



AGENDA

REGULAR MEETING OF THE LAKEPORT CITY COUNCIL

(ALSO MEETS AS THE CITY OF LAKEPORT MUNICIPAL SEWER DISTRICT, THE LAKEPORT INDUSTRIAL DEVELOPMENT AUTHORITY, THE MUNICIPAL FINANCING AGENCY OF LAKEPORT and THE SUCCESSOR AGENCY TO THE FORMER LAKEPORT REDEVELOPMENT AGENCY)

Tuesday, December 3, 2019

City Council Chambers, 225 Park Street, Lakeport, California 95453

Any person may speak for three (3) minutes on any agenda item; however, total public input per item is not to exceed 15 minutes, extended at the discretion of the City Council. This rule does not apply to public hearings. Non-timed items may be taken up at any unspecified time.

- I. **CALL TO ORDER & ROLL CALL:** 6:00 p.m.
- II. **PLEDGE OF ALLEGIANCE:**
- III. **ACCEPTANCE OF AGENDA/ URGENCY ITEMS:** Move to accept agenda as posted, or move to add or delete items.
To add item, Council is required to make a majority decision that an urgency exists (as defined in the Brown Act) and a 2/3rds determination that the need to take action arose subsequent to the Agenda being posted.
- IV. **CONSENT AGENDA:** *The following Consent Agenda items are expected to be routine and noncontroversial. They will be acted upon by the Council at one time without any discussion. Any Council Member may request that any item be removed from the Consent Agenda for discussion under the regular Agenda. Removed items will be considered following the Consent Calendar portion of this agenda.*
- A. Ordinances: Waive reading except by title, of any ordinances under consideration at this meeting for either introduction or passage per *Government Code* Section 36934.
- B. Minutes: Approve minutes of the City Council regular meeting of November 19, 2019.
- C. Renew Emergency Resolution: Mendocino Complex Fire Confirm the continuing existence of a local emergency for the Mendocino Complex Fire.
- D. Renew Emergency Resolution: February 2019 Storms Confirm the continuing existence of a local emergency for the February 2019 Storms.
- E. Renew Emergency Resolution: PG&E Public Safety Power Shutoffs (PSPS) Confirm the continuing existence of a local emergency for the October 2019 PSPS.
- F. Notice of Completion: Adopt the resolution accepting construction of the South Main Street Pavement Rehabilitation Project by Lamon Construction Company Inc., and authorize the filing of the Notice of Completion.
- V. **PUBLIC PRESENTATIONS/REQUESTS:**
- A. Public Input: *Any person may speak for 3 minutes about any subject within the authority of the City Council, provided that the subject is not already on tonight's agenda. Persons wishing to address the City Council are required to complete a Citizen's Input form and submit it to the City Clerk prior to the meeting being called to order. While not required, please state your name and address for the record. NOTE: Per Government Code §54954.3(a), the City Council cannot take action or express a consensus of approval or disapproval on any public comments regarding matters which do not appear on the printed agenda.*
- B. Presentation: Representatives from First 5 California will give a presentation titled "State of Our Children".
- VI. **PUBLIC HEARING:**
1. Dig Once Ordinance: Hold a public hearing and adopt the ordinance adding Chapter 15.28 Telecommunications Infrastructure Improvements to the Lakeport Municipal Code establishing a 'Dig Once' policy for the City of Lakeport.
2. Telecom Ordinance: Hold a public hearing and adopt the ordinance modifying Chapter 17.41 and amending Chapters 17.03, 17.4, 17.05, 17.6, 17.07, 17.8, 17.09, 17.10, 17.11, 17.12, 17.13, 17.14, 17.16, and 17.28 of the Lakeport Municipal Code to permit and regulate wireless facilities within the City of Lakeport.
- VII. **COUNCIL BUSINESS**
- A. Community Development Director
1. Library Park Promenade Approve the proposed wood plank stamped concrete design for use along the Lakefront Promenade.

B. Police Chief

1. Keeping California Safe Act: Adopt a resolution supporting the Keeping California Safe Act.

VIII. CITY COUNCIL COMMUNICATIONS:

A. Miscellaneous Reports, if any:

IX. ADJOURNMENT:

Materials related to an item on this Agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office at 225 Park Street, Lakeport, California, during normal business hours. Such documents are also available on the City of Lakeport's website, www.cityoflakeport.com, subject to staff's ability to post the documents before the meeting.

The City of Lakeport, in complying with the *Americans with Disabilities Act (ADA)*, requests individuals who require special accommodations to access, attend and/or participate in the City meeting due to disability, to please contact the City Clerk's Office, (707) 263-5615, 72 hours prior to the scheduled meeting to ensure reasonable accommodations are provided.

Hilary Britton, Deputy City Clerk

MINUTES

REGULAR MEETING OF THE LAKEPORT CITY COUNCIL

(ALSO MEETS AS THE CITY OF LAKEPORT MUNICIPAL SEWER DISTRICT, THE LAKEPORT INDUSTRIAL DEVELOPMENT AUTHORITY, THE MUNICIPAL FINANCING AGENCY OF LAKEPORT and THE SUCCESSOR AGENCY TO THE FORMER LAKEPORT REDEVELOPMENT AGENCY)

Tuesday, November 19, 2019

City Council Chambers, 225 Park Street, Lakeport, California 95453

Any person may speak for three (3) minutes on any agenda item; however, total public input per item is not to exceed 15 minutes, extended at the discretion of the City Council. This rule does not apply to public hearings. Non-timed items may be taken up at any unspecified time.

- I. **CALL TO ORDER & ROLL CALL:** Mayor Barnes called the meeting to order at 6:00p.m. with Council Members Mattina, Parlet, Spurr, Barnes and Turner present
- II. **PLEDGE OF ALLEGIANCE:** The Pledge of Allegiance was led by Lt. Stoebe.
- III. **ACCEPTANCE OF AGENDA/ URGENCY ITEMS:** A motion was made by Council Member Mattina, seconded by Council Member Turner, and unanimously carried by voice vote, to accept agenda as posted.
- IV. **CONSENT AGENDA:**
 - A. Ordinances: Waive reading except by title, of any ordinances under consideration at this meeting for either introduction or passage per *Government Code* Section 36934.
 - B. Minutes: Approve minutes of the County and Clearlake and Lakeport City Councils' joint special meeting of October 31, 2019, and the Lakeport City Council November 5, 2019 special meeting, the November 5, 2019 regular meeting and the special meeting of November 12, 2019.
 - C. Renew Emergency Resolution: Mendocino Complex Fire Confirm the continuing existence of a local emergency for the Mendocino Complex Fire.
 - D. Renew Emergency Resolution: February 2019 Storms Confirm the continuing existence of a local emergency for the February 2019 Storms.
 - E. Renew Emergency Resolution: PG&E Public Safety Power Shutoffs (PSPS) Confirm the continuing existence of a local emergency for the October 2019 PSPS.
 - F. Ordinance Introduction: Introduce the proposed ordinance adding Chapter 15.28 Telecommunications Infrastructure Improvements to the Lakeport Municipal Code establishing a 'Dig Once' policy for the City of Lakeport and set a public hearing for adoption of the ordinance on December 3, 2019.
 - G. Ordinance Introduction: Introduce the proposed ordinance modifying Chapter 17.41 and amending Chapters 17.03, 17.04, 17.05, 17.06, 17.07, 17.08, 17.09, 17.10, 17.11, 17.12, 17.13, 17.14, 17.16, and 17.28 of the Lakeport Municipal Code to permit and regulate wireless facilities within the City of Lakeport.
Vote on Consent Agenda: Council Member Turner requested that Item G. be pulled for discussion.
A motion was made by Council Member Parlet, seconded by Council Member Mattina, and unanimously carried by voice vote, to approve the Consent Agenda, items A-F.
- G. Ordinance Introduction: A motion was made by Council Member Turner, seconded by Council Member Parlet, and unanimously carried by voice vote to introduce the proposed ordinance modifying Chapter 17.41 and amending Chapters 17.03, 17.04, 17.05, 17.06, 17.07, 17.08, 17.09, 17.10, 17.11, 17.12, 17.13, 17.14, 17.16, and 17.28 of the Lakeport Municipal Code to permit and regulate wireless facilities within the City of Lakeport, and set a public hearing for adoption of the ordinance on December 3, 2019.
- V. **PUBLIC PRESENTATIONS/REQUESTS:**
 - A. Public Input: There was no public input.
- VI. **COUNCIL BUSINESS**

A. Community Development Director

1. Martin Street Apartments:

The staff report was presented by Community Development Director Ingram. A motion was made by Council Member Turner, seconded by Council Member Mattina, and unanimously carried by voice vote, to adopt a resolution approving the Lakeport Family Associates, LLC Final Parcel Map and Right of Way Dedications located at 1255 Martin Street.

2. Grant Application:

The staff report was presented by Community Development Director Ingram. A motion was made by Council Member Parlet, seconded by Council Member Spurr, and unanimously carried by voice vote, to adopt the proposed Resolution and authorize the City Manager to submit the SB 2 grant application to HCD.

VII. CITY COUNCIL COMMUNICATIONS:

A. Miscellaneous Reports, if any:

City Manager Silveira was absent.

City Attorney Ruderman had no report.

Finance Director Walker had no report.

Public Works Director Grider advised the Council that they should stop by the CalOES training at the Community Center on 11/20/2019.

Community Development Director Ingram gave an update on the potential PSPS scheduled for 11/20/2019. Final decision has not been made yet – Lakeport may still be affected.

Administrative Services Director/City Clerk Buendia was absent.

Mayor Barnes advised that parents can assist their children's education during PSPS related school cancellations.

Council Member Parlet advised a new type of striping has been applied at the Nice/Lucerne cutoff, by CalTrans. This paint is much more visible and reflective.

He also applauded Public Works Director Grider's tenacity in working with FEMA for the seawall. Council member Parlet attends LAFCO tomorrow, as well as an AVA meeting in the afternoon.

Council Member Mattina advised that the LTA had to cut back 1 route due to lack of trained drivers, but now, they currently have 12 drivers in training. She also reported that the Medical Emergency Trips program is expanding.

Council Member Spurr advised that the Dickens Christmas Market will be held the Saturday after Thanksgiving, and that volunteers were still needed to work the event.

Council Member Turner had no report.

VIII. ADJOURNMENT:

Mayor Barnes adjourned the meeting at 6:22 p.m.

Tim Barnes, Mayor

Attest:

Hilary Britton, Deputy City Clerk



CITY OF LAKEPORT

- City Council
- City of Lakeport Municipal Sewer District
- Lakeport Redevelopment Successor Agency
- Lakeport Industrial Development Authority
- Municipal Financing Agency of Lakeport

STAFF REPORT	
RE: Continuation of Local Emergency Declaration – Mendocino Complex Fires	MEETING DATE: 12/03/2019
SUBMITTED BY: Margaret Silveira, City Manager	
PURPOSE OF REPORT: <input type="checkbox"/> Information only <input type="checkbox"/> Discussion <input checked="" type="checkbox"/> Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to review the need to continue the proclamation declaring a Local State of Emergency due to conditions of extreme peril as a result of the River Fire, re-named along with the Ranch Fire, the Mendocino Complex fire and provide direction.

BACKGROUND/DISCUSSION:

On July 28, 2018, the Director of Emergency Services for the City of Lakeport declared a local State of Emergency in connection with the conditions of extreme peril to the safety of persons and property within the city as a result of the River Fire, re-named the Mendocino Complex fire in combination with the Ranch Fire. In accordance with the Emergency Services Act Section 8630(b) and Lakeport Municipal Code section 2.28.130, the City Council ratified the declared emergency on July 30, 2018 under Resolution 2679 (2018). Under Lakeport Municipal Code section 2.28.150, the City Council shall review, at least every 14 days, the need for continuing the emergency declaration until the local emergency is terminated.

The City Council, at a Special Meeting on August 13, 2018, continued the emergency declaration via Resolution 2680 (2018). The City Council subsequently continued the emergency declaration on August 21, 2018, September 18, 2018, October 2, 2018, October 16, 2018, November 6, 2018, November 20, 2018, December 4, 2018, December 18, 2018, January 15, 2019, February 5, 2019, February 19, 2019, March 5, 2019, March 19, 2019, April 2, 2019, April 16, 2019, May 7, 2019, May 21, 2019, June 4, 2019, June 18, 2019, July 16, 2019, August 6, 2019, September 3, 2019, September 17, 2019, October 1, 2019, October 22, 2019, November 5, 2019, and November 19, 2019. Since a need still exists for the declaration, Council is asked to review and continue the declaration. Should the need continue, staff will return this item at the next regularly scheduled City Council meeting.

OPTIONS:

Approve the need for the continuation of the proclamation declaring a Local State of Emergency due to Mendocino Complex fire; or proclaim the termination of the Local State of Emergency

FISCAL IMPACT:

None \$ Budgeted Item? Yes No

Budget Adjustment Needed? Yes No If yes, amount of appropriation increase: \$

Affected fund(s): General Fund Water OM Fund Sewer OM Fund Other:

Comments:

SUGGESTED MOTIONS: Move to confirm the continuing existence of a local emergency in the City of Lakeport.

Attachments: 1. Resolution No. 2679 (2018)

RESOLUTION NO. 2679 (2018)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKEPORT RATIFYING THE DIRECTOR OF EMERGENCY SERVICES' PROCLAMATION OF A LOCAL EMERGENCY IN THE CITY OF LAKEPORT

WHEREAS, Chapter 2.28 of the Lakeport Municipal Code, adopted as Ordinance Number 832 of the City of Lakeport empowers the Director of Emergency Services to proclaim the existence or threatened existence of a local emergency when the City of Lakeport is affected or likely to be affected by a public calamity and the City Council is not in session, subject to ratification by the City Council within seven (7) days; and

WHEREAS, conditions of extreme peril to the safety of persons and property have arisen within this City as a result of a fire commencing on or about 1:01 p.m. on the 27th day of ~~June~~July, 2018, called the River Fire and later re-named the Mendocino Complex along with the Ranch Fire, which commenced on or about 12:05 p.m. on the 27th day of July, 2018, at which time the City Council of the City of Lakeport was not in session; and

WHEREAS, the City Manager, acting as the Director of Emergency Services of the City of Lakeport, did proclaim the existence of a local emergency within the City on the 28th day of July, 2018; and

WHEREAS, the Governor of the State of California proclaimed a state of emergency in the Lake County as a result of the Mendocino Complex on the 28th day of July, 2018; and

WHEREAS, the City Council does hereby find that aforesaid conditions of extreme peril did warrant and necessitate the proclamation of existence of a local emergency.

NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED that the City Council hereby proclaims a local emergency due to the existence or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within the City of Lakeport; and

IT IS FURTHER RESOLVED AND ORDERED that the Director of Emergency Services' Proclamation of Existence of a Local Emergency is hereby ratified and confirmed; and

IT IS FURTHER RESOLVED AND ORDERED that the local emergency shall be deemed to continue to exist until its termination is proclaimed by the City Council of the City of Lakeport; and

IT IS FURTHER RESOLVED AND ORDERED that during the existence of this local emergency the powers, functions and duties of the Disaster Council of the City of Lakeport and its Director of Emergency Services shall be those prescribed by state law, and by the ordinances and resolutions of this City; and

IT IS FURTHER ORDERED that a copy of this Resolution be forwarded to the State Director of the Office of Emergency Services; and

IT IS FURTHER ORDERED that Margaret Silveira, Director of Emergency Services of the City of Lakeport, is hereby designated as the authorized representative of the City of Lakeport for the purpose of receipt, processing, and coordination of all inquiries and requirements necessary to obtain available State and Federal assistance.

This resolution shall be effective upon its adoption.

THIS RESOLUTION was passed by the City Council of the City of Lakeport at a special meeting thereof on the 30th day of July, 2018, by the following vote:

AYES:

NOES:

ABSTAINING:

ABSENT:



MIREYA G. TURNER, Mayor

ATTEST:



KELLY BUENDIA, City Clerk



CITY OF LAKEPORT

- City Council
- City of Lakeport Municipal Sewer District
- Lakeport Redevelopment Successor Agency
- Lakeport Industrial Development Authority
- Municipal Financing Agency of Lakeport

STAFF REPORT	
RE: Continuation of Local Emergency Declaration – February Storms	MEETING DATE: 12/03/2019
SUBMITTED BY: Margaret Silveira, City Manager	
PURPOSE OF REPORT: <input type="checkbox"/> Information only <input type="checkbox"/> Discussion <input checked="" type="checkbox"/> Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to review the need to continue the proclamation declaring a Local State of Emergency due to conditions of extreme peril as a result of the February 2019 Storms and provide direction.

BACKGROUND/DISCUSSION:

On February 28, 2019, the Director of Emergency Services for the City of Lakeport declared a local State of Emergency in connection with the conditions of extreme peril to the safety of persons and property within the city as a result of the February 2019 storms. In accordance with the Emergency Services Act Section 8630(b) and Lakeport Municipal Code section 2.28.130, the City Council ratified the declared emergency on March 5, 2019, March 19, 2019, April 2, 2019, April 16, 2019, May 7, 2019, May 21, 2019, June 4, 2019, June 18, 2019, July 16, 2019, August 6, 2019, September 3, September 17, 2019, October 1, 2019, October 22, 2019, November 5, 2019, and November 19, 2019 under Resolution 2704 (2019). Under Lakeport Municipal Code section 2.28.150, the City Council shall review, at least every 14 days, the need for continuing the emergency declaration until the local emergency is terminated.

Since a need still exists for the declaration, Council is asked to review and continue the declaration. Should the need continue, staff will return this item at the next regularly scheduled City Council meeting.

OPTIONS:

Approve the need for the continuation of the proclamation declaring a Local State of Emergency due to the February 2019 storms; or proclaim the termination of the Local State of Emergency

FISCAL IMPACT:

None \$ Budgeted Item? Yes No

Budget Adjustment Needed? Yes No If yes, amount of appropriation increase: \$

Affected fund(s): General Fund Water OM Fund Sewer OM Fund Other:

Comments:

SUGGESTED MOTIONS: Move to confirm the continuing existence of a local emergency in the City of Lakeport.

- Attachments:** 1. Resolution No. 2704 (2019)

RESOLUTION NO. 2704 (2019)

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
LAKEPORT CONFIRMING EXISTENCE OF A LOCAL EMERGENCY**

WHEREAS, Chapter 2.28 of the Lakeport Municipal Code, adopted as Ordinance Number 832 of the City of Lakeport empowers the Director of Emergency Services to proclaim the existence or threatened existence of a local emergency when the City of Lakeport is affected or likely to be affected by a public calamity and the City Council is not in session, subject to ratification by the City Council within seven (7) days; and

WHEREAS, conditions of extreme peril to the safety of persons and property have arisen within this City as a result of rain storms, wind, and flooding commencing on or about February 26, 2019, at which time the City Council of the City of Lakeport was not in session; and

WHEREAS, the City Council does hereby find that aforesaid conditions of extreme peril did warrant and necessitate the proclamation of existence of a local emergency; and

WHEREAS, the Director of Emergency Services of the City of Lakeport did proclaim the existence of a local emergency within the City on the 28th day of February, 2019; and

WHEREAS, the Governor of the State of California proclaimed a state of emergency in Lake County due to atmospheric river storm systems, which caused widespread damage and flooding; and

WHEREAS, the City Council does hereby find that aforesaid conditions of extreme peril did warrant and necessitate the proclamation of existence of a local emergency.

NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED that the City Council hereby proclaims a local emergency due to the existence or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within the City of Lakeport; and

IT IS FURTHER RESOLVED AND ORDERED that the Director of Emergency Services' Proclamation of Existence of a Local Emergency is hereby ratified and confirmed; and

IT IS FURTHER RESOLVED AND ORDERED that the local emergency shall be deemed to continue to exist until its termination is proclaimed by the City Council of the City of Lakeport; and

IT IS FURTHER RESOLVED AND ORDERED that during the existence of this local emergency the powers, functions and duties of the Disaster Council of the City of Lakeport and its Director of Emergency Services shall be those prescribed by state law, and by the ordinances and resolutions of this City; and

IT IS FURTHER ORDERED that a copy of this Resolution be forwarded to the State Director of the Office of Emergency Services; and

IT IS FURTHER ORDERED that Margaret Silveira, Director of Emergency Services of the City of Lakeport, is hereby designated as the authorized representative of the City of Lakeport for the purpose of receipt, processing, and coordination of all inquiries and requirements necessary to obtain available State and Federal assistance.

This resolution shall be effective upon its adoption.

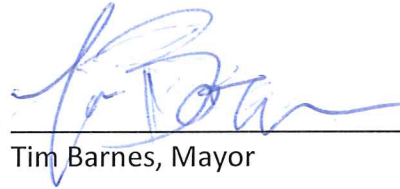
THIS RESOLUTION was passed by the City Council of the City of Lakeport at a regular meeting thereof on the 5th day of March, 2019, by the following vote:

AYES: Mayor Barnes, Council Members Mattina, Parlet, Spurr and Turner

NOES: None

ABSTAINING: None

ABSENT: None



Tim Barnes, Mayor

ATTEST:



Kelly Buendia, City Clerk



CITY OF LAKEPORT

- City Council
- City of Lakeport Municipal Sewer District
- Lakeport Redevelopment Successor Agency
- Lakeport Industrial Development Authority
- Municipal Financing Agency of Lakeport

STAFF REPORT	
RE: Continuation of Local Emergency Declaration – Public Safety Power Shutoff (PSPS)	MEETING DATE: 12/03/2019
SUBMITTED BY: Margaret Silveira, City Manager	
PURPOSE OF REPORT: <input type="checkbox"/> Information only <input type="checkbox"/> Discussion <input checked="" type="checkbox"/> Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to review the need to continue the proclamation declaring a Local State of Emergency due to electrical outages as a result of extreme fire weather conditions commencing on or about 6:00 p.m. on the 26th day of October 2019, called the Public Safety Power Shutoff (PSPS) of October 2019

BACKGROUND/DISCUSSION:

On October 26, 2019, the Director of Emergency Services for the City of Lakeport declared a local State of Emergency in connection with the conditions of extreme peril to the safety of persons and property within the city as a result of the October 2019 Public Safety Power Shutoffs (PSPS). In accordance with the Emergency Services Act Section 8630(b) and Lakeport Municipal Code section 2.28.130, the City Council ratified the declared emergency on October 31, 2019, under Resolution 2734 (2019). Under Lakeport Municipal Code section 2.28.150, the City Council shall review, at least every 14 days, the need for continuing the emergency declaration until the local emergency is terminated.

The City Council, at an emergency meeting on October 31, 2019, ratified the emergency declaration via Resolution 2734 (2019). The City Council subsequently continued the emergency declaration on November 5, 2019 and November 19, 2019

Since a need still exists for the declaration, Council is asked to review and continue the declaration. Should the need continue, staff will return this item at the next regularly scheduled City Council meeting.

OPTIONS:

Approve the need for the continuation of the proclamation declaring a Local State of Emergency due to the October Public Safety Power Shutoff; or proclaim the termination of the Local State of Emergency.

FISCAL IMPACT:

None \$ Budgeted Item? Yes No

Budget Adjustment Needed? Yes No If yes, amount of appropriation increase: \$

Affected fund(s): General Fund Water OM Fund Sewer OM Fund Other:

Comments:

SUGGESTED MOTIONS: Move to confirm the continuing existence of a local emergency in the City of Lakeport.

- Attachments:**
1. Resolution No. 2734 (2019)
 2. Emergency Proclamation

RESOLUTION NO. 2734 (2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKEPORT RATIFYING THE DIRECTOR OF EMERGENCY SERVICES' PROCLAMATION OF A LOCAL EMERGENCY IN THE CITY OF LAKEPORT

WHEREAS, Chapter 2.28 of the Lakeport Municipal Code, adopted as Ordinance Number 832 of the City of Lakeport empowers the Director of Emergency Services to proclaim the existence or threatened existence of a local emergency when the City of Lakeport is affected or likely to be affected by a public calamity and the City Council is not in session, subject to ratification by the City Council within seven (7) days; and

WHEREAS, conditions of extreme peril to the safety of persons and property have arisen within this City as caused by electrical outages as a result of extreme fire weather conditions commencing on or about 6:00 p.m. on the 26th day of October 2019, called the Public Safety Power Shutoff (PSPS) of October 2019, at which time the City Council of the City of Lakeport was not in session; and

WHEREAS, the City Manager, acting as the Director of Emergency Services of the City of Lakeport, did proclaim the existence of a local emergency within the City on the 26th day of October, 2019; and

WHEREAS, the Governor of the State of California proclaimed a state of emergency due to the extreme fire weather conditions on the 27th day of October, 2019; and

WHEREAS, the City Council does hereby find that aforesaid conditions of extreme peril did warrant and necessitate the proclamation of existence of a local emergency.

NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED that the City Council hereby proclaims a local emergency due to the existence or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within the City of Lakeport; and

IT IS FURTHER RESOLVED AND ORDERED that the Director of Emergency Services' Proclamation of Existence of a Local Emergency is hereby ratified and confirmed; and

IT IS FURTHER RESOLVED AND ORDERED that the local emergency shall be deemed to continue to exist until its termination is proclaimed by the City Council of the City of Lakeport; and

IT IS FURTHER RESOLVED AND ORDERED that during the existence of this local emergency the powers, functions and duties of the Disaster Council of the City of Lakeport and its Director of Emergency Services shall be those prescribed by state law, and by the ordinances and resolutions of this City; and

IT IS FURTHER ORDERED that a copy of this Resolution be forwarded to the State Director of the Office of Emergency Services; and

IT IS FURTHER ORDERED that Margaret Silveira, Director of Emergency Services of the City of Lakeport, is hereby designated as the authorized representative of the City of Lakeport for the purpose of receipt, processing, and coordination of all inquiries and requirements necessary to obtain available State and Federal assistance.

This resolution shall be effective upon its adoption.


THIS RESOLUTION was passed by the City Council of the City of Lakeport at a special meeting thereof on the 31st day of October, 2019, by the following vote:

AYES: Mayor Barnes, Council Members Mattina, Spurr and Turner

NOES: None

ABSTAINING: None

ABSENT: Council Member Parlet



TIMOTHY BARNES, Mayor

ATTEST:



KELLY BUENDIA, City Clerk

PROCLAMATION OF THE EXISTENCE OF A LOCAL EMERGENCY

WHEREAS, section 2.28.130 of the Lakeport Municipal Code empowers the Director of Emergency Services to proclaim the existence or threatened existence of a local emergency when the City is affected or likely to be affected by a public calamity and the City Council is not in session; and

WHEREAS, the City Manager, as Director of Emergency Services of the City of Lakeport, does hereby find that:

1. Conditions of extreme peril to the safety of persons and property have arisen within the City of Lakeport, caused by electrical outages as a result of extreme fire weather conditions commencing on or about 6:00 p.m. on the 26th day of October, 2019, called the Public Safety Power Shutoff (PSPS) of October 2019; and

2. That the City Council of the City of Lakeport is not in session and cannot immediately be called into session.

NOW, THEREFORE, IT IS HEREBY PROCLAIMED, that a local emergency now exists throughout the City; and

IT FURTHER PROCLAIMED AND ORDERED that during the existence of this local emergency the powers, functions, and duties of the emergency organization of this City shall be those prescribed by state law, ordinances, and resolutions of this City, and by the City of Lakeport Emergency Plan.

10/26/19

Date and Time

Margaret Silveira
Director of Emergency Services



CITY OF LAKEPORT

- City Council
- City of Lakeport Municipal Sewer District
- Lakeport Redevelopment Successor Agency
- Lakeport Industrial Development Agency
- Municipal Financing Agency of Lakeport

STAFF REPORT	
RE: Notice of Completion for South Main Street Pavement Rehabilitation Project	MEETING DATE: 12/3/2019
SUBMITTED BY: Douglas Grider, Public Works Director	
PURPOSE OF REPORT: <input type="checkbox"/> Information only <input type="checkbox"/> Discussion <input checked="" type="checkbox"/> Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to adopt a resolution accepting the South Main Street Pavement Rehabilitation Project, Bid No 19-05, as complete and authorize the City Manager to file a Notice of Completion.

BACKGROUND/DISCUSSION:

On August 20, 2019, the City Council awarded a construction contract to Lamson Construction Company Inc., for the South Main Street Pavement Rehabilitation Project, in the amount of \$356,316.70.

The project consisted of repairing approximately 815 feet of South Main Street from Peckham Court to the southern City Limits. The work consisted of traffic control, cold planing, full-depth reclamation cement, HMA paving, and pavement markings.

The City of Lakeport Public Works Department has reviewed the project and determined that it has been completed in substantial compliance with the project plans and specifications. The total cost of the construction contract came out to \$350,934.54.

OPTIONS:

No other options recommended

FISCAL IMPACT:

None \$ Budgeted Item? Yes No

Budget Adjustment Needed? Yes No If yes, amount of appropriation increase: \$

Affected fund(s): General Fund Water OM Fund Sewer OM Fund Other:

Comments:

SUGGESTED MOTIONS:

Move to adopt the resolution accepting construction of the South Main Street Pavement Rehabilitation Project by Lamson Construction Company Inc., and authorize the filing of the Notice of Completion.

- Attachments:** 1) Resolution
2) Notice of Completion

RESOLUTION NO. XXX (2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKEPORT ACCEPTING CONSTRUCTION OF THE SOUTH MAIN STREET PAVEMENT REHABILITATION PROJECT, BID NO 19-05, AND AUTHORIZING THE FILING OF THE NOTICE OF COMPLETION

WHEREAS, the final inspection of the South Main Street Pavement Rehabilitation Project, Bid No 19-05, was made by the City of Lakeport's Public Works Department; and

WHEREAS, it was determined that the work for this project has been completed in substantial compliance with the project plans and specifications.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAKEPORT AS FOLLOWS:

1. The City Council hereby accepts the work as completed on the South Main Street Pavement Rehabilitation Project, Bid No 19-05.
2. The City Manager is authorized and directed to execute the Notice of Completion to be filed with the County of Lake.

The foregoing Resolution was adopted at a regular meeting of the City Council of the City of Lakeport held on the on the 3rd day of December, 2019 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED:

Tim Barnes, Mayor
City of Lakeport

ATTEST:

Kelly Buendia, City Clerk
City of Lakeport

**RECORDING REQUESTED BY
City of Lakeport**

**AND WHEN RECORDED MAIL THIS DEED,
UNLESS OTHERWISE SHOWN BELOW.
MAIL TAX STATEMENTS TO:**

City of Lakeport Attn: Olivia Grupp
225 Park Street
Lakeport, CA 95453
Complimentary recording request pursuant to
government code § 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Notice of Completion

NOTICE is hereby given that:

1. The Undersigned is owner of the interest stated below in the property hereinafter described:
2. The NAME (including that of the undersigned), ADDRESS and NATURE OF TITLE of every person owning any interest in such property is as follows:

City of Lakeport

225 Park St, Lakeport, CA 95453

Fee Simple

(NAME OF UNDERSIGNED)

3. The names and addresses of the transferors of the undersigned owner: (to be shown if the undersigned is a successor in interest of the owner who caused the improvement to be constructed, etc.)
4. A work of improvement on the property hereinafter described was COMPLETED ON 11/18/2019
5. The name of the CONTRACTOR for such work of improvement was Lamon Construction Co., Inc.
(If no Contractor, insert "NONE")
6. The property on which said work of improvement was completed is in the City of Lakeport, county of Lake State of California, and is described as follows: Placement of rubber chip seal and a Type II micro-surface to preserve road surface.
7. The street address of said property is: South Main St, Peckham Court to the southern city limit

Dated: 12/3/2019

Signature of
Owner or Owners }

Margaret Silveira, City Manager

Verification for NON-INDIVIDUAL owner: I, the undersigned, declare under penalty of perjury under the laws of the State of California that I am the City Manager of the aforesaid interest or estate in
("PRESIDENT, PARTNER, MANAGER, AGENT, ETC.")

the property described in the above notice; that I have read the said notice, that I know and understand the contents thereof, and that the facts stated therein are true and correct.

Date and Place

(Signature of person signing on behalf of owner))

ALL CAPACITY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LAKE

On _____, before me, _____
(Date) (Name and Title of officer)

personally appeared _____,
(Name of person signing)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of officer

(Seal)



CITY OF LAKEPORT

City Council
City of Lakeport Municipal Sewer District
Lakeport Redevelopment Successor Agency

STAFF REPORT

RE: Dig Once Ordinance

MEETING DATE: 12/03/2019

SUBMITTED BY: Kevin M. Ingram, Community Development Director

PURPOSE OF REPORT: Information only Discussion Action Item

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to conduct a public hearing for the consideration of adding Chapter 15.28 "Telecommunications Infrastructure Improvements" also known as the Dig Once Ordinance to the Lakeport Municipal Code.

BACKGROUND/DISCUSSION:

Dig once policies are currently being adopted by municipalities across the county as a best management practice to improve and facilitate telecommunications infrastructure improvements. Dig once policies allow for the coordination between public works departments, public utility companies and internet service providers. Planned excavation/trenching projects in the public right-of-way is a coordination opportunity for the laying of broadband conduit simultaneously with these projects, reducing cost and reducing damage to public sidewalks and roadways. Dig once policies require that these coordination efforts take place. Implementing a dig once policy ensures the deployment of faster, more reliable broadband infrastructure.

The benefits of dig once policies:

- Facilitates private communications network deployment and reduces construction costs by up to 90%.
- Reduces overall costs of all underground work in the public right-of-way, both utility and telecommunications related, for public and private parties.
- Protects newly and recently paved roads and sidewalks.
- Enhances uniformity of construction.
- Ensures efficient, non-duplicative placement of infrastructure in the public right-of-way.
- Cost savings to taxpayers and private companies.

The adoption of a 'Dig Once' Ordinance is a principle element of the Lake County Master Broadband Plan, currently being developed by the Lake County Economic Development Corporation (Lake EDC) in partnership with the Geographical Information Center with California State University, Chico and the Upstate California Connect Consortium. Similar 'Dig Once' Ordinances are currently being pursued by the County of Lake and City of Clearlake to aid in the facilitation of greater broadband services countywide.

The proposed ordinance was introduced at the November 19, 2019 meeting of the City Council and a public hearing notice was published in the Record-Bee on November 22, 2019.

OPTIONS:

1. After conducting the public hearing adopt the proposed Ordinance.
2. After conducting the public hearing direct staff to make modifications to the proposed Ordinance.
3. After conducting the public hearing take no action or deny the project. Alternatively, Council may provide additional direction to staff.

FISCAL IMPACT:

None \$ Budgeted Item? Yes No

Budget Adjustment Needed? Yes No If yes, amount of appropriation increase: \$

Affected fund(s): General Fund Water OM Fund Sewer OM Fund Other:

Comments: None

SUGGESTED MOTIONS:

Move to approve the ordinance adding Chapter 15.28 Telecommunications Infrastructure Improvements to the Lakeport Municipal Code establishing a 'Dig Once' policy for the City of Lakeport.

- Attachments:**
1. Draft Ordinance Adding Chapter 15.28 Telecommunications Infrastructure Improvements to the Lakeport Municipal Code

ORDINANCE NO. (2019)

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKEPORT ADDING CHAPTER
15.28 TO THE LAKEPORT MUNICIPAL CODE RELATING TO TELECOMMUNICATIONS
INFRASTRUCTURE IMPROVEMENTS**

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEPORT DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 15.28 Added:

Chapter 15.28 of Title 15 of the Lakeport Municipal Code is hereby added to read as follows:

TELECOMMUNICATIONS INFRASTRUCTURE IMPROVEMENT ORDINANCE

- 15.28.010 Definitions.**
- 15.28.020 Telecommunications Infrastructure Improvement.**
- 15.28.030 Implementation.**
- 15.28.040 Exemptions.**
- 15.28.050 Enforcement.**
- 15.28.060 Violations.**

15.28.010 Definitions.

A. For the purpose of this Chapter, the following definitions apply:

"Company" refers to any utility, telephone or telecommunications company, or broadband service provider that is authorized by any government entity or law to provide services or operate in City of Lakeport.

"Conduit" refers to a tube, duct, or other device or structure designed for enclosing telecommunication wires or cables.

"Director" refers to the director of the city's Department of Public Works or his or her designee.

"Excavation" refers to any process which removes material from the ground through digging, drilling, boring, or other activity for the purpose of installing utilities, infrastructure, or other structures or equipment.

"Facilities" and "Infrastructure" refer to wires, cables, conduit, switches, transmission equipment, or other equipment for use in transmitting or processing telecommunications services or for providing support or connection to such equipment.

"Feasible" refers to the capability of being accomplished in a successful manner within a reasonable period of time, taking into account appropriate environmental, physical, legal, economic, and technological factors.

"Incremental cost" refers to the cost associated with adding telecommunications cable, conduit, and other related equipment to an excavation project, including the cost of the materials needed and any additional labor cost.

"Reconstruction" refers to any project which repairs or replaces fifty percent or more of an existing road, highway, or rail line.

"Rights-of-way" ("ROW") refers to the area upon or adjacent to any city-owned road, highway, or rail line or along or across any of the waters or lands owned or controlled by the city.

"ROW Permit" refers to a permit issued pursuant to this chapter.

"Telecommunications" refers to data, voice, video, or other information provided by copper wire, coaxial cable, fiber-optic cable, or other technology.

"Telecommunications service providers" refers to any person, company, corporation, or other entity providing data, voice, cable, video, or other information services by wire, fiber-optic cable, or other technology.

15.28.020 Telecommunications Infrastructure Improvement

In recognition of the need to provide local residents and businesses within the community with the infrastructure required to meet their telecommunications needs, this chapter requires the following:

- A. No company may undertake any construction, reconstruction, or repaving project involving excavation of the city ROW without first obtaining a ROW Permit pursuant to this chapter.
- B. No fewer than 30 days prior to a company's intended construction, reconstruction, or repaving start date, a written application for a city ROW Permit, along with payment of any fees or deposit required by the city, shall be filed with the director of public works, in the form and manner required by the Director.
- C. The ROW application shall contain, at a minimum, all of the following information:
 1. General information regarding any infrastructure and/or equipment that the company plans to apply for permits to install within the ROW in the next six (6) months, regardless of whether a permit is currently sought for that infrastructure and/or equipment.
 2. Site plan of the infrastructure and/or equipment proposed to be located within the ROW, including a map in digital and/or other form required by the city, including digital geographical information system (GIS) formats.
 3. Estimated project start and completion dates.

4. A traffic control plan, if required, that complies with guidelines established by the director.

D. Companies leading construction, reconstruction, or repaving projects involving excavation of city right-of-ways shall notify, advise, and coordinate with other companies (i.e., telephone or telecommunications companies or broadband service providers) regarding construction work to install telecommunications infrastructure in the right-of-way to a practical and feasible extent. This coordination shall be conducted through city or company sponsored coordination meetings. The frequency of the meetings shall be determined in coordination between the director and project leading company. As a result of the coordination, installation of, or upgrades to telecommunications facilities or infrastructure will be included as needed. In new developments, the company shall contact the developer to determine whether any surplus conduit is available in the areas that the company plans to install facilities or infrastructure, and whether any joint trenching or boring projects are feasible.

E. The public works director shall maintain a list of companies (i.e., telephone and telecommunications companies and broadband service providers) and shall send notifications to these companies regarding construction, reconstruction, and repaving projects and coordination to install telecommunications infrastructure in the right-of-way, to a practical and feasible extent.

F. The city may also opt in to participate in the installation of telecommunication infrastructure in the construction, reconstruction, or repaving projects.

G. When utility or telecommunications companies or the city participate or join in a construction, reconstruction, or repaving project that involves excavation in the city ROW, and install telecommunications facilities or infrastructure in such projects, these companies shall be responsible for the ROW permit applicant's incremental costs for installing these Facilities and Infrastructure.

H. The director of public works will work with companies and contractors to identify cost-effective approaches consistent with city requirements.

I. All installations shall be approved by the director of public works. Technical specifications for installing telecommunications infrastructure shall be discussed among companies participating in the project and technical specifications may also be developed in association with this ordinance.

J. In order to verify that a company has carried out the construction, reconstruction, or repaving project in the city ROW pursuant to this chapter, the city reserves the right to inspect the project, as well as to inspect all necessary documents related to said project.

K. There shall be a 5-year moratorium on excavating in the city ROW that have been constructed, reconstructed, or repaved in the preceding five years to protect the public infrastructure and maintain the integrity of the pavement and ROW. However, waivers to the moratorium may be granted by the public works director for “good cause,” such as:

1. to repair leaks
2. to respond to emergencies
3. to provide services to buildings where no other reasonable means of providing service exists
4. other situations deemed by the director to be in the best interest of the general public

15.28.030 Implementation.

No less than 60 days before this ordinance takes effect, the City of Lakeport shall e-mail, fax, mail, or deliver a copy of the ordinance to all telecommunications service providers and other affected entities doing business within the City of Lakeport.

15.28.040 Exemptions.

A. The director of public works may exempt construction, reconstruction, or repaving projects from the requirements of this chapter where compliance is found to be impractical or infeasible. Requests for an exemption shall be in writing, and the director’s decision shall be final.

B. An exemption application shall include all information necessary for the director of public works to make a decision, including but not limited to documentation showing factual support for the requested exemption.

C. The director of public works may approve the exemption application in whole or in part, with or without conditions.

15.28.050 Enforcement.

Enforcement of this ordinance shall be as follows:

A. The director of public works shall have primary responsibility for enforcement of this ordinance and shall have authority to issue citations for violation of this chapter. The director is authorized to establish regulations or administrative procedures to ensure compliance with this chapter.

B. A person or entity violating or failing to comply with any of the requirements of this chapter shall be guilty of an infraction.

C. The City of Lakeport may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulation or administrative procedure authorized by it through any lawful means provided by state law and this code.

D. The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.

E. The director of public works may inspect the premises of any construction, reconstruction, repaving, or excavation project to verify compliance with this ordinance.

15.28.060 Violations.

Violations of this ordinance shall be enforced as follows:

Violation of this chapter is hereby declared to be a public nuisance. Any violation described in the preceding paragraph shall be subject to abatement by the City of Lakeport, as well as any other remedies that may be permitted by law for public nuisances, and may be enforced by injunction, upon a showing of violation.

SECTION 3. Severability. If any word, phrase, sentence, part, section, subsection, or other portion of this chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City of Lakeport hereby declares that it would have passed this title, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional.

SECTION 4. No Conflict with Federal or State Law. Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

SECTION 5. Preemption. The provisions of this chapter shall be null and void if state or federal legislation or administrative regulation takes effect with the same or substantially similar provisions as contained in this chapter. The City Council shall determine whether or not identical or substantially similar statewide legislation has been enacted or regulations issued.

SECTION 6. CEQA. The project is exempt from environmental review per CEQA Guidelines under the General Rule (Section 15061(b)(3)). The project involves updates and revisions to existing regulations. To the extent this Ordinance is determined to be a project within the meaning of CEQA, it is categorically exempt under CEQA Guidelines section 15301 (Existing Facilities) and CEQA Guidelines section 15311 (Accessory Structures).

SECTION 7. Effective Date. This ordinance shall take effect thirty (30) days after adoption as provided by Government Code section 36937.

SECTION 8. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code

section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting the entire text.

INTRODUCED and first read at a regular meeting of the City Council on the 19th day of November, 2019, by the following vote:

AYES: Mayor Barnes, Council Members Mattina, Parlet, Spurr and Turner

NOES: None

ABSTAIN: None

ABSENT: None

FINAL PASSAGE AND ADOPTION by the City Council of Lakeport occurred at a meeting thereof held on the 3rd day of December 2019, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

TIM BARNES, MAYOR

ATTEST:

KELLY BUENDIA, City Clerk
City of Lakeport



CITY OF LAKEPORT

City Council

City of Lakeport Municipal Sewer District

Lakeport Redevelopment Successor Agency

STAFF REPORT

RE: Proposed Wireless Facility Ordinance Amending Urgency Ordinance Chapter 17.41 And Amending Chapters 17.03, 17.04, 17.05, 17.06, 17.07, 17.08, 17.09, 17.10, 17.11, 17.12, 17.13, 17.14, 17.16 And 17.28 to the Lakeport Municipal Code

MEETING DATE: 12/3/2019

SUBMITTED BY: Kevin M. Ingram, Community Development Director

PURPOSE OF REPORT: Information only Discussion Action Item

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to consider amending a previously adopted Urgency Ordinance for Wireless Communication Chapter 17.41 and amending the “UR” Urban Reserve; “R-1”, Low Density Residential; “R-2”, Medium Density Residential; “R-3”, High Density Residential; “R-5”, Resort/Residential; “PO”, Professional Office; “C-1”, Light Retail “C-2”, Major Retail; “C-3”, Service Commercial; “I”, Industrial; ‘OS”, Open Space; and “PCU”, Public and Civic Uses Zoning Districts to allow Zoning Permits for wireless facility minor modification, colocation, small wireless facility and Use Permits for wireless facility, wireless facility substantial modification.

BACKGROUND/DISCUSSION:

In response to the adoption of regulations for wireless facilities, on April 2, 2019, the City Council adopted an Urgency Ordinance for wireless Communication Facilities for the City of Lakeport (17.41). The Ordinance established a procedure to meet all new Federal Communication Commission (FCC) regulations to address wireless communication facilities, colocation, modification to wireless facilities and small wireless facilities.

On May 8, 2019, the Planning Commission and Community Development Department staff reviewed the urgency ordinance and had comments on the ordinance that may need to be addressed. At that time, the Community Development Department staff and the Planning Commission discussed procedural and content issues that would need to be addressed, that include potential inconsistencies with the General Plan and Zoning Ordinance. The discussion also included developing the ordinance to work seamlessly with the City’s Zoning Ordinance. Those Planning Commission comments and notes are addressed below.

On July 10, 2019, the Planning Commission recommended to the City Council adopt the modifications to the ordinance (17.41).

The amended ordinance allows the various wireless communication facilities through the use of the existing Zoning Permit and Use Permit processes outlined in the Zoning Ordinance. To accomplish this staff is recommending the addition of a Zoning Permit and Use Permit use category to the following zoning designations: (PCU) Public and Civic Uses, (OS) Open Space, (I) Industrial, (CB) Central Business, (C-3) Service Commercial, (C-2)

Major Retail, (C-1) Light Retail, (PO) Professional Office, (R-5) Resort/High Density Residential, (R-3) High Density Residential, (R-2) Medium Density Residential, (R-1) Low Density Residential and UR, Urban Reserve.

The Use Permit would be required for all new wireless facilities, while a Zoning Permit would be required for all changes to existing facilities, colocation and small wireless facilities. Under these standards the Planning Commission would be responsible for all new facilities, while the Community Development Director would be responsible for all others. Under the Zoning Permit criteria, the Community Development Director may refer the item to the Planning Commission if determined that the wireless facilities may have a significant or detrimental impacts on the community or neighborhoods. An example of these amendments to the Zoning Ordinance is modeled below showing how this language would appear in the C-2, Major Retail Zoning District:

- Add subsection J to Section 17.10.040, Uses subject to the issuance of a zoning permit—***“Small Wireless Facilities, Modifications to existing Wireless Communication Facilities and Collocation of Wireless Communication Facilities subject to the regulations set forth in Chapter 17.41.”***
- Add subsection N to Section 17.10.050, Uses subject to the issuance of a use permit—***“Wireless Communication Facilities subject to the regulations set forth in Chapter 17.41.”***

Staff also recommends changes to Title 17, Section 17.28.010 H & L in the Performance Standards which would exempt wireless facilities from 17.28.010.H. (Public Utilities Facilities) and 17.28.010.L. (Special Height Restrictions). Those issues listed in the Performance Standards would be addressed as part of the wireless or small wireless standards. Revised language would read as follows:

- 17.28.010.H: Public Utility Facilities. Public utility distribution and transportation lines, towers and poles, and underground facilities for the distribution of gas, water, communication, and electrical facilities shall be allowed in all zoning districts except for the CBD district. ***This provision does not apply to Wireless Communication Facilities subject to the regulations outlined in Chapter 17.41.*** All proposed routes for these transmission lines shall be submitted to the city planning commission for review and recommendation to the city council for their approval. Such approval shall be made prior to the acquisition of necessary right-of-way or easements.
- 17.28.010.L: Special Height Restrictions. Chimneys, silos, flag poles, monuments, radio towers, water tanks, church steeples, and similar structures or mechanical appurtenances may exceed the thirty-five foot height limit within the city upon approval of a use permit. ***This provision does not apply to Wireless Communication Facilities subject to the regulations outlined in Chapter 17.41.***

The proposed ordinance would supersede the urgency ordinance, and establish an ordinance that reflects the development standards, consistent with the existing development standards in the Title 17 Zoning Ordinance. The primary changes consist of removing the “Wireless Permit” and establishing development standards for the wireless facilities with a Use Permit or a Zoning Permit.

The Ordinance was introduced before the City Council on November 19, 2019 and a public hearing notice was published in the Record-Bee on November 22, 2019.

OPTIONS:

1. After conducting the public hearing and consideration of the proposed project, consider the recommendations of the Planning Commission and Community Development Department as set forth in the staff report, adopt the Ordinance.
2. After conducting the public hearing and consideration of the proposed project, direct staff to make modifications or revisions to the proposed Ordinance.
3. After conducting the public hearing and consideration of the proposed project, take no action or take action to deny the Ordinance.

FISCAL IMPACT:

None \$ Budgeted Item? Yes No

Budget Adjustment Needed? Yes No If yes, amount of appropriation increase: \$

Affected fund(s): General Fund Water OM Fund Sewer OM Fund Other:

Comments: None

SUGGESTED MOTION:

Move to adopt the ordinance modifying Chapter 17.41 and amending Chapters 17.03, 17.4, 17.05, 17.6, 17.07, 17.8, 17.09, 17.10, 17.11, 17.12, 17.13, 17.14, 17.16, and 17.28 of the Lakeport Municipal Code to permit and regulate wireless facilities within the City of Lakeport.

Attachments:

1. Draft Ordinance
2. Chapter 17.41, Original Urgency Ordinance highlighting recommended changes by the Planning Commission and City Attorney

ORDINANCE NO. _____(2019)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKEPORT
MODIFYING CHAPTER 17.41 OF TITLE 17 AND AMENDING CHAPTERS
17.03, 17.4, 17.05, 17.6, 17.07, 17.8, 17.09, 17.10, 17.11, 17.12, 17.13,
17.14, 17.16, AND 17.28 OF THE LAKEPORT MUNICIPAL CODE
ESTABLISHING REGULATIONS FOR WIRELESS COMMUNICATION
FACILITIES

THE CITY COUNCIL OF THE CITY OF LAKEPORT DOES ORDAIN AS FOLLOWS:

SECTION 1. [Reserved]

SECTION 2. Wireless Communication Facility Ordinance (17.41).

Chapter 17.41 of Title 17 of the Lakeport Municipal Code is hereby modified to read as follows:

- 17.41.010 Purpose and intent.
- 17.41.020 Definitions.
- 17.41.030 Applicable facilities.
- 17.41.040 Application procedure in general.
- 17.41.050 Wireless facility and small wireless facility application content.
- 17.41.060 Required findings of approval for wireless facility and small wireless facility.
- 17.41.070 Standards for wireless facility and small wireless facility.
- 17.41.080 Standard conditions of approval.
- 17.41.090 Denial without prejudice of small wireless facility.
- 17.41.100 Appeals.
- 17.41.110 Independent consultant review.
- 17.41.120 Maintenance.
- 17.41.130 Removal of abandoned facilities.
- 17.41.140 Ownership transfers.
- 17.41.150. Revocation of a wireless facility permit.
- 17.41.160. Exception from standards.
- 17.41.170 Violations.
- 17.41.180 Severability.

17.41.010 Purpose and intent.

A. The purpose of this chapter is to promote and protect the public health, safety and welfare, preserve the aesthetic character of the Lakeport community, and to reasonably regulate the development and operation of wireless communication facilities within the city to the extent permitted under state and federal law.

B. This chapter establishes clear guidelines and standards and an orderly process for expedited permit application review intended to facilitate the orderly deployment of wireless transmission equipment to provide advanced communication services to the city, its residents, businesses, and community at large.

C. The regulations in this city are specifically not intended to, and shall not be interpreted or applied to: (1) prohibit or effectively prohibit the provision of personal wireless services; (2) unreasonably discriminate among functionally equivalent service providers; or (3) regulate wireless communications facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission hereinafter also referred to as "FCC".

D. This chapter shall be interpreted and applied so as to be consistent with the Communications Act of 1996, section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, applicable state laws, and administrative and court decisions and determinations relating to same.

17.41.020 Definitions.

This section shall be construed in light of the following definitions:

"Accessory equipment" means any equipment installed, mounted, operated or maintained in close proximity to a wireless communication facility to provide power to the wireless communication facility or to receive, transmit or store signals or information received by or sent from a wireless communication facility.

"Antenna structure" means any antenna, any structure designed specifically to support an antenna or any appurtenances mounted on such a structure or antenna.

"Base station" means the equipment and non-tower supporting structure at a fixed location that enable FCC-licensed or authorized wireless communications between user equipment and a communications network.

"City" means the City of Lakeport.

"Collocation" means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

"Director" means the City of Lakeport Community Development Director or his or her designee.

“Equipment cabinet” means any transmission or other equipment other than an antenna housed within a protective case. An equipment cabinet may be indoors or outdoors, large or small, movable or immovable. Any equipment case with a heat sink or other cooling mechanism for the equipment inside qualifies as an equipment cabinet.

“Non-tower support structure” means any structure (whether built for wireless purposes or not) that supports wireless transmission equipment under a valid permit at the time the applicant submits its application.

“Open space” includes (1) land which is designated as an open space district, as defined in Chapter 17.14, (2) land in residential zones upon which structures may not be developed by virtue of a restriction on title, (3) all common areas, public and private parks, slope easements, recreational areas and open portions of recreational facilities, and (4) any other area owned by a homeowners association or similar entity.

“Personal communication service” means commercial mobile services provided under a license issued by the FCC. “RF” means radio frequency.

“Significant gap” as applied to an applicant’s personal communication service or the coverage of its wireless communication facilities is intended to be defined in this section consistently with the use of that term in the Communications Act of 1996 and case law construing that statute. Provided that neither that Act nor case law construing it requires otherwise, the following guidelines shall be used to identify such a significant gap:

1. A significant gap may be demonstrated by in-kind call testing.
2. The commission shall accept evidence of call testing by the applicant and any other interested person and shall not give greater weight to such evidence based on the identity of the person who provides it but shall consider (i) the number of calls conducted in the call test, (ii) whether the calls were taken on multiple days, at various times, and under differing weather and vehicular traffic conditions, and (iii) whether calls could be successfully initiated, received and maintained in the area within which a significant gap is claimed.
3. A significant gap may be measured by:
 - a. The number of people affected by the asserted gap in service;
 - b. Whether a wireless communication facility is needed to merely improve weak signals or to fill a complete void in coverage; and
 - c. Whether the asserted gap affects a state highway or an arterial street which carries significant amounts of traffic.

“Small Wireless Facility” refers to a small wireless facility as defined by the FCC and that meets the following requirements:

1. The small wireless facilities:

- a. Are mounted on structures 50 feet or less in height including their antennas, or
 - b. Are mounted on structures no more than 10 percent 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 percent, whichever is greater;
2. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume;
 3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment, is no more than 28 cubic feet in volume;
 4. The facilities do not require antenna structure registration under 47 C.F.R. section 17.1 et seq.;
 5. The facilities are not located on Tribal lands; and
 6. The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. section 1.1307(b).

“Stealth facility” means a wireless communication facility designed and constructed to be integrated into a building or other structure, or placed on or within a building or other structure, so that no portion of any equipment cabinet, transmission equipment, or any other apparatus associated with facility’s function is visible from publicly accessible areas.

“Transmission equipment” means any equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply.

“Wireless” means any FCC-authorized wireless communications service.

“Wireless communication facility” or “wireless facility” or “facility” (with the exception of small wireless facility) means any facility that transmits and/or receives electromagnetic waves, including, but not limited to, commercial wireless communications antennas and other types of transmission equipment for the transmission or receipt of such signals, towers or similar structures supporting said equipment, equipment cabinets and connectors, pedestals, meters, tunnels, vaults, splice box, surface location marker, equipment, equipment buildings, parking areas and other related improvements used, or designed to be used, to provide wireless transmission of voice, data, images or other information. The term also means any facility or transmission equipment used to provide any FCC-authorized wireless communications service including, but not limited to, personal wireless services defined by the Communications Act of 1996 and licensed by the FCC, including, but not limited

to, the types commonly known as cellular, personal communications services (“PCS”), specialized mobile radio (“SMR”), enhanced specialized mobile radio (“ESMR”), paging, ground based repeaters for satellite radio services, micro-cell antennas, distributed antenna systems (“DAS”) and similar systems.

“Wireless tower” means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities.

17.41.030 Applicable facilities.

This section applies to all proposed new or modified wireless communication facilities, as follows:

- A. New facilities. All permit applications received after the effective date of the ordinance codified in this chapter must comply with this chapter.
- B. Changes to existing facilities. All permit applications which in any manner whatsoever seek approval to modify a previously approved facility received after the effective date of the ordinance codified in this chapter must comply with this chapter.
- C. Small wireless facility permits. This subsection governs applications for small wireless facilities permits.
 - 1. Purpose. This subsection is intended to comply with the city’s obligations under 47 C.F.R. section 1.6001 et seq., which implements 47 U.S.C. sections 332(c)(7) and 1455. This subsection creates a process for the city to review an application for a small wireless facility permit submitted by an applicant who asserts that a proposed collocation of a small wireless facility using an existing structure or the deployment of a small wireless facility using a new structure, and the modifications of such small wireless facilities, is covered by federal law and to determine whether the city must approve the proposed collocation or deployment.
 - 2. Applicability. An applicant seeking approval of a collocation to a structure or a deployment to a new structure which the applicant contends is within the protection of 47 U.S.C. section 1455 shall apply for the following at the same time: (i) a small wireless facility permit; (ii) an encroachment permit from the public works department (if required by applicable provisions of this code); and (iii) any other permit required by applicable provisions of this code including a building permit, an electrical permit, or a tree report under chapter 17.21.
- D. Exemptions. This section shall not apply to:
 - 1. City-owned municipal wireless communications facilities.
 - 2. Amateur radio facilities that are under seventy (70) feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive-only antennas.
 - 3. Over-the-air receiving devices, as defined by the FCC at 47 C.F.R. section 1.4000, with a maximum diameter of one meter (thirty-nine (39) inches) for residential

installations, and two (2) meters (seventy-eight (78) inches) for nonresidential installations, and designed, installed, and maintained in compliance with the FCC and the California Public Utilities Commission (hereinafter referred to as the "CPUC") regulations.

17.41.040 Application procedures in general.

This chapter applies to all proposed new or modified wireless communication facilities, as follows:

A. **Wireless Facility.** All applications for approval of the installation of new wireless communication facilities in the city must be approved by a wireless facility use permit by the planning commission at a public hearing in compliance with this chapter and upon recommendation from the director. No new wireless communication facility shall be installed until the applicant or operator has obtained: (1) a wireless facility use permit in compliance with this chapter; (2) an encroachment permit from the public works department (if applicable); and (3) any other permit required by applicable provisions of this code.

B. **Changes to Existing Facilities.** All facilities applications which in any manner whatsoever seek approval to modify a previously approved facility received after the effective date of the ordinance codified in this chapter must be approved through a use permit by the planning commission after a public hearing for substantial modifications, or through a zoning permit by the director for minor modifications, in compliance with this chapter. All modifications to an existing personal wireless communications facility shall be subject to the approval of: (1) a wireless facility permit; in addition to (2) an encroachment permit from the public works department (if applicable); and (3) any other permit required by applicable provisions of this code.

C. **Small Wireless Facility** applications must be approved through a zoning permit by the director for minor modifications, in compliance with this chapter. All modifications to an existing personal wireless communications facility shall be subject to the approval of: (1) a wireless facility permit; in addition to (2) an encroachment permit from the public works department (if applicable); and (3) any other permit required by applicable provisions of this code.

D. All wireless communication facilities for which applications were received by the city but not approved prior to the effective date of the ordinance codified in this chapter shall comply with the regulations and guidelines of this chapter.

E. **Exemptions.** This chapter shall not apply to any city-owned municipal wireless communications facilities.

17.41.050 Wireless facility and small wireless facility application content.

A. Applications for the approval of a wireless facility for wireless communication facilities shall include, but are not necessarily limited to, an application fee and the following information:

1. A clear and complete written analysis that explains how the proposed design complies with the applicable design standards under this chapter to the maximum extent feasible. A complete design justification must identify all applicable standards under this chapter and provide a factually detailed reason why the proposed design either complies or the requirement is preempted by applicable state or federal law; and
 2. Scaled visual simulations showing the proposed facility superimposed on photographs of the site and surroundings, to assist the commission in assessing the visual impacts of the proposed facility and its compliance with the provisions of this chapter; and
 3. For new facilities, the plans shall include (in plan view and elevations) a scaled depiction of the maximum permitted increase as authorized by section 6409(a) of the 2012 Middle Class Jobs and Tax Relief Act, Title 47, United States Code, section 1455 using the proposed project as a baseline; and
 4. A siting analysis which identifies a minimum of two other feasible locations within or without the city which could serve the area intended to be served by the facility, unless the applicant provides compelling technical reasons for providing fewer than the minimum. The alternative site analysis shall include at least one collocation site; and
 5. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, in that it will not cause members of the general public to be exposed to RF levels that exceed the levels deemed safe by the FCC; and
 6. A statement signed by a person with legal authority to bind the applicant attesting under penalty of perjury to the accuracy of the information provided in the application; and
 7. A noise study, prepared by a qualified engineer, for the proposed wireless communication facility including, but not limited to, equipment, such as air conditioning units and back-up generators; and
 8. A written statement of the applicant's willingness to allow other carriers to collocate on the proposed wireless communication facility wherever technically and economically feasible and aesthetically desirable; and
 9. Such other information as the director shall establish from time to time pursuant to the Permit Streamlining Act, Government Code section 65940, or to respond to changes in law or technology.
- B. An application for a wireless communication facility in a public right-of-way for which the applicant claims entitlement under Public Utilities Code section 7901 shall be accompanied by evidence satisfactory to the director that the applicant is a telephone corporation or has written authorization to act as an agent for a telephone corporation.
- C. Applications for the approval of wireless communication facility within the public right-of-way shall include certification that the facility is for the use of a telephone

corporation or state 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 CPUC, it shall provide a copy of its CPCN.

D. Minor Modification Application Content. All applications for a wireless facility permit for a proposed minor modification to an existing wireless facility which the applicant contends is subject to Title 47, United States Code, section 1455 must include the following items.

1. Application Form. The city's standard application form, available on the city's website or from the Planning Department, as may be amended.
2. Application Fee. An application fee as established by the city council by resolution.
3. Independent Consultant Deposit. An independent consultant fee deposit, if required by the city council by resolution, to reimburse the city for its costs to retain an independent consultant to review the technical aspects of the application.
4. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.
 - a. A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
 - b. A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
 - c. A depiction of all existing and proposed utility runs and points of contact.
 - d. A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plain view.
 - e. For proposed collocations or modifications to wireless towers, the plans must include scaled plan views and all four elevations that depict the physical dimensions of the wireless tower as it existed on February 22, 2012 or as approved if constructed after February 22, 2012. For proposed collocations or modifications to base stations, the plans must include scaled plan views and all four elevations that depict the physical dimensions of the base station as it existed on February 22, 2012 or as approved if constructed after February 22, 2012.
 - f. A demolition plan.
5. Visual Simulations. A visual analysis that includes: (a) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four angles, together with a map that shows the location of each view angle; (b) a color and finished material palette for proposed screening materials; and (c) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.

6. Statement Asserting that Section 6409 Applies. A written statement asserting that the proposed collocation or modification is an “eligible facilities request” and does not result in a substantial change in the physical dimensions of the facility’s wireless tower or base station, as defined by section 6409, Title 47, United States Code, section 1455, and justifying that assertion. The written statement shall identify and discuss each required finding for approval of a wireless facility minor modification permit and explain the facts that justify the request for the director to make each finding.

7. Prior Permits. True and correct copies of all previously issued permits, including all required conditions of approval and a certification by the applicant that the proposal will not violate any previous permit or conditions of approval or why any violated permit or conditions does not prevent approval under Title 47, United States Code, section 1455 and the FCC’s regulations implementing this federal law.

8. Affirmation of Radio Frequency Standards Compliance. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, because it will not cause members of the general public to be exposed to RF levels that exceed the levels deemed safe by the FCC.

9. Structural Analysis. A structural analysis, prepared, signed, and sealed by a California-licensed engineer that assesses whether the proposed wireless communications facility complies with all applicable building codes.

10. Noise Study. A noise study, prepared, signed, and sealed by a California-licensed engineer, for the proposed wireless communication facility including, but not limited to, equipment, such as air conditioning units and back-up generators.; or a written statement signed and sealed by a California-licensed engineer indicating that the proposed modification(s) will not alter the existing noise levels or operational equipment which creates noise.

11. Other Permits. An application for a wireless facility minor modification permit shall include all permit applications with all required application materials for each and every separate permit required by the city for the proposed collocation or modification to an existing personal wireless communications facility, including a building permit, an encroachment permit (if applicable), and an electrical permit (if applicable).

12. Other Information. Such other information as the city may require, as specified in publicly available materials, including information required as stated on the city’s website.

E. Applications for the approval of small wireless facility shall include, but are not necessarily limited to, an application fee and the following information:

1. Application Form. The city’s standard application form, available on the city’s website or from the planning and building department, as may be amended.

2. Application Fee. An application fee as established by the city council by resolution.
3. Independent Consultant Deposit. An independent consultant fee deposit, if required by the city council by resolution, to reimburse the city for its costs to retain an independent consultant to review the technical aspects of the application.
4. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.
 - a. A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
 - b. A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
 - c. A depiction of all existing and proposed utility runs and points of contact.
 - d. A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.
 - e. For proposed collocation or deployment to wireless towers, the plans must include scaled plan views and all four (4) elevations that depict the physical dimensions of the wireless tower as it existed on the plans for the original tower.
 - f. A demolition plan.
 - g. The site plans and elevation shall include a stealth design for the small wireless facility that reflecting the design of the immediate area.
5. Visual Simulations. A visual analysis that includes: (1) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four (4) angles, together with a map that shows the location of each view angle; (2) a color and finished material palate for proposed screening materials; and (3) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.
6. Statement Asserting that 47 C.F.R. Section 1.6001 et seq. Applies. A written statement asserting that the proposed collocation or deployment is subject to 47 C.F.R. section 1.6001 et seq.
7. Prior Permits. True and correct copies of all previously issued permits, including all required conditions of approval and a certification by the applicant that the proposal will not violate any previous permit or conditions of approval or why any violated permit or conditions does not prevent approval under 47 U.S.C. section 1455 and the FCC's regulation implementing this federal law.
8. Affirmation of Radio Frequency Standards Compliance. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, because it will not cause members of the general public to be exposed to RF levels that exceed

the MPE levels deemed safe by the FCC. A copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the application. All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power."

9. Structural Analysis. A structural analysis, prepared, signed, and sealed by a California-licensed engineer, for the proposed small wireless facility including, but not limited to, equipment, such as air conditioning units and back-up generators; or a written statement signed and sealed by a California-licensed engineer indicating that the proposed facility will not alter the existing noise levels or operational equipment which creates noise.

10. Other Permits. An application for a small wireless facility permit shall include all permit applications with all required application materials for each and every separate permit required by the city for the proposed collocation or deployment, including a building permit, an encroachment permit (if applicable) and an electrical permit (if applicable).

17.41.060 Required findings of approval for wireless facility-and small wireless facility.

A. Wireless Facility Permit Findings for New or Substantially Modified Wireless Facility Permits. No wireless facility permit for a proposed new or substantial modification to a wireless communication facility may be approved unless the planning commission finds, at a public hearing for which notice was provided under the standards set forth in Government Code section 65090 and 65091, as follows:

1. The applicant has demonstrated by clear and convincing evidence that the new or substantially modified wireless facility is necessary to close a significant gap in the applicant's wireless service coverage. Such evidence shall include in-kind call testing of existing facilities within the area the applicant contends is a significant gap in coverage to be served by the facility.
2. The applicant has demonstrated by clear and convincing evidence that no feasible alternate site exists that would close a significant gap in the operator's wireless service coverage which alternative site is a more appropriate location for the facility under the standards of this section.
3. The proposed new or substantially modified wireless facility complies with all design standards and other requirements of this section, including the requirement that new or substantially modified facilities be camouflaged.
4. The proposed new or substantially modified wireless facility is consistent with the General Plan and any other applicable provisions of this code.

5. Public notice of the proposed facility was provided under the standards set forth in Government Code sections 65090 and 65091.

B. Additional Findings for New or Substantially Modified Wireless Facility Permits in the Public Rights of Way. In addition to the findings required in subsection (A)(1) above, no proposed new or substantially modified wireless communication facility within a public right-of-way may be approved unless the following findings are made by the planning commission:

1. The proposed facility has been designed to blend with the surrounding environment, with minimal visual impact on the public right-of-way.
2. The proposed facility will not have an adverse impact on the use of the public right-of-way, including but not limited to, the safe movement and visibility of vehicles and pedestrians.

C. Application Review Periods. Under federal and state law, the city must act on an application for a wireless facility permit for new facilities within 150 days, and must act on an application for a wireless facility permit for substantial modifications to existing facilities which the applicant does not contend are protected by Title 47, United States Code, section 1455, within 90 days, after the applicant submits the application for a wireless facility permit, unless tolled due to issuance of any notice of incomplete filing or by mutual agreement between the city and the applicant. Under federal and state law, failure to act on a wireless facility permit application within these timelines, excluding tolling periods, may result in the permit being deemed granted by operation of law. In that case, the applicant must still comply with the standard conditions of approval in this section.

D. Findings Required for Approval of Minor Modifications to Existing Wireless Facilities.

1. An applicant seeking approval of a collocation or modification to an existing wireless communication facility which the applicant contends is within the protection of Title 47, United States Code, section 1455, and qualifies as a minor or not substantial modification, must apply for and receive approval of a wireless facility permit for a minor modification in compliance with this section. This subsection is intended to comply with the city's obligations under federal law, which provides that the city "may not deny, and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." (47 U.S.C. § 1455, subd. (a)(1), adopted as section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub.L No. 112-96, 126 Stat. 156.) This subsection sets forth standards for the city to review an application for a wireless facility minor modification permit submitted by an applicant who asserts that a proposed collocation or modification to an existing personal wireless communications facility is covered by this federal law. The city's review of these applications is structured to comply with the requirements of Title 47, United States Code, section 1455 and the

FCC's regulations implementing this federal law, adopted on December 17, 2014 and codified at 47 C.F.R. §§ 1.40001, et seq. This subsection is intended to promote the public's health, safety, and welfare, and shall be interpreted consistent with the Federal Communications Act of 1996 (Pub.L. No. 104-104, 110 Stat. 56), Title 47, United States Code, section 1455, and applicable FCC regulations and court decisions considering these laws and regulations. Under federal law, the city must approve or deny an application for a wireless facility permit for a minor modification, together with any other city permits required for a proposed wireless facility minor modification, within sixty (60) days after the applicant submits the application for a wireless facility permit which the applicant contends is protected by Title 47, United States Code, section 1455, unless tolled due to issuance of any notice of incomplete filing or by mutual agreement between the city and the applicant. Under federal law, failure to act on a wireless facility permit application for a minor modification within the sixty (60) day review period, excluding tolling period, may result in the permit being deemed granted by operation of law. In that case, the applicant must still comply with the standard conditions of approval in this section.

2. The director must approve an application for a wireless facility permit for a minor modification that is a collocation or modification to an existing wireless tower or base station only which the applicant contends is within the protection of Title 47, United States Code, section 1455 if each of the following findings can be made:

- a. The applicant proposes a collocation or modification to either (i) a structure constructed and maintained with all necessary permits in good standing for the sole or primary purpose of supporting any FCC licensed or authorized antennas and their associated facilities or (ii) a structure constructed and maintained with all necessary permits in good standing, whether built for the sole or primary purpose of supporting any FCC licensed or authorized antennas and their associated facilities or not, that currently supports existing wireless transmission equipment;
- b. The proposed collocation or modification does not increase the height of the existing wireless communication facility above its lowest height on February 22, 2012 or as approved if constructed after February 22, 2012 by more than ten percent (10%) or ten (10) feet, whichever is greater. In addition, for private property, the proposed collocation or modification does not increase the height by one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater;
- c. The proposed collocation or modification does not increase the width of the facility by more than six (6) feet. In addition, for private property, the proposed collocation or modification does not increase the width of the facility by more than twenty (20) feet or the width of the tower at the level of the appurtenance, whichever is greater;

- d. The proposed collocation or modification does not involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four;
 - e. On public right of way the proposed collocation or modification does not involve either (i) the installation of any new equipment cabinets on the ground, if none already exist, or (ii) the installation of ground equipment cabinets that are more than ten percent (10%) larger in height or overall volume than any existing ground cabinets;
 - f. The proposed collocation or modification does not involve any excavation outside the area in proximity to the existing ground-mounted equipment in the public right of way;
 - g. The proposed collocation or modification does not defeat any existing concealment, stealth, or camouflage elements of the existing structure; and
 - h. The proposed collocation or modification does not violate any prior conditions of approval, except as may be preempted by section 6409, Title 47, United States Code, section 1455, subdivision (a).
- E. Required findings for small wireless facility.
1. Application Review. Each application for a new or modified small wireless facility permit shall be reviewed by the director. The city must approve or deny an application for a small wireless facility permit, together with any other city permits required for a proposed small wireless facility, within sixty (60) days after the applicant submits an application to collocate a small wireless facility using an existing structure, and within ninety (90) days after the applicant submits an application to deploy a small wireless facility using a new structure. The director shall provide written notice to all property owners within 300 feet of the site of a proposed small wireless facility upon approval of an application for a small wireless facility permit.
 2. Tolling Period. Unless a written agreement between the applicant and the city provides otherwise, the application is tolled when the city notifies the applicant within ten (10) days of the applicant's submission of the application that the application is materially incomplete and identifies the missing documents or information. The shot clock may again be tolled if the city provides notice within ten (10) days of the application's resubmittal that it is materially incomplete and identifies the missing documents or information. For an application to deploy small wireless facilities, if the city notifies the applicant on or before the tenth (10th) day after submission that the application is materially incomplete, and identifies the missing documents or information and the rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation will restart at zero on the date the applicant submits a completed application.

17.41.070. Standards for wireless facility and small wireless facility.

- A. All new wireless facilities shall be concealed. The installation of an uncamouflaged wireless facility is prohibited. All new facilities and substantial changes to existing facilities shall include appropriate stealth and concealment techniques given the proposed location, design, visual environment, and nearby uses and structures. Stealth and concealment techniques do not include incorporating faux-tree designs of a kind substantially different than the surrounding live trees. All new architectural features proposed to conceal transmission equipment shall be designed to mimic the existing underlying structure, shall be proportional to the existing underlying structure, and shall use materials in similar quality, finish, color, and texture as the existing underlying structure.
- B. All vents, exhausts and similar features for undergrounded equipment shall be flush to grade to the maximum extent feasible; all above-grade vents, exhausts or similar features shall be designed to blend with the environment to maximum extent feasible.
- C. All wireless facility antennas, mounting hardware, and cabling shall be covered or painted to match the color and texture of the building, tower, or pole on which it is mounted. Equipment cabinets, service panels, and service connections shall be screened by solid walls, landscaping, or berms. Screening shall blend with or enhance the surrounding context in terms of scale, form, texture, materials, and color. Any wireless facility shall be concealed as much as possible by blending into the natural and physical environment. All gates shall be opaque.
- D. Wireless facilities should be collocated with existing wireless facilities, if within one thousand five hundred (1,500) feet of an existing visible wireless facility; unless the city determines that the particular design proposed would not create excessive visual clutter or would otherwise create harms the city cannot ameliorate.
- E. A wireless facility located in the public rights-of-way:
1. Shall, with respect to its pole-mounted components, be located in a concealed manner on an existing or replaced utility pole; or
 2. Shall be located in a concealed wireless facility consistent with other existing natural or manmade features in the rights-of-way near the location where the wireless facility is to be located; or
 3. Shall, with respect to its pole-mounted components, be located in a concealed wireless facility on a new utility pole, if there are no reasonable alternatives, and the applicant is authorized to construct new utility poles.
- F. The ground-mounted components of a wireless facility shall, whether in or outside of the rights-of-way:
1. To the extent the structures are utility boxes within the meaning of this code, be reviewed and subject to the same approvals as utility boxes installed by other communications companies; and

2. Shall be located flush to grade where necessary to avoid incommoding the public or creating a hazard; and

3. To the extent permitted aboveground, shall otherwise be appropriately screened, landscaped and camouflaged to blend in with the surroundings, and nonreflective paints shall be used. All ground-mounted outdoor transmission equipment and associated enclosures or shelters shall be screened. All wires, cables, and any other connections shall be completely concealed from public view to the maximum extent feasible.

G. Unless it is determined by the city that there is no less intrusive alternative available to close a significant gap in the service provided by a wireless facility; or it is determined that the city is legally required to approve an application, the director may not approve an application for a wireless facility where the application proposes a design that would require extensions from any support structure inconsistent in size with the extensions otherwise permitted under the code.

H. A wireless facility and all subsequent modifications shall be designed and located to minimize the impact on the surrounding neighborhood, and to maintain the character and appearance of the city, consistent with other provisions of the code. To that end, wireless facilities should:

1. Employ the least intrusive design for the proposed location in terms of size, mass, visual and physical impact, and effects on properties from which the wireless facility is visible; and
2. Accommodate collocation consistent with the other design requirements of this section; and
3. Be consistent with the general plan.

I. Without limiting the foregoing, all portions of a wireless facility affixed to a support structure shall be designed to blend in or be screened from view in a manner consistent with the support structure's architectural style, color and materials when viewed from any part of the city. Wireless facilities shall be covered, painted and textured or otherwise camouflaged to match the color and texture of the support structure on which they are mounted. Where the support structure is a building, the wireless facility, including without limitation base station cabinets, remote transmitters and receivers, and antenna amplifiers, shall be placed within the building or mounted behind a parapet screened from public view unless that is not feasible. If the director determines that such in-building placement is not feasible, the equipment shall be roof-mounted in an enclosure or otherwise screened from public view as approved by the community development director.

J. Wireless facility shall not be lighted except with the authorization of the director. The director may permit lighting at the lowest intensity necessary:

1. For proximity-triggered or timer-controlled security lighting; or

2. To comply with regulations for the illumination of any flag attached to a wireless facility; or

3. Where such lighting is required by the director to protect public health or welfare, or as part of the camouflage for a particular design which includes street or decorative lighting as integral to the design and as approved by the director.

K. No facilities may bear any signage or advertisement(s) other than signage required by law or expressly permitted or required by the city. No advertising signage shall be displayed on any wireless facility except for government-required signs shown in the wireless facility permit application. Additionally site identification, address, warning and similar information plates may be permitted where approved by the director.

L. The wireless facility shall not incommode the public (including, without limitation, persons with disabilities) in its use of any structure, or any portion of the rights-of-way.

M. All new facilities and substantial changes to existing facilities shall comply with the applicable height limit for the facility's zone.

N. At no time shall transmission equipment or any other associated equipment (including but not limited to heating and air conditioning units) at any wireless communication facility emit noise that exceeds the applicable limit(s) established in this code.

O. All facilities shall at all times comply with all applicable federal, state, and local building codes, electrical codes, fire codes, and any other code related to public health and safety.

P. All wireless towers shall be designed and situated in a manner that utilizes existing natural or man-made features (including but not limited to topography, vegetation, buildings, or other structures) to visually conceal the wireless tower to the maximum extent feasible.

Q. All accessory equipment associated with the operation of a wireless communication facility shall be located within a building enclosure or underground vault that complies with the development standards of the zoning district in which the accessory equipment is located.

R. Ground-mounted equipment shall be located so as not to cause: (i) any physical or visual obstruction to pedestrian or vehicular traffic; (ii) inconvenience to the public's use of a public right-of-way; or (iii) safety hazards to pedestrians and motorists. In no case shall ground-mounted equipment, walls, or landscaping be less than eighteen (18) inches from the front of the curb.

S. No facility shall be built so as to cause the right-of-way in which the facility is located to fail to comply with the Americans with Disabilities Act.

T. Standards governing approval of small wireless facilities by director

1. The director shall approve or deny an application to collocate a small wireless facility using an existing structure by evaluating the following standards:
 - a. The existing structure was constructed and maintained with all necessary permits in good standing.
 - b. The existing structure is fifty (50) feet or less in height, including any antennas, or the existing structure is no more than ten (10) percent taller than other adjacent structures.
 - c. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume.
 - d. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment serving the facility, is no more than twenty-eight (28) cubic feet in volume.
 - e. The small wireless facilities do not extend the existing structure on which they are located to a height of more than fifty (50) feet or by more than ten (10) percent, whichever is greater.
 - f. The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.
 - g. The small wireless facility is not located on Tribal lands, as defined under 36 C.F.R. section 800.16(x).
 - h. For collocations not located within the public right-of-way, the proposed collocation shall be consistent with the standards of sections 17.41.070 and 17.41.080.
 - i. For collocation located within the public right-of-way, the proposed collocation shall be consistent with the standards of sections 17.41.070 and 17.41.080, except that sections 17.41.070(D), and 17.41.080(I) and (J) do not apply.
 - j. The proposed collocation would be in the most preferred location and configuration within two-hundred and fifty (250) feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location or configuration within two-hundred and fifty (250) feet would be technically infeasible, applying the preference standards of this section.
 - k. The proposed collocation is designed as a stealth facility, to the maximum feasible extent.
2. The director must approve an application to deploy a small wireless facility using a new structure only if each of the following findings can be made:

- a. The new structure was constructed and maintained with all necessary permits in good standing;
- b. The new structure is fifty (50) feet or less in height, including any antennas, or the new structure is no more than ten (10) percent taller than other adjacent structures;
- c. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume;
- d. All other wireless equipment associated with the facility, including the wireless equipment associated with the antenna and any pre-existing equipment associated with the facility, is no more than twenty-eight (28) cubic feet in volume;
- e. The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.
- f. The small wireless facility is not located on Tribal lands, as defined under 36 C.F.R. section 800.16(x);
- g. For new structures not located within the public right-of-way, the proposed facility shall be consistent with the standards of sections 17.41.070 and 17.41.080.
- h. For new structures located within the public right-of-way, the proposed facility shall be consistent with sections 17.41.070 and 17.41.080, except that sections 17.41.070 (D), and 17.41.080(I) and (J) do not apply.
- i. The proposed project would be in the most preferred location and configuration within two-hundred and fifty (250) feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location or configuration within two-hundred and fifty (250) feet would be technically infeasible, applying the preference standards of this section.
- j. The proposed project is designed as a stealth facility, to the maximum feasible extent.

3. Small Cell Location and Configuration Preferences. The city prefers that small wireless facilities in the public right of way or in the equivalent right of way on homeowners' association owned lands and private streets be configured on the following support structures, in order of preference from most to least preferred: (1) existing or replacement street light standard; (2) existing or replacement concrete or steel utility pole; (3) existing or replacement wood utility pole; (4) new street light standard; (5) new utility pole. The city prefers that small wireless facilities outside the public right of way be configured on the following support structures, in order of preference from most to least preferred: (1) on existing, approved wireless facility support structures operating in compliance with this code; (2) on existing buildings

or non-tower structures; (3) on existing or replacement utility poles or towers; (4) in new towers meeting the height requirements of the applicable FCC regulations.

17.41.080 Standard conditions of approval.

All facilities subject to a wireless facility permit approved under this chapter, including any facilities for which a wireless facility permit is deemed approved by operation of law, shall be subject to the following conditions:

- A. Facilities shall not bear any signs or advertising devices other than legally required certification, warning, or other required seals or signage, or as expressly authorized by the City.
- B. Abandonment.
 - 1. Wireless communication facilities that are no longer operating shall be removed at the expense of the applicant, operator, or owner no later than ninety (90) days after the discontinuation of use. Disuse for ninety (90) days or more shall also constitute a voluntary termination by the applicant of any land use entitlement under this code or any predecessor to this code.
 - 2. The director shall send a written notice of the determination of non-operation to the owner and operator of the wireless communication facility, who shall be entitled to a hearing on that determination before the city manager or a hearing officer appointed by the city manager, provided that written request for such a hearing is received by the city clerk within ten (10) days of the date of the notice. No further appeal from the decision of the city manager may be had other than pursuant to Code of Civil Procedure section 1094.5. Upon a final decision of the city manager or the running of the time for a request for a hearing without such a request, the operator shall have ninety (90) days to remove the facility.
 - 3. The operator of a facility shall notify the city in writing of its intent to abandon a permitted site. Removal shall comply with applicable health and safety regulations. Upon completion of abandonment, the site shall be restored to its original condition at the expense of the applicant, operator, or owner.
 - 4. All facilities not removed within the required ninety (90)-day period shall be in violation of this code. In the event the city removes a disused facility upon the failure of the applicant, operator, or owner to timely do so, the applicant, operator, and owner shall be jointly and severally liable for the payment of all costs and expenses the city incurs for the removal of the facilities, including legal fees and costs.
- C. The applicant, operator of a facility and property owner (when applicable) shall defend, indemnify and hold the city and its elective and appointed boards, commissions, officers, agents, consultants and employees harmless from and against all demands, liabilities, costs (including attorneys' fees), or damages arising from the city's review and approval of the design, construction, operation, location, inspection or maintenance of the facility.

D. Removal of Unsafe Facilities. If, at any time after ten (10) years of the issuance of a building permit or encroachment permit, or any shorter period permitted by Government Code section 65964(b), any wireless communication facility becomes incompatible with public health, safety or welfare, the applicant or operator of the facility shall, upon notice from the city and at the applicant's or operator's own expense, remove that facility. Written notice of a determination pursuant to this subsection shall be sent to the owner and operator of the wireless communication facility, who shall be entitled to a hearing on that determination before the city manager or a hearing officer appointed by the city manager, provided that written request for such a hearing is received by the city clerk within ten (10) days of the date of the notice. No further appeal from the decision of the city manager may be had other than pursuant to Code of Civil Procedure section 1094.5. Upon a final decision of the city manager or the running of the time for a request for a hearing without such a request, the operator shall have ninety (90) days to remove the facility.

E. Prior to the issuance of a building permit or encroachment permit, the applicant or owner/operator of the facility shall pay for and provide a performance bond, which shall be in effect until all facilities are fully and completely removed and the site reasonably returned to its original condition. The purpose of this bond is to cover the applicant's or owner/operator of the facility's obligation under the conditions of approval and the city code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping obligations. The amount of the performance bond shall be set by the director on a case-specific basis and in an amount reasonably related to the obligations required under this code and all conditions of approval, and shall be specified in the conditions of approval.

F. An applicant shall not transfer a permit to any person or entity prior to completion of construction of a wireless communication facility.

G. The applicant shall submit as-built photographs of the facility within ninety (90) days of installation of the facility, detailing the installed equipment.

H. A wireless communication facility approved by a wireless facility permit may operate only until the 10th anniversary of the date it is first placed into service, unless that sunset date is extended by additional term(s) not to exceed ten (10) years pursuant to a wireless facility permit issued. There is no limit to the number of times the sunset date for a facility may be extended.

I. Any approved wireless communication facility within a public right-of-way shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the public works director to: (1) protect the public health, safety, and welfare; (2) prevent interference with pedestrian and vehicular traffic; or (3) prevent damage to a public right-of-way or any property adjacent to it. Before the director of public works imposes conditions, changes, or limitations pursuant to this subsection, he or she shall notify the applicant or operator, in writing, by mail to the address set forth in the application or such other address as may be on file with the city. Such change,

new limitation or condition shall be effective twenty-four (24) hours after deposit of the notice in the United States mail.

J. The applicant or operator of a wireless communication facility in the public rights-of-way shall not move, alter, temporarily relocate, change, or interfere with any existing public facility, structure or improvement without the prior written consent of the city, and the owner in the circumstance where the owner is not the city. No structure, improvement or facility owned by the city shall be moved to accommodate a wireless communication facility unless: (1) the city determines, in its sole and absolute discretion, that such movement will not adversely affect the city or surrounding residents or businesses; and (2) the applicant or operator pays all costs and expenses related to the relocation of the city's facilities. Every applicant or operator of any wireless communication facility shall assume full liability for damage or injury caused to any property or person by his, her, or its facility. Before commencement of any work pursuant to an encroachment permit issued for any wireless communication facility within a public right-of-way, an applicant shall provide the city with documentation establishing to the city's satisfaction that the applicant has the legal right to use or interfere with any other facilities within the public right-of-way to be affected by applicant's facilities.

K. In addition to any other conditions of approval permitted under federal and state law and this code that the director deems appropriate or required under this code, all wireless facility permits for minor modifications subject to Title 47, United States Code, section 1455, including any minor modifications for which a wireless facility permit is deemed approved by operation of law, shall include the following conditions of approval:

1. No Automatic Renewal. The grant or approval of a wireless facility minor modification permit shall not renew or extend the underlying permit term.
2. Compliance with Previous Approvals. The grant or approval of a wireless facility minor modification permit shall be subject to the conditions of approval of the underlying permit, except as may be preempted by section 6409(a) of the 2012 Middle Class Jobs and Tax Relief Act, Title 47, United States Code, section 1455.
3. As-Built Plans. The applicant shall submit to the director an as-built set of plans and photographs depicting the entire personal wireless communications facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.
4. Indemnification. To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless city, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way

attributable to, actually, allegedly or impliedly, in whole or in part, related to the wireless facility minor modification permit and the issuance of any permit or entitlement in connection therewith. The applicant shall pay such obligations as they are incurred by city, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the city reasonably determines necessary to protect the city from exposure to fees, costs or liability with respect to such claim or lawsuit.

5. Compliance with Applicable Laws. The applicant shall comply with all applicable provisions of this code, any permit issued under this code, and all other applicable federal, state, and local laws. Any failure by the city to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.

6. Compliance with Approved Plans. The proposed project shall be built in compliance with the approved plans on file with the Planning Department.

7. Violations. The facility shall be developed, maintained, and operated in full compliance with the conditions of the wireless facility minor modification permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this code, the conditions of approval for the wireless facility minor modification permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this chapter shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

8. In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, Title 47, United States Code, section 1455, such that such statute would not mandate approval for the collocation or modification granted or deemed granted under a wireless facility minor modification permit, such permit shall automatically expire twelve (12) months from the date of that opinion.

9. The grant, deemed-grant or acceptance of wireless facility minor modification permit shall not waive and shall not be construed or deemed to waive the City's standing in a court of competent jurisdiction to challenge Title 47, United States Code, section 1455 or any wireless facility minor modification permit issued pursuant to Title 47, United States Code, section 1455 or this code.

L. Annual Monitoring Fee. The owner or operator of a facility subject to a permit under this chapter shall pay to the city an annual monitoring fee as established in the city's Master Fee Schedule. The fee shall be used to recover the city's costs to inspect, review, and monitor compliance with the conditions of the permit.

M. Standard Conditions of Approval for Small Wireless Facility Permits. In addition to any other conditions of approval permitted under federal and state law and this code that the director deems appropriate or required under this code, all small wireless facility permits under this subsection shall include the following conditions of approval:

1. No Automatic Renewal. The grant or approval of a small wireless facility permit shall not renew or extend the underlying permit term.
2. Compliance with Previous Approvals. The grant or approval of a small wireless facility permit shall be subject to the conditions of approval of the underlying permit.
3. As-Built Plans. The applicant shall submit to the director an as-built set of plans and photographs depicting the entire small wireless facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.
4. Indemnification. To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless the city, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the wireless facility minor modification permit and the issuance of any permit or entitlement in connection therewith. The applicant shall pay such obligations as they are incurred by the city, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the city reasonably determines necessary to protect the city from exposure to fees, costs or liability with respect to such claim or lawsuit.
5. Compliance with Applicable Laws. The applicant shall comply with all applicable provisions of this code, any permit issued under this code, and all other applicable federal, state, and local laws. Any failure by the city to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.
6. Compliance with Approved Plans. The proposed project shall be built in compliance with the approved plans on file with the planning and building department.
7. Violations. The small wireless facility shall be developed, maintained, and operated in full compliance with the conditions of the small wireless facility permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this code, the conditions of approval for the wireless

facility minor modification permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this section shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

8. In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, 47 U.S.C. section 1455, such that such statute would not mandate approval for the collocation or deployment granted or deemed granted under a wireless facility minor modification permit, such permit shall automatically expire twelve (12) months from the date of that opinion.

9. The grant, deemed-grant or acceptance of a small wireless facility permit shall not waive and shall not be construed or deemed to waive the city's standing in a court of competent jurisdiction to challenge 47 U.S.C. section 1455 or any small wireless facility permit issued pursuant to 47 U.S.C. section 1455 or this code.

10. Annual Monitoring Fee. The owner or operator of a facility subject to a permit under this chapter shall pay to the city an annual monitoring fee as established in the city's Master Fee Schedule. The fee shall be used to recover the city's costs to inspect, review, and monitor compliance with the conditions of the permit.

17.41.090 Provisions for denial without prejudice of small wireless facility.

A. Grounds for Denial without Prejudice. The director may deny without prejudice an application for a small wireless facility permit in any of the following circumstances:

1. The director cannot make all findings required for approval of a small wireless facility permit;
2. The proposed collocation or deployment would cause the violation of an objective, generally applicable law protecting public health or safety;
3. the proposed collocation or deployment involves the removal and replacement of an existing facility's entire supporting structure; or
4. the proposed collocation or deployment does not qualify for mandatory approval under 47 U.S.C. section 1455, as may be amended or superseded, and as may be interpreted by any order of the FCC or any court of competent jurisdiction.

B. Procedures for Denial without Prejudice. All small wireless facility permit application denials shall be in writing and shall include: (i) the decision date; (ii) a statement that the city denies the permit without prejudice; (iii) a short and plain statement of the basis for the denial; and (iv) that the applicant may submit the same or substantially the same permit application in the future.

C. Submittal after Denial without Prejudice. After the director denies a small wireless facility permit application, and subject to the generally applicable permit application submittal provisions in this chapter, an applicant shall be allowed to:

1. submit a new small wireless facility permit application for the same or substantially the same proposed collocation or deployment; or
2. submit an appeal of the director's decision to the city council in accordance with section 17.41.100 of this code.

D. **Costs to Review a Denied Permit.** The city shall be entitled to recover the reasonable costs for its review of any small wireless facility permit application. In the event that the director denies a small wireless facility permit application, the city shall return any unused deposit fees within sixty (60) days after a written request from the applicant. An applicant shall not be allowed to submit a small wireless facility permit application for the same or substantially the same proposed modification unless all costs for the previously denied permit application are paid in full.

17.41.100. Appeals.

Appeals of decisions by the planning commission or director under this section are governed by Chapter 17.31 of this code.

17.41.110 Independent consultant review.

A. **Selection by Director.** The director may select and retain with the approval of the city manager one or more independent consultants with expertise in communications satisfactory to the director and the city manager in connection with any permit review and evaluation.

B. **Scope.** The independent consultant shall review the project aspects that involve technical or specialized knowledge and may address:

1. Whether the applicant submitted a complete and accurate application;
2. Whether the facts and materials presented in a particular application tend to support certain statements or analyses in the application;
3. Compliance with any applicable regulations;
4. Any other specific technical or specialized issues requested by the city; and/or
5. Presence or absence of a significant gap in service coverage, as appropriate.

C. **Independent Consultant Fee Deposit.** The applicant shall pay the cost for any independent consultant fees, along with applicable overhead recovery, through a deposit, estimated by the director, paid at the time the applicant submits an application. The applicant shall pay all consultant fees before the city may act on a permit application. In the event that such costs or fees do not exceed the deposit amount, the city shall refund any unused portion within sixty (60) days after the final building permit is released or, if no final building permit is released, within sixty (60) days after the city receives a written request from the applicant.

17.41.120. Maintenance.

- A. All wireless communication facilities must comply with all standards and regulations of the FCC, and any other state or federal government agency with the authority to regulate wireless communication facilities.
- B. The site and the wireless communication facility, including all landscaping, fencing, and related transmission equipment must be maintained in a neat and clean manner and in accordance with all approved plans.
- C. All graffiti on wireless communication facilities must be removed at the sole expense of the permittee within forty-eight (48) hours of notification.
- D. A wireless communication facility located in the public right-of-way may not unreasonably interfere with the use of any city property or the public right-of-way by the city, by the general public or by other persons authorized to use or be present in or upon the public right-of-way. Unreasonable interference includes disruption to vehicular or pedestrian traffic, and interference with any other city or public utilities.
- E. If any FCC, CPUC or other required license or approval to provide communication services is ever revoked, the permittee must inform the director of the revocation within ten (10) days of receiving notice of such revocation.

17.41.130. Removal of abandoned facilities.

- A. Any facility whose permit has expired or whose permit has been terminated by the city or that is not operated for a continuous period of one-hundred and eighty (180) days shall be deemed abandoned, and the owner of the facility shall remove the facility within ninety (90) days of receipt of notice from the director notifying the owner of the abandonment.
- B. If the facility is not removed within the ninety (90) day period, the director may remove the facility at the permittee's, facility owner's, or landowner's expense pursuant to the city's abatement procedures.
- C. If there are two or more users of the permitted facility, this provision shall not become effective until all applicable permits have expired or have terminated or all users cease using the facility.
- D. As a condition of approval for permit issuance, the applicant shall provide a separate demolition bond for the duration of the permit, and in the form and manner of surety as determined by the director and approved as to form by the city attorney, with provision for inspection and city removal of the facility in the event of failure to perform by the responsible parties as defined by this chapter.

17.41.140. Ownership transfers.

Upon transfer of an approved wireless communication facility or any rights under the applicable permit or approval, the permittee of the facility must within thirty (30) days of such transfer provide written notification to the director of the date of the transfer

and the identity of the transferee. The director may require submission of any supporting materials or documentation necessary to determine that the facility is in compliance with the existing permit or approval and all of its conditions including, but not limited to, statements, photographs, plans, drawings, and analysis by a qualified engineer demonstrating compliance with all applicable regulations and standards of the city, FCC, and CPUC.

17.41.150. Revocation of a wireless facility permit.

- A. A wireless facility permit may be revoked if the permittee is not in compliance with permit conditions, if the permit conditions are not enforceable, or for a failure to comply with any provision of the code relating to the permit, or relating to the wireless facility associated with the permit (“default event”). By way of example and not limitation, a refusal to timely remove facilities located in the rights-of-way where required in connection with a public works project would be a default event.
- B. The Community Development Director may revoke a wireless facility permit only after:
 - 1. Written notice of the default event has been provided to the wireless facility permit holder.
 - 2. The wireless facility permit holder has been afforded a reasonable opportunity to cure and comply with its permit, or demonstrate that no default event occurred.
 - 3. If the wireless facility permit holder fails to cure, the city council, or designee, shall conduct a noticed public hearing where the wireless facility permit holder shall be afforded an opportunity to speak and be heard and to provide written material prior to the hearing. If the city council or its designee, after the public hearing, finds that the wireless facility or the wireless facility permit holder has violated any law regulating the wireless facility or has failed to comply with the requirements of this chapter, the wireless facility permit, any applicable agreement or any condition of approval, the city council may revoke the permit.
 - 4. Upon revocation, the city council may require the removal of the wireless facility or take any other legally permissible action or combination of actions necessary to protect the health and welfare of the city.

17.41.160. Exception from standards.

- A. Exception from standards for wireless facilities:
 - 1. Notwithstanding the provisions of this chapter, one or more specific exceptions to the standards contained within this chapter may be granted if a denial of an exception would prohibit or have the effect of prohibiting the provision of wireless communications services by the applicant within the meaning of Title 47, United States Code section 332, subdivision (c)(7) or if the denial of the exception is otherwise preempted or prohibited by state or federal law or regulations. The city may grant an exception, on such terms as the city may deem appropriate, in cases

where the city determines that the grant of an exception is necessary to comply with state and federal law or regulations.

2. Prior to the issuance of an exception, the applicant shall be required to submit to the director a written explanation setting forth clear and convincing evidence that the location or locations and the design of the facility is necessary to close a significant gap in service coverage, that there is no feasible alternate location or locations, or design, that would close this significant gap in coverage or reduce this significant gap in coverage to less than significant, and that the facility is the least intrusive means to close a significant gap or to reduce it to less than a significant gap in coverage.

3. Exceptions shall be subject to the review and approval by the planning commission at noticed public hearings. The burden is on the applicant to prove significant gaps and least intrusive means as required herein.

B. Exception from standards for small wireless facility;

1. Nothing in this section shall modify the existing standards for non-small wireless facility applications.

2. Nothing in this section shall limit the city's authority to negotiate different standards for small wireless facility applications.

17.41.170 Violations.

It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. Any person, firm, partnership, or corporation violating any provision of this chapter or failing to comply with any of its requirements will be deemed guilty of an infraction and upon conviction thereof will be punished by fine not exceeding \$1,000.00. Each such person, firm, partnership, or corporation will be deemed guilty of a separate offense for each and every day or any portion thereof during which any violation of any of the provisions of this chapter is committed, continued or permitted by such person, firm, partnership, or corporation, and will be deemed punishable therefor as provided in this chapter. The remedies specified in this chapter shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

17.41.180 Severability.

In the event that a court of competent jurisdiction holds any section, subsection, paragraph, sentence, clause, or phrase in this chapter unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this chapter and shall not affect the validity of the remaining portions of this chapter. The city hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause, or phrase in this chapter irrespective of the fact that any one or more sections,

subsections, paragraphs, sentences, clauses, or phrases in this chapter might be declared unconstitutional, preempted, or otherwise invalid.

SECTION 3. Section 17.03.040.c of 17.03, Regulations for the Urban Reserve District or “UR” District, of the Lakeport Municipal Code is hereby added as follows:

- C. Wireless facility minor modification, colocation, small wireless facility subject to the regulations set forth in Title 17.41.

SECTION 4. Section 17.03.050.e of 17.03, Regulations for the Urban Reserve District or “UR” District, of the Lakeport Municipal Code is hereby added as follows:

- E. Wireless facility, wireless facility substantial modification subject to the regulations set forth in Title 17.41.

SECTION 5. Section 17.04.040.f of 17.04, Regulations for the Low Density Residential District or “R-1” District, of the Lakeport Municipal Code is hereby added as follows:

- F. Wireless facility minor modification, colocation, small wireless facility subject to the regulations set forth in Title 17.41.

SECTION 6. Section 17.04.050.h of 17.04, Regulations for the Low Density Residential District or “R-1” District, of the Lakeport Municipal Code is hereby added as follows:

- H. Wireless facility, wireless facility substantial modification subject to the regulations set forth in Title 17.41.

SECTION 7. Section 17.05.040.b of 17.05, Regulations for the Medium Density Residential District or “R-2” District, of the Lakeport Municipal Code is hereby amended as follows:

- A. Those uses permitted in the R-1 district with a zoning permit.
- B. Wireless facility minor modification, colocation, small wireless facility subject to the regulations set forth in Title 17.41.

SECTION 8. Section 17.05.050.h of 17.05, Regulations for the Medium Density Residential District or “R-2” District, of the Lakeport Municipal Code is hereby added as follows:

- H. Wireless facility, wireless facility substantial modification subject to the regulations set forth in Title 17.41.

SECTION 9. Section 17.06.040.b of 17.06, Regulations for the High Density Residential District or “R-3” District, of the Lakeport Municipal Code is hereby added as follows:

- B. Wireless facility minor modification, colocation, small wireless facility subject to the regulations set forth in Title 17.41.

SECTION 10. Section 17.06.050.F of 17.06, Regulations for the High Density Residential District or “R-3” District, of the Lakeport Municipal Code is hereby added as follows:

- B. Wireless facility, wireless facility substantial modification subject to the regulations set forth in Title 17.41.

SECTION 11. Section 17.07.050.h of 17.07, Regulations for the Resort/High Density Residential District or “R-5” District, of the Lakeport Municipal Code is hereby added as follows:

- H. Wireless facility, wireless facility substantial modification subject to the regulations set forth in Title 17.41.

SECTION 12. Section 17.08.040.c of 17.08, Regulations for the Professional Office District or “PO” District, of the Lakeport Municipal Code is hereby added as follows:

- C. Wireless facility minor modification, colocation, small wireless facility subject to the regulations set forth in Title 17.41.

SECTION 13. Section 17.08.050.h of 17.08, Regulations for Professional Office District or “PO” District, of the Lakeport Municipal Code is hereby added as follows:

- H. Wireless facility, wireless facility substantial modification subject to the regulations set forth in Title 17.41.

SECTION 14. Section 17.09.040.e of 17.09, Regulations for the Light Retail District or “C-1” District, of the Lakeport Municipal Code is hereby added as follows:

- E. Wireless facility minor modification, colocation, small wireless facility subject to the regulations set forth in Title 17.41.

SECTION 15. Section 17.09.050.j of 17.09, Regulations for the Light Retail District or “C-1” District, of the Lakeport Municipal Code is hereby added as follows:

- J. Wireless facility, wireless facility substantial modification subject to the regulations set forth in Title 17.41.

SECTION 16. Section 17.10.040.j of 17.10, Regulations for the Major Retail District or “C-2” District, of the Lakeport Municipal Code is hereby added as follows:

- J. Wireless facility minor modification, colocation, small wireless facility subject to the regulations set forth in Title 17.41.

SECTION 17. Section 17.10.050.o of 17.10, Regulations for the Major Retail District or “C-2” District, of the Lakeport Municipal Code is hereby added as follows:

- O. Wireless facility, wireless facility substantial modification subject to the regulations set forth in Title 17.41.

SECTION 18. Section 17.11.040.f of 17.11, Regulations for the Service Commercial District or “C-3” District, of the Lakeport Municipal Code is hereby added as follows:

- F. Wireless facility minor modification, colocation, small wireless facility subject to the regulations set forth in Title 17.41.

SECTION 19. Section 17.11.050.l of 17.11, Regulations for the Service Commercial District or “C-3” District, of the Lakeport Municipal Code is hereby added as follows:

- L. Wireless facility, wireless facility substantial modification subject to the regulations set forth in Title 17.41.

SECTION 20. Section 17.12.040.f of 17.12, Regulations for the Central Business District or “CB” District, of the Lakeport Municipal Code is hereby added as follows:

- F. Wireless facility minor modification, colocation, small wireless facility subject to the regulations set forth in Title 17.41.

SECTION 21. Section 17.12.050.v of 17.12, Regulations for the Central Business District or “CB” District, of the Lakeport Municipal Code is hereby added as follows:

- V. Wireless facility, wireless facility substantial modification subject to the regulations set forth in Title 17.41.

SECTION 22. Section 17.13.035.b of 17.13, Regulations for the Industrial District or “I” District, of the Lakeport Municipal Code is hereby added as follows:

- B. Wireless facility minor modification, colocation, small wireless facility subject to the regulations set forth in Title 17.41.

SECTION 23. Section 17.13.040.s of 17.13, Regulations for the Industrial District or “I” District, of the Lakeport Municipal Code is hereby added as follows:

- S. Wireless facility, wireless facility substantial modification subject to the regulations set forth in Title 17.41.

SECTION 24. Section 17.14.040.b of 17.14, Regulations for the Open Space District or “OS” District, of the Lakeport Municipal Code is hereby added as follows:

- B. Wireless facility minor modification, colocation, small wireless facility subject to the regulations set forth in Title 17.41.

SECTION 25. Section 17.14.050.k of 17.09, Regulations for the Open Space District or “OS” District, of the Lakeport Municipal Code is hereby added as follows:

- K. Wireless facility, wireless facility substantial modification subject to the regulations set forth in Title 17.41.

SECTION 26. Section 17.16.030.a of 17.16, Regulations for the Public and Civic District or “PCU” District, of the Lakeport Municipal Code is hereby added as follows:

- A. Wireless facility minor modification, colocation, small wireless facility subject to the regulations set forth in Title 17.41.

SECTION 27. Section 17.16.040.a of 17.16, Regulations for the Public and Civic Uses District or “PCU” District, of the Lakeport Municipal Code is hereby added as follows:

- A. Wireless facility, wireless facility substantial modification subject to the regulations set forth in Title 17.41.

SECTION 28. Section 17.28.010.H of the Lakeport Municipal Code is hereby amended to state:

Public Utility Facilities. Public utility distribution and transportation lines, towers and poles, and underground facilities for the distribution of gas, water, communication, and electrical facilities shall be allowed in all zoning districts except for the CBD district. All proposed

routes for these transmission lines shall be submitted to the city planning commission for review and recommendation to the city council for their approval. Such approval shall be made prior to the acquisition of necessary right-of-way or easements. This provision does not apply to Wireless Communication Facilities subject to the regulations outlined in Chapter 17.41.

SECTION 30. Section 17.28.010.I of the Lakeport Municipal Code is hereby amended to state:

Special Height Restrictions. Chimneys, silos, flag poles, monuments, radio towers, water tanks, church steeples, and similar structures or mechanical appurtenances may exceed the thirty-five foot height limit within the city upon approval of a use permit. This provision does not apply to Wireless Communication Facilities subject to the regulations outlined in Chapter 17.41.

SECTION 31. Severability: Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 32. CEQA. The adoption of this Ordinance is exempt from review under the California Environmental Quality Act (CEQA). Pursuant to section 15061(b)(3) of the CEQA Guidelines, CEQA applies only to projects which have the potential for causing a significant effect on the environment. This policy will not result in a significant foreseeable environmental impact. Additionally, the revision to the Lakeport Municipal Code provides for a discretionary review process for the approval of wireless facility-related permits. To the extent this Ordinance is determined to be a project within the meaning of CEQA, it is categorically exempt under CEQA Guidelines section 15301 (Existing Facilities) and CEQA Guidelines section 15311 (Accessory Structures).

SECTION 33. Effective Date. This ordinance shall take effect thirty (30) days after adoption as provided by Government Code section 36937.

SECTION 34. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting the entire text.

INTRODUCED and first read at a regular meeting of the City Council on the 19th day of November, 2019, by the following vote:

AYES: Mayor Barnes, Council Members Mattina, Parlet, Spurr and Turner
NOES: None
ABSTAIN: None
ABSENT: None

FINAL PASSAGE AND ADOPTION by the City Council of Lakeport occurred at a meeting thereof held on the 3rd day of December, 2019, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

TIM BARNES, MAYOR

ATTEST:

KELLY BUENDIA, City Clerk
City of Lakeport

ORDINANCE NO. _____(2019)

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKEPORT
ADDING ~~MODIFYING~~ CHAPTER 17.41 OF TITLE 17 OF THE LAKEPORT MUNICIPAL
CODE ~~AND AMENDING CHAPTERS 17.03, 17.4, 17.05, 17.6, 17.07, 17.8, 17.09,
17.10, 17.11, 17.12, 17.13, 17.14, 17.16, AND 17.28~~ ESTABLISHING
REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES**

~~WHEREAS~~, Government Code sections 36934 and 36937 permit the City Council by a four-fifths vote to adopt an urgency ordinance for the immediate preservation of the public peace, health, or safety;

~~WHEREAS~~, the City Council finds that the lack of current standards and regulations in the Municipal Code for wireless facilities and the potential liabilities and negative consequences for noncompliance with state and federal regulations (including, without limitation, automatic approvals) present current and immediate threat to the public health, safety and welfare. The City Council further finds and declares that the immediate implementation of the Ordinance is necessary to preserve and protect public health, safety and welfare;

~~WHEREAS~~, section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub.L.No. 112-96, 126 Stat. 156, codified at 47 U.S.C. § 1455) provides that the City “may not deny, and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.” (47 U.S.C. § 1455, subd. (a)(1));

~~WHEREAS~~, on September 26, 2018, the Federal Communications Commission adopted a Declaratory Ruling and Report and Order (FCC 18-133) adopting 47 C.F.R. section 1.6001 et seq.;

~~WHEREAS~~, 47 C.F.R. section 1.6001 et seq. implements 47 U.S.C. sections 332(c)(7) and 1455, regulating the collocation, modification, and deployment of wireless facilities;

~~WHEREAS~~, FCC 18-133 is intended to streamline the process of collocating and deploying small wireless facilities necessary to support the 5G network infrastructure;

~~WHEREAS~~, FCC 18-133 shortens the shot clock for reviewing small wireless facility permit applications, limits the amount of fees that can be assessed for the review, and regulates aesthetic requirements, among others;

~~WHEREAS~~, FCC 18-133 took effect on January 14, 2019, and preempts any and all conflicting local ordinances and regulations;

~~WHEREAS~~, FCC 18-133 requires cities to have small cell facility regulations in place by April 15, 2019

~~WHEREAS~~, given the short time period before the enforcement date of the new regulations, which require that the City approve applications for small wireless facilities, time is of the essence to review, evaluate, and approve if warranted, applications for small wireless communications facilities;

~~WHEREAS~~, the immediate adoption of an administrative regulatory process to review, evaluate, and approve if warranted, applications for wireless communications facilities is necessary to protect the public's health, safety, and welfare by complying with federal law, namely section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 and the Federal Communications Commission's implementing regulations, thereby preserving to the maximum extent possible the City's ability to regulate modifications to existing wireless communications facilities;

~~WHEREAS~~, the City Council finds that this Zoning Ordinance Amendment is consistent with the goals, policies, and actions of the General Plan and will not conflict with the General Plan;

~~WHEREAS~~, this Zoning Ordinance Amendment implements the General Plan's visions and desire for the community, is adopted in the public's interest, and is otherwise consistent with federal and state law;

~~WHEREAS~~, the City Council finds that this Zoning Ordinance Amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City;

~~WHEREAS~~, the proposed actions are in compliance with the provisions of the California Environmental Quality Act (CEQA) because this project is categorically exempt from environmental review in accordance with section 21084 of the California Environmental Quality Act (CEQA) pursuant to section 15061(b)(3) of the CEQA Guidelines and because the proposed action is not a project under section 15378(b)(5) of the CEQA Guidelines. A Notice of Exemption is prepared and will be filed in accordance with the CEQA guidelines.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEPORT DOES ORDAIN AS FOLLOWS:

Section 1. ~~Recitals Made Findings.~~ [Reserved]

~~The City Council of the City of Lakeport hereby declares the above recitals to be true and correct.~~

Section 2. Wireless Communication Facilities Ordinance.

Chapter 17.41 of Title 17 of the Lakeport Municipal Code is hereby ~~added~~ modified to read as follows:

- 17.41.010 Purpose and intent.**
- 17.41.020 Definitions.**
- 17.41.030 Applicable facilities.**
- 17.41.040 Application procedure in general.**
- 17.41.050 Wireless facility ~~permit~~ facilities and small wireless facility application content.**
- 17.41.060 Required findings of approval for wireless ~~permits~~ facilities and small wireless facilities.**

- 17.41.070 Standards for wireless facilities and small wireless facilities.
- 17.41.080 Standard conditions of approval.
- 17.41.090 ~~Provisions applicable to~~ Denial without prejudice of small wireless facilities.
- 17.41.100 Appeals.
- 17.41.110 Independent consultant review.
- 17.41.120 Maintenance.
- 17.41.130 Removal of abandoned facilities.
- 17.41.140 Ownership transfers.
- 17.41.150. Revocation of a wireless facility permit.
- 17.41.160. Exception from standards.
- 17.41.170 Violations.
- 17.41.180 Severability.

17.41.010 Purpose and intent.

- A. The purpose of this chapter is to promote and protect the public health, safety and welfare, preserve the aesthetic character of the Lakeport community, and to reasonably regulate the development and operation of wireless communication facilities within the city to the extent permitted under state and federal law.
- B. This chapter establishes clear guidelines and standards and an orderly process for expedited permit application review intended to facilitate the orderly deployment of wireless transmission equipment to provide advanced communication services to the city, its residents, businesses, and community at large.
- C. The regulations in this city are specifically not intended to, and shall not be interpreted or applied to: (1) prohibit or effectively prohibit the provision of personal wireless services; (2) unreasonably discriminate among functionally equivalent service providers; or (3) regulate wireless communications facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission hereinafter also referred to as "FCC".
- D. This chapter shall be interpreted and applied so as to be consistent with the Communications Act of 1996, section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, applicable state laws, and administrative and court decisions and determinations relating to same.

17.41.020 Definitions.

This section shall be construed in light of the following definitions:

“Accessory equipment” means any equipment installed, mounted, operated or maintained in close proximity to a wireless communication facility to provide power to the wireless communication facility or to receive, transmit or store signals or information received by or sent from a wireless communication facility.

“Antenna structure” means any antenna, any structure designed specifically to support an antenna or any appurtenances mounted on such a structure or antenna.

“Base station” means the equipment and non-tower supporting structure at a fixed location that enable FCC-licensed or authorized wireless communications between user equipment and a communications network.

“City” means the City of Lakeport.

“Collocation” means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

“Director” means the City of Lakeport Community Development Director or his or her designee.

“Equipment cabinet” means any transmission or other equipment other than an antenna housed within a protective case. An equipment cabinet may be indoors or outdoors, large or small, movable or immovable. Any equipment case with a heat sink or other cooling mechanism for the equipment inside qualifies as an equipment cabinet.

“Non-tower support structure” means any structure (whether built for wireless purposes or not) that supports wireless transmission equipment under a valid permit at the time the applicant submits its application.

“Open space” includes (1) land which is designated as an open space district, as defined in Chapter 17.14, (2) land in residential zones upon which structures may not be developed by virtue of a restriction on title, (3) all common areas, public and private parks, slope easements, recreational areas and open portions of recreational facilities, and (4) any other area owned by a homeowners association or similar entity.

“Personal communication service” means commercial mobile services provided under a license issued by the FCC. “RF” means radio frequency.

“Significant gap” as applied to an applicant’s personal communication service or the coverage of its wireless communication facilities is intended to be defined in this section consistently with the use of that term in the Communications Act of 1996 and case law construing that statute. Provided that neither that Act nor case law construing it requires otherwise, the following guidelines shall be used to identify such a significant gap:

1. A significant gap may be demonstrated by in-kind call testing.
2. The commission shall accept evidence of call testing by the applicant and any other interested person and shall not give greater weight to such evidence based on the identity of the person who provides it but shall consider (i) the number of calls conducted in the call test, (ii) whether the calls were taken on multiple days, at various times, and under differing weather and vehicular traffic conditions, and (iii)

whether calls could be successfully initiated, received and maintained in the area within which a significant gap is claimed.

3. A significant gap may be measured by:
 - a. The number of people affected by the asserted gap in service;
 - b. Whether a wireless communication facility is needed to merely improve weak signals or to fill a complete void in coverage; and
 - c. Whether the asserted gap affects a state highway or an arterial street which carries significant amounts of traffic.

“Small Wireless Facility” refers to a small wireless facility as defined by the FCC and that meets the following requirements:

1. The small wireless facilities:
 - ~~1-a.~~ Are mounted on structures 50 feet or less in height including their antennas, or
 - ~~2-b.~~ Are mounted on structures no more than 10 percent taller than other adjacent structures, or
 - ~~3-c.~~ Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
 - ~~B-2.~~ Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume;
 - ~~C-3.~~ All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment, is no more than 28 cubic feet in volume;
 - ~~D-4.~~ The facilities do not require antenna structure registration under 47 C.F.R. section 17.1 et seq.;
 - ~~E-5.~~ The facilities are not located on Tribal lands; and
 - ~~F-6.~~ The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. section 1.1307(b).

“Stealth facility” means a wireless communication facility designed and constructed to be integrated into a building or other structure, or placed on or within a building or other structure, so that no portion of any equipment cabinet, transmission equipment, or any other apparatus associated with facility’s function is visible from publicly accessible areas.

“Transmission equipment” means any equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply.

“Wireless” means any FCC-authorized wireless communications service.

“Wireless communication facility” or “wireless facility” or “facility” (with the exception of small wireless facility) means any facility that transmits and/or receives electromagnetic waves,

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including, but not limited to, commercial wireless communications antennas and other types of transmission equipment for the transmission or receipt of such signals, towers or similar structures supporting said equipment, equipment cabinets and connectors, pedestals, meters, tunnels, vaults, splice box, surface location marker, equipment, equipment buildings, parking areas and other related improvements used, or designed to be used, to provide wireless transmission of voice, data, images or other information. The term also means any facility or transmission equipment used to provide any FCC-authorized wireless communications service including, but not limited to, personal wireless services defined by the Communications Act of 1996 and licensed by the FCC, including, but not limited to, the types commonly known as cellular, personal communications services (“PCS”), specialized mobile radio (“SMR”), enhanced specialized mobile radio (“ESMR”), paging, ground based repeaters for satellite radio services, micro-cell antennas, distributed antenna systems (“DAS”) and similar systems.

“Wireless tower” means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities.

17.41.030 Applicable facilities.

This section applies to all proposed new or modified wireless communication facilities, as follows:

- A. New facilities. All permit applications received after the effective date of the ordinance codified in this chapter must comply with this chapter.
- B. Changes to existing facilities. All permit applications which in any manner whatsoever seek approval to modify a previously approved facility received after the effective date of the ordinance codified in this chapter must comply with this chapter.
- C. ~~Small wireless facilities. Requirements for Small wireless facilities permits. This subsection governs applications for small wireless facilities permits.~~

1. Purpose. This subsection is intended to comply with the city’s obligations under 47 C.F.R. section 1.6001 et seq., which implements 47 U.S.C. sections 332(c)(7) and 1455. This subsection creates a process for the city to review an application for a small wireless facility permit submitted by an applicant who asserts that a proposed collocation of a small wireless facility using an existing structure or the deployment of a small wireless facility using a new structure, and the modifications of such small wireless facilities, is covered by federal law and to determine whether the city must approve the proposed collocation or deployment.

2. Applicability. An applicant seeking approval of a collocation to a structure or a deployment to a new structure which the applicant contends is within the protection of 47 U.S.C. section 1455 shall apply for the following at the same time: (i) a small wireless facility permit; (ii) an encroachment permit from the public works department (if required by applicable provisions of this code); and (iii) any other permit required by applicable provisions of this code including a building permit, an electrical permit, or a tree report under chapter 17.21.

- D. Exemptions. This section shall not apply to:

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a.1. City-owned municipal wireless communications facilities.

b.2. Amateur radio facilities that are under seventy (70) feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive-only antennas.

c.3. Over-the-air receiving devices, as defined by the FCC at 47 C.F.R. section 1.4000, with a maximum diameter of one meter (thirty-nine (39) inches) for residential installations, and two (2) meters (seventy-eight (78) inches) for nonresidential installations, and designed, installed, and maintained in compliance with the FCC and the California Public Utilities Commission (hereinafter referred to as the "CPUC") regulations.

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17.41.040 Application procedures in general.

This chapter applies to all proposed new or modified wireless communication facilities, as follows:

A. **Wireless Facility**ies. All applications for approval of the installation of new wireless communication facilities in the city must be approved by a wireless facility ~~permit~~ **use permit** facilities by the planning commission at a public hearing in compliance with this chapter and upon recommendation from the director. No new wireless communication facility shall be installed until the applicant or operator has obtained: (1) a wireless facility ~~use permit~~ **use permit** facilities in compliance with this chapter; (2) an encroachment permit from the public works department (if applicable); and (3) any other permit required by applicable provisions of this code.

B. **Changes to Existing Facilities**. All ~~permit~~ **facilities** applications which in any manner whatsoever seek approval to modify a previously approved facility received after the effective date of the ordinance codified in this chapter must be approved ~~by-through a use permit by the planning commission after a public hearing for substantial modifications, or-or through a zoning permit approved~~ by the ~~planning commission/Community Development~~ Director ~~at a public hearing for substantial modifications, or the director~~ for minor modifications, in compliance with this chapter. All modifications to an existing personal wireless communications facility shall be subject to the approval of: (1) a wireless facility permit; in addition to (2) an encroachment permit from the public works department (if applicable); and (3) any other permit required by applicable provisions of this code.

C. **Small Wireless Facility**ies applications must be approved ~~by-through a zoning permit by the director for minor modifications, in compliance with the zoning permit requirements~~ **this chapter**. All modifications to an existing personal wireless communications facility shall be subject to the approval of: (1) a wireless facility permit; in addition to (2) an encroachment permit from the public works department (if applicable); and (3) any other permit required by applicable provisions of this code.

D. All wireless communication facilities for which applications were received by the city but not approved prior to the effective date of the ordinance codified in this chapter shall comply with the regulations and guidelines of this chapter.

E. Exemptions. This chapter shall not apply to any city-owned municipal wireless communications facilities.

17.41.050 Wireless ~~permit~~ facilities and small wireless facilities application content.

A. Applications for the approval of a wireless facility ~~ies permits~~ for wireless communication facilities shall include, but are not necessarily limited to, an application fee and the following information:

1. A clear and complete written analysis that explains how the proposed design complies with the applicable design standards under this chapter to the maximum extent feasible. A complete design justification must identify all applicable standards under this chapter and provide a factually detailed reason why the proposed design either complies or the requirement is preempted by applicable state or federal law; and
2. Scaled visual simulations showing the proposed facility superimposed on photographs of the site and surroundings, to assist the commission in assessing the visual impacts of the proposed facility and its compliance with the provisions of this chapter; and
3. For new facilities, the plans shall include (in plan view and elevations) a scaled depiction of the maximum permitted increase as authorized by section 6409(a) of the 2012 Middle Class Jobs and Tax Relief Act, Title 47, United States Code, section 1455 using the proposed project as a baseline; and
4. A siting analysis which identifies a minimum of two other feasible locations within or without the city which could serve the area intended to be served by the facility, unless the applicant provides compelling technical reasons for providing fewer than the minimum. The alternative site analysis shall include at least one collocation site; and
5. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, in that it will not cause members of the general public to be exposed to RF levels that exceed the levels deemed safe by the FCC; and
6. A statement signed by a person with legal authority to bind the applicant attesting under penalty of perjury to the accuracy of the information provided in the application; and
7. A noise study, prepared by a qualified engineer, for the proposed wireless communication facility including, but not limited to, equipment, such as air conditioning units and back-up generators; and
8. A written statement of the applicant's willingness to allow other carriers to collocate on the proposed wireless communication facility wherever technically and economically feasible and aesthetically desirable; and
9. Such other information as the director shall establish from time to time pursuant to the Permit Streamlining Act, Government Code section 65940, or to respond to changes in law or technology.

B. An application for a wireless communication facility in a public right-of-way for which the applicant claims entitlement under Public Utilities Code section 7901 shall be accompanied

by evidence satisfactory to the director that the applicant is a telephone corporation or has written authorization to act as an agent for a telephone corporation.

C. Applications for the approval of wireless communication facilities within the public right-of-way shall include certification that the facility is for the use of a telephone corporation or state 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 CPUC, it shall provide a copy of its CPCN.

D. Minor Modification Application Content. All applications for a wireless facility permit for a proposed minor modification to an existing wireless facility which the applicant contends is subject to Title 47, United States Code, section 1455 must include the following items.

~~a~~.1. Application Form. The city's standard application form, available on the city's website or from the Planning Department, as may be amended.

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~~b~~.2. Application Fee. An application fee as established by the city council by resolution.

~~c~~.3. Independent Consultant Deposit. An independent consultant fee deposit, if required by the city council by resolution, to reimburse the city for its costs to retain an independent consultant to review the technical aspects of the application.

~~d~~.4. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.

~~A~~.a. A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.

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~~B~~.b. A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.

~~C~~.c. A depiction of all existing and proposed utility runs and points of contact.

~~D~~.d. A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.

~~E~~.e. For proposed collocations or modifications to wireless towers, the plans must include scaled plan views and all four elevations that depict the physical dimensions of the wireless tower as it existed on February 22, 2012 or as approved if constructed after February 22, 2012. For proposed collocations or modifications to base stations, the plans must include scaled plan views and all four elevations that depict the physical dimensions of the base station as it existed on February 22, 2012 or as approved if constructed after February 22, 2012.

~~F~~.f. A demolition plan.

~~e~~.5. Visual Simulations. A visual analysis that includes: (a) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four angles, together with a map that shows the location of each view angle;

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(b) a color and finished material palette for proposed screening materials; and (c) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.

~~f.6.~~ f.6. Statement Asserting that Section 6409 Applies. A written statement asserting that the proposed collocation or modification is an “eligible facilities request” and does not result in a substantial change in the physical dimensions of the facility’s wireless tower or base station, as defined by section 6409, Title 47, United States Code, section 1455, and justifying that assertion. The written statement shall identify and discuss each required finding for approval of a wireless facility minor modification permit and explain the facts that justify the request for the director to make each finding.

~~g.7.~~ g.7. Prior Permits. True and correct copies of all previously issued permits, including all required conditions of approval and a certification by the applicant that the proposal will not violate any previous permit or conditions of approval or why any violated permit or conditions does not prevent approval under Title 47, United States Code, section 1455 and the FCC’s regulations implementing this federal law.

~~h.8.~~ h.8. Affirmation of Radio Frequency Standards Compliance. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, because it will not cause members of the general public to be exposed to RF levels that exceed the levels deemed safe by the FCC.

~~i.9.~~ i.9. Structural Analysis. A structural analysis, prepared, signed, and sealed by a California-licensed engineer that assesses whether the proposed wireless communications facility complies with all applicable building codes.

~~j.10.~~ j.10. Noise Study. A noise study, prepared, signed, and sealed by a California-licensed engineer, for the proposed wireless communication facility including, but not limited to, equipment, such as air conditioning units and back-up generators.; or a written statement signed and sealed by a California-licensed engineer indicating that the proposed modification(s) will not alter the existing noise levels or operational equipment which creates noise.

~~k.11.~~ k.11. Other Permits. An application for a wireless facility minor modification permit shall include all permit applications with all required application materials for each and every separate permit required by the city for the proposed collocation or modification to an existing personal wireless communications facility, including a building permit, an encroachment permit (if applicable), and an electrical permit (if applicable).

~~l.12.~~ l.12. Other Information. Such other information as the city may require, as specified in publicly available materials, including information required as stated on the city’s website.

E. Applications for the approval of small wireless facilities shall include, but are not necessarily limited to, an application fee and the following information:

1. Application Form. The city’s standard application form, available on the city’s website or from the planning and building department, as may be amended.

2. Application Fee. An application fee as established by the city council by resolution.
3. Independent Consultant Deposit. An independent consultant fee deposit, if required by the city council by resolution, to reimburse the city for its costs to retain an independent consultant to review the technical aspects of the application.
4. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.

- ~~1~~a. A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
- ~~1~~b. A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
- ~~1~~c. A depiction of all existing and proposed utility runs and points of contact.
- ~~1~~d. A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.
- ~~1~~e. For proposed collocation or deployment to wireless towers, the plans must include scaled plan views and all four (4) elevations that depict the physical dimensions of the wireless tower as it existed on the plans for the original tower.
- ~~1~~f. A demolition plan.
- ~~1~~g. The site plans and elevation shall include a stealth design for the small wireless facility that reflecting the design of the immediate area.

5. Visual Simulations. A visual analysis that includes: (1) scaled visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four (4) angles, together with a map that shows the location of each view angle; (2) a color and finished material palate for proposed screening materials; and (3) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.

6. Statement Asserting that 47 C.F.R. Section 1.6001 et seq. Applies. A written statement asserting that the proposed collocation or deployment is subject to 47 C.F.R. section 1.6001 et seq.

7. Prior Permits. True and correct copies of all previously issued permits, including all required conditions of approval and a certification by the applicant that the proposal will not violate any previous permit or conditions of approval or why any violated permit or conditions does not prevent approval under 47 U.S.C. section 1455 and the FCC's regulation implementing this federal law.

8. Affirmation of Radio Frequency Standards Compliance. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, because it will not cause members of the general public to be exposed to RF levels that exceed the MPE levels deemed safe by the FCC. A copy of the fully completed FCC form "A Local Government

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Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the application. All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power."

9. Structural Analysis. A structural analysis, prepared, signed, and sealed by a California-licensed engineer, for the proposed small wireless facility including, but not limited to, equipment, such as air conditioning units and back-up generators; or a written statement signed and sealed by a California-licensed engineer indicating that the proposed facility will not alter the existing noise levels or operational equipment which creates noise.

10. Other Permits. An application for a small wireless facility permit shall include all permit applications with all required application materials for each and every separate permit required by the city for the proposed collocation or deployment, including a building permit, an encroachment permit (if applicable) and an electrical permit (if applicable).

17.41.060 Required findings of approval for wireless permits facilities and small wireless facilities.

a.A. Wireless Facility Permit Findings for New or Substantially Modified Wireless Facility Permits. No wireless facility permit for a proposed new or substantial modification to a wireless communication facility may be approved unless the planning commission finds, at a public hearing for which notice was provided under the standards set forth in Government Code section 65090 and 65091, as follows:

1. The applicant has demonstrated by clear and convincing evidence that the new or substantially modified wireless facility is necessary to close a significant gap in the applicant's wireless service coverage. Such evidence shall include in-kind call testing of existing facilities within the area the applicant contends is a significant gap in coverage to be served by the facility.
2. The applicant has demonstrated by clear and convincing evidence that no feasible alternate site exists that would close a significant gap in the operator's wireless service coverage which alternative site is a more appropriate location for the facility under the standards of this section.
3. The proposed new or substantially modified wireless facility complies with all design standards and other requirements of this section, including the requirement that new or substantially modified facilities be camouflaged.
4. The proposed new or substantially modified wireless facility is consistent with the General Plan and any other applicable provisions of this code.
5. Public notice of the proposed facility was provided under the standards set forth in Government Code sections 65090 and 65091.

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b.B. Additional Findings for New or Substantially Modified Wireless Facility Permits in the Public Rights of Way. In addition to the findings required in subsection (A)(1) above, no proposed new or substantially modified wireless communication facility within a public right-of-way may be approved unless the following findings are made by the planning commission:

A-1. The proposed facility has been designed to blend with the surrounding environment, with minimal visual impact on the public right-of-way.

B-2. The proposed facility will not have an adverse impact on the use of the public right-of-way, including but not limited to, the safe movement and visibility of vehicles and pedestrians.

c.C. Application Review Periods. Under federal and state law, the city must act on an application for a wireless facility permit for new facilities within 150 days, and must act on an application for a wireless facility permit for substantial modifications to existing facilities which the applicant does not contend are protected by Title 47, United States Code, section 1455, within 90 days, after the applicant submits the application for a wireless facility permit, unless tolled due to issuance of any notice of incomplete filing or by mutual agreement between the city and the applicant. Under federal and state law, failure to act on a wireless facility permit application within these timelines, excluding tolling periods, may result in the permit being deemed granted by operation of law. In that case, the applicant must still comply with the standard conditions of approval in this section.

D. Findings Required for Approval of Minor Modifications to Existing Wireless Facilities.

1. An applicant seeking approval of a collocation or modification to an existing wireless communication facility which the applicant contends is within the protection of Title 47, United States Code, section 1455, and qualifies as a minor or not substantial modification, must apply for and receive approval of a wireless facility permit for a minor modification in compliance with this section. This subsection is intended to comply with the city's obligations under federal law, which provides that the city "may not deny, and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." (47 U.S.C. § 1455, subd. (a)(1), adopted as section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub.L No. 112-96, 126 Stat. 156.) This subsection sets forth standards for the city to review an application for a wireless facility minor modification permit submitted by an applicant who asserts that a proposed collocation or modification to an existing personal wireless communications facility is covered by this federal law. The city's review of these applications is structured to comply with the requirements of Title 47, United States Code, section 1455 and the FCC's regulations implementing this federal law, adopted on December 17, 2014 and codified at 47 C.F.R. §§ 1.40001, et seq. This subsection is intended to promote the public's health, safety, and welfare, and shall be interpreted consistent with the Federal Communications Act of 1996 (Pub.L. No. 104-104, 110 Stat. 56), Title 47, United States Code, section 1455, and applicable FCC regulations and court decisions considering these laws and regulations. Under federal law, the city must approve or deny an application for a wireless facility permit for a minor modification, together with any other city permits required for a proposed wireless facility

minor modification, within sixty (60) days after the applicant submits the application for a wireless facility permit which the applicant contends is protected by Title 47, United States Code, section 1455, unless tolled due to issuance of any notice of incomplete filing or by mutual agreement between the city and the applicant. Under federal law, failure to act on a wireless facility permit application for a minor modification within the sixty (60) day review period, excluding tolling period, may result in the permit being deemed granted by operation of law. In that case, the applicant must still comply with the standard conditions of approval in this section.

~~a.1. The director must approve an application for a wireless facility permit for a minor modification that is a collocation or modification to an existing wireless tower on private property which the applicant contends is within the protection of Title 47, United States Code, section 1455 only if each of the following findings can be made:~~

~~a. The applicant proposes a collocation or modification to a structure constructed and maintained with all necessary permits in good standing for the sole or primary purpose of supporting any FCC licensed or authorized antennas and their associated facilities;~~

~~b. The proposed collocation or modification does not increase the height of the existing wireless communication facility above its lowest height on February 22, 2012 or as approved if constructed after February 22, 2012 by more than ten percent (10%) or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater;~~

~~c. The proposed collocation or modification does not increase the width of the facility by more than twenty (20) feet or the width of the tower at the level of the appurtenance, whichever is greater;~~

~~d. The proposed collocation or modification does not involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four;~~

~~e. The proposed collocation or modification does not involve any excavation outside the lease or license area of the facility, including any access or utility easements;~~

~~f. The proposed collocation or modification does not defeat any existing concealment, stealth, or camouflage elements of the support structure; and~~

~~g. The proposed collocation or modification does not violate any prior conditions of approval, except as may be preempted by section 6409, Title 47, United States Code, section 1455, subdivision (a).~~

~~b.2. The director must approve an application for a wireless facility permit for a minor modification that is a collocation or modification to an existing base station on private property which the applicant contends is within the protection of Title 47, United States Code, section 1455 only if each of the following findings can be made:~~

~~i.a. The applicant proposes a collocation or modification to a structure constructed and maintained with all necessary permits in good standing, whether built for the sole~~

or primary purpose of supporting any FCC licensed or authorized antennas and their associated facilities or not, that currently supports existing wireless transmission equipment;

~~ii.b.~~ The proposed collocation or modification does not increase the height of the existing wireless communication facility above its lowest height on February 22, 2012 or as approved if constructed after February 22, 2012 by more than ten percent (10%) or ten (10) feet, whichever is greater;

~~iii.c.~~ The proposed collocation or modification does not increase the width of the facility by more than six (6) feet;

~~iv.d.~~ The proposed collocation or modification does not involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four;

~~v.e.~~ The proposed collocation or modification does not involve any excavation outside the lease or license area of the facility, including any access and utility easements;

~~vi.f.~~ The proposed collocation or modification does not defeat any existing concealment, stealth, or camouflage elements of the support structure; and

~~vii.g.~~ The proposed collocation or modification does not violate any prior conditions of approval, except as may be preempted by section 6409, Title 47, United States Code, section 1455, subdivision (a).

~~e.3.~~ The director must approve an application for a wireless facility permit for a minor modification that is a collocation or modification to an existing wireless tower or base station ~~in the public right of way~~ only which the applicant contends is within the protection of Title 47, United States Code, section 1455 if each of the following findings can be made:

a. The applicant proposes a collocation or modification to either (i) a structure constructed and maintained with all necessary permits in good standing for the sole or primary purpose of supporting any FCC licensed or authorized antennas and their associated facilities or (ii) a structure constructed and maintained with all necessary permits in good standing, whether built for the sole or primary purpose of supporting any FCC licensed or authorized antennas and their associated facilities or not, that currently supports existing wireless transmission equipment;

b. The proposed collocation or modification does not increase the height of the existing wireless communication facility above its lowest height on February 22, 2012 or as approved if constructed after February 22, 2012 by more than ten percent (10%) or ten (10) feet, whichever is greater. In addition, for Antennas on private property, the proposed collocation or modification does not increase by the height of by one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater;

c. The proposed collocation or modification does not increase the width of the facility by more than six (6) feet. In addition, for private property, the proposed

~~collocation or modification does not increase the width of the facility by more than twenty (20) feet or the width of the tower at the level of the appurtenance, whichever is greater;~~

- d. The proposed collocation or modification does not involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four;
- e. **On public right of way** the proposed collocation or modification does not involve either (i) the installation of any new equipment cabinets on the ground, if none already exist, or (ii) the installation of ground equipment cabinets that are more than ten percent (10%) larger in height or overall volume than any existing ground cabinets;
- f. The proposed collocation or modification does not involve any excavation outside the area in proximity to the existing ground-mounted equipment in the public right of way;
- g. The proposed collocation or modification does not defeat any existing concealment, stealth, or camouflage elements of the existing structure; and
- h. The proposed collocation or modification does not violate any prior conditions of approval, except as may be preempted by section 6409, Title 47, United States Code, section 1455, subdivision (a).

~~D.E.~~ **Required findings for small wireless facilities.**

1. **Application Review.** Each application for a new or modified small wireless facility permit shall be reviewed by the director. The city must approve or deny an application for a small wireless facility permit, together with any other city permits required for a proposed small wireless facility, within sixty (60) days after the applicant submits an application to collocate a small wireless facility using an existing structure, and within ninety (90) days after the applicant submits an application to deploy a small wireless facility using a new structure. The director shall provide written notice to all property owners within ~~500~~ 300 feet of the site of a proposed small wireless facility upon approval of an application for a small wireless facility permit.

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2. **Tolling Period.** Unless a written agreement between the applicant and the city provides otherwise, the application is tolled when the city notifies the applicant within ten (10) days of the applicant's submission of the application that the application is materially incomplete and identifies the missing documents or information. The shot clock may again be tolled if the city provides notice within ten (10) days of the application's resubmittal that it is materially incomplete and identifies the missing documents or information. For an application to deploy small wireless facilities, if the city notifies the applicant on or before the tenth (10th) day after submission that the application is materially incomplete, and identifies the missing documents or information and the rule or regulation creating the obligation to submit such documents

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or information, the shot clock date calculation will restart at zero on the date the applicant submits a completed application.

17.41.070. Standards for wireless facilities and small wireless facilities.

~~a~~.A. All new wireless facilities shall be concealed. The installation of an uncamouflaged wireless facility is prohibited. All new facilities and substantial changes to existing facilities shall include appropriate stealth and concealment techniques given the proposed location, design, visual environment, and nearby uses and structures. Stealth and concealment techniques do not include incorporating faux-tree designs of a kind substantially different than the surrounding live trees. All new architectural features proposed to conceal transmission equipment shall be designed to mimic the existing underlying structure, shall be proportional to the existing underlying structure, and shall use materials in similar quality, finish, color, and texture as the existing underlying structure.

~~b~~.B. All vents, exhausts and similar features for undergrounded equipment shall be flush to grade to the maximum extent feasible; all above-grade vents, exhausts or similar features shall be designed to blend with the environment to maximum extent feasible.

~~c~~.C. All wireless facility antennas, mounting hardware, and cabling shall be covered or painted to match the color and texture of the building, tower, or pole on which it is mounted. Equipment cabinets, service panels, and service connections shall be screened by solid walls, landscaping, or berms. Screening shall blend with or enhance the surrounding context in terms of scale, form, texture, materials, and color. Any wireless facility shall be concealed as much as possible by blending into the natural and physical environment. All gates shall be opaque.

~~d~~.D. Wireless facilities should be collocated with existing wireless facilities, if within one thousand five hundred (1,500) feet of an existing visible wireless facility, unless the city determines that the particular design proposed would not create excessive visual clutter or would otherwise create harms the city cannot ameliorate.

~~e~~.E. A wireless facility located in the public rights-of-way:

1. Shall, with respect to its pole-mounted components, be located in a concealed manner on an existing or replaced utility pole; or
2. Shall be located in a concealed wireless facility consistent with other existing natural or manmade features in the rights-of-way near the location where the wireless facility is to be located; or
3. Shall, with respect to its pole-mounted components, be located in a concealed wireless facility on a new utility pole, if there are no reasonable alternatives, and the applicant is authorized to construct new utility poles.

~~f~~.F. The ground-mounted components of a wireless facility shall, whether in or outside of the rights-of-way:

- ~~i~~.1. To the extent the structures are utility boxes within the meaning of this code, be reviewed and subject to the same approvals as utility boxes installed by other communications companies; and

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~~h.~~2. Shall be located flush to grade where necessary to avoid incommoding the public or creating a hazard; and

~~h.~~3. To the extent permitted aboveground, shall otherwise be appropriately screened, landscaped and camouflaged to blend in with the surroundings, and nonreflective paints shall be used. All ground-mounted outdoor transmission equipment and associated enclosures or shelters shall be screened. All wires, cables, and any other connections shall be completely concealed from public view to the maximum extent feasible.

~~g.~~G. Unless it is determined by the city that there is no less intrusive alternative available to close a significant gap in the service provided by a wireless facility; or it is determined that the city is legally required to approve an application, the director may not approve an application for a wireless facility where the application proposes a design that would require extensions from any support structure inconsistent in size with the extensions otherwise permitted under the code.

~~h.~~H. A wireless facility and all subsequent modifications shall be designed and located to minimize the impact on the surrounding neighborhood, and to maintain the character and appearance of the city, consistent with other provisions of the code. To that end, wireless facilities should:

~~i.~~1. Employ the least intrusive design for the proposed location in terms of size, mass, visual and physical impact, and effects on properties from which the wireless facility is visible; and

~~h.~~2. Accommodate collocation consistent with the other design requirements of this section; and

~~h.~~3. Be consistent with the general plan.

~~i.~~I. Without limiting the foregoing, all portions of a wireless facility affixed to a support structure shall be designed to blend in or be screened from view in a manner consistent with the support structure's architectural style, color and materials when viewed from any part of the city. Wireless facilities shall be covered, painted and textured or otherwise camouflaged to match the color and texture of the support structure on which they are mounted. Where the support structure is a building, the wireless facility, including without limitation base station cabinets, remote transmitters and receivers, and antenna amplifiers, shall be placed within the building or mounted behind a parapet screened from public view unless that is not feasible. If the director determines that such in-building placement is not feasible, the equipment shall be roof-mounted in an enclosure or otherwise screened from public view as approved by the community development director.

~~j.~~J. Wireless facilities shall not be lighted except with the authorization of the director. The director may permit lighting at the lowest intensity necessary:

1. For proximity-triggered or timer-controlled security lighting; or
2. To comply with regulations for the illumination of any flag attached to a wireless facility; or

3. Where such lighting is required by the director to protect public health or welfare, or as part of the camouflage for a particular design which includes street or decorative lighting as integral to the design and as approved by the director.

~~K.~~ K. No facilities may bear any signage or advertisement(s) other than signage required by law or expressly permitted or required by the city. No advertising signage shall be displayed on any wireless facility except for government-required signs shown in the wireless facility permit application. Additionally site identification, address, warning and similar information plates may be permitted where approved by the director.

~~L.~~ L. The wireless facility shall not incommode the public (including, without limitation, persons with disabilities) in its use of any structure, or any portion of the rights-of-way.

~~M.~~ M. All new facilities and substantial changes to existing facilities shall comply with the applicable height limit for the facility's zone.

~~N.~~ N. At no time shall transmission equipment or any other associated equipment (including but not limited to heating and air conditioning units) at any wireless communication facility emit noise that exceeds the applicable limit(s) established in this code.

~~O.~~ O. All facilities shall at all times comply with all applicable federal, state, and local building codes, electrical codes, fire codes, and any other code related to public health and safety.

~~P.~~ P. All wireless towers shall be designed and situated in a manner that utilizes existing natural or man-made features (including but not limited to topography, vegetation, buildings, or other structures) to visually conceal the wireless tower to the maximum extent feasible.

~~Q.~~ Q. All accessory equipment associated with the operation of a wireless communication facility shall be located within a building enclosure or underground vault that complies with the development standards of the zoning district in which the accessory equipment is located.

~~R.~~ R. Ground-mounted equipment shall be located so as not to cause: (i) any physical or visual obstruction to pedestrian or vehicular traffic; (ii) inconvenience to the public's use of a public right-of-way; or (iii) safety hazards to pedestrians and motorists. In no case shall ground-mounted equipment, walls, or landscaping be less than eighteen (18) inches from the front of the curb.

~~S.~~ S. No facility shall be built so as to cause the right-of-way in which the facility is located to fail to comply with the Americans with Disabilities Act.

~~T.~~ T. Standards governing approval of small wireless facilities by director

~~A.1.~~ A.1. The director shall approve or deny an application to collocate a small wireless facility using an existing structure by evaluating the following standards:

~~a.~~ a. The existing structure was constructed and maintained with all necessary permits in good standing.

~~b.~~ b. The existing structure is fifty (50) feet or less in height, including any antennas, or the existing structure is no more than ten (10) percent taller than other adjacent structures.

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~~1-c.~~ Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume.

~~1-d.~~ All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment serving the facility, is no more than twenty-eight (28) cubic feet in volume.

~~1-e.~~ The small wireless facilities do not extend the existing structure on which they are located to a height of more than fifty (50) feet or by more than ten (10) percent, whichever is greater.

~~1-f.~~ The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.

~~1-g.~~ The small wireless facility is not located on Tribal lands, as defined under 36 C.F.R. section 800.16(x).

~~1-h.~~ For collocations not located within the public right-of-way, the proposed collocation shall be consistent with the standards of sections 17.41.070 and 17.41.080.

~~1-i.~~ For collocation located within the public right-of-way, the proposed collocation shall be consistent with the standards of sections 17.41.070 and 17.41.080, except that sections 17.41.070(D), and 17.41.080(I) and (J) do not apply.

~~1-j.~~ The proposed collocation would be in the most preferred location and configuration within two-hundred and fifty (250) feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location or configuration within two-hundred and fifty (250) feet would be technically infeasible, applying the preference standards of this section.

~~1-k.~~ The proposed collocation is designed as a stealth facility, to the maximum feasible extent.

~~B-2.~~ The director must approve an application to deploy a small wireless facility using a new structure only if each of the following findings can be made:

~~1-a.~~ The new structure was constructed and maintained with all necessary permits in good standing;

~~1-b.~~ The new structure is fifty (50) feet or less in height, including any antennas, or the new structure is no more than ten (10) percent taller than other adjacent structures;

~~1-c.~~ Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume;

~~1-d.~~ All other wireless equipment associated with the facility, including the wireless equipment associated with the antenna and any pre-existing equipment associated with the facility, is no more than twenty-eight (28) cubic feet in volume;

~~1-e.~~ The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.

~~1-f.~~ The small wireless facility is not located on Tribal lands, as defined under 36 C.F.R. section 800.16(x);

~~1-g.~~ For new structures not located within the public right-of-way, the proposed facility shall be consistent with the standards of sections 17.41.070 and 17.41.080.

~~1-h.~~ For new structures located within the public right-of-way, the proposed facility shall be consistent with sections 17.41.070 and 17.41.080, except that sections 17.41.070 (D), and 17.41.080(I) and (J) do not apply.

~~1-i.~~ The proposed project would be in the most preferred location and configuration within two-hundred and fifty (250) feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location or configuration within two-hundred and fifty (250) feet would be technically infeasible, applying the preference standards of this section.

~~1-j.~~ The proposed project is designed as a stealth facility, to the maximum feasible extent.

~~3.~~ **Small Cell Location and Configuration Preferences.** The city prefers that small wireless facilities in the public right of way or in the equivalent right of way on homeowners' association owned lands and private streets be configured on the following support structures, in order of preference from most to least preferred: (1) existing or replacement street light standard; (2) existing or replacement concrete or steel utility pole; (3) existing or replacement wood utility pole; (4) new street light standard; (5) new utility pole. The city prefers that small wireless facilities outside the public right of way be configured on the following support structures, in order of preference from most to least preferred: (1) on existing, approved wireless facility support structures operating in compliance with this code; (2) on existing buildings or non-tower structures; (3) on existing or replacement utility poles or towers; (4) in new towers meeting the height requirements of the applicable FCC regulations.

17.41.080 Standard conditions of approval.

All facilities subject to a wireless facility permit approved under this chapter, including any facilities for which a wireless facility permit is deemed approved by operation of law, shall be subject to the following conditions:

~~1-A.~~ Facilities shall not bear any signs or advertising devices other than legally required certification, warning, or other required seals or signage, or as expressly authorized by the City.

~~2-B.~~ Abandonment.

~~a-1.~~ Wireless communication facilities that are no longer operating shall be removed at the expense of the applicant, operator, or owner no later than ninety (90) days after the discontinuation of use. Disuse for ninety (90) days or more shall also constitute a voluntary termination by the applicant of any land use entitlement under this code or any predecessor to this code.

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~~b-2.~~ The director shall send a written notice of the determination of non-operation to the owner and operator of the wireless communication facility, who shall be entitled to a hearing on that determination before the city manager or a hearing officer appointed by the city manager, provided that written request for such a hearing is received by the city clerk within ten (10) days of the date of the notice. No further appeal from the decision of the city manager may be had other than pursuant to Code of Civil Procedure section 1094.5. Upon a final decision of the city manager or the running of the time for a request for a hearing without such a request, the operator shall have ninety (90) days to remove the facility.

~~c-3.~~ The operator of a facility shall notify the city in writing of its intent to abandon a permitted site. Removal shall comply with applicable health and safety regulations. Upon completion of abandonment, the site shall be restored to its original condition at the expense of the applicant, operator, or owner.

~~d-4.~~ All facilities not removed within the required ninety (90)-day period shall be in violation of this code. In the event the city removes a disused facility upon the failure of the applicant, operator, or owner to timely do so, the applicant, operator, and owner shall be jointly and severally liable for the payment of all costs and expenses the city incurs for the removal of the facilities, including legal fees and costs.

~~3-C.~~ The applicant, operator of a facility and property owner (when applicable) shall defend, indemnify and hold the city and its elective and appointed boards, commissions, officers, agents, consultants and employees harmless from and against all demands, liabilities, costs (including attorneys' fees), or damages arising from the city's review and approval of the design, construction, operation, location, inspection or maintenance of the facility.

~~4-D.~~ Removal of Unsafe Facilities. If, at any time after ten (10) years of the issuance of a building permit or encroachment permit, or any shorter period permitted by Government Code section 65964(b), any wireless communication facility becomes incompatible with public health, safety or welfare, the applicant or operator of the facility shall, upon notice from the city and at the applicant's or operator's own expense, remove that facility. Written notice of a determination pursuant to this subsection shall be sent to the owner and operator of the wireless communication facility, who shall be entitled to a hearing on that determination before the city manager or a hearing officer appointed by the city manager, provided that written request for such a hearing is received by the city clerk within ten (10) days of the date of the notice. No further appeal from the decision of the city manager may be had other than pursuant to Code of Civil Procedure section 1094.5. Upon a final decision of the city manager or the running of the time for a request for a hearing without such a request, the operator shall have ninety (90) days to remove the facility.

~~5-E.~~ Prior to the issuance of a building permit or encroachment permit, the applicant or owner/operator of the facility shall pay for and provide a performance bond, which shall be in effect until all facilities are fully and completely removed and the site reasonably returned to its original condition. The purpose of this bond is to cover the applicant's or owner/operator of the facility's obligation under the conditions of approval and the city code. The bond coverage shall include, but not be limited to, removal of the facility, maintenance obligations and landscaping

obligations. The amount of the performance bond shall be set by the director on a case-specific basis and in an amount reasonably related to the obligations required under this code and all conditions of approval, and shall be specified in the conditions of approval.

6.F. An applicant shall not transfer a permit to any person or entity prior to completion of construction of a wireless communication facility.

7.G. The applicant shall submit as-built photographs of the facility within ninety (90) days of installation of the facility, detailing the installed equipment.

8.H. A wireless communication facility approved by a wireless facility permit may operate only until the 10th anniversary of the date it is first placed into service, unless that sunset date is extended by additional term(s) not to exceed ten (10) years pursuant to a wireless facility permit issued. There is no limit to the number of times the sunset date for a facility may be extended.

9.I. Any approved wireless communication facility within a public right-of-way shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the public works director to: (1) protect the public health, safety, and welfare; (2) prevent interference with pedestrian and vehicular traffic; or (3) prevent damage to a public right-of-way or any property adjacent to it. Before the director of public works imposes conditions, changes, or limitations pursuant to this subsection, he or she shall notify the applicant or operator, in writing, by mail to the address set forth in the application or such other address as may be on file with the city. Such change, new limitation or condition shall be effective twenty-four (24) hours after deposit of the notice in the United States mail.

10.J. The applicant or operator of a wireless communication facility in the public right-of-way shall not move, alter, temporarily relocate, change, or interfere with any existing public facility, structure or improvement without the prior written consent of the city, and the owner in the circumstance where the owner is not the city. No structure, improvement or facility owned by the city shall be moved to accommodate a wireless communication facility unless: (1) the city determines, in its sole and absolute discretion, that such movement will not adversely affect the city or surrounding residents or businesses; and (2) the applicant or operator pays all costs and expenses related to the relocation of the city's facilities. Every applicant or operator of any wireless communication facility shall assume full liability for damage or injury caused to any property or person by his, her, or its facility. Before commencement of any work pursuant to an encroachment permit issued for any wireless communication facility within a public right-of-way, an applicant shall provide the city with documentation establishing to the city's satisfaction that the applicant has the legal right to use or interfere with any other facilities within the public right-of-way to be affected by applicant's facilities.

11.K. In addition to any other conditions of approval permitted under federal and state law and this code that the director deems appropriate or required under this code, all wireless facility permits for minor modifications subject to Title 47, United States Code, section 1455, including any minor modifications for which a wireless facility permit is deemed approved by operation of law, shall include the following conditions of approval:

~~a~~.1. No Automatic Renewal. The grant or approval of a wireless facility minor modification permit shall not renew or extend the underlying permit term.

~~b~~.2. Compliance with Previous Approvals. The grant or approval of a wireless facility minor modification permit shall be subject to the conditions of approval of the underlying permit, except as may be preempted by section 6409(a) of the 2012 Middle Class Jobs and Tax Relief Act, Title 47, United States Code, section 1455.

~~c~~.3. As-Built Plans. The applicant shall submit to the director an as-built set of plans and photographs depicting the entire personal wireless communications facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.

~~d~~.4. Indemnification. To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless city, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the wireless facility minor modification permit and the issuance of any permit or entitlement in connection therewith. The applicant shall pay such obligations as they are incurred by city, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the city reasonably determines necessary to protect the city from exposure to fees, costs or liability with respect to such claim or lawsuit.

~~e~~.5. Compliance with Applicable Laws. The applicant shall comply with all applicable provisions of this code, any permit issued under this code, and all other applicable federal, state, and local laws. Any failure by the city to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.

~~f~~.6. Compliance with Approved Plans. The proposed project shall be built in compliance with the approved plans on file with the Planning Department.

~~g~~.7. Violations. The facility shall be developed, maintained, and operated in full compliance with the conditions of the wireless facility minor modification permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this code, the conditions of approval for the wireless facility minor modification permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this chapter shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

~~4-8.~~ In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, Title 47, United States Code, section 1455, such that such statute would not mandate approval for the collocation or modification granted or deemed granted under a wireless facility minor modification permit, such permit shall automatically expire twelve (12) months from the date of that opinion.

~~4-9.~~ The grant, deemed-grant or acceptance of wireless facility minor modification permit shall not waive and shall not be construed or deemed to waive the City's standing in a court of competent jurisdiction to challenge Title 47, United States Code, section 1455 or any wireless facility minor modification permit issued pursuant to Title 47, United States Code, section 1455 or this code.

~~12-L.~~ Annual Monitoring Fee. The owner or operator of a facility subject to a permit under this chapter shall pay to the city an annual monitoring fee as established in the city's Master Fee Schedule. The fee shall be used to recover the city's costs to inspect, review, and monitor compliance with the conditions of the permit.

~~13-M.~~ Standard Conditions of Approval for Small Wireless Facility Permits. In addition to any other conditions of approval permitted under federal and state law and this code that the director deems appropriate or required under this code, all small wireless facility permits under this subsection shall include the following conditions of approval:

1. No Automatic Renewal. The grant or approval of a small wireless facility permit shall not renew or extend the underlying permit term.

~~1-2.~~ Compliance with Previous Approvals. The grant or approval of a small wireless facility permit shall be subject to the conditions of approval of the underlying permit.

~~1-3.~~ As-Built Plans. The applicant shall submit to the director an as-built set of plans and photographs depicting the entire small wireless facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.

~~1-4.~~ Indemnification. To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless the city, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the wireless facility minor modification permit and the issuance of any permit or entitlement in connection therewith. The applicant shall pay such obligations as they are incurred by the city, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the city reasonably determines necessary to protect the city from exposure to fees, costs or liability with respect to such claim or lawsuit.

~~1-5.~~ Compliance with Applicable Laws. The applicant shall comply with all applicable provisions of this code, any permit issued under this code, and all other applicable federal, state, and local laws. Any failure by the city to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.

~~1-6.~~ Compliance with Approved Plans. The proposed project shall be built in compliance with the approved plans on file with the planning and building department.

~~1-7.~~ Violations. The small wireless facility shall be developed, maintained, and operated in full compliance with the conditions of the small wireless facility permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this code, the conditions of approval for the wireless facility minor modification permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this section shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

~~1-8.~~ In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, 47 U.S.C. section 1455, such that such statute would not mandate approval for the collocation or deployment granted or deemed granted under a wireless facility minor modification permit, such permit shall automatically expire twelve (12) months from the date of that opinion.

~~1-9.~~ The grant, deemed-grant or acceptance of a small wireless facility permit shall not waive and shall not be construed or deemed to waive the city's standing in a court of competent jurisdiction to challenge 47 U.S.C. section 1455 or any small wireless facility permit issued pursuant to 47 U.S.C. section 1455 or this code.

~~1-10.~~ Annual Monitoring Fee. The owner or operator of a facility subject to a permit under this chapter shall pay to the city an annual monitoring fee as established in the city's Master Fee Schedule. The fee shall be used to recover the city's costs to inspect, review, and monitor compliance with the conditions of the permit.

17.41.090 Provisions applicable to for denial without prejudice of small wireless facilities.

Unless modified by this section, all provisions of this chapter shall apply to small wireless facilities.

~~1.A.~~ Requirements for Small Wireless Facilities Permits. This subsection governs applications for small wireless facilities permits.

~~1.~~ Purpose. This subsection is intended to comply with the city's obligations under 47 C.F.R. section 1.6001 et seq., which implements 47 U.S.C. sections 332(e)(7) and 1455. This subsection creates a process for the city to review an application for a small wireless facility permit submitted by an applicant who asserts that a proposed collocation of a

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small wireless facility using an existing structure or the deployment of a small wireless facility using a new structure, and the modifications of such small wireless facilities, is covered by federal law and to determine whether the city must approve the proposed collocation or deployment.

3.—Applicability. An applicant seeking approval of a collocation to a structure or a deployment to a new structure which the applicant contends is within the protection of 47 U.S.C. section 1455 shall apply for the following at the same time: (i) a small wireless facility permit; (ii) an encroachment permit from the public works department (if required by applicable provisions of this code); and (iii) any other permit required by applicable provisions of this code including a building permit, an electrical permit, or a tree report under chapter 17.21.

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4.—Application Content: All applications for a small wireless facility permit must include the following items:

a.—Application Form. The city's standard application form, available on the city's website or from the planning and building department, as may be amended.

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b.—Application Fee. An application fee as established by the city council by resolution.

c.—Independent Consultant Deposit. An independent consultant fee deposit, if required by the city council by resolution, to reimburse the city for its costs to retain an independent consultant to review the technical aspects of the application.

d.—Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items:

i.—A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.

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ii.—A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.

iii.—A depiction of all existing and proposed utility runs and points of contact.

iv.—A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.

v.—For proposed collocation or deployment to wireless towers, the plans must include scaled plan views and all four (4) elevations that depict the physical dimensions of the wireless tower as it existed on

vi.—A demolition plan.

e.—Visual Simulations. A visual analysis that includes: (1) scaled visual simulations that show unobstructed before and after construction daytime and clear-weather views from at least four (4) angles, together with a map that shows the location of each view angle; (2) a color and finished material palate for proposed screening

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materials; and (3) a photograph of a completed facility of the same design and in roughly the same setting as the proposed wireless communication facility.

f. ~~Statement Asserting that 47 C.F.R. Section 1.6001 et seq. Applies. A written statement asserting that the proposed collocation or deployment is subject to 47 C.F.R. section 1.6001 et seq.~~

g. ~~Prior Permits. True and correct copies of all previously issued permits, including all required conditions of approval and a certification by the applicant that the proposal will not violate any previous permit or conditions of approval or why any violated permit or conditions does not prevent approval under 47 U.S.C. section 1455 and the FCC's regulation implementing this federal law.~~

h. ~~Affirmation of Radio Frequency Standards Compliance. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, because it will not cause members of the general public to be exposed to RF levels that exceed the MPE levels deemed safe by the FCC. A copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination of Whether a Facility is Categorical Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the application. All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power."~~

i. ~~Structural Analysis. A structural analysis, prepared, signed, and sealed by a California licensed engineer, for the proposed small wireless facility including, but not limited to, equipment, such as air conditioning units and back up generators; or a written statement signed and sealed by a California licensed engineer indicating that the proposed facility will not alter the existing noise levels or operational equipment which creates noise.~~

j. ~~Other Permits. An application for a small wireless facility permit shall include all permit applications with all required application materials for each and every separate permit required by the city for the proposed collocation or deployment, including a building permit, an encroachment permit (if applicable) and an electrical permit (if applicable).~~

5. ~~Application Review. Each application for a new or modified small wireless facility permit shall be reviewed by the director. The city must approve or deny an application for a small wireless facility permit, together with any other city permits required for a proposed small wireless facility, within sixty (60) days after the applicant submits an application to collocate a small wireless facility using an existing structure, and within ninety (90) days after the applicant submits an application to deploy a small wireless facility using a new structure. The director shall provide written notice to all property owners within 500 feet of the site of~~

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a proposed small wireless facility upon approval of an application for a small wireless facility permit.

6. Tolling Period. Unless a written agreement between the applicant and the city provides otherwise, the application is tolled when the city notifies the applicant within ten (10) days of the applicant's submission of the application that the application is materially incomplete and identifies the missing documents or information. The shot clock may again be tolled if the city provides notice within ten (10) days of the application's resubmittal that it is materially incomplete and identifies the missing documents or information. For an application to deploy small wireless facilities, if the city notifies the applicant on or before the tenth (10th) day after submission that the application is materially incomplete, and identifies the missing documents or information and the rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation will restart at zero on the date the applicant submits a completed application.

7. Standards Governing Approval by Director

- a. The director shall approve or deny an application to collocate a small wireless facility using an existing structure by evaluating the following standards:
 - i. The existing structure was constructed and maintained with all necessary permits in good standing.
 - ii. The existing structure is fifty (50) feet or less in height, including any antennas, or the existing structure is no more than ten (10) percent taller than other adjacent structures.
 - iii. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume.
 - iv. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment serving the facility, is no more than twenty eight (28) cubic feet in volume.
 - v. The small wireless facilities do not extend the existing structure on which they are located to a height of more than fifty (50) feet or by more than ten (10) percent, whichever is greater.
 - vi. The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.
 - vii. The small wireless facility is not located on Tribal lands, as defined under 36 C.F.R. section 800.16(x).
 - viii. For collocations not located within the public right of way, the proposed collocation shall be consistent with the standards of sections 17.41.070 and 17.41.080.
 - ix. For collocation located within the public right of way, the proposed collocation shall be consistent with the standards of sections 17.41.070 and

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17.41.080, except that sections 17.41.070(D), and 17.41.080(I) and (J) do not apply.

- x. The proposed collocation would be in the most preferred location and configuration within two hundred and fifty (250) feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more preferred location or configuration within two hundred and fifty (250) feet would be technically infeasible, applying the preference standards of this section.
- xi. The proposed collocation is designed as a stealth facility, to the maximum feasible extent.
- b. The director must approve an application to deploy a small wireless facility using a new structure only if each of the following findings can be made:
 - i. The new structure was constructed and maintained with all necessary permits in good standing;
 - ii. The new structure is fifty (50) feet or less in height, including any antennas, or the new structure is no more than ten (10) percent taller than other adjacent structures;
 - iii. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume;
 - iv. All other wireless equipment associated with the facility, including the wireless equipment associated with the antenna and any pre-existing equipment associated with the facility, is no more than twenty-eight (28) cubic feet in volume;
 - v. The small wireless facility does not require an antenna structure registration under part 47 C.F.R. section 17.1 et seq.
 - vi. The small wireless facility is not located on Tribal lands, as defined under 36 C.F.R. section 800.16(x);
 - vii. For new structures not located within the public right of way, the proposed facility shall be consistent with the standards of sections 17.41.070 and 17.41.080.
 - viii. For new structures located within the public right of way, the proposed facility shall be consistent with sections 17.41.070 and 17.41.080, except that sections 17.41.070 (D), and 17.41.080(I) and (J) do not apply.
 - ix. The proposed project would be in the most preferred location and configuration within two hundred and fifty (250) feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more preferred location or configuration within two hundred and fifty (250) feet would be technically infeasible, applying the preference standards of this section.

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x.—The proposed project is designed as a stealth facility, to the maximum feasible extent.

e.—Small Cell Location and Configuration Preferences. The city prefers that small wireless facilities in the public right of way or in the equivalent right of way on homeowners' association owned lands and private streets be configured on the following support structures, in order of preference from most to least preferred: (1) existing or replacement street light standard; (2) existing or replacement concrete or steel utility pole; (3) existing or replacement wood utility pole; (4) new street light standard; (5) new utility pole. The city prefers that small wireless facilities outside the public right of way be configured on the following support structures, in order of preference from most to least preferred: (1) on existing, approved wireless facility support structures operating in compliance with this code; (2) on existing buildings or non tower structures; (3) on existing or replacement utility poles or towers; (4) in new towers meeting the height requirements of the applicable FCC regulations.

8.—Conditions of Approval for Small Wireless Facility Permits. In addition to any other conditions of approval permitted under federal and state law and this code that the director deems appropriate or required under this code, all small wireless facility permits under this subsection shall include the following conditions of approval:

a.—No Automatic Renewal. The grant or approval of a small wireless facility permit shall not renew or extend the underlying permit term.

b.—Compliance with Previous Approvals. The grant or approval of a small wireless facility permit shall be subject to the conditions of approval of the underlying permit.

c.—As Built Plans. The applicant shall submit to the director an as built set of plans and photographs depicting the entire small wireless facility as modified, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.

d.—Indemnification. To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless the city, its employees, agents and officials, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the wireless facility minor modification permit and the issuance of any permit or entitlement in connection therewith. The applicant shall pay such obligations as they are incurred by the city, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the city reasonably determines necessary to protect the city from exposure to fees, costs or liability with respect to such claim or lawsuit.

e.—Compliance with Applicable Laws. The applicant shall comply with all applicable provisions of this code, any permit issued under this code, and all other applicable

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~~federal, state, and local laws. Any failure by the city to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.~~

~~f. — Compliance with Approved Plans. The proposed project shall be built in compliance with the approved plans on file with the planning and building department.~~

~~g. — Violations. The small wireless facility shall be developed, maintained, and operated in full compliance with the conditions of the small wireless facility permit, any other applicable permit, and any law, statute, ordinance or other regulation applicable to any development or activity on the site. Failure of the applicant to cease any development or activity not in full compliance shall be a violation of these conditions. Any violation of this code, the conditions of approval for the wireless facility minor modification permit, or any other law, statute, ordinance or other regulation applicable to any development or activity on the site may result in the revocation of this permit. The remedies specified in this section shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.~~

~~h. — In the event that a court of competent jurisdiction invalidates or limits, in part or in whole, 47 U.S.C. section 1455, such that such statute would not mandate approval for the collocation or deployment granted or deemed granted under a wireless facility minor modification permit, such permit shall automatically expire twelve (12) months from the date of that opinion.~~

~~i. — The grant, deemed grant or acceptance of a small wireless facility permit shall not waive and shall not be construed or deemed to waive the city's standing in a court of competent jurisdiction to challenge 47 U.S.C. section 1455 or any small wireless facility permit issued pursuant to 47 U.S.C. section 1455 or this code.~~

~~Small Wireless Facility Permit Denial Without Prejudice.~~

~~A. Grounds for Denial without Prejudice. The director may deny without prejudice an application for a small wireless facility permit in any of the following circumstances:~~

- ~~i. The director cannot make all findings required for approval of a small wireless facility permit;~~
- ~~ii. The proposed collocation or deployment would cause the violation of an objective, generally applicable law protecting public health or safety;~~
- ~~iii. the proposed collocation or deployment involves the removal and replacement of an existing facility's entire supporting structure; or~~
- ~~iv. the proposed collocation or deployment does not qualify for mandatory approval under 47 U.S.C. section 1455, as may be amended or superseded, and as may be interpreted by any order of the FCC or any court of competent jurisdiction.~~

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~~2-B.~~ Procedures for Denial without Prejudice. All small wireless facility permit application denials shall be in writing and shall include: (i) the decision date; (ii) a statement that the city denies the permit without prejudice; (iii) a short and plain statement of the basis for the denial; and (iv) that the applicant may submit the same or substantially the same permit application in the future.

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~~3-C.~~ Submittal after Denial without Prejudice. After the director denies a small wireless facility permit application, and subject to the generally applicable permit application submittal provisions in this chapter, an applicant shall be allowed to:

- i. submit a new small wireless facility permit application for the same or substantially the same proposed collocation or deployment; or
- ii. submit an appeal of the director's decision to the city council in accordance with section 17.41.100 of this code.

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~~4-D.~~ Costs to Review a Denied Permit. The city shall be entitled to recover the reasonable costs for its review of any small wireless facility permit application. In the event that the director denies a small wireless facility permit application, the city shall return any unused deposit fees within sixty (60) days after a written request from the applicant. An applicant shall not be allowed to submit a small wireless facility permit application for the same or substantially the same proposed modification unless all costs for the previously denied permit application are paid in full.

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~~2. Nothing in this section shall modify the existing standards for non-small wireless facility applications.~~

~~3. Nothing in this section shall limit the city's authority to negotiate different standards for small wireless facility applications.~~

17.41.100. Appeals.

~~Appeals of decisions by the planning commission or director under this section are governed by Chapter 17.31 of this code. Refer to 17.31 Appeals and City Council Review in Title 17 Zoning Ordinance~~

~~i.A. Within fifteen (15) calendar days following the date of any decision by the director or planning commission on a wireless facility permit application, any person or entity may appeal the decision to the city council. The city council may call for the review of a decision by the director or planning commission by a majority vote.~~

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~~ii.B. Where an appeal is timely filed, the city manager shall prepare a staff report regarding the original decision and shall submit the report to the city council along with the written notice of appeal submitted by the appellant, and shall make the written record available to the city council.~~

~~iii.C. The appeal before the city council shall be a public hearing and shall be appropriately noticed. The appellant shall bear all costs for the appeal.~~

~~iv.D.~~ The city council shall hear the appeal at a regular city council meeting or at a special meeting of the city council called for the purpose of hearing the appeal, after allowing for sufficient time for the city manager to prepare the written report and compile the written record. To prevent applicants from withholding information or otherwise abusing the appeal process, the city council has the discretion but is not required to hear additional evidence, and may decide the matter solely on the record that was before the director or planning commission.

~~v.E.~~ The city council may accept or reject, wholly or in part, or may modify, the decision made by the director or planning commission. If the decision of the city council regarding the wireless facility permit appeal is to deny the wireless facility permit or conditionally approve the wireless facility permit, the city council shall direct the city manager to prepare written findings referencing substantial evidence in the city's written administrative record and such written finding shall be provided to the city council for adoption. The applicant and any appellant on the application shall receive a copy of the final written decision approved by the city council.

17.41.110 Independent consultant review.

A. Selection by Director. The director may select and retain with the approval of the city manager one or more independent consultants with expertise in communications satisfactory to the director and the city manager in connection with any permit review and evaluation.

B. Scope. The independent consultant shall review the project aspects that involve technical or specialized knowledge and may address:

~~a.1.~~ Whether the applicant submitted a complete and accurate application;

~~b.2.~~ Whether the facts and materials presented in a particular application tend to support certain statements or analyses in the application;

~~c.3.~~ Compliance with any applicable regulations;

~~d.4.~~ Any other specific technical or specialized issues requested by the city; and/or

~~e.5.~~ Presence or absence of a significant gap in service coverage, as appropriate.

C. Independent Consultant Fee Deposit. The applicant shall pay the cost for any independent consultant fees, along with applicable overhead recovery, through a deposit, estimated by the director, paid at the time the applicant submits an application. The applicant shall pay all consultant fees before the city may act on a permit application. In the event that such costs or fees do not exceed the deposit amount, the city shall refund any unused portion within sixty (60) days after the final building permit is released or, if no final building permit is released, within sixty (60) days after the city receives a written request from the applicant.

17.41.120. Maintenance.

A. All wireless communication facilities must comply with all standards and regulations of the FCC, and any other state or federal government agency with the authority to regulate wireless communication facilities.

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B. The site and the wireless communication facility, including all landscaping, fencing, and related transmission equipment must be maintained in a neat and clean manner and in accordance with all approved plans.

C. All graffiti on wireless communication facilities must be removed at the sole expense of the permittee within forty-eight (48) hours of notification.

D. A wireless communication facility located in the public right-of-way may not unreasonably interfere with the use of any city property or the public right-of-way by the city, by the general public or by other persons authorized to use or be present in or upon the public right-of-way. Unreasonable interference includes disruption to vehicular or pedestrian traffic, and interference with any other city or public utilities.

E. If any FCC, CPUC or other required license or approval to provide communication services is ever revoked, the permittee must inform the director of the revocation within ten (10) days of receiving notice of such revocation.

17.41.130. Removal of abandoned facilities.

~~i~~A. Any facility whose permit has expired or whose permit has been terminated by the city or that is not operated for a continuous period of one-hundred and eighty (180) days shall be deemed abandoned, and the owner of the facility shall remove the facility within ninety (90) days of receipt of notice from the director notifying the owner of the abandonment.

~~ii~~B. If the facility is not removed within the ninety (90) day period, the director may remove the facility at the permittee's, facility owner's, or landowner's expense pursuant to the city's abatement procedures.

~~iii~~C. If there are two or more users of the permitted facility, this provision shall not become effective until all applicable permits have expired or have terminated or all users cease using the facility.

~~iv~~D. As a condition of approval for permit issuance, the applicant shall provide a separate demolition bond for the duration of the permit, and in the form and manner of surety as determined by the director and approved as to form by the city attorney, with provision for inspection and city removal of the facility in the event of failure to perform by the responsible parties as defined by this chapter.

17.41.140. Ownership transfers.

Upon transfer of an approved wireless communication facility or any rights under the applicable permit or approval, the permittee of the facility must within thirty (30) days of such transfer provide written notification to the director of the date of the transfer and the identity of the transferee. The director may require submission of any supporting materials or documentation necessary to determine that the facility is in compliance with the existing permit or approval and all of its conditions including, but not limited to, statements, photographs, plans, drawings, and analysis by a qualified engineer demonstrating compliance with all applicable regulations and standards of the city, FCC, and CPUC.

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17.41.150. Revocation of a wireless facility permit.

~~(a)~~A. A wireless facility permit may be revoked if the permittee is not in compliance with permit conditions, if the permit conditions are not enforceable, or for a failure to comply with any provision of the code relating to the permit, or relating to the wireless facility associated with the permit (“default event”). By way of example and not limitation, a refusal to timely remove facilities located in the rights-of-way where required in connection with a public works project would be a default event.

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~~(b)~~B. The Community Development Director may revoke a wireless facility permit only after:

~~a-1~~.1. Written notice of the default event has been provided to the wireless facility permit holder.

~~b-2~~.2. The wireless facility permit holder has been afforded a reasonable opportunity to cure and comply with its permit, or demonstrate that no default event occurred.

~~c-3~~.3. If the wireless facility permit holder fails to cure, the city council, or designee, shall conduct a noticed public hearing where the wireless facility permit holder shall be afforded an opportunity to speak and be heard and to provide written material prior to the hearing. If the city council or its designee, after the public hearing, finds that the wireless facility or the wireless facility permit holder has violated any law regulating the wireless facility or has failed to comply with the requirements of this chapter, the wireless facility permit, any applicable agreement or any condition of approval, the city council may revoke the permit.

~~d-4~~.4. Upon revocation, the city council may require the removal of the wireless facility or take any other legally permissible action or combination of actions necessary to protect the health and welfare of the city.

17.41.160. Exception from standards.

~~1-A~~. Exception from standards for wireless facilities:

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a. Notwithstanding the provisions of this chapter, one or more specific exceptions to the standards contained within this chapter may be granted if a denial of an exception would prohibit or have the effect of prohibiting the provision of wireless communications services by the applicant within the meaning of Title 47, United States Code section 332, subdivision (c)(7) or if the denial of the exception is otherwise preempted or prohibited by state or federal law or regulations. The city may grant an exception, on such terms as the city may deem appropriate, in cases where the city determines that the grant of an exception is necessary to comply with state and federal law or regulations.

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b. Prior to the issuance of an exception, the applicant shall be required to submit to the director a written explanation setting forth clear and convincing evidence that the location or locations and the design of the facility is necessary to close a significant gap in service coverage, that there is no feasible alternate location or locations, or design, that would close this significant gap in coverage or reduce this significant gap in coverage to less than significant, and that the facility is the

least intrusive means to close a significant gap or to reduce it to less than a significant gap in coverage.

~~1-c.~~ Exceptions shall be subject to the review and approval by the planning commission at noticed public hearings. The burden is on the applicant to prove significant gaps and least intrusive means as required herein.

~~2-B.~~ Exception from standards for small wireless facility;

~~1-a.~~ Nothing in this section shall modify the existing standards for non-small wireless facility applications.

~~2-b.~~ Nothing in this section shall limit the city's authority to negotiate different standards for small wireless facility applications.

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17.41.170 Violations.

It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. Any person, firm, partnership, or corporation violating any provision of this chapter or failing to comply with any of its requirements will be deemed guilty of an infraction and upon conviction thereof will be punished by fine not exceeding \$1,000.00. Each such person, firm, partnership, or corporation will be deemed guilty of a separate offense for each and every day or any portion thereof during which any violation of any of the provisions of this chapter is committed, continued or permitted by such person, firm, partnership, or corporation, and will be deemed punishable therefor as provided in this chapter. The remedies specified in this chapter shall be cumulative and the city may resort to any other remedy available at law or in equity and resort to any one remedy shall not cause an election precluding the use of any other remedy with respect to a violation.

17.41.180 Severability.

In the event that a court of competent jurisdiction holds any section, subsection, paragraph, sentence, clause, or phrase in this chapter unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this chapter and shall not affect the validity of the remaining portions of this chapter. The city hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause, or phrase in this chapter irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses, or phrases in this chapter might be declared unconstitutional, preempted, or otherwise invalid.

Section 3. CEQA.

The adoption of this Ordinance is exempt from review under the California Environmental Quality Act (CEQA). Pursuant to section 15061(b)(3) of the CEQA Guidelines, CEQA applies only to projects which have the potential for causing a significant effect on the environment. This policy will not result in a significant foreseeable environmental impact. To the extent this Ordinance is determined to be a project within the meaning of CEQA, it is categorically exempt under CEQA Guidelines section 15301 (Existing Facilities) and CEQA Guidelines section 15311 (Accessory Structures).

Section 4. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The city council hereby declares that it would have passed this and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional on their face or as applied.

Section 5. Declaration of Urgency.

This Ordinance is hereby declared to be an urgency measure necessary for the immediate protection of the public health, safety and welfare and shall take effect immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the city council under Government Code section 36937.

Section 6. Posting.

The city clerk shall cause this ordinance to be published and/or posted within fifteen (15) days after its adoption.

This Ordinance was introduced, passed, approved, and adopted by the City Council of the City of Lakeport at a regular meeting thereof on the __ day of __, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINING:

TIM BARNES, Mayor

ATTEST:

KELLY BUENDIA, City Clerk



CITY OF LAKEPORT

- City Council
- City of Lakeport Municipal Sewer District
- Lakeport Redevelopment Successor Agency
- Lakeport Industrial Development Authority
- Municipal Financing Agency of Lakeport

STAFF REPORT

RE: Lakefront Promenade Stamped Concrete Design

MEETING DATE: 12/3/2019

SUBMITTED BY: Kevin M. Ingram, Community Development Director

PURPOSE OF REPORT: Information only Discussion Action Item

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to review and consider design options for the Lakefront Promenade stamped concrete pathway as recommended by the Parks and Recreation Commission.

BACKGROUND/DISCUSSION:

A key element of the adopted 2017 Lakeport Lakefront Revitalization Plan includes a 'Waterfront Promenade' along the entire shoreline of Clear Lake, stretching from C Street to Clear Lake Avenue. The initial implementation phase would accompany the replacement of the storm damaged sea wall, scheduled to be replaced this December. Additional phases would follow—

- Phase I: Library Park Sea Wall Replacement Area
- Phase II: Prop 68 Lakefront Park Grant (Natural High Property)
- Phase III: Waterfront Path between Library Park and proposed new Lakefront Park (Third & Fifth Street Boat Ramps and Parking Area)
- Future Phases: Private Lands (Will-O-Point & North Main Resort Enhancement Zone)



On October 17, 2017, City staff presented the Parks and Recreation Commission with three stamped concrete design option to consider for use along the Lakefront Promenade. These options included—gray brick, wood plank and random slate. The Commission discussed the coordination of the color on the concrete with the seawall color, the railings and other elements to ensure an overall aesthetic. The Commissioners requested the

decision be held till the next regular meeting in order to allow time to individually look at the existing stamped concrete work in Library Park to better formulate a decision.

At the regular meeting of the Parks & Recreation Committee on November 21, 2019 a motion was made to recommend the wood plank design option to the City Council (See Attachment 1—Parks & Recreation 11/21/2019 Minute Order). Samples of each of the proposed design options are provided as a part of this report (See Attachment 2—Stamped Concrete Design Alternatives)

OPTIONS:

Move to approve the proposed wood plank stamped concrete design for use along the Lakefront Promenade as recommended by the Parks and Recreation Commission; or provide alternative direction to staff.

FISCAL IMPACT:

None \$0 Budgeted Item? Yes No

Budget Adjustment Needed? Yes No If yes, amount of appropriation increase:

Affected fund(s): General Fund Water OM Fund Sewer OM Fund Other:

Comments:

SUGGESTED MOTIONS:

Move to approve the proposed wood plank stamped concrete design for use along the Lakefront Promenade.

- Attachments:**
 1. Minute Order – 11/21/2019 Parks & Recreation Commission Meeting
 2. Stamped Concrete Design Alternatives



MINUTE ORDER

PARKS AND RECREATION COMMISSION REGULAR MEETING November 21, 2019

Please be advised of the following action taken by the Parks and Recreation Commission:

A. Library Park:

The staff report was presented by Community Development Director Ingram.

The Commission members had previously viewed the options, and all three (3) agreed that they preferred the Wood Plank design.

A motion was made by Commissioner Ustrud, seconded by Commissioner Hanson, and passed by unanimous voice vote, with Commissioners Moore and Yahnke absent, to recommend the Wood Plank stamped concrete design for the Lakefront Promenade to the City Council.

Respectfully Submitted,

Hilary Britton
Deputy City Clerk

Lakefront Promenade

Stamped Concrete Design Alternatives

Gray Brick Stamped Concrete



Wood Plank Stamped Concrete



Random Slate Stamped Concrete





CITY OF LAKEPORT

City Council
City of Lakeport Municipal Sewer District

STAFF REPORT

RE: Resolution in Support of the Keeping California Safe Act

MEETING DATE: 12/03/19

SUBMITTED BY: Brad Rasmussen, Chief of Police

PURPOSE OF REPORT: Information only Discussion Action Item

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

Adopt a Resolution in Support of the Keeping California Safe Act

BACKGROUND:

Since 2011, a series of sentencing and criminal justice reforms have been passed by both the legislature, and the voter initiative process. While these changes were successful in reducing the state prison population, in conjunction, and as a result of some Supreme Court decisions on their interpretation, there have also been some dangerous unintended consequences. This initiative attempts to correct some of those unintended consequences.

The first key legislative change was in 2011, with Assembly Bill 109 (AB 109), commonly known as “Realignment”. AB 109 effectively shifted tens of thousands of state prison inmates and state prison sentences to local county jails, most of which were already overcrowded. It also shifted the post release supervision of those inmates from state parole, to county probation departments.

As local jails filled up with the types of inmates who ordinarily would have been sent to a state prison, local jail inmates received shorter sentences and earlier releases. The effect of shorter sentences and earlier releases impacted all levels of inmates, regardless of criminal history.

There is a key difference between local probation supervision, known as Post Release Community Supervision (PRCS), and State Parole supervision. Unlike State Parole, which has a 24-hour phone line that our officers can call to advise a supervising parole agent if they have contact with a parolee suspected of being involved in criminal conduct, PRCS supervision is headed by County probation officers. Several county probation departments do not offer a 24-hour supervision line. Although Lake County probation does not have an on-call probation officer for PRCS inquiries or a 24-hour supervision line they are open to being contacted. Lakeport, police officers often encounter PRCS probationers from outside of Lake County. PRCS probationers from other nearby counties often travel to Lakeport for the specific intent of committing thefts or other crimes. The Keeping California Safe Act would, among other things, strengthen penalties for parole violations and require parole board hearings to consider an inmates entire criminal history when making decisions on early parole, not just the most recent offense. A review of an offender’s entire criminal history is a better indicator of public safety risk, as well as an offender’s likelihood to re-offend.

In 2014, voters passed Proposition 47 (Prop 47). Prop 47 downgraded “possession of drug” crimes, such as heroin, cocaine, methamphetamine, to misdemeanors, along with most theft crimes. Now drug users, who

steal from stores or unlocked vehicles, when arrested, are issued a citation and face insignificant criminal consequence (which means very little motivation to seek sobriety programs). With local jail beds already occupied by what used to be state prison inmates, the combined effect of Prop 47 with AB 109 is very little confinement time consequences for drug users and thieves, despite repeated offenses.

DISCUSSION:

Removing consequences for this type of conduct has not gone unnoticed. Property crimes have risen since 2014. California DOJ reported a 13 percent increase in 2015, the largest single-year increase in a decade. Every week, Lakeport police officers handle calls related to retail theft from our local stores. Suspects tend to flee neighboring jurisdictions and travel through the City of Lakeport with stolen property. Even when apprehended, the consequences for these theft crimes have challenged the old adage of “Crime doesn’t pay.” Often times, serial thieves continue their criminal behavior while out on bail, on conditional Own Recognizance (O.R.) release, or even on PRCS supervision from similar convictions, since a short (often only hours) stay in jail if caught does not dissuade future criminal activity in light of the profits made from selling stolen items on the black market.

Reducing felony crimes to misdemeanors also had an effect on the collection of DNA for crime solving. In California, persons arrested for felony crimes are photographed, fingerprinted, and a buccal swab for a statewide DNA database is collected. This database has proven to be a very useful tool in the solving of cold cases including murders, rapes, and other violent crimes. Since Prop 47, however, the number of cold case hits have dropped significantly, allowing potential murderers, rapist, and violent criminals to remain free as their cases remain unsolved.

In 2016, voters passed Proposition 57 (Prop 57). This measure was also introduced as a reform to reduce prison overcrowding, by allowing the release of “non-violent” felons. After several court rulings, however, it was determined that all felony crimes not already identified by the statute that defines the “violent felony” list, is by default, “non-violent.” This includes crimes such as:

- Domestic Violence
- Felony Elder abuse
- Felony Hate Crimes
- Assault with a Deadly Weapon
- Drive-by Shootings
- Serial Arson
- Exploding a bomb to injure people
- Rape, sodomy, or oral copulation of an unconscious victim
- Solicitation to commit murder
- False imprisonment/hostage taking
- Use of force or threats against a witness or crime victim

Prop 57 also opened the door to early parole releases for a variety of offenders, many of whom society would traditionally describe as “violent”, even if the court ruling deems them eligible. Recent court rulings have concluded that sex offender inmates are also eligible for early parole and reduced sentences under Proposition 57.

While well intentioned, these changes and their combined effects have had unintended consequences that have made for dangerous conditions. Statewide, there have been several incidents of violent crime carried out by offenders who, but for the above reforms, would not have been out of jail or prison when they committed their crimes.

The Keeping California Safe Act, a ballot initiative for the November 2020 ballot, does not look to undo the changes from the above reforms. It does, however, address several of their dangerous unintended consequences. The Keeping California Safe Act expands the list of “violent” felonies to include violent crimes such as sex trafficking of a minor, rape of an unconscious person, and domestic violence, among others. It also restores the collection of DNA for theft and drug crimes that have been reclassified as misdemeanors by Prop 47

Statewide, Public Safety groups, victim groups, local governments, and business community organizations support the Keeping California Safe Act. The League of Cities is also supporting this initiative. Several California cities have already passed resolutions in support, including:

- City of Anderson
- City of Atascadero
- City of Auburn
- City of Chowchilla
- City of Citrus Hghts
- City of Clovis
- City of Colusa
- City of Eureka
- City of Fairfield
- City of Farmersville
- City of Galt
- City of Gilroy
- City of Glendale
- City of Kingsburg
- City of Lincoln
- City of Morgan Hill
- City of Oakdale
- City of Rocklin
- City of Roseville
- City of Shasta Lake
- City of Turlock
- City of Visalia
- City of Tustin
- City of Whittier
- City of Winters
- City of American Canyon

Locally stores like the Grocery Outlet have seen an uptake in local thefts. They have seen serial thefts involving sophisticated operations where thieves price check before the theft so as to avoid the \$950 felony threshold. In the past the threshold was \$400 before you hit a felony charge. Additionally the owner estimates that his 6 month theft related losses are currently at \$100,000. The owner also estimates that he has an additional \$50,000 in security related expenses because of the rise in thefts. He has additional labor costs because he has to post an employee at the entrance to deter theft. He lamented that these additional expenses have hurt his ability to make further charitable donations in the community.

OPTIONS:

The Council can either choose to support the Keeping California Safe Act by passing a resolution today or not support the act by not passing the resolution.

FISCAL IMPACT:

None \$ **Account Number:** **Comments:**

SUGGESTED MOTIONS:

Move to adopt a resolution supporting the Keeping California Safe Act.

- Attachments:**
 1. Resolution No. XXXX (2019)
 2. Copy of Proposed Legislation Text
 3. Initiative for Public Safety Fact Sheet

RESOLUTION NO. XXX (2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKEPORT SUPPORTING THE REDUCING CRIME AND KEEPING CALIFORNIA SAFE ACT

WHEREAS, protecting every person in our state, including our most vulnerable children, from violent crime is of the utmost importance; and

WHEREAS, since 2014, California has had a larger increase in violent crime than the rest of the United States; and

WHEREAS between 2014 and 2016, California had the 2nd highest increase in theft and property crimes in the United States, while most states saw a steady decline; and

WHEREAS, according to the California Department of Justice, the value of stolen property in 2015 was \$2.5 Billion dollars, a 13% increase from 2014; and

WHEREAS, in City of Lakeport, organized retail thieves visit our City for the specific intent of stealing from our retail businesses; and

WHEREAS, recent changes to California law allow individuals who steal repeatedly to face few consequences, regardless of their criminal record or how many times they steal; and

WHEREAS, many of the criminals who come to the City of Lakeport to commit thefts are often on “supervised release”, have active arrest warrants, are in possession of dangerous drugs such as methamphetamine and heroin, and are illegally in possession of firearms; and

WHEREAS, often times, when leaving the scene after committing a theft or a robbery, Lakeport Police Officers locate the get-away vehicle and attempt to pull the offenders over, resulting in dangerous vehicle pursuits; and

WHEREAS, recent changes in parole laws allowed the early release of dangerous criminals by the law’s failure to define certain crimes as “violent.” These changes allowed individuals convicted of sex trafficking of children, rape of an unconscious person, felony assault with a deadly weapon, and battery on a police officer or firefighter to be considered “non-violent offenders”; and

WHEREAS, as a result, these so-called “non-violent” offenders are eligible for early release from prison after serving only a fraction of the sentence ordered by a judge; and

WHEREAS, violent offenders are also being allowed to remain free in our communities even when they commit new crimes and violate the terms of the Post Release Community Supervision; and

WHEREAS, the lack of consequences eliminates incentives to stop committing further crimes, or seek sobriety for drug addiction; and

WHEREAS, this measure reforms the law so felons who violate the terms of their release can be brought back to court and held accountable for such violations; and

WHEREAS, grocery store operators around the state have seen unprecedented increases in the amount of losses associated with shoplifting in their stores, with some reporting up to 150 percent increase in these losses from 2012 to present, with the largest jump occurring since 2014; and

WHEREAS, individuals who repeatedly steal often do so to support their drug habit. Recent changes to California law have reduced judges' ability to order individuals convicted of repeat theft crimes into effective drug treatment programs; and

WHEREAS, nothing in this act is intended to create additional "strike" offenses which would increase the state prison population, nor is it intended to affect the ability of the California Department of Corrections and Rehabilitation to award educational and merit credits; and

WHEREAS, an unintended consequence from recent changes in California law greatly reduced the number of criminals involved in theft and drug crimes, from whom DNA collection assisted in solving other violent crimes; and

WHEREAS, this measure restores DNA collection from persons convicted for such offenses that will help identify suspects, clear the innocent, and free the wrongly convicted; and

WHEREAS, this measure does not affect existing legal safeguards that protect the privacy of individuals by allowing for the removal of their DNA profile if they are not charged with a crime, are acquitted or found innocent; and

WHEREAS, this measure has the support of several California cities including Fairfield, Chico, Morgan Hill, Redding, Citrus Heights, among others, along with the California Police Chief's Association, California Peace Officers Association, California District Attorneys Office Association, California Grocers Association, and the California Business Properties Association.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lakeport hereby supports the Reducing Crime and Keeping California Safe Act.

DULY AND REGULARLY ADOPTED this 3rd day of December, 2019, by the following vote:

AYES: Council Members
NOES: None
ABSTAINING: None
ABSENT: None

Tim Barnes, Mayor

ATTEST:

Kelly Bundia, City Clerk

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The Attorney General of California has prepared the following circulating title and summary of the chief purpose and points of the proposed measure:

(17-0044.) RESTRICTS PAROLE FOR NON-VIOLENT OFFENDERS. AUTHORIZES FELONY SENTENCES FOR CERTAIN OFFENSES CURRENTLY TREATED ONLY AS MISDEMEANORS. INITIATIVE STATUTE. Imposes restrictions on parole program for non-violent offenders who have completed the full term for their primary offense. Expands list of offenses that disqualify an inmate from this parole program. Changes standards and requirements governing parole decisions under this program. Authorizes felony charges for specified theft crimes currently chargeable only as misdemeanors, including some theft crimes where the value is between \$250 and \$950. Requires persons convicted of specified misdemeanors to submit to collection of DNA samples for state database. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: Increased state and local correctional costs likely in the tens of millions of dollars annually, primarily related to increases in penalties for certain theft-related crimes and the changes to the nonviolent offender release consideration process. Increased state and local court-related costs of around a few million dollars annually related to processing probation revocations and additional felony theft filings. Increased state and local law enforcement costs not likely to exceed a couple million dollars annually related to collecting and processing DNA samples from additional offenders.

To the Honorable Secretary of State of California:

We, the undersigned, registered, qualified voters of California, residents of the County (or City and County) referenced on the signature page of this petition, hereby propose amendments to the California Penal Code relating to parole, serial theft, and DNA collection from convicted criminals, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or as otherwise provided by law. The proposed statutory amendments (full title and text of the measure) read as follows:

SEC. 1. TITLE

This act shall be known and may be cited as the Reducing Crime and Keeping California Safe Act of 2018.

SEC. 2. PURPOSES

This measure will fix three related problems created by recent laws that have threatened the public safety of Californians and their children from violent criminals. This measure will:

- A. Reform the parole system so violent felons are not released early from prison, strengthen oversight of post release community supervision and tighten penalties for violations of terms of post release community supervision;
- B. Reform theft laws to restore accountability for serial thieves and organized theft rings; and
- C. Expand DNA collection from persons convicted of drug, theft and domestic violence related crimes to help solve violent crimes and exonerate the innocent.

SEC. 3. FINDINGS AND DECLARATIONS

A. Prevent Early Release of Violent Felons

1. Protecting every person in our state, including our most vulnerable children, from violent crime is of the utmost importance. Murderers, rapists, child molesters and other violent criminals should not be released early from prison.
2. Since 2014, California has had a larger increase in violent crime than the rest of the United States. Since 2013, violent crime in Los Angeles has increased 69.5%. Violent crime in Sacramento rose faster during the first six months of 2015 than in any of the 25 largest U.S. cities tracked by the FBI.
3. Recent changes to parole laws allowed the early release of dangerous criminals by the law's failure to define certain crimes as "violent." These changes allowed individuals convicted of sex trafficking of children, rape of an unconscious person, felony assault with a deadly weapon, battery on a police officer or firefighter, and felony domestic violence to be considered "non-violent offenders."
4. As a result, these so-called "non-violent" offenders are eligible for early release from prison after serving only a fraction of the sentence ordered by a judge.
5. Violent offenders are also being allowed to remain free in our communities even when they commit new crimes and violate the terms of their post release community supervision, like the gang member charged with the murder of Whittier Police Officer, Keith Boyer.
6. Californians need better protection from such violent criminals.
7. Californians need better protection from felons who repeatedly violate the terms of their post release community supervision.
8. This measure reforms the law so felons who violate the terms of their release can be brought back to court and held accountable for such violations.
9. Californians need better protection from such

violent criminals. This measure reforms the law to define such crimes as "violent felonies" for purposes of early release.

10. Nothing in this act is intended to create additional "strike" offenses which would increase the state prison population.

11. Nothing in this act is intended to affect the ability of the California Department of Corrections and Rehabilitation to award educational and merit credits.

B. Restore Accountability for Serial Theft and Organized Theft Rings

1. Recent changes to California law allow individuals who steal repeatedly to face few consequences, regardless of their criminal record or how many times they steal.

2. As a result, between 2014 and 2016, California had the 2nd highest increase in theft and property crimes in the United States, while most states have seen a steady decline. According to the California Department of Justice, the value of property stolen in 2015 was \$2.5 billion with an increase of 13 percent since 2014, the largest single-year increase in at least ten years.

3. Individuals who repeatedly steal often do so to support their drug habit. Recent changes to California law have reduced judges' ability to order individuals convicted of repeated theft crimes into effective drug treatment programs.

4. California needs stronger laws for those who are repeatedly convicted of theft related crimes, which will encourage those who repeatedly steal to support their drug problem to enter into existing drug treatment programs. This measure enacts such reforms.

C. Restore DNA Collection to Solve Violent Crime

1. Collecting DNA from criminals is essential to solving violent crimes. Over 450 violent crimes including murder, rape and robbery have gone unsolved because DNA is being collected from fewer criminals.

2. DNA collected in 2015 from a convicted child molester solved the rape-murders of two six-year-old boys that occurred three decades ago in Los Angeles County. DNA collected in 2016 from an individual caught driving a stolen car solved the 2012 San Francisco Bay Area rape-murder of an 83-year-old woman.

3. Recent changes to California law unintentionally eliminated DNA collection for theft and drug crimes. This measure restores DNA collection from persons convicted for such offenses.

4. Permitting collection of more DNA samples will help identify suspects, clear the innocent and free the wrongly convicted.

5. This measure does not affect existing legal safeguards that protect the privacy of individuals by allowing for the removal of their DNA profile if they are not charged with a crime, are acquitted or are found innocent.

SEC. 4. PAROLE CONSIDERATION

Section 3003 of the Penal Code is amended to read:

[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

(a) Except as otherwise provided in this section, an inmate who is released on parole or postrelease supervision as provided by Title 2.05 (commencing with Section 3450) shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. For purposes of this subdivision, "last legal residence" shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Parole Hearings setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections and Rehabilitation setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community: (1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections and Rehabilitation, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e)(1) The following information, if available, shall be released by the Department of Corrections and Rehabilitation to local law enforcement agencies regarding a paroled inmate or inmate placed on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) who is released in their jurisdictions:

(A) Last, first, and middle names.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole or placement on postrelease community supervision and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole or postrelease community supervision in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date that the address proposed pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the inmate's residence location for use with a Geographical Information System (GIS) or comparable computer program.

(N) Copies of the record of supervision during any prior period of parole.

(2) Unless the information is unavailable, the Department of Corrections and Rehabilitation shall electronically transmit to the county agency identified in subdivision (a) of Section 3451 the inmate's tuberculosis status, specific medical, mental health, and outpatient clinic needs, and any medical concerns or disabilities for the county to consider as the offender transitions onto postrelease community supervision pursuant to Section 3450, for the purpose of identifying the medical and mental health needs of the individual. All transmissions to the county agency shall be in compliance with applicable provisions of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191), the federal Health Information Technology for Clinical Health Act (HITECH) (Public Law 111-005), and the implementing of privacy and security regulations in Parts 160 and 164 of Title 45 of the Code of Federal Regulations. This paragraph shall not take effect until the Secretary of the United States Department of Health and Human Services, or his or her designee, determines that this provision is not preempted by HIPAA.

(3) Except for the information required by paragraph (2), the information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.

(4) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(5) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

~~(f) Notwithstanding any other law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, and paragraph (16) of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily injury on a person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of a victim or witness: the victim or witness, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, any of the following crimes:~~

(1) A violent felony as defined subdivision (c) of Section 667.5 or subdivision (a) of Section 3040.1.

(2) A felony in which the defendant inflicts great bodily injury on a person, other than an accomplice, that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9.

(g) Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public

shall not be placed or reside, for the duration of his or her parole, within one-half mile of a public or private school including any or all of kindergarten and grades 1 to 12, inclusive.

(h) Notwithstanding any other law, an inmate who is released on parole or postrelease community supervision for a stalking offense shall not be returned to a location within 35 miles of the victim's or witness' actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole or postrelease community supervision, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation, or the supervising county agency, as applicable, finds that there is a need to protect the life, safety, or well-being of the victim.

If an inmate who is released on postrelease community supervision cannot be placed in his or her county of last legal residence in compliance with this subdivision, the supervising county agency may transfer the inmate to another county upon approval of the receiving county.

(i) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

(j) An inmate may be paroled to another state pursuant to any other law. The Department of Corrections and Rehabilitation shall coordinate with local entities regarding the placement of inmates placed out of state on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450).

(k)(1) Except as provided in paragraph (2), the Department of Corrections and Rehabilitation shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e). County agencies supervising inmates released to postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) shall provide any information requested by the department to ensure the availability of accurate information regarding inmates released from state prison. This information may include all records of supervision, the issuance of warrants, revocations, or the termination of postrelease community supervision. On or before August 1, 2011, county agencies designated to supervise inmates released to postrelease community supervision shall notify the department that the county agencies have been designated as the local entity responsible for providing that supervision.

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

(l) In addition to the requirements under subdivision (k), the Department of Corrections and Rehabilitation shall submit to the Department of Justice data to be included in the supervised release file of the California Law Enforcement Telecommunications System (CLETS) so that law enforcement can be advised through CLETS of all persons on postrelease community supervision and the county agency designated to provide supervision. The data required by this subdivision shall be provided via electronic transfer.

Section 3040.1 is added to the Penal Code to read:

(a) For purposes of early release or parole consideration under the authority of Section 32 of Article I of the Constitution, Sections 12838.4 and 12838.5 of the Government Code, Sections 3000.1, 3041.5, 3041.7, 3052, 5000, 5054, 5055, 5076.2 of this Code and the rulemaking authority granted by Section 5058 of this Code, the following shall be defined as "violent felony offenses":

(1) Murder or voluntary manslaughter;

(2) Mayhem;

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262;

(4) Sodomy as defined in subdivision (c) or (d) of Section 286;

(5) Oral copulation as defined in subdivision (c) or (d) of Section 288a;

(6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288;

(7) Any felony punishable by death or imprisonment in the state prison for life;

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in

subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55;

(9) Any robbery;

(10) Arson, in violation of subdivision (a) or (b) of Section 451;

(11) Sexual penetration as defined in subdivision (a) or (j) of Section 289;

(12) Attempted murder;

(13) A violation of Section 18745, 18750, or 18755;

(14) Kidnapping;

(15) Assault with the intent to commit a specified felony, in violation of Section 220;

(16) Continuous sexual abuse of a child, in violation of Section 288.5;

(17) Carjacking, as defined in subdivision (a) of Section 215;

(18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1;

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22;

(20) Threats to victims or witnesses, as defined in subdivision (c) of Section 136.1;

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary;

(22) Any violation of Section 12022.53;

(23) A violation of subdivision (b) or (c) of Section 11418;

(24) Solicitation to commit murder;

(25) Felony assault with a firearm in violation of subsections (a)(2) and (b) of Section 245;

(26) Felony assault with a deadly weapon in violation of paragraph (1) of subdivision (a) of Section 245;

(27) Felony assault with a deadly weapon upon the person of a peace officer or firefighter in violation of subdivisions (c) and (d) of Section 245;

(28) Felony assault by means of force likely to produce great bodily injury in violation of paragraph (4) of subdivision (a) of Section 245;

(29) Assault with caustic chemicals in violation of Section 244;

(30) False imprisonment in violation of Section 210.5;

(31) Felony discharging a firearm in violation of Section 246;

(32) Discharge of a firearm from a motor vehicle in violation of subsection (c) of Section 26100;

(33) Felony domestic violence resulting in a traumatic condition in violation of Section 273.5;

(34) Felony use of force or threats against a witness or victim of a crime in violation of Section 140;

(35) Felony resisting a peace officer and causing death or serious injury in violation of Section 148.10;

(36) A felony hate crime punishable pursuant to Section 422.7;

(37) Felony elder or dependent adult abuse in violation of subdivision (b) of Section 368;

(38) Rape in violation of paragraphs (1), (3), or (4) of subdivision (a) of Section 261;

(39) Rape in violation of Section 262;

(40) Sexual penetration in violation of subdivision (b), (d) or (e) of Section 289;

(41) Sodomy in violation of subdivision (f), (g), or (i) of Section 286;

(42) Oral copulation in violation of subdivision (f), (g), or (i) of Section 288a;

(43) Abduction of a minor for purposes of prostitution in violation of Section 267;

(44) Human trafficking in violation of subdivision (a), (b), or (c) of Section 236.1;

(45) Child abuse in violation of Section 273ab;

(46) Possessing, exploding, or igniting a destructive device in violation of Section 18740;

(47) Two or more violations of subsection (c) of Section 451;

(48) Any attempt to commit an offense described in this subdivision;

(49) Any felony in which it is pled and proven that the Defendant personally used a dangerous or deadly weapon;

(50) Any offense resulting in lifetime sex offender registration pursuant to Sections 290 through 290.009.

(51) Any conspiracy to commit an offense described in this Section.

(b) The provisions of this section shall apply to any inmate serving a custodial prison sentence on or after the effective date of this section, regardless of when the sentence was imposed.

Section 3040.2 is added to the Penal Code to read:

(a) Upon conducting a nonviolent offender parole consideration review, the hearing officer for the Board of Parole

Hearings shall consider all relevant, reliable information about the inmate.

(b) The standard of review shall be whether the inmate will pose an unreasonable risk of creating victims as a result of felonious conduct if released from prison.

(c) In reaching this determination, the hearing officer shall consider the following factors:

(1) Circumstances surrounding the current conviction;
(2) The inmate's criminal history, including involvement in other criminal conduct, both juvenile and adult, which is reliably documented;

(3) The inmate's institutional behavior including both rehabilitative programming and institutional misconduct;
(4) Any input from the inmate, any victim, whether registered or not at the time of the referral, and the prosecuting agency or agencies;

(5) The inmate's past and present mental condition as documented in records in the possession of the Department of Corrections and Rehabilitation;

(6) The inmate's past and present attitude about the crime;

(7) Any other information which bears on the inmate's suitability for release.

(d) The following circumstances shall be considered by the hearing officer in determining whether the inmate is unsuitable for release:

(1) Multiple victims involved in the current commitment offense;

(2) A victim was particularly vulnerable due to age or physical or mental condition;

(3) The inmate took advantage of a position of trust in the commission of the crime;

(4) The inmate was armed with or used a firearm or other deadly weapon in the commission of the crime;

(5) A victim suffered great bodily injury during the commission of the crime;

(6) The inmate committed the crime in association with a criminal street gang;

(7) The inmate occupied a position of leadership or dominance over other participants in the commission of the crime, or the inmate induced others to participate in the commission of the crime;

(8) During the commission of the crime, the inmate had a clear opportunity to cease but instead continued;

(9) The inmate has engaged in other reliably documented criminal conduct which was an integral part of the crime for which the inmate is currently committed to prison;

(10) The manner in which the crime was committed created a potential for serious injury to persons other than the victim of the crime;

(11) The inmate was on probation, parole, post release community supervision, mandatory supervision or was in custody or had escaped from custody at the time of the commitment offense;

(12) The inmate was on any form of pre- or post-conviction release at the time of the commitment offense;

(13) The inmate's prior history of violence, whether as a juvenile or adult;

(14) The inmate has engaged in misconduct in prison or jail;

(15) The inmate is incarcerated for multiple cases from the same or different counties or jurisdictions.

(e) The following circumstances shall be considered by the hearing officer in determining whether the inmate is suitable for release:

(1) The inmate does not have a juvenile record of assaulting others or committing crimes with a potential of harm to victims;

(2) The inmate lacks any history of violent crime;

(3) The inmate has demonstrated remorse;

(4) The inmate's present age reduces the risk of recidivism;

(5) The inmate has made realistic plans if released or has developed marketable skills that can be put to use upon release;

(6) The inmate's institutional activities demonstrate an enhanced ability to function within the law upon release;

(7) The inmate participated in the crime under partially excusable circumstances which do not amount to a legal defense;

(8) The inmate had no apparent predisposition to commit the crime but was induced by others to participate in its commission;

(9) The inmate has a minimal or no criminal history;

(10) The inmate was a passive participant or played a minor role in the commission of the crime;

(11) The crime was committed during or due to an unusual situation unlikely to reoccur.

Section 3040.3 is added to the Penal Code to read:

(a) An inmate whose current commitment includes a concurrent, consecutive or stayed sentence for an offense or allegation defined as violent by subdivision (c) of

Section 667.5 or 3040.1 shall be deemed a violent offender for purposes of Section 32 of Article I of the Constitution.

(b) An inmate whose current commitment includes an indeterminate sentence shall be deemed a violent offender for purposes of Section 32 of Article I of the Constitution.

(c) An inmate whose current commitment includes any enhancement which makes the underlying offense violent pursuant to subdivision (c) of Section 667.5 shall be deemed a violent offender for purposes of Section 32 of Article I of the Constitution.

(d) For purposes of Section 32 of Article I of the Constitution, the "full term" of the "primary offense" shall be calculated based only on actual days served on the commitment offense.

Section 3040.4 is added to the Penal Code to read:

Pursuant to subsection (b) of Section 28 of Article I of the Constitution, the Department shall give reasonable notice to victims of crime prior to an inmate being reviewed for early parole and release. The Department shall provide victims with the right to be heard regarding early parole consideration and to participate in the review process. The Department shall consider the safety of the victims, the victims' family, and the general public when making a determination on early release.

(a) Prior to conducting a review for early parole, the Department shall provide notice to the prosecuting agency or agencies and to registered victims, and shall make reasonable efforts to locate and notify victims who are not registered.

(b) The prosecuting agency shall have the right to review all information available to the hearing officer including, but not limited to the inmate's central file, documented adult and juvenile criminal history, institutional behavior including both rehabilitative programming and institutional misconduct, any input from any person or organization advocating on behalf of the inmate, and any information submitted by the public.

(c) A victim shall have a right to submit a statement for purposes of early parole consideration, including a confidential statement.

(d) All prosecuting agencies, any involved law enforcement agency, and all victims, whether or not registered, shall have the right to respond to the board in writing.

(e) Responses to the Board by prosecuting agencies, law enforcement agencies, and victims must be made within 90 days of the date of notification of the inmate's eligibility for early parole review or consideration.

(f) The Board shall notify the prosecuting agencies, law enforcement agencies, and the victims of the Nonviolent Offender Parole decision within 10 days of the decision being made.

(g) Within 30 days of the notice of the final decision concerning Nonviolent Offender Parole Consideration, the inmate and the prosecuting agencies may request review of the decision.

(h) If an inmate is denied early release under the Nonviolent Offender Parole provisions of Section 32 of Article I of the Constitution, the inmate shall not be eligible for early Nonviolent Offender parole consideration for two (2) calendar years from the date of the final decision of the previous denial.

Section 3041 of the Penal Code is amended to read:

[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

(a)(1) In the case of any inmate sentenced pursuant to any law, other than Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, the Board of Parole Hearings shall meet with each inmate during the sixth year before the inmate's minimum eligible parole date for the purposes of reviewing and documenting the inmate's activities and conduct pertinent to parole eligibility.

During this consultation, the board shall provide the inmate information about the parole hearing process, legal factors relevant to his or her suitability or unsuitability for parole, and individualized recommendations for the inmate regarding his or her work assignments, rehabilitative programs, and institutional behavior. Within 30 days following the consultation, the board shall issue its positive and negative findings and recommendations to the inmate in writing.

(2) One year before the inmate's minimum eligible parole date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate and shall normally grant parole as provided in Section 3041.5. No more than one member of the panel shall be a deputy commissioner.

(3) In the event of a tie vote, the matter shall be referred for an en banc review of the record that was before the panel that rendered the tie vote. Upon en banc review, the

board shall vote to either grant or deny parole and render a statement of decision. The en banc review shall be conducted pursuant to subdivision (e).

(4) Upon a grant of parole, the inmate shall be released subject to all applicable review periods. However, an inmate shall not be released before reaching his or her minimum eligible parole date as set pursuant to Section 3046 unless the inmate is eligible for earlier release pursuant to his or her youth offender parole eligibility date or elderly parole eligibility date.

(5) At least one commissioner of the panel shall have been present at the last preceding meeting, unless it is not feasible to do so or where the last preceding meeting was the initial meeting. Any person on the hearing panel may request review of any decision regarding parole for an en banc hearing by the board. In case of a review, a majority vote in favor of parole by the board members participating in an en banc review is required to grant parole to any inmate.

(b)(1) The panel or the board, sitting en banc, shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual. The panel or the board, sitting en banc, shall consider the entire criminal history of the inmate, including all current or past convicted offenses, in making this determination.

(2) After July 30, 2001, any decision of the parole panel finding an inmate suitable for parole shall become final within 120 days of the date of the hearing. During that period, the board may review the panel's decision. The panel's decision shall become final pursuant to this subdivision unless the board finds that the panel made an error of law, or that the panel's decision was based on an error of fact, or that new information should be presented to the board, any of which when corrected or considered by the board has a substantial likelihood of resulting in a substantially different decision upon a rehearing. In making this determination, the board shall consult with the commissioners who conducted the parole consideration hearing.

(3) A decision of a panel shall not be disapproved and referred for rehearing except by a majority vote of the board, sitting en banc, following a public meeting.

(c) For the purpose of reviewing the suitability for parole of those inmates eligible for parole under prior law at a date earlier than that calculated under Section 1170.2, the board shall appoint panels of at least two persons to meet annually with each inmate until the time the person is released pursuant to proceedings or reaches the expiration of his or her term as calculated under Section 1170.2.

(d) It is the intent of the Legislature that, during times when there is no backlog of inmates awaiting parole hearings, life parole consideration hearings, or life rescission hearings, hearings will be conducted by a panel of three or more members, the majority of whom shall be commissioners. The board shall report monthly on the number of cases where an inmate has not received a completed initial or subsequent parole consideration hearing within 30 days of the hearing date required by subdivision (a) of Section 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless the inmate has waived the right to those timeframes. That report shall be considered the backlog of cases for purposes of this section, and shall include information on the progress toward eliminating the backlog, and on the number of inmates who have waived their right to the above timeframes. The report shall be made public at a regularly scheduled meeting of the board and a written report shall be made available to the public and transmitted to the Legislature quarterly.

(e) For purposes of this section, an en banc review by the board means a review conducted by a majority of commissioners holding office on the date the matter is heard by the board. An en banc review shall be conducted in compliance with the following:

(1) The commissioners conducting the review shall consider the entire record of the hearing that resulted in the tie vote.

(2) The review shall be limited to the record of the hearing. The record shall consist of the transcript or audiotape of the hearing, written or electronically recorded statements actually considered by the panel that produced the tie vote, and any other material actually considered by the panel. New evidence or comments shall not be considered in the en banc proceeding.

(3) The board shall separately state reasons for its decision to grant or deny parole.

(4) A commissioner who was involved in the tie vote shall be recused from consideration of the matter in the

en banc review.

Section 3454 of the Penal Code is amended to read:

[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

- (a) Each supervising county agency, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, shall establish a review process for assessing and refining a person's program of postrelease supervision. Any additional postrelease supervision conditions shall be reasonably related to the underlying offense for which the offender spent time in prison, or to the offender's risk of recidivism, and the offender's criminal history, and be otherwise consistent with law.
- (b) Each county agency responsible for postrelease supervision, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, may determine additional appropriate conditions of supervision listed in Section 3453 consistent with public safety, including the use of continuous electronic monitoring as defined in Section 1210.7, order the provision of appropriate rehabilitation and treatment services, determine appropriate incentives, and determine and order appropriate responses to alleged violations, which can include, but shall not be limited to, immediate, structured, and intermediate sanctions up to and including referral to a reentry court pursuant to Section 3015, or flash incarceration in a city or county jail. Periods of flash incarceration are encouraged as one method of punishment for violations of an offender's condition of postrelease supervision.
- (c) As used in this title, "flash incarceration" is a period of detention in a city or county jail due to a violation of an offender's conditions of postrelease supervision. The length of the detention period can range between one and 10 consecutive days. Flash incarceration is a tool that may be used by each county agency responsible for postrelease supervision. Shorter, but if necessary more frequent, periods of detention for violations of an offender's postrelease supervision conditions shall appropriately punish an offender while preventing the disruption in a work or home establishment that typically arises from longer term revocations.
- (d) Upon a decision to impose a period of flash incarceration, the probation department shall notify the court, public defender, district attorney, and sheriff of each imposition of flash incarceration.

Section 3455 of the Penal Code is amended to read:

[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

- (a) If the supervising county agency has determined, following application of its assessment processes, that intermediate sanctions as authorized in subdivision (b) of Section 3454 are not appropriate, or if the supervised person has violated the terms of his or her release for a third time, the supervising county agency shall petition the court pursuant to Section 1203.2 to revoke, modify, or terminate postrelease community supervision. At any point during the process initiated pursuant to this section, a person may waive, in writing, his or her right to counsel, admit the violation of his or her postrelease community supervision, waive a court hearing, and accept the proposed modification of his or her postrelease community supervision. The petition shall include a written report that contains additional information regarding the petition, including the relevant terms and conditions of postrelease community supervision, the circumstances of the alleged underlying violation, the history and background of the violator, and any recommendations. The Judicial Council shall adopt forms and rules of court to establish uniform statewide procedures to implement this subdivision, including the minimum contents of supervision agency reports. Upon a finding that the person has violated the conditions of postrelease community supervision, the revocation hearing officer shall have authority to do all of the following:
- (1) Return the person to postrelease community supervision with modifications of conditions, if appropriate, including a period of incarceration in a county jail.
- (2) Revoke and terminate postrelease community supervision and order the person to confinement in a county jail.
- (3) Refer the person to a reentry court pursuant to Section 3015 or other evidence-based program in the court's discretion.
- (b) (1) At any time during the period of postrelease community supervision, if a peace officer, including a probation officer, has probable cause to believe a

person subject to postrelease community supervision is violating any term or condition of his or her release, or has failed to appear at a hearing pursuant to Section 1203.2 to revoke, modify, or terminate postrelease community supervision, the officer may, without a warrant or other process, arrest the person and bring him or her before the supervising county agency established by the county board of supervisors pursuant to subdivision (a) of Section 3451. Additionally, an officer employed by the supervising county agency may seek a warrant and a court or its designated hearing officer appointed pursuant to Section 71622.5 of the Government Code shall have the authority to issue a warrant for that person's arrest.

- (2) The court or its designated hearing officer shall have the authority to issue a warrant for a person who is the subject of a petition filed under this section who has failed to appear for a hearing on the petition or for any reason in the interests of justice, or to remand to custody a person who does appear at a hearing on the petition for any reason in the interests of justice.
- (3) Unless a person subject to postrelease community supervision is otherwise serving a period of flash incarceration, whenever a person who is subject to this section is arrested, with or without a warrant or the filing of a petition for revocation, the court may order the release of the person under supervision from custody under any terms and conditions the court deems appropriate.
- (c) The revocation hearing shall be held within a reasonable time after the filing of the revocation petition. Except as provided in paragraph (3) of subdivision (b), based upon a showing of a preponderance of the evidence that a person under supervision poses an unreasonable risk to public safety, or that the person may not appear if released from custody, or for any reason in the interests of justice, the supervising county agency shall have the authority to make a determination whether the person should remain in custody pending the first court appearance on a petition to revoke postrelease community supervision, and upon that determination, may order the person confined pending his or her first court appearance.
- (d) Confinement pursuant to paragraphs (1) and (2) of subdivision (a) shall not exceed a period of 180 days in a county jail for each custodial sanction.
- (e) A person shall not remain under supervision or in custody pursuant to this title on or after three years from the date of the person's initial entry onto postrelease community supervision, except when his or her supervision is tolled pursuant to Section 1203.2 or subdivision (b) of Section 3456.

SEC. 5. DNA COLLECTION

Section 296 of the Penal Code is amended to read:

[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

- (a) The following persons shall provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required pursuant to this chapter for law enforcement identification analysis:
- (1) Any person, including any juvenile, who is convicted of or pleads guilty or no contest to any felony offense, or is found not guilty by reason of insanity of any felony offense, or any juvenile who is adjudicated under Section 602 of the Welfare and Institutions Code for committing any felony offense.
- (2) Any adult person who is arrested for or charged with any of the following felony offenses:
- (A) Any felony offense specified in Section 290 or attempt to commit any felony offense described in Section 290, or any felony offense that imposes upon a person the duty to register in California as a sex offender under Section 290.
- (B) Murder or voluntary manslaughter or any attempt to commit murder or voluntary manslaughter.
- (C) Commencing on January 1, 2009, any adult person arrested or charged with any felony offense.
- (3) Any person, including any juvenile, who is required to register under Section 290 through 290.009 or 457.1 because of the commission of, or the attempt to commit, a felony or misdemeanor offense, or any person, including any juvenile, who is housed in a mental health facility or sex offender treatment program after referral to such facility or program by a court after being charged with any felony offense.
- (4) Any person, excluding a juvenile, who is convicted of, or pleads guilty or no contest to, any of the following offenses:
- (A) A misdemeanor violation of Section 459.5;
- (B) A violation of subdivision (a) of Section 473 that is punishable as a misdemeanor pursuant to subdivision (b) of Section 473;
- (C) A violation of subdivision (a) of Section 476a that is

punishable as a misdemeanor pursuant to subdivision (b) of Section 476a;

(D) A violation of Section 487 that is punishable as a misdemeanor pursuant to Section 490.2;

(E) A violation of Section 496 that is punishable as a misdemeanor;

(F) A misdemeanor violation of subdivision (a) of Section 11350 of the Health and Safety Code;

(G) A misdemeanor violation of subdivision (a) of Section 11377 of the Health and Safety Code;

(H) A misdemeanor violation of paragraph (1) of subdivision (e) of Section 243;

(I) A misdemeanor violation of Section 273.5;

(J) A misdemeanor violation of paragraph (1) of subdivision (b) of Section 368;

(K) Any misdemeanor violation where the victim is defined as set forth in Section 6211 of the Family Code;

(L) A misdemeanor violation of paragraph (3) of subdivision (b) of Section 647.

~~(4)(5)~~ The term "felony" as used in this subdivision includes an attempt to commit the offense.

~~(5)(6)~~ Nothing in this chapter shall be construed as prohibiting collection and analysis of specimens, samples, or print impressions as a condition of a plea for a non-qualifying offense.

(b) The provisions of this chapter and its requirements for submission of specimens, samples and print impressions as soon as administratively practicable shall apply to all qualifying persons regardless of sentence imposed, including any sentence of death, life without the possibility of parole, or any life or indeterminate term, or any other disposition rendered in the case of an adult or juvenile tried as an adult, or whether the person is diverted, fined, or referred for evaluation, and regardless of disposition rendered or placement made in the case of juvenile who is found to have committed any felony offense or is adjudicated under Section 602 of the Welfare and Institutions Code.

(c) The provisions of this chapter and its requirements for submission of specimens, samples, and print impressions as soon as administratively practicable by qualified persons as described in subdivision (a) shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility, and shall include, but not be limited to, the following persons, including juveniles:

(1) Any person committed to a state hospital or other treatment facility as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any person who has a severe mental disorder as set forth within the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

(3) Any person found to be a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(d) The provisions of this chapter are mandatory and apply whether or not the court advises a person, including any juvenile, that he or she must provide the data bank and database specimens, samples, and print impressions as a condition of probation, parole, or any plea of guilty, no contest, or not guilty by reason of insanity, or any admission to any of the offenses described in subdivision (a).

(e) If at any stage of court proceedings the prosecuting attorney determines that specimens, samples, and print impressions required by this chapter have not already been taken from any person, as defined under subdivision (a) of Section 296, the prosecuting attorney shall notify the court orally on the record, or in writing, and request that the court order collection of the specimens, samples, and print impressions required by law. However, a failure by the prosecuting attorney or any other law enforcement agency to notify the court shall not relieve a person of the obligation to provide specimens, samples, and print impressions pursuant to this chapter.

(f) Prior to final disposition or sentencing in the case the court shall inquire and verify that the specimens, samples, and print impressions required by this chapter have been obtained and that this fact is included in the abstract of judgment or dispositional order in the case of a juvenile. The abstract of judgment issued by the court shall indicate that the court has ordered the person to comply with the requirements of this chapter and that the person shall be included in the state's DNA and Forensic Identification Data Base and Data Bank program and be subject to this chapter.

However, failure by the court to verify specimen, sample, and print impression collection or enter these facts in the abstract of judgment or dispositional order in the case of

a juvenile shall not invalidate an arrest, plea, conviction, or disposition, or otherwise relieve a person from the requirements of this chapter.

SEC. 6. SHOPLIFTING

Section 459.5 of the Penal Code is amended to read:

[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

(a) Notwithstanding Section 459, shoplifting is defined as entering a commercial establishment with intent to ~~commit larceny~~ steal retail property or merchandise while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950). Any other entry into a commercial establishment with intent to commit larceny is burglary. Shoplifting shall be punished as a misdemeanor, except that a person with one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290 may be punished pursuant to subdivision (h) of Section 1170.

(b) Any act of shoplifting as defined in subdivision (a) shall be charged as shoplifting. No person who is charged with shoplifting may also be charged with burglary or theft of the same property.

(c) “Retail property or merchandise” means any article, product, commodity, item or component intended to be sold in retail commerce.

(d) “Value” means the retail value of an item as advertised by the affected retail establishment, including applicable taxes.

(e) This section shall not apply to theft of a firearm, forgery, the unlawful sale, transfer, or conveyance of an access card pursuant to Section 484e, forgery of an access card pursuant to Section 484f, the unlawful use of an access card pursuant to Section 484g, theft from an elder pursuant to subdivision (e) of Section 368, receiving stolen property, embezzlement, or identity theft pursuant to Section 530.5, or the theft or unauthorized use of a vehicle pursuant to Section 10851 of the Vehicle Code.

Section 490.2 of the Penal Code is amended to read:

[language added to an existing section of law is designated in underlined type and language deleted is designated in ~~strikeout~~ type]

(a) Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

(b) This section shall not be applicable to any theft that may be charged as an infraction pursuant to any other provision of law.

(c) This section shall not apply to theft of a firearm, forgery, the unlawful sale, transfer, or conveyance of an access card pursuant to Section 484e, forgery of an access card pursuant to Section 484f, the unlawful use of an access card pursuant to Section 484g, theft from an elder pursuant to subdivision (e) of Section 368, receiving stolen property, embezzlement, or identity theft pursuant to Section 530.5, or the theft or unauthorized use of a vehicle pursuant to Section 10851 of the Vehicle Code.

SEC. 7. SERIAL THEFT

Section 490.3 is added to the Penal Code to read:

(a) This section applies to the following crimes:

- (1) petty theft;
- (2) shoplifting;
- (3) grand theft;
- (4) burglary;
- (5) carjacking;
- (6) robbery;
- (7) a crime against an elder or dependent adult within the meaning of subdivision (d) or (e) of Section 368;
- (8) any violation of Section 496;
- (9) unlawful taking or driving of a vehicle within the meaning of Section 10851 of the Vehicle Code.
- (10) Forgery.
- (11) The unlawful sale, transfer, or conveyance of an

access card pursuant to Section 484e.

(12) Forgery of an access card pursuant to Section 484f.

(13) The unlawful use of an access card pursuant to Section 484g.

(14) Identity theft pursuant to Section 530.5.

(15) The theft or unauthorized use of a vehicle pursuant to Section 10851 of the Vehicle Code.

(b) Notwithstanding subsection (3) of subdivision (h) of Section 1170, subsections (2) and (4) of subdivision (a) of Section 1170.12, subsections (2) and (4) of subdivision (c) of Section 667, any person who, having been previously convicted of two or more of the offenses specified in subdivision (a), which offenses were committed on separate occasions, and who is subsequently convicted of petty theft or shoplifting where the value of the money, labor, or real or personal property taken exceeds two hundred fifty dollars (\$250) shall be punished by imprisonment in the county jail not exceeding one year, or imprisonment pursuant to subdivision (h) of Section 1170.

(c) This section does not prohibit a person or persons from being charged with any violation of law arising out of the same criminal transaction that violates this section.

SEC. 8. ORGANIZED RETAIL THEFT

Section 490.4 is added to the Penal Code to read:

(a) “Retail property or merchandise” means any article, product, commodity, item or component intended to be sold in retail commerce.

(b) “Value” means the retail value of an item as advertised by the affected retail establishment, including applicable taxes.

(c) Any person, who, acting in concert with one or more other persons, commits two (2) or more thefts pursuant to Sections 459.5 or 490.2 of retail property or merchandise having an aggregate value exceeding two hundred fifty dollars (\$250) and unlawfully takes such property during a period of one hundred eighty days (180) is guilty of organized retail theft.

(d) Notwithstanding subsection (3) of subdivision (h) of Section 1170, subsections (2) and (4) of subdivision (a) of Section 1170.12, subsections (2) and (4) of subdivision (c) of Section 667, organized retail theft shall be punished by imprisonment in the county jail not exceeding one year, or imprisonment pursuant to subdivision (h) of Section 1170.

(e) For purposes of this section, the value of retail property stolen by persons acting in concert may be aggregated into a single count or charge, with the sum of the value of all of the retail merchandise being the values considered in determining the degree of theft.

(f) An offense under this section may be prosecuted in any county in which an underlying theft could have been prosecuted as a separate offense.

(g) This section does not prohibit a person or persons from being charged with any violation of law arising out of the same criminal transaction that violates this section.

SEC. 9. AMENDMENTS

This act shall not be amended by the Legislature except by a statute that furthers the purposes, findings and declarations of the Act and is passed in each house by roll call vote entered in the journal, three-fourths of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters.

SEC. 10. SEVERABILITY

If any provision of this Act, or any part of any provision, or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remaining provisions and applications which can be given effect without the invalid or unconstitutional provision or application shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

SEC. 11. CONFLICTING INITIATIVES

(a) In the event that this measure and another measure addressing parole consideration pursuant to Section 32 of Article I of the Constitution, revocation of parole and post release community supervision, DNA collection, or theft offenses shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot

measure is later held invalid, this measure shall be self-executing and given full force and effect.



An Initiative for Public Safety

VIOLENT CRIME

What is a 'violent crime'? For California's new parole law, the definition is murky — and it matters *(Los Angeles Times)*

- Expands the list of violent crimes for which early release is not an option
- Under current law, rape of an unconscious person, trafficking a child for sex, assault of a peace officer, felony domestic violence and other similar crimes are not classified as “violent felonies” — making criminals convicted of these crimes eligible for early release
- Gives victims reasonable notice of inmates' release and the right to submit a confidential statement to the Board of Parole Hearings

DNA COLLECTION

California's DNA database gets fewer hits due to Prop. 47 (KCRA)

- Reinstates DNA collection for certain crimes that were reduced to misdemeanors as part of Proposition 47
- Multiple studies have shown that DNA collected from theft and drug crimes has helped solve other violent crimes, including robbery, rape and murder. Since passage of Prop. 47, cold case hits have dropped over 2,000, with more than 450 of those hits connected to violent crimes

SERIAL THEFT

**An explosion of California property crimes
— due to Prop. 47** *(San Francisco Chronicle)*

- Revises the theft threshold by adding a felony for serial theft — when a person is caught for the 3rd time stealing with a value of \$250
- Prop. 47 changed the dollar threshold for theft to be considered a felony — from \$450 to \$950. As a result, there has been an explosion of serial theft and an inability of law enforcement to prosecute these crimes effectively. Theft has increased by 12% to 25%, with losses of a billion dollars since the law was passed.
- This problem won't be solved legislatively

PAROLE VIOLATIONS

**Suspect in Whittier police officer shooting death
arrested 5 times in last 7 months** *(Whittier Daily News)*

- Requires the Board of Parole Hearings to consider an inmate's entire criminal history when deciding parole, not just his most recent commitment offense; and requires a mandatory hearing to determine whether parole should be revoked for any parolee who violates the terms of his parole for the third time
- AB 109 bases parole solely on an offender's commitment offense, resulting in the release of inmates with serious and violent criminal histories. Moreover, parolees who repeatedly violate the terms of their parole currently face few consequences, allowing them to remain on the street

Keep California Safe

A Project of the California Public Safety Partnership Issues Committee

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