of the subject property. AHQs are currently allowed based on following development standards (WCMC Article VIII, 26-391.5);

- Maximum of 640 square feet.
- Require 1 covered parking space.
- 25-foot separation between second unit and primary unit.
- Comply with 25-foot rear setback.
- AHQ must be behind the primary dwelling unit.
- AHQ must be architecturally compatible with primary unit.
- No windows allowed when along a side property line if closer than 10 feet.

While the State has revised the methods that cities can regulate ADU's, it is the cities choice about whether to allow AHQs. Since 2014, there have been four AHQs proposed, one in 2014, two in 2015, and one in 2017. Because the State has placed a focus on ADUs and required them to be approved by right, there has not been much interest in proposing AHQs.

**DISCUSSION:**

## ATTACHMENT NO. 3

The proposed Code Amendment would examine rear setbacks and accessory living quarters. Staff is also suggesting including backup space standards to ensure that garages have adequate space to allow for vehicular access to the garage.

### Rear Setback

The City currently has a 25-foot rear setback for one-story and two-story structures. The Code does allow an exception to this setback for one-story structures that encroach no more than 40 percent into the rear yard (an area 25 feet by the width of the lot) that have a minimum 5-foot setback. In effect, the Code does allow structures to be built with a 5-foot rear setback that are one-story structures. It is possible that the initial concept for allowing the 5-foot setback was for non-habitable buildings, however, the Code allows all structures that are one story to be built with a 5-foot setback.

For most lots in the City, it is not likely that a room addition would be built with a 5-foot rear setback, and an addition that close to the rear property line can impact the neighboring rear yards. In addition, the recent changes to State law make it difficult to have different regulations for room additions and ADUs. In practice, many individuals proposing ADUs are proposing them as close to the rear yard as possible, which causes concerns for privacy in the neighboring rear yard. It should also be noted that State law requires cities to convert legal structures (habitable or non-habitable) into ADUs.

Staff surveyed surrounding cities on their rear setbacks for habitable and for non-habitable structures (Attachment No. 3). Many cities have different standards to allow detached garages, sheds and other accessory structures in the rear yard area while providing more separation for habitable structures. Given the current requirements for ADUs, it may not be advisable to create different standards for habitable and non-habitable structures.

This code amendment was initiated to consider modifications to the 5-foot rear setback. The issues to consider are privacy in rear yards and the appropriate location for ADUs. All the options provided below would be to continue to require a 25-foot rear setback for all two-story structures. Options to consider include the following.

1. Continue to require a rear setback of 5 feet.
2. Require a rear setback of 10 feet (La Puente and El Monte use this setback).
3. Require a rear setback of 15 feet.
4. Require a rear setback of 20 feet (Baldwin Park, Diamond Bar, Azusa and El Monte use this setback).
5. Require a rear setback of 25 feet (Covina, Azusa and Glendora use this setback).

Staff is recommending a rear setback of 15 feet. This still allows some encroachment into the rear setback but provides separation from the neighboring properties to the rear and would likely reduce negative impacts on those adjacent properties.

### Accessory Living Quarters

Historically, guest houses (AHQs) were a simple process (allowed by right) and second units (ADUs) were more complicated (conditional use permit). Over the last 10 years the State has required cities to amend their Codes to relax standards and processes for ADUs. Subsequently, today ADUs are allowed by right. The Code was amended to make AHQs more complicated, requiring the approval of an AUP and requiring a garage (Attachment No. 3). Based on the number of submittals last year, 15 ADUs and no AHQs, it would seem that there is currently little interest in constructing AHQs. Additionally, State law allows structures

## ATTACHMENT NO. 3

legal structures to be converted to ADUs so even if someone builds an AHQ, they may want to convert it to an ADU. This code amendment was initiated to consider eliminating AHQs.

### Backup Space

Currently, the Municipal Code requires a 22-foot backup space for garages that are in the side yard and face a side street, a 25-foot backup space for garages in the front yard, and an overall minimum of 22 feet of driveway length from property lines. However, the code does not contain any regulations about the distance from garage doors to another structure to allow for vehicle access to the garage. The Planning Department currently has a policy requiring a 25-foot backup space; however, the Municipal Code does not include any standards to ensure that vehicles can access a garage.

The backup space requirement is something that staff has intended to add to the Zoning Code for some time. Therefore, staff is recommending that the requirement for a 25-foot back space be added to the code amendment.

### **RECOMMENDATION:**

Staff recommends that the Planning Commission review the information in the staff report and attachments and provide appropriate direction to staff regarding the code amendment.

**Submitted by:** Jeff Anderson, Community Development Director

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### **Attachments**

Attachment No. 1 - City Council Staff Report 4/2/19

Attachment No. 2 - Municipal Code/Accessory Habitable Quarters

Attachment No. 3 - Survey of Surrounding Cities

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RESOLUTION NO. 2019-13

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, INITIATING CODE AMENDMENT NO. 19-02 TO STUDY REAR YARD SETBACKS AND ACCESSORY HABITABLE QUARTERS IN SINGLE FAMILY ZONES**

**WHEREAS**, on April 2, 2019, the City Council initiated a code amendment to consider revisions to rear yard setbacks and accessory habitable quarters in single family zones; and

**WHEREAS**, the studies and investigations made by the City Council and in its behalf reveal the following facts:

**SECTION 1.** The current zoning standards for rear yard setbacks in Single-Family zones have not been reviewed since 1977.

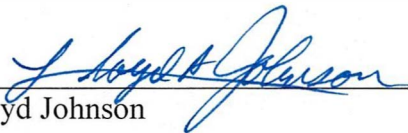
**SECTION 2.** The Municipal Code currently includes accessory habitable quarters standards in the City of West Covina.

**SECTION 3.** The consideration of the code amendment would evaluate revisions to the rear yard setback and accessory habitable quarters standards in single family zones.

**SECTION 4.** The proposed action is considered to be exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the proposed action consists of the consideration of a potential code amendment, which does not of itself have the potential for causing a significant effect on the environment.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, DOES RESOLVE AS FOLLOWS:** in conformance with Section 26-153(a)(2) of the West Covina Municipal Code, does hereby initiate a Code Amendment related to rear yard setbacks and accessory dwelling unit standards in Single-Family Residential zones.

**PASSED, APPROVED AND ADOPTED** on this 2<sup>nd</sup> day of April, 2019.

  
\_\_\_\_\_  
Lloyd Johnson  
Mayor

**APPROVED AS TO FORM**



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Scott E. Porter  
City Attorney

**ATTEST**

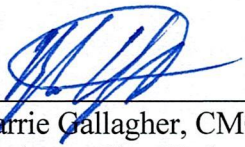


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Carrie Gallagher, CMC  
Assistant City Clerk

I, CARRIE GALLAGHER, Assistant City Clerk of the City of West Covina, California, do hereby certify that the foregoing resolution was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 2nd day of April 2019, by the following vote of the City Council:

AYES: Castellanos, Lopez-Viado, Shewmaker, Wu, Johnson  
NOES: None  
ABSENT: None  
ABSTAIN: None

 for: \_\_\_\_\_  
Carrie Gallagher, CMC  
Assistant City Clerk

**PLANNING DEPARTMENT STAFF REPORT**

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**SUBJECT**

**CODE AMENDMENT NO. 19-03**

**GENERAL EXEMPTION**

**APPLICANT: City of West Covina**

**LOCATION: Citywide**

**REQUEST: The proposed code amendment consists of amendments to Sections 26-312, and 26-314 to Chapter 26 (Zoning) of the West Covina Municipal Code to allow for temporary non-commercial (political) signs to be placed in parkways within the public right of way.**

**BACKGROUND**

On April 2, 2019, the City Council initiated a code amendment to consider revising the West Covina Municipal Code (WCMC) to allow temporary noncommercial signs in the parkway (the area between a private property line and the curb/street). The Planning Commission held a study session to discuss the potential code amendment on July 23, 2019. At that study session, the Planning Commission directed staff to prepare a code amendment.

**DISCUSSION**

Staff has prepared a draft code revision as requested by the Planning Commission. The draft code amendment would revise Sections 26-312 and 26-314 of the WCMC pertaining to the temporary non-commercial signs placed in parkways within the public right of way. The proposed addition to the Municipal Code would be in Section 26-314 and would read as follows:

In areas immediately adjacent to areas zoned residential agricultural (R-A) or single family residential (R-1), temporary noncommercial signs may be placed within parkways (i.e. the portions of the right-of-way that are between the paved surface of the street and the sidewalk). Such signs shall be attached to the ground, shall not exceed 30 inches in any dimension, and shall not exceed three (3) square feet in area.

The proposed amendment has been drafted and the code text is attached to the resolution for your review (Attachment No. 1). If the Planning Commission chooses to recommend approval of the proposed code amendment, the City Council will hold a public hearing to consider adopting the proposed amendments.

**ENVIRONMENTAL DETERMINATION**

The proposal is not subject to the California Environmental Quality Act (CEQA) per Section 15061(b)(3) of the CEQA Guidelines, which provides that CEQA only applies to activity that results in direct or reasonably foreseeable indirect physical change in the environment and for activity considered to be a project, respectively. The amendment to the West Covina Municipal Code would not result in a physical change in the environment because it would revise standards for temporary non-commercial signs.

## **STAFF RECOMMENDATIONS**

Based on direction, staff recommends that the Planning Commission adopt a resolution recommending approval of Code Amendment No. 19-03 to the City Council.

**Submitted by:** Camillia Martinez, Assistant Planner

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### **Attachments**

Attachment No. 1 - Resolution

Attachment No. 2 - Initiation of Code Amendment

Attachment No. 3 - Initiation Resolution

Attachment No. 4 - Study Session Staff Report, 7/23/19

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**PLANNING COMMISSION**

**R E S O L U T I O N   N O .**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF  
WEST COVINA, CALIFORNIA, RECOMMENDING TO THE CITY  
COUNCIL APPROVAL OF CODE AMENDMENT NO. 19-03, RELATED  
TEMPORARY NON-COMMERCIAL SIGNS IN PARKWAYS WITHIN  
MUNCIPAL RIGHTS OF WAY**

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**CODE AMENDMENT NO. 19-03**

**GENERAL EXEMPTION**

**APPLICANT:**           City of West Covina

**LOCATION:**            Citywide

---

WHEREAS, on the 2<sup>nd</sup> day of April 2019, the City Council initiated a code amendment to Section 26-312 and 26-314 of the West Covina Municipal Code; and

WHEREAS, the Planning Commission, did on the 23<sup>rd</sup> day of July 2019, conduct a study session to consider the initiated proposed code amendment change; and

WHEREAS, the Planning Commission, upon giving the required notice, did on the 26<sup>th</sup> day of November 2019, conduct a duly advertised public hearing as prescribed by law; and

WHEREAS, studies and investigations made by this Commission and on its behalf reveal the following facts:

1.     The Municipal Code currently has standards prohibiting temporary non-commercial signs to be placed in parkways within municipal rights of way, which were last revised in 2018.
2.     On January 15, 2019, the City Council requested to consider changes to the temporary sign standards. The City Council initiated a code amendment on April 2, 2019.
3.     The proposed action is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that

the proposed action consists of a code amendment, which does not have the potential for causing a significant effect on the environment.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Commission of the City of West Covina as follows:

**SECTION NO. 1:** The above recitals are true and correct and are incorporated herein as if set forth herein in full.

**SECTION NO. 2:** Based on the evidence presented and the findings set forth, Code Amendment No. 19-03 is hereby found to be consistent with the West Covina General Plan and the implementation thereof, and that enhances the public necessity, convenience, and general welfare, Code Amendment No. 19-03.

**SECTION NO. 3:** Based on the evidence presented and the findings set forth, the Planning Commission of the City of West Covina hereby recommends to the City Council of the City of West Covina that it approves Code Amendment No. 19-03 to amend Chapter 26 (Zoning) of the West Covina Municipal Code as shown on Exhibit "A."

**SECTION NO. 4:** The Secretary is instructed to forward a copy of this Resolution to the City Council for their attention in the manner as prescribed by law and this Resolution shall go into force and effect upon its adoption.

*[continued on next page]*

I HEREBY CERTIFY, that the foregoing Resolution was adopted by the Planning Commission of the City of West Covina, at a regular meeting held on the 26<sup>th</sup> day of November, 2019, by the following vote.

AYES:

NOES:

ABSTAIN:

ABSENT:

DATE:

---

Herb Redholtz, Chairman  
Planning Commission

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Jeff Anderson, Secretary  
Planning Commission



## EXHIBIT A

### ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
WEST COVINA, CALIFORNIA AMENDING SECTIONS 26-312  
and 26-314 OF THE WEST COVINA MUNICIPAL CODE, TO  
ALLOW CERTAIN TEMPORARY NON-COMMERCIAL  
SIGNS TO BE PLACED IN PARKWAYS WITHIN MUNICIPAL  
RIGHTS OF WAY**

WHEREAS, within residential zones, signs placed in the area between a sidewalk and the paved area of the street ("parkways") are typically more visible to the public than signs placed upon private property;

WHEREAS, residential private property owners typically do not allow temporary commercial signs to be placed in the front yard of their own property, except when selling their own home; and

WHEREAS, increasing the ability of the public to place signage in the parkway will be in the public interest, provided the city simultaneously adopts reasonable content-neutral regulations on the time, place and manner of such signage to mitigate the negative impacts of such signage on public safety and community aesthetics; and

WHEREAS, on the 2<sup>nd</sup> day of April 2019, the City Council initiated a code amendment to Section 26-685.93 (1) of the West Covina Municipal Code; and

WHEREAS, the Planning Commission, did on the 23<sup>rd</sup> day of July 2019, conduct a study session to consider the initiated proposed code amendment change; and

WHEREAS, the Planning Commission, upon giving required notice, did on the 26th day of November 2018, conduct a duly advertised public hearing as prescribed by law, at which time the Planning Commission adopted Resolution No. \_\_\_\_\_, recommending to the City Council approval of Code Amendment No. 19-03.

WHEREAS, the City Council, upon giving the required notice, did on the \_\_\_\_ day of \_\_\_\_\_ 2019, conduct a duly advertised public hearing as prescribed by law on the proposed ordinance; and

WHEREAS, based on review of the State CEQA Guidelines, the City Council finds and determines that the proposed ordinance is statutorily exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines, which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment; and

WHEREAS, the City Council has duly considered all information presented to it, including written staff reports and any testimony provided at the public hearing, with all testimony received being made a part of the public record.

**WHEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA  
HEREBY ORDAINS AS FOLLOWS:**

SECTION 1: Municipal Code Amendment.

- A. Subsection (e) of Section 26-312 of the Municipal Code, "Prohibited Signs" is revised as follows:

(e) Signs located on public property or in the public right-of-way, except as allowed by sections 26-311(c), ~~and section 26-313, and 314(g)~~, or by approval of an encroachment permit by the city council. Public property includes, but is not limited to: public streets, alleys, medians, sidewalks, rights of way, or easements. This restriction shall not apply to city or public entity signs on its own property pursuant to section 26-311(c), or construction warning signs permitted by an encroachment permit. Furthermore, the following shall apply:

(1) No sign shall be affixed to private improvements in the public right-of-way, including, but not limited to, utility poles, light standards, telephone poles, telephone equipment boxes, cross-arms, traffic control devices, trees, fences, or poles supporting fences.

(2) Notwithstanding anything to the contrary, no sign shall prevent or interfere with free ingress to or egress from any door, window or fire escape, or shall be located or maintained in such a place or in such a manner as to constitute an immediate hazard to the safety of or block the path of travel of pedestrians or vehicular traffic. The determination of the city engineer or authorized representative as to whether a sign constitutes such a hazard shall be conclusive.

- B. Section 26-314 of the Municipal Code, "Temporary noncommercial signs" is revised as follows:

Sec. 26-314. - Temporary noncommercial signs.

Temporary noncommercial signs, as defined in section 26-310.45, shall be permitted, subject to the following:

- (a) Signs may be placed on private property with the prior consent of the property owner. As used here, "property owner" includes a tenant in possession.
- (b) Signs on private property shall not exceed eight (8) feet in any dimension or thirty-two (32) square feet in area.

- (c) Signs on private property that are attached to a wall, fence, or building may project into the public right-of-way up to a maximum of six (6) inches.
- (d) Except as provided in subsection (g) of this section, Temporary noncommercial signs may not be placed in or on a public street, alley, median island, sidewalk right-of-way, or easement, and such signs may not be attached to utility poles, traffic control boxes, or other public property.
- (e) It shall be unlawful for any person to erect or maintain a temporary noncommercial sign other than as authorized by this section, or for any owner of real property to permit, allow, acquiesce in, sanction, or condone the erection or maintenance of a temporary noncommercial sign on his/her property other than as authorized by this division.
- (f) All temporary noncommercial signs shall be removed within ten (10) days after the event to which they pertain by the person or entity which erected the sign, or the owner of the property on which the sign has been erected. Signs not removed within ten (10) days shall be removed according to the provisions of section 26-320 below.
- (g) In areas immediately adjacent to areas zoned residential agricultural (R-A) or single family residential (R-1), temporary noncommercial signs may be placed within parkways (i.e. the portions of the right-of-way that are between the paved surface of the street and the sidewalk). Such signs shall be attached to the ground, shall not exceed 30 inches in any dimension, and shall not exceed three (3) square feet in area.

SECTION 2: Repeal of Inconsistent Sections. Any provision of the West Covina Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, are repealed or modified solely to the extent necessary to preserve the provisions of this Ordinance.

SECTION 3: Environmental Review. The Council finds that adoption of this ordinance is not a "project" pursuant to California Public Resources Code Section 21065 and CEQA Guidelines Section 15378(a)(5) because CEQA only applies to "projects" and the definition of "project" excludes "administrative activities of governments that will not result in direct or indirect physical change in the environment", and this ordinance merely amends the appointment power of the city manager.

SECTION 4: Severability. If any section, subsection, clause or phrase or portion of this code is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of all other provisions of this ordinance. The City Council of West Covina hereby declares that it would have passed the ordinance codified in this chapter, and each section, subsection, sentence, clause and phrase or portion thereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, or phrases or portions thereof be declared invalid or unconstitutional.

SECTION 5: Attestation. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the

official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2019 by the following roll call vote:

AYES:

NOES:

ABSENT:

---

Tony Wu, Mayor

**APPROVED AS TO FORM**

**ATTEST**

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Thomas P. Duarte  
City Attorney

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Carrie Gallagher, CMC  
Assistant City Clerk

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES )  
CITY OF WEST COVINA )

I, CARRIE GALLAGHER, Assistant City Clerk, of the City of West Covina, custodian of the original records, which are public records which I maintain custody and control for the City of West Covina do hereby certify the foregoing Ordinance, being Ordinance No. XXXX as passed by the City Council of the City of West Covina, signed by the Mayor of said Council, and attested by the Assistant City Clerk, at a regular meeting of the City Council held on the X<sup>nd</sup> of (Month) 20XX, and that the same was passed by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINED:

Carrie Gallagher, CMC  
Assistant City Clerk



## AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

**DATE:** April 2, 2019

**TO:** Mayor and City Council

**FROM:** Nikole Bresciani  
Acting City Manager

**SUBJECT: INITIATION OF CODE AMENDMENT NO. 19-02 (R-1 STANDARDS), CODE  
AMENDMENT NO. 19-03 (TEMPORARY SIGNS) AND CODE AMENDMENT NO. 19-04  
(PARK FEES)  
GENERAL EXEMPTION**

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### RECOMMENDATION:

It is recommended that the City Council adopt the following resolutions.

**RESOLUTION NO. 2019-13 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
WEST COVINA, CALIFORNIA, INITIATING CODE AMENDMENT NO. 19-02 TO STUDY REAR  
SETBACKS AND ACCESSORY HABITABLE QUARTERS IN SINGLE FAMILY ZONES**

**RESOLUTION NO. 2019-14 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
WEST COVINA, CALIFORNIA, INITIATING CODE AMENDMENT NO. 19-03 TO STUDY  
TEMPORARY SIGN STANDARDS**

**RESOLUTION NO. 2019-15 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
WEST COVINA, CALIFORNIA, INITIATING CODE AMENDMENT NO. 19-04 TO STUDY PARK  
FEES**

### DISCUSSION:

This staff report covers three code amendment initiations. The Municipal Code requires that a notice be published in the newspaper advertising public hearings for code amendments. No other type of noticing is required. For the three proposed code amendments, staff intends to keep an address list of interested individuals and provide notices in the mail for each study session and public hearing.

#### Code Amendment No. 19-02

At the February 5, 2019 City Council Meeting, the City Council discussed items concerning accessory dwelling units standards including rear setbacks, minimum lot size and maximum unit size. At the conclusion of the hearing the City Council adopted an ordinance that clarified text for accessory dwelling units and requested that staff agendize the initiation of a code amendment to study R-1 rear yard standards and standards for accessory habitable quarters. The R-1 standards are included in the Zoning Code requiring the adoption of a resolution by the Planning Commission or City Council to initiate a code amendment.

#### Code Amendment No. 19-03

At the January 15, 2019 City Council Meeting, Mayor Johnson requested to initiate a code amendment to consider revisions to the temporary signs standards in the Zoning section of the Municipal Code for temporary noncommercial signs. The sign standards are included in the Zoning Code requiring the adoption of a resolution by the Planning Commission or City Council to initiate a code amendment.

#### Code Amendment No. 19-04

At the February 5, 2019 City Council Meeting, the Council requested the initiation of a code amendment to require Parks and Recreation dedications or in-lieu fees for residential subdivisions and rental units. Currently, Parks and Recreation Fees requirement is located in the Subdivision section of the Municipal Code for subdivisions (tract and parcel maps), with a reference in the Zoning section of the Municipal Code. The code amendment would consider revisions of the Municipal Code to ensure that park fees are required when either rental units or for-sale units are constructed. Since revisions to the Municipal Code for park fees may include the Zoning Code, an initiation resolution has been provided to comply with Zoning Code requirements that a resolution initiating a code amendment be adopted by the Planning Commission or City Council.

#### **OPTIONS:**

The City Council has the following options:

1. Approve staff's recommendation;
2. Decline to initiate one or more a code amendments; or
3. Provide alternative direction.

#### **ENVIRONMENTAL REVIEW:**

The proposed code amendments are exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines in that they consist of a code amendments to the Municipal Code, which do not have the potential for causing a significant effect on the environment.

**Prepared by:** Jeff Anderson, Community Development Director

---

#### **Attachments**

Attachment No. 1 - Resolution No. 2019-13 R-1 Standards

Attachment No. 2 - Resolution No. 2019-14 Temporary Signs

Attachment No. 3 - Resolution No. 2019-15 Park Fees

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**RESOLUTION NO. 2019-14**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, INITIATING CODE AMENDMENT NO. 19-03 TO STUDY TEMPORARY SIGN STANDARDS**

**WHEREAS**, on April 2, 2019, the City Council initiated a code amendment to consider revisions to the temporary signs standards in the West Covina Municipal Code; and

**WHEREAS**, the studies and investigations made by the City Council and in its behalf reveal the following facts:

**SECTION 1.** On January 15, 2019, the City Council requested to consider changes to the temporary sign standards in an effort to reduce the number of campaign signs on public property and address violations.

**SECTION 2.** The Sign Section of the Municipal Code includes temporary sign standards that specify where a temporary sign may be placed, the length of time the sign may remain, the size standards, and the type of permit needed. It is necessary to review the standards to determine if the current standards are appropriate and legally defensible.

**SECTION 3.** The proposed action is considered to be exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the proposed action consists of a code amendment, which does not have the potential for causing a significant effect on the environment.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA DOES RESOLVE AS FOLLOWS:** in conformance with Section 26-153(a)(2) of the West Covina Municipal Code, does hereby initiate an application for a Code Amendment related to the sign regulation section of the Municipal Code.

**PASSED, APPROVED AND ADOPTED** on this 2<sup>nd</sup> day of April 2019.

  
\_\_\_\_\_  
Lloyd Johnson  
Mayor



**APPROVED AS TO FORM**



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Scott E. Porter  
City Attorney

**ATTEST**

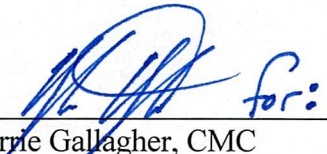
 *for:*

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Carrie Gallagher, CMC  
Assistant City Clerk

I, CARRIE GALLAGHER, Assistant City Clerk of the City of West Covina, California, do hereby certify that the foregoing resolution was duly adopted by the City Council of the City of West Covina, California, at a regular meeting thereof held on the 2nd day of April 2019, by the following vote of the City Council:

AYES: Castellanos, Lopez-Viado, Shewmaker, Wu, Johnson  
NOES: None  
ABSENT: None  
ABSTAIN: None

 for:  
\_\_\_\_\_  
Carrie Gallagher, CMC  
Assistant City Clerk

*City of West Covina*  
*Memorandum*  
A G E N D A

ITEM NO. 4.

DATE: July 23, 2019

**TO:** Planning Commission  
**FROM:** Planning Division  
**SUBJECT:** **STUDY SESSION - CODE AMENDMENT NO. 19-03**  
**TEMPORARY NONCOMMERCIAL SIGNS**

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**BACKGROUND:**

On April 2, 2019, the City Council adopted Resolution No. 2019-14 initiating Code Amendment No. 19-03 to consider modifying the temporary sign standards to allow noncommercial signs in parkways. The request for initiation came from Mayor Johnson.

**DISCUSSION:**

The City Council adopted Code Amendment No. 16-02 on February 6, 2018. That Code Amendment was required to address a U.S. Supreme Court ruling of *Reed v. Town of Gilbert* which was a first amendment case on protections for signs. That case addressed temporary noncommercial signs which includes such signs as banners, real estate signs, and political signs. One of the revisions to the Municipal Code at that time was the prohibition of temporary noncommercial signs in the public right-of-way.

As expressed by the Mayor at the January 15, 2019 City Council meeting, the proposed code amendment was initiated to address two issues.

- Adding enforcement standards for those that do not follow the standards.
- Allowing temporary noncommercial signs in the parkway (public right-of-way between a private property and the curb of a street).

While the issue raised were specifically related to political signs, any revisions to this section would affect all types of temporary noncommercial signs. The primary purpose of this study session is to introduce the Planning Commission to the initiated code amendment and to receive input. The next step in the process would be for staff to prepare a draft code amendment and schedule a public hearing before the Planning Commission. Any recommendation on a code amendment by the Planning Commission would ultimately be presented to the City Council at a public hearing.

**RECOMMENDATION:**

Staff recommends that the Planning Commission review the information in the staff report and attachments and provide appropriate direction to staff regarding the code amendment.

**Submitted by:** Jeff Anderson, Community Development Director

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**Attachments**

Attachment No. 1 - City Council Staff Report 4/2/19

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**PLANNING DEPARTMENT STAFF REPORT**

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**SUBJECT**

**INITIATION OF CODE AMENDMENT NO. 19-06**

**GENERAL EXEMPTION**

**APPLICANT: City of West Covina**

**LOCATION: Citywide**

**REQUEST: Initiate Code Amendment No. 19-06 to allow the West Covina Municipal Code to be amended to be consistent with State Law pertaining to Accessory Dwelling Units (ADU).**

**BACKGROUND**

In September 2019 the State Legislature adopted Senate Bill (SB) 13 and Assembly Bills (AB) 68, 670, and 881 which were signed by Governor Newsom in October 2019 and will take effect January 1, 2020. Cities that do not adopt an ordinance pertaining to accessory dwelling units (ADUs) in compliance with State law are mandated to allow accessory dwelling units pursuant only to the State law standards described in the Government Code. Therefore, it is appropriate to initiate a code amendment to address the changes within the City's Municipal Code.

**DISCUSSION**

Based on communication with the City Attorney's office and decisions made by the State legislature, it would be appropriate to consider some modifications to the current ADU's. Staff is recommending that the following issues be evaluated.

- Lot Size Requirements
  - Minimum lot size standards are prohibited.
  - Maximum Floor Area allowed for attached and detached units.
  - Setbacks. Allow for conversion of existing structures and require a minimum setback of four feet, or "sufficient for fire safety".
- Parking
  - Allow Garage Conversions for ADUs. For construction of an ADU, cities cannot require replacement covered parking.
- 60 Days to Approve. A 60-day review limit for proposed ADUs.
- Multifamily / Mixed Use Zones. ADUs allowed in multifamily residential zones.
- Establishes required situations for ministerial approval within residential.
- Prohibits the payment of impact fees or park fees for ADUs under 750 square feet and requires reduced impact fees for ADUs greater than 750 square feet.
- Requires changes for conditions or development standards.
  - Cannot require owner occupancy.
  - Restrictions on short term rentals.
  - Restrictions on requiring corrections for non-conforming zoning conditions.
  - Some portions of the requirements will sunset on January 1, 2025.
- Additional Authority for the State Department of Housing and Community Development (HCD).
  - HCD may opine on sufficiency of the City's ordinance.
  - HCD is granted authority to interpret the legislation.

- Junior Accessory Dwelling Units (JADUs)
  - Reduced standards for JADU kitchen standards.
  - Establishes a ministerial approval process.
  - Definition of JADU: must be within a single family residence.
- Revises allowance for constructing ADUs and JADUs in developments with CC&Rs.
- Allows Separate Sales of ADUs in specific non-profits (such as Habitat for Humanity).

As there is a State required deadline of January 1, 2020, the City is anticipating an urgency ordinance to be presented to the City Council prior to the end of the calendar year. Following that process, it is anticipated that study sessions will be scheduled to address issues that might arise due to the new ADU regulations and then follow the normal public hearing process for a code amendment.

## **STAFF RECOMMENDATIONS**

Staff is recommending adoption of a resolution initiating a code amendment to allow the City to be in conformance with the legislation passed by the state.

### **Submitted by:**

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### **Attachments**

Attachment No. 1 - Draft Resolution for Initiation

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# ATTACHMENT NO. 1

## P L A N N I N G   C O M M I S S I O N

### R E S O L U T I O N   N O .

#### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WEST COVINA, CALIFORNIA, INITIATING CODE AMENDMENT NO. 19-06 RELATED TO REVISIONS TO THE ACCESSORY DWELLING UNIT STANDARDS**

WHEREAS, on November 26, 2019, the Planning Commission considered the initiation of a code amendment related to Accessory Dwelling Unit standards in the City of West Covina; and

WHEREAS, the studies and investigations made by the Planning Commission reveal the following facts:

1. The existing code standards for Accessory Dwelling Units (ADUs) were last amendment on February 5, 2019. Since the adoption of the current standards, the State has adopted new standards that need to be studied.
  - a) The state passed five ADU bills which will become law on January 1, 2020. Each bill relates to either Accessory Dwelling Units (“ADUs”) or Junior Accessory Dwelling Units (“JADUs”), or both.
  - b) The bills were among eighteen housing bills the Governor signed on October 9, 2019.1 AB 68, AB 881, and SB 13 will amend Government Code sections 65852.2 and 65852.22 to expand the number of situations in which ADUs and JADUs must be allowed, and limited the fees and regulations that cities may impose on ADUs. SB 13 will add Health & Safety Code Section 17980.12 to limit a city’s ability to engage in code enforcement upon ADUs. AB 587 will add Government Code 65852.26 to allow cities to allow certain ADUs (e.g., those built by Habitat for Humanity), to be separately conveyed.
  - c) It is the interest of the City to adopt standards in the Municipal Code to allow for efficient review of proposed ADUs.
2. The proposed action is considered to be exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the proposed action consists of a code amendment, which does not have the potential for causing a significant effect on the environment.

Resolution No.  
Code Amendment No. 19-06  
November 16, 2019 - Page 2

NOW, THEREFORE, BE IT RESOLVED, the Planning Commission of the City of West Covina, in conformance with Section 26-353(b) of the West Covina Municipal Code, does hereby initiate an application for Code Amendment No. 19-06 related to Accessory Dwelling Units in the City of West Covina.

I HEREBY CERTIFY, that the foregoing Resolution was adopted by the Planning Commission of the City of West Covina, at a regular meeting held on the 26<sup>th</sup> day of November, 2019, by the following vote.

AYES:

NOES:

ABSTAIN:

ABSENT:

DATE: November 26, 2019

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Herb Redholtz, Chairman  
Planning Commission

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Jeff Anderson, Secretary  
Planning Commission

*City of West Covina*  
*Memorandum*  
**A G E N D A**

**ITEM NO. 6.**

**TO:** Planning Commission  
**FROM:** Planning Division  
**SUBJECT: STUDY SESSION ON SPECIFIC PLANS**

**DATE: November 26, 2019**

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**DISCUSSION:**

At the October 22, 2019 Planning Commission meeting, Commissioner Jaquez requested scheduling a study session on Specific Plans. A Specific Plan is a comprehensive planning and zoning document for a defined geographic region of the City. The City currently has about 30 Specific Plans.

Specific Plans are allowed under State law as an implementation measure of the General Plan. The City of West Covina has approved Specific Plans over the years to allow for development of properties. A Specific Plan includes development standards that are tailored to the site. Specific Plans are allowed by State law for properties that are greater than an acre. While the majority of Specific Plans have been proposed for residential development, Specific Plans have been used for other uses, including mixed-use development at the former Wickes site, Queen of the Valley Hospital, and Faith Community Church.

In general, most Specific Plans in the City fall into two broad categories. Most of the approved Specific Plans have been designed for a specific project, such as Cadanera on Lark Ellen Avenue or West Covina Holt Specific Plan on Holt Avenue near Oak Knoll. The other type of Specific Plan is one that lays out standards for a geographic area with development phases expected over time. Queen of the Valley Specific Plan fits into that type of category.

**Submitted by:** Jeff Anderson, Community Development Director

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*City of West Covina*  
**A G E N D A**

**ITEM NO. 7. a.**

**DATE: November 26, 2019**

**TO:** Planning Commission  
**FROM:** Planning Division  
**SUBJECT:** Forthcoming - November 26, 2019

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**Attachments**

Forthcoming - November 26, 2019

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**FORTHCOMING PLANNING COMMISSION HEARINGS**

**December 10, 2019**

A. CONSENT CALENDAR

None

B. PUBLIC HEARINGS

(1)

PRECISE PLAN NO. 19-04

CONDITIONAL USE PERMIT NO. 19-11

NEW BUILDING AND AUTO REPAIR GARAGE

APPLICANT: Danny Reynoso

LOCATION: 928 South Glendora Avenue

(2)

PRECISE PLAN NO. 19-05

NEW BUILDING

APPLICANT: Theresa Plante

LOCATION: 1030 South Glendora Avenue

(3)

CONDITIONAL USE PERMIT NO. 19-12

INDOOR RECREATIONAL FACILITY (LASER TAG)

APPLICANT: Alexander Nekchaychik for Laser Land

LOCATION: 2340 South Azusa Avenue

C. NON-HEARING ITEMS

(4)

HISTORIC RESOURCES INVENTORY UPDATE

APPLICANT: City of West Covina

LOCATION: Citywide

**December 24, 2019**

No meeting – Happy Holidays!