RESOLUTION NO. 2019-4696

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KING, CALIFORNIA, ADOPTING COUNCIL POLICIES AND PROCEDURES GOVERNING SMALL WIRELESS FACILITIES

A. The City Council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.

B. Significant changes in Federal and State law that affect local authority over wireless communications facilities ("WCFs") have occurred, including but not limited to the following:

i. On November 18, 2009, the Federal Communications Commission ("FCC") adopted a declaratory ruling (the "2009 Shot Clock"), which established presumptively reasonable timeframes for State and local governments to act on applications for WCFs.

ii. On February 22, 2012, Congress adopted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act ("Section 6409(a)"), which mandated that State and local governments approve certain modifications and collocations to existing WCFs, known as eligible facilities requests.

iii. On October 17, 2014, the FCC adopted a report and order that, among other things, implemented new limitations on how State and local governments review applications covered by Section 6409(a), established an automatic approval for such applications when the local reviewing authority fails to act within 60 days, and also further restricted generally applicable procedural rules under the 2009 Shot Clock.

iv. On October 9, 2015, California adopted Assembly Bill No. 57 (Quirk), which deemed approved any WCF applications when the local reviewing authority fails to act within the 2009 Shot Clock timeframes.

v. On August 2, 2018, the FCC adopted a declaratory ruling that formally prohibited express and de facto moratoria for all telecommunications services and facilities under 47 U.S.C. § 253(a).

vi. On September 26, 2018, the FCC adopted a declaratory ruling and report and order that, among other things, creates a new regulatory classification for small wireless facilities ("SWFs"), requires State and local governments to process applications for small wireless facilities within 60 days or 90 days, establishes a national standard for an effective prohibition and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition.

C. In addition to the changes described above, new Federal laws and regulations that drastically alter local authority over WCFs are currently pending, including without limitation, the following:

i. On March 30, 2017, the FCC issued a Notice of Proposed Rulemaking (WT Docket No. 17-79, WC Docket No. 17-84) and has acted on some of the noticed issues referenced above, but may adopt forthcoming rulings and/or orders that further limit local authority over wireless facilities deployment.

ii. On June 28, 2018, United States Senator John Thune introduced and referred to the Senate Committee on Commerce, Science and Transportation the "STREAMLINE Small Cell Deployment Act" (S. 3157) that, among other things, would apply specifically to small cell WCFs and require local governments to review applications based on objective standards, shorten the 2009 Shot Clock timeframes, require all proceedings to occur within the 2009 Shot Clock timeframes, and provide a "deemed granted" remedy for failure to act within the applicable 2009 Shot Clock.

D. Given the rapid and significant changes in Federal and State law, the actual and effective prohibition on moratoria to amend local policies in response to such changes and the significant adverse consequences for noncompliance with Federal and State law, the City Council desires to amend Chapter 7.38 of the King City Municipal Code, entitled "Chapter 7.38 - WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY" (the "Ordinance") to allow greater flexibility and responsiveness to the new Federal and State laws while still preserving the City's traditional authority to the maximum extent practicable.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of King as follows:

SECTION 1. The facts set forth in the recitals in this Resolution are true and correct and incorporated by reference. The recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony, if any, and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in the Resolution.

SECTION 2. The Resolution is consistent with the City's General Plan, King City Municipal Code, and applicable Federal and State law.

SECTION 3. The Resolution will not be detrimental to the public interest, health, safety, convenience or welfare.

SECTION 4. The Resolution is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Resolution does not authorize any specific development or installation on any specific piece of property within the City's boundaries. The Resolution is further exempt from CEQA because the City Council's adoption of the Resolution is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment (State CEQA Guidelines, § 15061(b)(3)). Installations, if any, would be exempt from CEQA review in accordance with either State CEQA Guidelines Section 15302 (replacement or reconstruction), State CEQA

Guidelines Section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines Section 15304 (minor alterations to land).

SECTION 5. The Resolution establishing Council policies and procedures governing small wireless facilities is hereby adopted in its entirety as shown in *Exhibit "A"* attached hereto and incorporated herein by this reference.

SECTION 6. If the provisions in this Resolution conflict in whole or in part with any other City regulation adopted prior to the effective date of this Resolution, the provisions in this Resolution will control.

SECTION 7. If any subsection, subdivision, paragraph, sentence, clause or phrase of this Resolution or any part thereof is for any reason held to be unconstitutional or otherwise unenforceable, such decision shall not affect the validity of the remaining portion of this Resolution or any part thereof. The City Council hereby declare that they would have passed each subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more subsection, subdivision, paragraph, sentence, clause, or phrase be declared unconstitutional or otherwise unenforceable.

SECTION 8. This Resolution shall take effect immediately after its adoption.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of King at a regular meeting thereof held on the 26th day of March, 2019, by the following vote:

AYES: LeBarre, Victoria, Acosta, Cullen, DeLeon
NOES: _____
ABSTAIN: _____
ABSENT: _____

ATTEST

STEVEN ADAMS, City Clerk

CITY OF KING

By: _____
MIKE LEBARRE, Mayor

APPROVED AS TO FORM:

By: _____
ROY C. SANTOS, City Attorney
Aleshire & Wynder, LLP

I, _____, City Clerk of the City of King, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Resolution passed and adopted by the City Council of the City of King on the date and by the vote indicated herein.

EXHIBIT A

COUNCIL POLICY GOVERNING SWF's

SMALL WIRELESS FACILITIES PER 47 CFR 1.6002(1)

"SWF REGULATIONS"

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SECTION 1. GENERAL PROVISIONS

SECTION 1.1 PURPOSE AND INTENT

This Policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC' s regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unfair, unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California law.

SECTION 1.2 GENERAL DEFINITIONS

(a) **Undefined Terms**. Undefined phrases, terms or words in this Policy will have the meanings assigned to them in Chapter 7.38 of the King City Municipal Code, as may be amended or superseded, and, if not defined therein, will have their ordinary meanings. If any definition assigned to any phrase, term or word in this Policy conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

(b) **Defined Terms.**

(1) **"approval authority"** means the City official responsible for reviewing applications for small cell permits and vested with the authority to approve, conditionally approve or deny such applications as provided in this Policy. The approval authority for applications in connection with small wireless facilities within the public rights-of-way shall be the City Engineer.

(2) **"arterial road"** means a road designed primarily for long-distance travel with a typical curb-to-curb width of 106 feet to 80 feet, high traffic capacity and low accessibility from neighboring roads. The term "arterial road" as used in this Policy includes freeways, prime arterials, urban major and major roadways as defined in the City of King General Plan, Circulation Element.

(3) **"collector road"** means a road designed primarily as a connection between local roads and arterials, with a typical curb-to-curb width of 64 feet to 40 feet, moderate to low traffic capacity and high accessibility from local roads. The term "collector road" as used in this Policy includes 4-lane collectors, 2-lane collectors and 2-lane light collectors as defined in the City of King General Plan, Circulation Element.

(4) **"concealed"** or **"concealment"** means camouflaging techniques that integrate the transmission equipment into the surrounding natural and/or built environment such that the average, untrained observer cannot directly view the equipment but would likely recognize the existence of the wireless facility or concealment technique. Camouflaging concealment techniques include, but are not limited to: (1) facade or rooftop mounted pop-out screen boxes; (2) antennas mounted within a radome above a streetlight; (3) equipment cabinets in the public rights-of-way painted or wrapped to match the background; and (4) an isolated or standalone faux-tree.

(5) **"decorative pole"** means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.

(6) **"FCC Shot Clock"** means the presumptively reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended from time to time.

(7) **"ministerial permit"** means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City's jurisdiction. Ministerial permits may include, without limitation, a building permit, construction permit, electrical permit, encroachment permit, excavation permit and/or traffic control permit.

(8) **"personal wireless services"** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

(9) **"personal wireless service facilities"** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as facilities that provide personal wireless services.

(10) **"RF"** means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.

(11) **"Section 6409"** means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended.

(12) **"Small cell"** bears the same meaning as "small wireless facility" or "SWF" as used in Chapter 7.38 of the Municipal Code.

SECTION 2. SMALL WIRELESS FACILITIES

SECTION 2.1 APPLICABILITY; REQUIRED PERMITS AND APPROVALS

(a) **Applicable Wireless Facilities.** Except as expressly provided otherwise in this Policy, the provisions in this Policy shall be applicable to all existing small wireless facilities (SWFs) and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate or otherwise deploy small wireless facilities within the City's jurisdictional and territorial boundaries within the public rights-of-way (PROW).

SECTION 2.2 SMALL CELL PERMIT APPLICATION REQUIREMENTS; PRE-APPLICATION PUBLIC NOTICING REQUIREMENTS

(a) **Small Cell Permit Application Contents.** All applications for a SWF WTFP must include all the information and materials required in this subsection (a), unless exempted by the approval authority.

(1) **Application Form.** The applicant shall submit a complete, duly executed SWF WTFP application on the then-current form prepared pursuant to Chapter 7.38 of the King City Municipal Code.

(2) **Application Fee.** The applicant shall submit the applicable SWF WTFP application fee established by City Council resolution. Batched applications must include the applicable application fee for each SWF in the batch.

(3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all structures within 250 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.

(4) **Site Survey.** For any SWF proposed to be located within the PROW, the applicant shall submit a survey prepared, signed and stamped by a California

licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 250 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.

(5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed SWF in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point.

(6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a SWF as defined by the FCC in 47 C.F.R. 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a structure as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a SWF permit as provided in Section 2.4.

(7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed SWF, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

(8) **Public Notice.** *Prior to a SWF application being deemed complete, applicants shall submit proof of mailing of public notice to all owners and occupants of real property, and the resident manager for any multi-family dwelling unit that includes ten (10) or more units, within 300 feet of the proposed SWF.* The notice must contain: (1) a general project description and dimensioned, full color photo simulations; (2) the applicant's identification and contact information as provided on the application submitted to the City; (3) contact information for the approval

authority; (4) a statement that the approval authority will act on the application without a public hearing but will accept written public comments that evaluate the application for compliance with the standards in this Policy; (5) a statement that the FCC requires the City to act on small cell permit applications, which includes any administrative appeals, in 60 days for attachments to existing structures and 90 days for new structures, unless the applicant voluntarily agrees to toll the timeframe for review; and (6) a deadline for submission of written public comments to the approval authority, which deadline shall not be less than thirty (30) days after mailing of said notice.

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

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

(11) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by an engineer for the proposed SWF and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.

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

(13) Reserved

(14) **Environmental Data.** A completed environmental assessment application, or in the alternative any and all documentation identifying the proposed WTFP as exempt from environmental review (under the California Environmental Quality Act, Public Resources Code 21000–21189, the National Environmental Policy Act, 42 U.S.C. §4321 *et seq.*, or related environmental laws). Notwithstanding any determination of environmental exemption issued by another governmental entity, the city reserves its

right to exercise its rights as a responsible agency to review *de novo* the environmental impacts of any WTFP application.

(15) **FAA Documentation.** Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the proposed wireless telecommunications facility.

(16) **Traffic Control Plan (TCP).** A traffic control plan when the proposed installation is on any street in a non-residential zone. The city shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g. crane).

(17) **Landscape Plan.** A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the SWF and its accessory equipment.

(18) **CPCN.** Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the PROW. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.

(b) **Additional Requirements.** The City Council authorizes the approval authority to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the approval authority finds necessary, appropriate or useful for processing any application governed under this Policy. All such requirements and materials must be in written form and publicly stated to provide all interested parties with prior notice (or posted upon the City's website).

SECTION 2.3 SMALL CELL PERMIT APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

(a) **Pre-Submittal Conferences.** For purposes of SWFs only, and notwithstanding any contrary provisions of Chapter 7.38, the City does not require pre-submittal appointments for the submission of SWF WTFPs. However, the City strongly encourages applicants to schedule and attend a pre-submittal conference with the approval authority for all proposed SWF projects, and particularly those that involve more than five SWFs. This voluntary pre-submittal conference does not cause the FCC Shot Clock to begin and is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The approval authority shall use reasonable efforts to provide the applicant

with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the services rendered in the pre-submittal conference.

(b) **Batched Applications.** Applicants may submit up to five individual applications for a SWF permit in a batch; provided, however, that small wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each site in the batch. If any application in a batch is incomplete, the entire batch shall be deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch, the entire batch shall be deemed withdrawn. If any application in a batch fails to meet the required findings for approval, the entire batch shall be denied.

(c) **Additional Procedures.** The City Council authorizes the approval authority to establish other reasonable rules and regulations for duly filed applications. All such rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice (or posted upon the City's website).

SECTION 2.4 ADDITIONAL FINDINGS FOR SWFs

(a) **Required Findings.** In addition to those finding requirements set forth in Chapter 7.38 for SWF WTFP, the following findings are required for the approval or conditional approval of a SWF application:

(1) The proposed SWF would not be located on a prohibited support structure identified in this Policy;

(2) The proposed SWF would utilize the most preferred support structure and location within 250 feet from the originally proposed site in any direction, or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) or locations within 250 feet would be technically infeasible;

(3) All public notices required for the application have been given.

(b) Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, no decision upon a SWF application shall be premised upon the environmental or health effects of RF emissions, nor shall public comments be considered to the extent they are premised upon the environmental or health effects of RF emissions.

SECTION 2.5 STANDARD CONDITIONS OF APPROVAL

(a) **General Conditions.** In addition to all other conditions adopted by the approval authority and Chapter 7.38 for a SWF permit, all SWF WTFPs issued under this Policy shall be automatically subject to the conditions in this subsection (a).

(1) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a SWF approved or deemed-approved, the permittee shall provide the approval authority with documentation reasonably acceptable to the approval authority that the SWF has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.

(2) **Adverse Impacts on Other Properties.** In addition to those requirements in Chapter 7.38 the permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the King City Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The approval authority may issue a stop work order for any activities that violates this condition in whole or in part.

(3) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.

(4) **Future Undergrounding Programs.** If other public utilities or communications providers in the PROW underground their facilities in the segment of the PROW where the permittee's SWF is located, the permittee must underground its equipment except the antennas and any other equipment that must be placed above ground to function. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. SWFs installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.

(5) **Electric Meter Upgrades.** If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric

meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.

(6) **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (i) change any street grade, width or location; (ii) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (iii) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in the SWF permit. If the City Engineer determines that any City work will require the permittee's SWF located in the PROW to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's SWF within a reasonable time after the City Engineer's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's SWF without prior notice to permittee when the City Engineer determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.

SECTION 2.6 SECTION 2.6. LOCATION REQUIREMENTS

(a) **Preface to Location Requirements.** Applications that involve lesser-preferred locations or structures may be approved so long as the applicant demonstrates that either (1) no more preferred locations or structures exist within 250 feet from the proposed site; or (2) any more preferred locations or structurers within 250 feet from the proposed site would be technically infeasible to achieve the operator's service objectives, as supported by clear and convincing evidence in the written record. The final subsection of this Section 2.6 identifies "prohibited" support structures on which the City shall not approve any small cell permit application for any competitor or potential competitor.

(1) Allowable locations for SWFs are on existing or replacement infrastructure such as street lights and utility poles.

(2) When locating in an alley, the SWF shall be placed at a height above the roof line of adjacent buildings to avoid being placed adjacent to a window. When locating

in a walk-street, the facility shall be placed below the roof line of the adjacent buildings.

(3) When choosing locations, choose locations in between occupiable buildings rather than immediately adjacent to occupiable buildings, and not adjacent to a window.

(4) If the SWF is not able to be placed on existing infrastructure, the applicant shall provide a map of existing infrastructure in the service area and describe why each such site was not feasible.

(b) **Locations in the Public Rights-of-Way.** The City prefers small wireless facilities in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:

(1) Locations within industrial districts;

(2) Locations within commercial districts;

(3) Locations within residential districts;

(4) Locations within the historic downtown district; and

(5) Locations within open spaces and parks.

(c) **Support Structures in the Public Rights-of-Way**. The City prefers SWFs to be installed on support structures in the PROW, ordered from most preferred to least preferred, as follows:

(1) Existing or replacement utility poles;

(2) Existing or replacement standard street light poles.

(d) **Prohibited Support Structures.** The City prohibits SWFs to be installed on the following support structures:

(1) Historic structures/monuments, including but not limited to windmills;

(2) Strand-mounted wireless facilities are prohibited.

(3) Decorative poles;

(4) Traffic signals, signs, poles, cabinets and related devices;

(5) Any utility pole scheduled for removal or relocation within 12 months from the time the approval authority acts on the small cell permit application;

(6) New, non-replacement wood poles.

SECTION 2.7 DESIGN STANDARDS

(a) **Visual & Other General Standards**. SWFs shall be designed in the least visible means possible and to be compatible with support structure/surroundings.

(1) **Noise.** SWFs and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations in the King City Municipal Code, as may be amended or superseded, and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable district/zone.

(2) **Lights.** SWFs shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection (a)(2) shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this Policy.

(3) **Landscape Features.** SWFs shall not displace any existing landscape features unless: (A) such displaced landscaping is replaced with native and/or drought-resistant plants, trees or other landscape features approved by the approval authority and (B) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscape maintenance must be performed in accordance with the King City Municipal Code, as may be amended or superseded.

(A) If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree. The permittee shall, at all times, be responsible to maintain any replacement landscape features.

(B) To preserve existing landscaping in the public rights-of-way, all work performed in connection with SWFs shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees at the site for the duration of the permit term.

(4) **Site Security Measures.** SWFs may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The approval authority shall not approve

any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on SWFs shall be constructed from or coated with graffiti-resistant materials.

(5) **Signage; Advertisements.** All SWFs shall contain a site identification sticker that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. SWFs may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, OSHA, Federal Aviation Administration or other United States governmental agencies for compliance with RF emissions regulations. Permittees shall:

(A) Remove or paint over unnecessary equipment manufacturer decals and fill-in any visibly depressed manufacturer logos on equipment.

(B) Utilize the smallest and lowest visibility stickers required by government or electric utility regulations.

(C) Use sticker colors that are muted.

(D) Signage shall be maintained in legible condition and the carrier will be required to replace any faded signage within thirty (30) days of receiving written notification from the City that it is in need of replacing.

(6) **Compliance with Health and Safety Regulations.** All SWFs shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions.

(b) **Dimensions; Design.** Wireless facilities shall be as small, short and unobtrusive as possible.

(1) **Overall Height.** SWFs may not exceed either (A) the minimum separation from electrical lines required by applicable safety regulations, plus four feet or (B) four feet above the existing support structure. In addition, SWFs shall be located no higher than 10% or 10 feet, whichever is greater, than the height otherwise permitted in the immediately adjacent zoning district.

(2) **Concealment.** All antennas and associated mounting equipment, hardware, cables or other connecters must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be painted a flat, non-reflective color to match the underlying support structure. The wireless facility and accessory equipment shall be camouflaged with use of one or more concealment elements to blend the facility with surrounding materials and colors of the adjacent street light or utility pole to which it is mounted. Concealment elements include:

(A) Radio frequency transparent screening;

(B) Approved, specific colors;

(C) Use of non-reflective material(s);

(D) Minimizing the size of the site;

(E) Integrating the installation into existing or replacement utility infrastructure;

(F) Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site.

(G) Antennas, brackets (mounting), PVC or steel risers and cabling shall match the color of the adjacent structure.

(H) Paint shall be of durable quality.

(I) Materials shall be non-flammable and non-reflective..

(J) Each individual antenna may not exceed three cubic feet in volume and all antennas may not exceed six cubic feet in volume.

(3) **Accessory Equipment**.

(A) **Installation Preferences.** SWF accessory equipment shall be enclosed in replacement poles or placed underground where technically feasible, and if not feasible, shall be as small, short and unobtrusive as possible. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically infeasible as supported by clear and convincing evidence in the written record.

(B) **Undergrounded Accessory Equipment.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Applicants shall not be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced.

(c) **Streetlights.** Applicants that propose to install SWFs on an existing streetlight must remove and replace the existing streetlight with one substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment. To mitigate any material changes in the street lighting patterns, the replacement pole must: (A) be located as close to the removed pole as possible; (B) be aligned with the other existing streetlights; and (C) include a luminaire at substantially

the same height and distance from the pole as the luminaire on the removed pole. All antennas must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.

(d) **Wood Utility Poles.** Applicants that propose to install SWFs on an existing wood utility pole must install all antennas above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the side-arm mount or extension arm. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.

(e) **For Replacement Poles and Street Lights.** If an applicant proposes a replacement pole or street light to accommodate the SWF, the replacement shall be in the same location as the street light or pole being replaced; unless the replacement will not meet all applicable standards, then replacement may be located in an alternative location that complies with the requirements herein.

(f) **New, Non-Replacement Poles.** Applicants that propose to install SWFs on a new, non-replacement pole must install a new streetlight substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome.

(1) The new pole must actually function for a purpose other than placement of a wireless facility (e.g. street light, utility pole, etc.).

(2) The design must match the dimensions and design of existing and similar types of poles and antennas in the surrounding areas.

(g) **Encroachments over Private Property.** SWFs may not encroach onto or over any private or other property outside the PROW without the property owner's express written consent.

(h) **Backup Power Sources.** Fossil-fuel based backup power sources shall not be permitted within the PROW; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.

(i) **Obstructions; Public Safety.** Small wireless facilities and any associated equipment or improvements shall not physically interfere with or impede access to any: (A) worker access to any above-ground or underground infrastructure for traffic

control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (B) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (C) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (D) fire hydrant or water valve; (E) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or (F) access to any fire escape.

(j) **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through and concealed from view within: (A) internal risers or conduits if on a concrete, composite or similar pole; or (B) a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.

(k) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.

(l) **Electric Meters.**

(1) SWFs shall use unmetered (flat rate) electric service, if allowed by the utility company, or use the narrowest, shrouded electric meter and disconnect available. Permittees shall ensure the meter and other enclosures are well maintained, including regular painting, and the use of a graffiti-resistant paint, and stack the disconnect switch above/below the meter, instead of attached to the side of the meter.

(2) Electrical meters, vaults and fans shall be located underground where feasible.

(m) **Building-Mounted Small Wireless Facilities.**

(A) **Preferred Concealment Techniques.** All applicants must propose new non-tower SWFs that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, if the applicant demonstrates with clear and convincing evidence that integration with existing features is technically infeasible, the applicant may propose completely concealed

new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, steeples and chimneys).

(B) **Facade-Mounted Equipment.** When SWFs cannot be placed behind existing parapet walls or other existing screening elements, the approval authority may approve facade-mounted equipment in accordance with this Subsection. All facade-mounted equipment must be concealed behind screen walls and mounted flush to the facade. The approval authority may not approve "pop-out" screen boxes. Except in industrial zones, the approval authority may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade.

(n) **Future Modifications.** Any modifications to existing facilities or collocations shall not defeat the concealment elements of the existing structure/facility.