



**CITY OF LARKSPUR
Staff Report**

May 15, 2019 City Council Meeting

DATE: May 5, 2019
TO: Honorable Mayor Morrison and the Larkspur City Council
FROM: Kristin Teiche, Senior Planner
SUBJECT: CONSIDER A RESOLUTION ADOPTING POLICIES, PROCEDURES
AND PROCESSING REQUIREMENTS FOR SMALL CELL (5G)
WIRELESS FACILITIES

ACTION REQUESTED

That the City Council consider and adopt Resolution 19/19 and “policy document” addressing Small Cell (5G) Wireless Facilities.

SUMMARY AND BACKGROUND

On April 3 and April 17, 2019, Council considered and adopted Ordinance No. 1039 to replace Chapter 18.51 with a new Chapter titled “Wireless Communications Facilities”. The ordinance incorporates updated federal and state regulations and definitions, and provides more detailed submittal, locational, and processing requirements for standard wireless facilities.

With regard to small cell (5G) wireless facilities, it is anticipated that state and federal laws will experience further modification as the technology evolves. Therefore, staff has prepared a draft resolution (attached) establishing policies, procedures, standards and limitations for review of Small Cell (5G) Wireless Facilities. This resolution is referenced in Ordinance No. 1039 under Section 18.51.050 Small Cell Wireless Facilities. As a “policy document” adopted by resolution, the regulations and procedures can be more readily amended to respond to future changes to the industry, FCC Rulings and guidelines, and/or court actions.

BACKGROUND

During the regularly scheduled meeting of May 1, 2019, the City Council considered draft Resolution 19/19 which would adopt policies, procedures and processing requirements for applications to install small cell (5G) wireless facilities.

AGENDA ITEM 8.1

Based on comments provided by members of the public and the Council during their discussion on the content of the resolution, the Council requested staff prepare the following modifications:

- Add a provision that authorizes staff to retain an outside expert to evaluate technical studies submitted by and applicant, and to require the applicant reimburse the City for the cost of the consultant;
- Add a provision that prohibits “speculative applications”;
- Include a reference to the Heritage Tree Ordinance, to inform applicants of these provisions;
- Clarify the Cities preferred and least preferred locations, and reorder them so that all residential districts are least preferred;
- Reconsider the hearing process to allow for a public hearing, or for improved access to public participation and information;
- Add a severability clause;

Additionally, the Council requested review by staff of written comments submitted by the public.

DISCUSSION

As directed by the City Council, and subject to the review of the City Attorney, staff has prepared the following amendments to Resolution 19/19:

Section 2 – Definitions

- Added definition (j) defining “Speculative Facilities” to describe the type of application that is not accompanied by a proposed plan of deployment.

Section 3 – Applicability

- Added subsection (c) No Speculative Facilities. This section prohibits speculative facilities as defined in Section 2 Definitions. The subsection requires all small cell wireless permits to be accompanied by a plan to install, construct or otherwise deploy small cell wireless facilities by the permit applicant or a third-party wireless tenant. If the applicant fails to carry out such plan within six (6) month of permit approval, the small cell wireless permit is subject to automatic revocation.

Staff notes that this prohibition against speculative facilities does not strictly require a preexisting contract between the applicant and a licensed wireless service provider for the installation of a small cell facility on a proposed structure. Some applicants may not be proposing to install a small cell facility by themselves, but rather provide a commingled wireless service or engage in activities that are related to the provision of personal wireless services. The FCC asserts that these entities are covered by the federal “effective

AGENDA ITEM 8.1

prohibition” preemption and local regulations may not create a material inhibition or dictate how such service is to be provided. As such, a requirement that conditions permit application and approval for these entities on the procurement of a contract with another party to actually install small cell facilities is likely to be considered prohibitive and preventive of the applicant from competing in the market. Instead, staff proposes to require a plan of deployment that would demonstrate the applicant is intending to use the proposed pole or structure for small cell deployment rather than merely occupying a pole without a plan to provide such service, thereby inhibiting other applicants and carriers who would desire to utilize that pole or structure space for introducing or expanding existing wireless services without plans to begin work or install equipment.

Section 4 - Required Permits and Approvals

- Added subsection (d) Heritage Tree Removal Permit. This section informs the applicant that removal of a heritage tree, as defined in Chapter 12.16, requires a heritage tree removal permit to be processed concurrently with the Small Cell Permit.

Section 5 - Small Cell Permit Application Requirements

- Expanded Subsection (a) Small Cell Permit Application Contents. Amendment clarifies that all application materials shall be filed in hard copy and digital version on a thumb drive or CD;
- Added (a) (3) Plan of Deployment to require the permit applicant to submit a sufficiently-detailed plan or proposal to install, construct or otherwise deploy small cell wireless facilities by the permit applicant or a third party wireless tenant, such as a preexisting contract between the parties for deployment.
- Amended subsection (a) 4) Site Survey, to require the applicant identify and assign a reference number to all trees in the immediate vicinity;
- Added (c) 14) Arborist Report / Heritage Tree Removal Permit. This Section requires an arborist report to assess the potential impacts to heritage trees from installation of a small cell wireless facility. All trees are require to be referenced by the number assigned on the Site Survey.

Section 6. – Small Cell Permit Application Submittal and Review

- Amended Sections (a) through (f) to change the designated reviewer from Planning Director to the Zoning Administrator;
- Added Subsection (e) Independent Expert, empowering the Zoning Administrator to retain an independent qualified consultant to review technical documents and plans. All costs to be assumed by the applicant.

Section 7 – Approvals and Denials; Notices

- Amended subsection (a) Public Notice, to clarify that the public notice will be mailed by the City. The Council should note that posting legal notices on the City webpage is standard practice for all applications. Therefore, staff has not added language to this effect in the Resolution;

AGENDA ITEM 8.1

- Amended subsections (a) through (f) to change the reviewing body from Director to Zoning Administrator;
- Amended Subsection (b) Administrative Review to Zoning Administrator Review. The Zoning Administrator will hold a public hearing to approve, conditionally approve, or deny an application.

Section 9 – Locational Requirements

- Amended Subsection (b) 1) Most Preferred Locations, to:
 - Add clarifying language stating the list is ordered from most preferred to least preferred;
 - Reordered the preferred locations to place industrial and commercial districts at the top, and City parcels, H overlay districts, and residential right-of-ways in the City’s primary circulation system at the bottom.
- Amended Subsection (b) 1) Least-Preferred Locations, to:
 - Add clarifying language to make it clear the City does not encourage these locations, and that the list is ordered from most preferred to least preferred;
 - Reordered the least preferred locations to place the residential right-of-ways (that are not part of the City’s primary circulation system) and privately held residential properties at the bottom.

Amendments to the Resolution Format

Staff amended the Resolution format to add the following items at the conclusion of this document (pages 20-21):

- Added Section 5: Environmental Clearance. Specifying the CEQA determination that has been applied to the proposed resolution.
- Added Section 6: Severability. To insure if any portion of the resolution is held invalid that such decision shall not affect the validity of remaining portions of the resolution.

FISCAL IMPACT

Not Applicable

ENVIRONMENTAL STATUS

This ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to §15378 and California Public Resources Code § 21065, as this ordinance is not a “project” because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment; and that, even if this ordinance qualified as a “project” subject to CEQA, and pursuant to CEQA Guidelines §15061 (b) (3) this ordinance does not have the potential for causing a significant effect on the

AGENDA ITEM 8.1

environment as it does not allow for any new or expanded uses not otherwise permitted under existing federal, state and local regulations. The wireless communications facilities themselves are exempt from CEQA pursuant to Section 1530 of the CEQA Guidelines.

STAFF RECOMMENDATION:

Staff recommends that the City Council adopt the draft resolution 19/19 as presented, or subject to any amendments as directed by the Council.

Respectfully submitted,

Kristin Teiche, Senior Planner

ATTACHMENTS

1. Draft Council Resolution Adopting Policies, Procedures, Standards and Limitations for Submittal and Review of Small Cell Wireless Facilities.

3222304.1

RESOLUTION NO. 19/19

RESOLUTION OF THE LARKSPUR CITY COUNCIL ADOPTING POLICIES, PROCEDURES, STANDARDS AND LIMITATIONS FOR SUBMITTAL AND REVIEW OF SMALL CELL WIRELESS FACILITIES AS SET FORTH IN THE LARKSPUR MUNICIPAL CODE SECTION 18.51.050

WHEREAS, on September 26, 2018, the Federal Communications Commission (FCC) adopted a Declaratory Ruling and Third Report and Order pertaining to small cell wireless facilities setting forth limitations on state and local government regulation of small cell wireless facilities that are placed on utility poles and street light standards located in the public right-of-way (the “FCC ruling”);

WHEREAS, the FCC ruling: a) limits the level of local permitting and discretion; b) establishes “shot clock” rules (e.g., time limits and deadlines) for processing and action on local permits; and c) limits the fees that can be charged for the facilities;

WHEREAS, the FCC ruling further established that any aesthetic regulations and fees required for processing of small cell wireless facilities be published in advance;

WHEREAS, at the March 26, 2019 Larkspur Planning Commission meeting, the Commission considered and recommended approval of the draft ordinance amending Chapter 18.51 Wireless Communications Facilities and the related policy resolution providing further provisions to define and regulate the placement of small cell wireless facilities in the City;

WHEREAS, on April 17, 2019, the City Council adopted Ordinance No. 1039 amending and updating the Zoning Ordinance Chapter 18.51 pertaining to Wireless Communications Facilities and adding provisions to define and regulate the placement of small cell wireless facilities in the City. These amendments refer to a policy resolution for application/review procedures and review criteria for evaluating the placement of small cell wireless facilities; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council does hereby determine and order as follows:

Section 1. The above recitations are true and correct.

Section 2. The City Council finds that, pursuant to California Environmental Quality Act (“CEQA”) Guidelines § 15378 and California Public Resources Code § 21065, the Policy is not a “project” because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. The City Council further finds that, even if the Policy qualified as a “project” subject to CEQA, and pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. The Policy merely carries out the delegation of authority under the Larkspur Municipal Code to regulate the deployment of small cell wireless facilities and does not directly or indirectly authorize or approve any actual changes in the physical environment;

- Section 3. The City Council finds the Policy will, to the extent permitted by federal and California law, protect and promote public health, safety and welfare, and also balance the benefits that flow from robust, advanced, wireless services with the City's local values, which include without limitation the aesthetic character of the City, its neighborhoods and community.
- Section 4. The City Council hereby adopts the following Policies, Procedures, Standards and Limitations for submittal and review of small cell wireless facilities:

SECTION 1 PURPOSE AND INTENT

- (a) The City of Larkspur intends this Policy to establish reasonable, uniform and comprehensive standards and procedures for small cell wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this Policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the City's local values, which include without limitation the aesthetic character of the City, its neighborhoods and community. This Policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interest is maintained; (2) protecting the City's visual character from potential adverse impacts or visual blight created or exacerbated by small cell wireless facilities and related communications infrastructure; (3) protecting and preserving the City's environmental resources; and (4) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors.
- (b) 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 2 DEFINITIONS

In addition to the definitions contained in Larkspur Municipal Code 18.51.030, the following definitions shall also provide clarity:

- (a) "**concealed**" or "**concealment**" means camouflaging techniques that meet the design standards in Section 10 and 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.
- (b) "**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 right-of-way in which the pole is located.

- (c) **“Director”** means the Planning and Building Director for the Larkspur or the Director’s designee.
- (d) **“FCC Shot Clock”** means the presumptively reasonable time frame within which the City must act on a wireless application, as defined by the FCC and as may be amended from time to time.
- (e) **“personal wireless services”** means the same as defined in 47 U.S.C. § 332façade(7)FAÇADE(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. As an illustration and not a limitation, personal wireless services are typically services that are offered directly to the public or a class of people for a fee. At the adoption of the Telecommunications Act of 1996, these services generally meant cellular, specialized mobile radio (SMR) and broadband personal communications services (PCS).
- (f) **“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. As an illustration and not a limitation, personal wireless service facilities are the physical infrastructure – antennas, support structures, radios, wires and base station equipment – that are used to provide personal wireless services.
- (g) **“radome”** means a protective dome or cover for wireless antennae and equipment, constructed of material transparent to radio waves.
- (h) **“RF”** means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.
- (i) **“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.
- (j) **“Speculative Facilities”**. The proposed installation of a structure, as defined under (k), to be installed by the applicant (i.e. property owner, contractor, sub-contractor or developer), for which there is no sufficiently detailed plan to install, operate, or otherwise deploy small cell wireless facilities on said structure. Instead the applicant has undertaken the project due to, or with, the expectation that its construction will attract an interested licensed wireless service provider to lease or purchase the installation from applicant.
- (k) **“structure”** for this policy, means the same as defined by the FCC in 47 C.F.R. § 1.6002(m), as may be amended or superseded, which defines the term as a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

SECTION 3 APPLICABILITY

- (a) **Applicable Wireless Facilities.** Except as expressly provided otherwise in this Policy, the provisions in this Policy shall be applicable to all existing small cell wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate or otherwise deploy small cell wireless facilities within the City’s jurisdictional and territorial boundaries within the public rights-of-way or on private property.
- (b) **Special Provisions for Eligible Facilities Requests.** Notwithstanding Section 3(a), all requests for

approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409 will be reviewed consistent with the standards required by law.

- (c) **No Speculative Facilities.** All small cell wireless permits must be accompanied by a plan to install, construct or otherwise deploy small cell wireless facilities (such as a contract with a third party wireless service carrier for deployment) by the permit applicant or a third party wireless tenant, as set forth in Section 5 below. A small cell wireless permit is subject to automatic revocation if the applicant fails to construct, deploy, or otherwise carry out such plan within six (6) month of permit approval.

SECTION 4 REQUIRED PERMITS AND APPROVALS

- (a) **Small Cell Permit.** A “small cell permit,” subject to the Zoning Administrator’s prior review and approval, is required for any small cell wireless facility proposed on an existing, new or replacement support structure.
- (b) **Right-of-way authority.** An encroachment permit must be obtained for any work performed in the public right-of-way. Only applicants authorized to enter the public right-of-way pursuant to state or federal law or a franchise or other agreement with the City shall be eligible for a permit to install or modify a wireless telecommunications facility in the public right-of-way.
- (c) **Other Permits and Approvals.** In addition to the above for small cell permits, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or approvals issued by other City of Larkspur departments or divisions. All applications for ministerial permits submitted in connection with a proposed small cell wireless facility must contain a valid small cell permit for the proposed facility. Any application submitted without such small cell permit will be denied without prejudice. Furthermore, any permit or approval granted under this Policy shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals.
- (d) **Heritage Tree Removal Permit.** Any application that will requires removal of, or will severely endanger a heritage tree, (as defined under Section 12.16.010) will require a Heritage Tree Removal Permit in compliance with Chapter 12.16. This application must be filed concurrently with a proposed Small Cell Permit.

SECTION 5 SMALL CELL PERMIT APPLICATION REQUIREMENTS

- (a) **Small Cell Permit Application Contents.** All applications for a small cell permit must include all the information and materials required in this subsection (a). All information, plans and materials shall be filed both in hard copy and in digital form on a thumb drive or CD:
 - 1) **Application Form.** The applicant shall submit a complete, duly executed small cell permit application on the then-current form prepared by the Director or Zoning Administrator.
 - 2) **Fee.** The applicant shall submit the applicable small cell permit application fee established by City Council resolution. Batched applications must include the applicable small cell permit application fee for each small wireless facility in the batch. If no small cell permit application fee has been established, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to reimburse the City for its reasonable costs incurred in connection with the application.

- 3) **Plan of Deployment.** The applicant shall submit a sufficiently-detailed plan or proposal to install, construct or otherwise deploy small cell wireless facilities by the permit applicant or a third party wireless tenant. A preexisting contract with a third party wireless service carrier proposing to deploy small cell wireless facilities on one or more poles or structure covered by the permit will be deemed to satisfy this requirement.
- 4) **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 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.
- 5) **Site Survey.** For any small wireless facility proposed to be located within the public rights-of-way, 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, including species and an assigned number for ease of reference, planters and other landscaping features.
- 6) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small cell wireless facility in context from at least three separate and distinct 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.
- 7) **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 "small wireless facility" 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 small cell permit as provided in Section 7.
- 8) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that

certifies that the proposed small wireless facility, 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.

- 9) **Public Notices.** The applicant shall submit a mailing list and envelopes, stamped and addressed, for all properties and record owners of properties entitled to receive notice under Section 7(a). Insufficient postage and/or illegible addressing shall be a basis to deem the application incomplete.
- 10) **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 small cell wireless facility proposed in the application.
- 11) **Site Agreement.** For any small cell wireless facility proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant shall submit a partially-executed site agreement on a form prepared by the City 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.
- 12) **Property Owner's Authorization.** For any small cell wireless facility proposed to be installed on any private or public property not owned or controlled by the City, the applicant must submit written authorization signed by the property owner or controlling agency that authorizes the applicant to submit a small cell permit in connection with the subject property.
- 13) **Title Report.** For any small cell wireless facility proposed to be installed on any private property not owned or controlled by the City, the applicant must submit a title report issued within 30 days prior to the date the applicant filed the application.
- 14) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by an engineer for the proposed small cell wireless facility 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 ordinance (LMC 9.54). 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.
- 15) **Arborist Report / Heritage Tree Removal Permit.** For any small cell wireless facility that will be installed in close proximity to one or more heritage sized trees, an arborist report must be provided. The report shall identify each tree by the number that corresponds with the submitted site plan, and specify the size, species, health and vigor of each tree. Based upon the project plan, the arborist shall provide a determination as to whether each tree can survive the construction process for the wireless facility, due to potential impacts such as root loss and

proposed trimming. When it is determined that a heritage tree will not survive, or requires removal to accommodate the proposed small cell wireless facility, an application for a heritage tree removal permit must be included with the application for a Small Cell Permit.

- (b) **Additional Requirements.** The City Council authorizes the Director and/or the Zoning Administrator 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 Director 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.

SECTION 6 SMALL CELL PERMIT APPLICATION SUBMITTAL AND REVIEW

- (a) **Requirements for a Duly Filed Application.** Any application for a small cell permit will not be considered duly filed unless submitted in accordance with the requirements in this subsection (a).
- 1) **Submittal Appointment.** All applications must be submitted to the City at a pre-scheduled appointment with the Zoning Administrator. Applicants may generally submit one application per appointment, or up to five individual applications per appointment for batched applications subject to subsection (d). Applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The Zoning Administrator shall use reasonable efforts to provide the applicant with an appointment within five working days after the Zoning Administrator receives a written request. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed.
 - 2) **Pre-Submittal Conferences.** The City encourages, but does not require, applicants to schedule and attend a pre-submittal conference with the Zoning Administrator for all proposed projects that involve more than five (5) small cell wireless facilities. 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 Zoning Administrator 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) **Application Completeness Review.** Within 10 calendar days after the Zoning Administrator receives a duly filed small cell permit application, the Zoning Administrator shall review the application for completeness and, if any application does not contain all the materials required in Section 5(a) or any other publicly stated requirements, send a written notice to the applicant that identifies the missing or incomplete requirements.
- (c) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, and to mitigate unreasonable delays or barriers to entry caused by chronically incomplete applications, any application governed under this Policy will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the Zoning Administrator within 60

calendar days after the Zoning Administrator deems the application incomplete in a written notice to the applicant. As used in this subsection façade, a “substantive response” must include the materials identified as incomplete in the Zoning Administrator’s notice.

- (d) **Batched Applications.** Applicants may submit up to five individual applications for a small cell permit in a batch; provided, however, that small cell wireless facilities in a batch consist of 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 application 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.

- (e) **Independent Expert.** The Zoning Administrator is authorized to retain on behalf of the City an independent qualified consultant to review any application for a permit for a small cell wireless facility. The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution. The consultant shall be retained to review technical aspects of the application, including but not limited to the following matters:
 - 1) The accuracy, adequacy, and completeness of submissions.
 - 2) Compliance with applicable radio frequency emission standards.
 - 3) Whether any requested exception is necessary to close a significant gap in coverage and if it is the least intrusive means of doing so.
 - 4) Technical information intended to demonstrate the unavailability of more preferred sites, or more preferred facility designs or configurations.
 - 5) Coverage analysis.
 - 6) The validity of conclusions reached or claims made by applicant.

- (f) **Procedures.** The City Council authorizes the Zoning Administrator to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments with applicants, as the Zoning Administrator deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice.

SECTION 7 APPROVALS AND DENIALS; NOTICES

- (a) **Public Notice.** Prior to any approval, conditional approval or denial, the public notice required per Section 5 (a) 8), shall be mailed by the City to all properties and record owners and occupants of properties within a 500-foot radius of the project site. The notice must contain: (1) a general project description; (2) the applicant’s identification and contact information as provided on the application submitted to the City; (3) contact information for the Planning and Building Department; (4) a statement that the Zoning Administrator will act on the application during a public hearing and specifying the date of the public hearing, and further stating the City will accept written public comments that evaluate the application for compliance with the standards in this Policy; and (5) a statement that the FCC requires the City to act on small wireless facility 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. A template for the public notice will be provided with the application forms for a Small Cell Wireless Permit.

- (b) **Zoning Administrator Review.** Not less than 10 calendar days after the public notice required in

subsection (a), the Zoning Administrator shall hold a hearing and approve, conditionally approve or deny a complete and duly filed small cell permit application.

- (c) **Required Findings.** The Zoning Administrator may approve or conditionally approve a complete and duly filed application for a small cell permit when the Zoning Administrator finds:
- 1) The proposed project meets the definition for a “small wireless facility” as defined in subdivision (K) of section 18.51.030 of the Larkspur Municipal Code;
 - 2) The proposed project would be in the most preferred location provided in Section 9(b) or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 500 feet would be technically infeasible;
 - 3) The proposed project would not be located on a prohibited support structure identified in this Policy;
 - 4) The proposed project would be on the most preferred support structure provided in Section 9 (f) or 9(d) or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) within 500 feet would be technically infeasible;
 - 5) The proposed project complies with all applicable design standards in this Policy;
 - 6) The applicant has demonstrated that the proposed project will be in compliance with all applicable health and safety regulations, which include without limitation the Americans with Disabilities Act and all FCC regulations and guidelines for human exposure to RF emissions; and,
 - 7) All public notices required for the application have been given.
- (d) **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or California laws, nothing in this Policy is intended to limit the Zoning Administrator’s ability to conditionally approve or deny without prejudice any small cell permit application as may be necessary or appropriate to ensure compliance with this Policy.
- (e) **Decision Notices.** Within five calendar days after the Zoning Administrator acts on a small cell permit application or before the FCC Shot Clock expires (whichever occurs first), the Zoning Administrator shall notify the applicant of such decision by written notice. If the Zoning Administrator denies the application (with or without prejudice), the written notice must contain the reasons for the decision.
- (f) **Appeals.** Any decision to approve, conditionally approve or deny a small cell wireless facility shall be appealable directly to the City Council. Appeals shall be filed within 5 working days of a decision having been rendered. Any such appeal shall include a letter identifying the name, address and contact information for the appellant and provides the reasons for the appeal based on the alleged noncompliance with the required findings in Section 7(c). Any such appeal shall be subject to the appeal fees established in the City’s Master Fee Schedule. Appeals from an approval will not be permitted to the extent that the appeal is based on environmental effects from a facility’s RF emissions that the applicant has demonstrated to comply with all applicable FCC regulations.

SECTION 8 STANDARD CONDITIONS OF APPROVAL

- (a) **General Conditions.** In addition to all other conditions that may be adopted by the Zoning Administrator for a small cell permit, all such permits issued under this Policy shall be automatically subject to the conditions in this subsection (a).
- 1) **Permit Term.** This small cell permit will automatically expire 10 years and one day from its issuance. Any other permits or approvals issued in connection with any collocation, modification or other change to this small cell wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed- approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law. To the extent that this small cell permit is issued in connection with any structure owned or controlled by the City and located in the public rights-of-way, this small cell permit shall be coterminous with the cancellation, termination or expiration of the agreement between the applicant and the City for access to the subject City structure.
 - 2) **Permit Renewal.** Not more than one year before this small cell permit expires, the permittee may apply for permit renewal. The permittee must demonstrate that the subject small wireless facility complies with all the conditions of approval associated with this small cell permit and all applicable provisions in the Municipal Code and this Policy that exist at the time the decision to renew or not renew the permit is rendered. The Zoning Administrator may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with this Policy. Upon renewal, this small cell permit will automatically expire 10 years and one day from its issuance.
 - 3) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility approved or deemed-approved, the permittee shall provide the Zoning Administrator with documentation reasonably acceptable to the Zoning Administrator that the small cell wireless facility 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.
 - 4) **Build-Out Period.** This small cell permit will automatically expire six (6) months from the approval date (the “build-out period”) unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved small cell wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the small cell wireless facility or its use. If this build-out period or the construction permit expires, the permit automatically terminates and the City will not extend the build-out period or the permit, but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project
 - 5) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this small cell permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
 - 6) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“laws”) applicable to the permittee, the subject property, the small cell wireless facility or any use or activities in connection with the use authorized in this small cell permit, which includes without

limitation any laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Larkspur Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with all applicable provisions in the Larkspur Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation.

- 7) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. 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 Larkspur 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 City may issue a stop work order for any activities that violates this condition in whole or in part.
- 8) **Inspections; Emergencies.** Upon reasonable prior notice to the permittee, the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment during an emergency. 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.
- 9) **Permittee's Contact Information.** Within 10 days from the final approval of this small cell permit, the permittee shall furnish the Zoning Administrator with accurate and up-to-date contact information for a person responsible for the small cell facility, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and promptly provide the Zoning Administrator with updated contact information if either the responsible person or such person's contact information changes.
- 10) **Indemnification.** The permittee and, if applicable, the property owner (if not on City-owned infrastructure) upon which the small cell wireless facility is installed shall agree in writing to defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (1) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this small cell permit, and (2) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this small cell permit or the small wireless facility. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee

and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. Within ten calendar days of the service of a claim, the permittee shall execute a letter of agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this small cell permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this small cell permit.

- 11) **Performance Bond.** Before the City issues any permits required to commence construction in connection with this small cell permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Zoning Administrator in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the small wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the Director shall take into consideration any information provided by the permittee regarding the cost to remove the small wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the expiration, revocation or other termination of this small cell permit to the extent required to completely remove the equipment and improvements, restore the affected areas and perform all other obligations in accordance with this condition.

- 12) **Permit Revocation.** Any permit granted under this Policy may be revoked in accordance with the provisions and procedures in this condition. The Zoning Administrator may initiate revocation proceedings when the Zoning Administrator has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before the Zoning Administrator may conduct a public hearing to revoke any permit granted under this Policy, the Zoning Administrator must issue a written notice to the permittee that specifies (i) the facility; (ii) the violation(s) to be corrected; (iii) the timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s). A permit granted under this Policy may be revoked only by the City Council after a duly notice public hearing. The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Zoning Administrator shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

- 13) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the small cell permit application, small cell permit, RF report, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial

permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the small cell permit (collectively, "records"). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

- 14) **Abandoned Wireless Facilities.** The small cell wireless facility authorized under this small cell permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a small wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small cell wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Larkspur Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
- 15) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. 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 and consistent with the City's list of pre-approved street trees. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- 16) **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.
- 17) **Cooperation with RF Compliance Evaluations.** At all times relevant to this permit, the permittee and the property owner shall reasonably cooperate with efforts by the City to evaluate whether the wireless facility complies with all applicable FCC rules and regulations for human

exposure to RF emissions. Such cooperation shall be at no cost to the City and may include, but is not limited to: (1) furnishing the City with a written affidavit signed by an RF engineer certifying the wireless facility's compliance with applicable FCC rules and regulations; (2) providing technical data such as the frequencies in use, power output levels and antenna specifications, reasonably necessary to evaluate compliance with maximum permissible exposure levels set by the FCC; (3) allowing the City or its designee to have supervised access to the areas near the wireless facility for inspections and field measurements; and (4) promptly responding to all requests by the City or its designee for information and/or cooperation with respect to any of the foregoing. The City may conduct random tests to ensure compliance with the FCC's rules and regulations. In the event that the City determines that permittee is not in compliance with any legal requirements or conditions, the permittee shall be responsible for all costs and expenses incurred by the City in connection with the investigation, enforcement and/or remediation of such noncompliance.

- (b) **Conditions for Small cell wireless facilities in the Public Rights-of-Way.** In addition to all conditions in subsection (a), all small cell permits for small cell wireless facilities in the public rights-of-way issued under this Policy shall be automatically subject to the conditions in this subsection (b).
- 1) **Future Undergrounding Programs.** If other public utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small cell wireless facility is located, the permittee must underground its equipment except the antennas, any electric meter 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 are not exempt from this condition and shall be undergrounded. Small cell wireless facilities installed on wood utility poles to 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 CPUC for undergrounding costs. The undergrounding requirements in this subsection may be exempted if the permittee provides sufficient evidence that undergrounding is technically infeasible.
 - 2) **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.
 - 3) **Rearrangement and Relocation.** The City, in its sole discretion and at any time, may: (1) change any street grade, width or location; (2) 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 (3) 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 this small cell permit. If the Public Works Director determines that any City work will require the permittee's small cell wireless facility located in the public rights-of-way 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 small cell wireless facility within a reasonable time after the Public Works Director'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 small cell wireless facility without prior notice to permittee when the Public Works Director 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 ten (10) days after a written demand for reimbursement and reasonable documentation to support such costs.

SECTION 9 LOCATION REQUIREMENTS

(a) **Preface to Location Requirements.** This subsection (a) provides guidance as to how to interpret and apply the location requirements in this Section 9. To better assist applicants and decision makers to understand and respond to the community's aesthetic preferences and values, subsections (b), (c) and (d) set out listed preferences for locations and support structures to be used in connection with small cell wireless facilities in ordered hierarchies. Applications that involve least-preferred locations or structures may be approved so long as the applicant demonstrates that either: 1) no more preferred locations or structures exist within 500 feet from the proposed site; or 2) any more preferred locations or structures within 500 feet from the proposed site would be technically infeasible as supported by clear and convincing evidence in the written record. Subsection (d) identifies lowest-ranked support structures on which the City least prefers small cell facilities deployment.

(b) Location Preferences

1) **Most Preferred Locations.** The City prefers wireless facilities to be installed in locations, ordered from most preferred to least preferred, as follows:

- i. Any parcel or public right-of-way located in the Industrial Zoning District;
- ii. Any parcel or public right-of-way located in a Commercial Zoning District (C-1, C-2, AP);
- iii. Any parcel or public right-of-way located in a PD Zoning District developed with commercial and office uses; and
- iv. Any parcel or public right-of-way located in TD Zoning District;
- v. City-owned parcels in any zoning district, excepting parks and properties located in the H (Historic) overlay zone and Residential Zoning Districts (R-1, R-2, R-3, RMP);
- vi. Public right-of-ways located in Residential Zoning Districts (R-1, R-2, R-3, RMP or a residential development in a PD zoning district) that are identified as the City's Primary Circulation system as specified in the Circulation Element of the General Plan (Figure 4-4).

2) **Least-Preferred Locations.** The following locations are discouraged by the City. If one of the following locations is proposed, the City prefers wireless facilities to be installed in locations, ordered from most preferred to least preferred, as follows:

- i. Any parcel or public right-of-way located in an Open Space District;
- ii. Any public park;
- iii. Any parcel or public right of way located in the Historic Overlay Zoning District (H)
- iv. Any public right-of-way located in Residential Zoning Districts (R-1, R-2, R-3, RMP, or a residential development within a PD zoning district) that is not part of the City's Primary Circulation system as specified in the Circulation Element of the General Plan (Figure 4-4).
- v. Any parcel located in Residential Zoning Districts (R-1, R-2, R-3, RMP, or a residential development within a PD zoning district);

(c) Support Structures

- 1) **Most Preferred Locations.** Support Structures in the Public Rights-of-Way. The City prefers small cell wireless facilities to be installed on support structures in the public rights-of-way, ordered from most preferred to least preferred, as follows:
 - i. Existing or replacement streetlight poles;
 - ii. Existing or replacement wood utility poles;
 - iii. New, non-replacement streetlight poles;
 - iv. New, non-replacement poles for small cell wireless facilities.
 - 2) **Least Preferred Locations: Support Structures Outside the Public Rights-of-Way.** The City prefers small cell wireless facilities to be installed on support structures outside the public rights-of-way, ordered from most preferred to least preferred, as follows:
 - i. Existing buildings or other non-tower structures previously approved for use as a support structure for personal wireless service facilities;
 - ii. Other existing buildings or non-tower structures;
 - iii. Existing or replacement poles or towers;
 - iv. New, non-replacement towers for small cell wireless facilities.
- (d) **Other Support Structures.** The City prohibits small cell wireless facilities to be installed on the following support structures, whether located in the public rights-of-way or not:
- i. Decorative poles;
 - ii. Traffic signals, signs, poles, cabinets and related devices;
 - iii. Any utility pole scheduled for removal or relocation within 12 months from the time the Zoning Administrator acts on the small cell permit application;
 - iv. New, non-replacement wood poles.

SECTION 10 DESIGN STANDARDS

(a) General Standards.

- 1) **Noise.** Small cell wireless facilities and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations in Larkspur Municipal Code Chapter 9.54, and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable district.
- 2) **Lights.** Small cell wireless facilities 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 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.** Small cell wireless facilities 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 Director 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 Larkspur Municipal Code 18.16.280 (J).
- 4) **Site Security Measures.** Small cell wireless facilities may incorporate reasonable and

appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The Zoning Administrator shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small cell wireless facilities shall be constructed from or coated with graffiti-resistant materials.

- 5) **Signage; Advertisements.** All small cell wireless facilities must include signage 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. Small cell wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, OSHA or other United States governmental agencies for compliance with RF emissions regulations.
- 6) **Compliance with Health and Safety Regulations.** All small cell wireless facilities 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 as established by the FCC, the Americans with Disabilities Act, California Building Standards Code and the Larkspur Municipal Code.

(b) **Small cell wireless facilities in the Public Right-of-Way.**

- 1) **Overall Height.** Small cell wireless facilities may not exceed either (A) the minimum separation from electrical lines required by applicable safety regulations (such as CPUC General Order 95), plus four feet or (B) four feet above the existing support structure. However, at no point shall an existing support structure be increased by more than 10 feet above existing height.
- 2) **Antennas.**
 - (A) **Concealment.** All antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be graffiti-resistant and painted a flat, non-reflective color to match the underlying support structure.
 - (B) **Antenna Volume.** 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.** All non-antenna accessory equipment shall be installed in accordance with the following preferences, ordered from most preferred to least preferred: (i) underground in any area in which the existing utilities are primarily located underground; (ii) on the pole or support structure; or (iii) integrated into the base of the pole or support structure. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that the 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) **Pole-Mounted Accessory Equipment.** All pole-mounted accessory equipment must be installed at least 10 feet above grade and flush to the pole to minimize the overall visual profile. If any applicable health and safety regulations prohibit flush-mounted equipment, the maximum separation permitted between the accessory equipment and the pole shall be the minimum separation required by such regulations. All pole-mounted equipment and required or permitted signage must be placed and oriented away from adjacent sidewalks and structures. Pole-mounted equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. All cables, wires and other connectors must be routed through conduits within the pole, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying support structure.
- (D) **Base-Mounted Accessory Equipment.** All base-mounted accessory equipment must be installed within a shroud, enclosure or pedestal integrated into the base of the support structure. All cables, wires and other connectors routed between the antenna and base-mounted equipment must be concealed from public view.
- (E) **Ground-Mounted Accessory Equipment.** Any ground-mounted accessory equipment including, but not limited to, any utility or transmission equipment, pedestals, cabinets, panels or electric meters, that is not base-mounted accessory equipment, is prohibited.
- (F) **Accessory Equipment Volume.** All accessory equipment associated with a small wireless facility installed above ground level shall not cumulatively exceed: (i) nine (9) cubic feet in volume if installed in a residential district or within 500 feet from any structure approved for a residential use; or (ii) seventeen (17) cubic feet in volume if installed in a non-residential district. The volume calculation shall include any shroud, cabinet or other concealment device used in connection with the non-antenna accessory equipment. The volume calculation shall not include any equipment or other improvements placed underground.
- 1) **Streetlights.** Applicants that propose to install small cell wireless facilities 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, unless the existing streetlight has been designed and engineered to support a small cell wireless facility in accordance with applicable health and safety regulations. To mitigate any material changes in the streetlighting 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.
- 2) **Wood Utility Poles.** Applicants that propose to install small cell wireless facilities 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.

- 3) **New, Non-Replacement Poles.** Applicants that propose to install small cell wireless facilities on a new, non-replacement pole must demonstrate that any existing structures within 500 feet from the proposed site would be technically infeasible as supported by clear and convincing evidence in the written record. Any new, non-replacement pole must be 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.
- 4) **Encroachments over Private Property.** Small cell wireless facilities may not encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.
- 5) **Backup Power Sources.** Fossil-fuel based backup power sources shall not be permitted within the public rights-of-way; 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.
- 6) **Obstructions; Public Safety.** Small cell 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.
- 7) **Parking and Access.** Any equipment or improvements constructed or installed in connection with any small cell wireless facilities must not remove or impede any public parking spaces. Whenever feasible, small cell wireless facilities must use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements must be the minimum size necessary to reasonably accommodate the proposed use.
- 8) **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. New overhead utility lines or service drops are prohibited.
- 9) **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.

- 10) **Electric Meters.** Small cell wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. A separate ground-mounted electric meter pedestal is prohibited.
- 11) **Street Trees.** To preserve existing landscaping in the public rights-of-way, all work performed in connection with small cell wireless facilities shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees, consistent with the City's list of pre-approved street trees, at the site for the duration of the permit term.

(c) **Small cell wireless facilities outside of the Public Right-of-Way.**

- 1) **Overall Height.** Small cell wireless facilities on private property may not exceed the applicable height limit for structures in the applicable zoning district or as specified in the Precise Plan approval within a PD zoning district.
- 2) **Setbacks.** Small cell wireless facilities on private property may not encroach into any applicable setback for main structures in the subject zoning district.
- 3) **Backup Power Sources.** The Director shall not approve any diesel generators or other similarly noisy or noxious generators in or within 250 feet from any residence. Sockets or other connections used for temporary emergency backup generators are permitted.
- 4) **Parking; Access.** Any equipment or improvements constructed or installed in connection with any small cell wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, small cell wireless facilities must use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements must be the minimum size necessary to reasonably accommodate the proposed use.
- 5) **Towers, Poles and Other Freestanding Small cell wireless facilities.** All new towers, poles or other freestanding structures that support small cell wireless facilities must be made from a metal or composite material capable of concealing all the accessory equipment, including cables, mounting brackets, radios, and utilities, either within the support structure or within an integrated enclosure located at the base of the support structure. All antennas must be installed above the pole in a single, canister-style shroud or radome. The support structure and all transmission equipment must be painted with flat/neutral colors that match the support structure. The pole height shall not exceed thirty-five (35) feet or the height limit for the applicable zoning district or overlay zone, whichever is less. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches.
- 6) **Building-Mounted Small cell wireless facilities.**
 - (A) **Preferred Concealment Techniques.** All applicants must propose new non-tower small cell wireless facilities 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 visually replicate the support structure’s architecture and proportions (examples include, but are not limited to, steeples and chimneys).

(B) **Facade-Mounted Equipment.** When small cell wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the Director may approve facade-mounted equipment concealed behind screen walls and mounted flush to the facade. Exposed facade-mounted antennas, including but not limited to “Pop-out” screen boxes and exposed antennas painted to match the façade, are prohibited, except in industrial zones.

Section 5. **Environmental Clearance.** This Resolution (Policy) is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to §15378 and California Public Resources Code § 21065, as this ordinance is not a “project” because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment; and that, even if this ordinance qualified as a “project” subject to CEQA, and pursuant to CEQA Guidelines §15061 (b) (3) this Ordinance does not have the potential for causing a significant effect on the environment as it does not allow for any new or expanded uses not otherwise permitted under existing federal, state and local regulations. The wireless communications facilities themselves are exempt from CEQA pursuant to Section 1530 of the CEQA Guidelines.

Section 6. **Severability.** If any section, subsection, sentence, clause or phrase or word of this Resolution (Policy) is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Larkspur hereby declares that it would have passed and adopted this Resolution and each and all sections, subsections, sentences, clauses, phrases and words thereof irrespective of the fact that any one or more of said sections, subsections, sentences, clauses, phrases or words be declared unconstitutional, unlawful or otherwise invalid.

Section 7. **Amendments.** Any and all amendments to the Small cell wireless facilities policies, procedures, standards and limitations herein, as deemed necessary from time-to-time, shall be adopted by resolution of the City Council.

IT IS HEREBY CERTIFIED that the City Council of the City of Larkspur duly introduced and regularly adopted the foregoing resolution at the regular meeting held on the 15th day of May 2019, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ATTEST:

Jamie Kuryllo, City Clerk